

**PREVENTION OF UNAUTHORIZED
TELECOMMUNICATIONS PROVIDER CHANGE**

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

John E. Swallow

AN ACT RELATING TO PUBLIC UTILITIES; PROHIBITING ~~h [THE] AN h~~ UNAUTHORIZED TELECOMMUNICATIONS PROVIDER CHANGE ~~h [KNOWN AS SLAMMING] h~~; PROVIDING DEFINITIONS; PRESCRIBING CHANGE AND VERIFICATION PROCEDURES AND RECORDS; REQUIRING RESTITUTION; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO PROMULGATE RULES; PROVIDING AND PRESCRIBING PENALTIES AND PROCEDURES FOR SUBSCRIBER COMPLAINTS; AND REQUIRING NOTICE OF CHANGE TO SUBSCRIBERS.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

54-8b-18, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **54-8b-18** is enacted to read:

54-8b-18. h [~~Slamming~~] h -- Definitions -- Unauthorized change of telecommunications provider -- Unauthorized charges -- Procedures for verification -- Penalties -- Authority of commission.

(1) For purposes of this section:

(a) "Agents" includes any person, firm, or corporation representing a telecommunications corporation for purposes of requesting a change in a subscriber's telecommunications provider, but does not include a local service provider when executing a request submitted by another service provider or its agents.

(b) "Freeze" means a directive from a subscriber to retain the provider of public

28 telecommunications services selected by the subscriber until the subscriber provides authorization
29 for a change to another provider of public telecommunications services through any means by
30 which a freeze is implemented.

31 h [(c) "~~Slamming~~" means changing of a subscriber's service provider without the prior
32 knowledge and authorization of the subscriber as provided in Subsection (2)(c).] h

33 h [(d)] (c) h "Small commercial subscriber" is a person or entity conducting a business,
33a agriculture,
34 or other enterprise in the state having less than five telecommunications lines.

35 h [(e)] (d) h "Subscriber" means a corporation, person, or government, or a person acting
35a legally
36 on behalf of a corporation, person, or government who has purchased public telecommunications
37 services from a telecommunications corporation.

38 (2) No telecommunications corporation or its agents shall make any change or authorize
39 a different telecommunications corporation to make any change in the provider of any public
40 telecommunications service to a subscriber unless it complies, at a minimum, with Subsections
41 (2)(a) through (e). This Subsection (2) does not apply to a telecommunications corporation that
42 effectuates a change in service provider pursuant to a change authorization submitted or requested
43 by another telecommunications corporation.

44 (a) The telecommunications corporation or its agents shall, at a minimum, inform the
45 subscriber of the nature, extent, and rates of the service being offered and any charges associated
46 with the change.

47 (b) Notwithstanding Section 13-26-4, changes in provider of telecommunication service
48 accomplished through telephone solicitation shall comply with the Telephone Fraud Prevention
49 Act, Sections 13-26-2, 13-26-8, 13-26-10, and 13-26-11.

50 (c) For sales of residential service or small commercial subscriber service, the
51 telecommunications corporation or its agents shall confirm that the subscriber is aware of any
52 charges that the subscriber must pay associated with the change and that the subscriber authorizes
53 the change of provider. The subscriber's authorization to change the provider shall be confirmed
54 by any one of the following methods:

55 (i) obtaining the subscriber's written authorization;

56 (ii) having the subscriber's oral authorization verified by an independent third party; or

57 (iii) any means provided by rule of the Federal Communications Commission or the
58 commission.

59 (d) If the subscriber is not an individual, an authorization shall be valid only if given by
60 an authorized representative of the subscriber.

61 (e) (i) The written authorization to change the provider shall be signed by the subscriber
62 and shall contain a clear, conspicuous, and unequivocal request by the subscriber for a change of
63 telecommunications provider.

64 (ii) A written authorization is not valid if it is presented to the subscriber for signature in
65 connection with a sweepstakes, game of chance, or any other means prohibited by commission
66 rule.

67 (iii) Nothing in this section shall be construed to prohibit any person from offering a
68 premium, incentive, or a thing of value to another as consideration for authorizing a change of
69 telecommunications service provider, provided that no element of chance or skill is associated with
70 the offer of the premium, incentive, or thing of value or its receipt.

71 (3) The confirmation by a third-party verifier shall, at a minimum:

72 (a) confirm the subscriber's identity with information unique to the customer, unless the
73 customer refuses to provide identifying information, then that fact shall be noted;

74 (b) confirm that the subscriber agrees to the requested change in telecommunications
75 service providers; and

76 (c) confirm that the subscriber has the authority to select the provider as the provider of
77 that service.

78 (4) A third-party verifier shall meet each of the following criteria:

79 (a) any criteria for third-party verifiers set by the Federal Communications Commission;

80 (b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part:

81 (i) by the telecommunications corporation or its agents that seek to provide the
82 telecommunications service or by any corporation, firm, or person who directly or indirectly
83 manages, controls, directs, or owns more than 5% of the telecommunications corporation; or

84 (ii) by the marketing entity that seeks to market the telecommunications service or by any
85 corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more
86 than 5% of the marketing entity;

87 (c) operate from facilities physically separated from:

88 (i) those of the telecommunications corporation or its agents that seek to provide the
89 subscriber's telecommunications service; or

90 (ii) those of the marketing entity that seeks to market a telecommunications service to the
91 subscriber; and

92 (d) not derive commissions or compensation based upon the number of change
93 authorizations verified.

94 (5) A telecommunications corporation or its agents seeking to verify the change
95 authorization shall connect the subscriber to the third-party verifier or arrange for the third-party
96 verifier to call the subscriber to verify the change authorization.

97 (6) A third-party verifier that obtains the subscriber's oral verification regarding the change
98 shall record that verification by obtaining appropriate verification data.

99 (7) (a) The record verifying a subscriber's change of provider shall be available to the
100 subscriber upon request.

101 (b) Information obtained from the subscriber through verification may not be used for any
102 other purpose.

103 (c) Any intentional unauthorized release of the information in Subsection (7)(b) is grounds
104 for penalties or other action by the commission or remedies provided by law to the aggrieved
105 subscriber against the telecommunications corporation, third-party verifier, their agents, or their
106 employees who are responsible for the violation.

107 (8) The third-party verification shall occur in the same language as that in which the
108 change was solicited.

109 (9) The verification requirements described in this section shall apply to all changes in the
110 provider of any public telecommunications service.

111 (10) The commission may promulgate rules:

112 (a) necessary to implement this section;

113 (b) consistent with any rules promulgated by the Federal Communications Commission;

114 and

115 (c) in a nondiscriminatory and competitively neutral manner.

116 (11) (a) Each subscriber may elect to require the telecommunications corporation
117 providing the subscriber's local exchange service to implement a freeze until the subscriber
118 provides authorization for a change to another provider of public telecommunications services.

119 (b) Once a subscriber has elected the freeze option under Subsection (11)(a), the
120 telecommunications corporation providing the subscriber's local exchange service may not process

121 a request to change the subscriber to another provider of telecommunications services without
122 prior authorization directly from the subscriber.

123 (12) (a) Whenever the subscriber's provider of a telecommunications service changes, the
124 new provider shall:

125 (i) retain a record of the verified change authorization consistent with requirements of the
126 Federal Communications Commission or rules issued by the commission; and

127 (ii) be responsible for providing a conspicuous notice of the change within 30 days of the
128 effective date of the change of service.

129 (b) At a minimum, the notice in Subsection (12)(a)(ii) shall identify the new provider,
130 contain a general description of the service and price, and provide information necessary for the
131 subscriber to have questions answered or to rescind the change.

132 (13) Any bill shall identify each telecommunications service provider of
133 telecommunication service for which billing is rendered.

134 (14) (a) Any person or provider of telecommunications service inadvertently or knowingly
135 designating or changing the subscriber's telecommunications service provider in violation of this
136 section shall refund to the subscriber any amounts required by the rules of the Federal
137 Communications Commission and the commission.

138 (b) The unauthorized provider in Subsection (14)(a) additionally shall:

139 (i) bear all costs of restoring the customer to the service of the subscriber's original service
140 provider; and

141 (ii) pay to any other telecommunications provider any fees set by the commission for the
142 designation or change.

143 (15) Proceedings for violations of this section may be commenced by request for agency
144 action filed with the commission by a subscriber, a telecommunications corporation, the Division
145 of Public Utilities, or by the commission on its own motion.

146 (16) Any telecommunications corporation, its agents, or a third-party verifier who violates
147 this section or rules adopted to implement this section shall be subject to the provisions of Sections
148 54-7-23 through 54-7-29.

149 (17) The commission is granted authority to enforce ~~h~~ [violations of slamming] PROVISIONS
149a RELATING TO AN UNAUTHORIZED TELECOMMUNICATION SERVICE PROVIDER CHANGE ~~h~~ in
149b interstate
150 and intrastate telecommunication service involving telecommunications corporations operating in
151 the state.

Legislative Review Note

as of 2-2-99 4:14 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel