

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1483

H.P. 1088

House of Representatives, March 31, 2003

An Act To Improve the Ability of the Public Utilities Commission To Enforce State Laws, Rules and Requirements

Submitted by the Public Utilities Commission pursuant to Joint Rule 204.
Reference to the Committee on Utilities and Energy suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BLISS of South Portland.
Cosponsored by Senator HALL of Lincoln.

Be it enacted by the People of the State of Maine as follows:

2
4 **Sec. 1. 5 MRSA §10051, sub-§1**, as amended by PL 2001, c. 229, §2, is further amended to read:

6 **1. Jurisdiction.** Except as provided in section 10004; Title 8, section 279-B; Title 10, section 8003; Title 20-A, sections 10712 and 10713; Title 29-A; and Title 32, chapters 2-B, 105 and 114, ~~and Title 35-A, section 3132~~, the District Court has exclusive jurisdiction upon complaint of any agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency and has original jurisdiction upon complaint of an agency to determine whether renewal or reissuance of a license of that agency may be refused.

16 **Sec. 2. 5 MRSA §10051, sub-§4**, as amended by PL 1999, c. 547, Pt. B, §19 and affected by §80, is repealed.

20 **Sec. 3. 23 MRSA §3360-A, sub-§6-C**, as amended by PL 2001, c. 577, §§9 to 11, is further amended to read:

22 **6-C. Penalties.** In an adjudicatory proceeding, the Public Utilities Commission may, in accordance with this subsection, impose an administrative penalty for any violation of this subsection. The administrative penalty may not exceed \$500, except that, if the person has been found in violation of this subsection within the prior 12 months, the administrative penalty may not exceed \$5,000. Administrative penalties imposed pursuant to this subsection are in addition to any other remedies or forfeitures provided by law and any liability that may result from the act or omission constituting the violation. ~~Prior to~~ Before imposing any penalties under this subsection, the commission shall consider evidence of the record of the violator, including, to the extent applicable, the number of successful excavations undertaken by the violator or the number of locations successfully marked by the violator during the prior 12 months. The commission may require a person who violates any provision of this section to participate, at the expense of the violator, in an educational program developed and conducted by the system.

42 The Public Utilities Commission may impose administrative penalties for any of the following violations:

44 A. Failure of an excavator to give notice of an excavation as required under subsection 3, except to the extent the excavator is exempt from the provisions of subsection 3 pursuant to other provisions of this section;

2 B. Excavation by an excavator in a reckless or negligent
manner that poses a threat to an underground facility;

4 C. Excavation by an excavator that does not comply with the
requirements of subsection 4-C, except to the extent the
6 excavator is exempt from the provisions of subsection 4-C
pursuant to subsection 5-C;

8 D. Failure of an underground facility operator to mark the
10 location of the operator's underground facilities within the
time limits required by subsection 4;

12 E. Marking by an underground facility operator of the
14 location of an underground facility in a reckless or
negligent manner; or

16 F. Failure of an excavator to comply with the requirements
18 of subsection 5-C, 5-D or 5-E.

20 **Sec. 4. 23 MRSA §3360-A, sub-§12**, as amended by PL 1999, c.
718, §13, is further amended to read:

22 **12. Injunctions; costs.** The owner or operator of an
24 underground facility ~~or may request that~~ the Public Utilities
Commission ~~may--commence--an--action--in--a--court--of--competent~~
26 ~~jurisdiction--seeking--a--temporary--restraining~~ issue a cease and
desist order ~~or injunction~~ to prevent a person from undertaking
28 an excavation that may result in damage to the underground
facility. The ~~court~~ Public Utilities Commission may issue a
30 ~~temporary-restraining~~ cease and desist order ~~or injunction~~ if the
32 ~~court~~ commission determines that the excavation or proposed
excavation:

34 A. Is being conducted or is likely to be conducted in a
negligent or unsafe manner; and

36 B. Is causing or is likely to cause damage to the
38 underground facility.

40 If the owner or operator prevails in an action brought pursuant
to this subsection, the owner or operator is entitled to an award
42 of the costs of bringing the action, including reasonable
attorney's fees.

44 **Sec. 5. 25 MRSA §2933, sub-§4**, as amended by PL 2001, c. 667,
46 Pt. C, §16, is further amended to read:

48 **4. Penalties.** On petition by the bureau, the Public
Utilities Commission, in an adjudicatory proceeding, may impose
50 the following administrative penalties for a violation by a local

exchange carrier of subsection 1 or 2 or any rules adopted by the
bureau implementing subsection 1 or 2:

A. An administrative penalty of up to \$1,000 for each day
of the violation; and

B. In extraordinary cases, as determined by the Public
Utilities Commission, revocation of the commission's
authorization of the local exchange carrier's authority to
provide local exchange service in this State.

~~Penalties collected by the commission under this subsection must
be deposited in the Public Utilities Commission Reimbursement
Fund under Title 35-A, section 117.~~

Sec. 6. 25 MRSA §2933, last ¶, as enacted by PL 2001, c. 53,
§2, is amended to read:

Rules adopted pursuant to this section are routine technical
rules pursuant to Title 5, chapter 375, subchapter II-A 2-A.

Sec. 7. 35-A MRSA §112, sub-§4, ¶A, as enacted by PL 1987, c.
141, Pt. A, §6, is amended to read:

A. The commission may require, by order or subpoena to be
served on any public utility or its agent in the same manner
that a summons is served in a civil action in the Superior
Court, the production of any books, accounts, papers,
records or verified copies of them kept by a public utility
or within the control of a public utility in any office or
place within or outside the State, so that an examination
may be made by the commission or under its direction.

Sec. 8. 35-A MRSA §112, sub-§4, ¶B, as enacted by PL 1987, c.
141, Pt. A, §6, is repealed.

Sec. 9. 35-A MRSA §115, sub-§1, ¶D, as enacted by PL 1987, c.
141, Pt. A, §6, is amended to read:

D. Report all possible criminal violations of this Title
and all other laws relating to public utilities to the
Attorney General.

Sec. 10. 35-A MRSA §115, sub-§3, as amended by PL 1999, c.
398, Pt. A, §12 and affected by §§104 and 105, is further amended
to read:

3. Administrative penalties. Unless otherwise provided,
the following provisions apply to ~~forfeitures and~~ administrative
penalties.

2 A. A complaint for the ~~recovery~~ enforcement of a ~~forfeiture~~
4 ~~or an administrative~~ penalty may be made by the commission
~~or one of its members.~~

6 B. A suit to ~~recovery~~ enforce any ~~forfeiture~~ ~~or~~
8 administrative penalty may be brought in the name of the
10 State in the Superior Court in the county where the main
office of the public utility is located or in Kennebec
County.

12 C. An action commenced by the commission must be prosecuted
14 by the Attorney General.

16 **Sec. 11. 35-A MRSA §116, sub-§6**, as enacted by PL 1987, c.
141, Pt. A, §6, is repealed.

18 **Sec. 12. 35-A MRSA §116, sub-§8, ¶D**, as enacted by PL 1991, c.
20 591, Pt. CC, §2, is repealed.

22 **Sec. 13. 35-A MRSA §117, sub-§3**, as enacted by PL 1987, c.
141, Pt. A, §6, is amended to read:

24 **3. Administrative penalties.** ~~Fines~~ All administrative
26 penalties collected by the commission ~~which do not constitute a~~
~~reimbursement of commission expenses shall~~ must be deposited into
28 the Public Utilities Commission Reimbursement Fund.
Administrative penalties not needed to reimburse the commission
30 for additional expenses associated with the enforcement
activities that resulted in the collection of the penalty must be
32 deposited--in transferred to the General Fund of the State
Treasury.

34 **Sec. 14. 35-A MRSA §703, sub-§4**, as amended by PL 1987, c.
36 490, Pt. A, §2, is repealed.

38 **Sec. 15. 35-A MRSA §704, sub-§3**, as amended by PL 1999, c.
547, Pt. B, §76 and affected by §80, is repealed.

40 **Sec. 16. 35-A MRSA §704, sub-§4**, as enacted by PL 1987, c.
42 141, Pt. A, §6 and amended by PL 1999, c. 547, Pt. B, §78 and
affected by §80, is further amended to read:

44 **4. Property loss suffered by a customer.** Upon a finding by
46 the District Court of a property loss suffered by a customer
causally related to a willful or reckless violation by a public
48 utility set-out-in-subsection-3 of any substantive rule adopted
by the commission pursuant to the authority granted in this
section, the court may order the public utility to compensate the
50 customer for the actual loss, less any ~~set-off~~ setoff for a
52 balance found to be due the utility by the customer for unpaid
utility

2 service. That loss may not include consequential damages. No
3 action for damages resulting from a termination which that was in
4 willful or reckless violation of the ~~emissions~~ commission's
5 rules may be commenced until at least 60 days after notice of a
6 claim setting forth the nature of the termination and the damages
7 suffered has been provided to the utility. That notice shall
8 must be provided to the utility in writing within 30 days of the
9 termination.

10 **Sec. 17. 35-A MRSA §707, sub-§5**, as enacted by PL 1987, c.
11 141, Pt. A, §6, is repealed.

12 **Sec. 18. 35-A MRSA §709, sub-§6**, as enacted by PL 1987, c.
13 141, Pt. A, §6, is repealed.

14 **Sec. 19. 35-A MRSA c. 15** is amended by repealing the chapter
15 headnote and enacting the following in its place:

16 **CHAPTER 15**

17 **SANCTIONS AND ADMINISTRATIVE PENALTIES**

18 **Sec. 20. 35-A MRSA §§1503 to 1507**, as enacted by PL 1987, c.
19 141, Pt. A, §6, are repealed.

20 **Sec. 21. 35-A MRSA §1507-A** is enacted to read:

21 **§1507-A. False statements**

22 It is a Class C crime for any person to make or cause to be
23 made, in any document filed with the commission or in any
24 proceeding under this Title, any statement that, at the time and
25 in light of the circumstances under which it is made, is false or
26 misleading in any material respect and that the person knows is
27 false or misleading in any material respect.

28 **Sec. 22. 35-A MRSA §1508**, as enacted by PL 1987, c. 141, Pt.
29 A, §6, is repealed.

30 **Sec. 23. 35-A MRSA §1508-A** is enacted to read:

31 **§1508-A. Administrative penalty**

32 **1. Penalty.** Unless otherwise specified in law, the
33 commission may, in an adjudicatory proceeding, impose an
34 administrative penalty as specified in this section.

35 **A.** For violations by a public utility or a competitive
36 electricity provider of this Title, a commission rule or a
37 commission order, the commission may impose an
38 administrative penalty for each violation in an amount that

2 does not exceed \$25,000. Each day a violation continues
3 constitutes a separate offense. The maximum administrative
4 penalty may not exceed \$500,000 for any related series of
5 violations.

6 B. For violations in which a public utility or a
7 competitive electricity provider was explicitly notified by
8 the commission that it is not in compliance with the
9 requirements of this Title, a commission rule or a
10 commission order and that failure to comply could result in
11 the imposition of administrative penalties, the commission
12 may impose an administrative penalty that does not exceed
13 \$500,000.

14 C. The commission may impose an administrative penalty on
15 any person that violates this Title, a commission rule or a
16 commission order in an amount that does not exceed \$1,000.
17 Each day a violation continues constitutes a separate
18 offense. The maximum administrative penalty may not exceed
19 \$25,000 for any related series of violations.

20 2. Considerations. In determining the amount of an
21 administrative penalty under this section, the commission shall
22 take into account:

23 A. The severity of the violation, including the intent of
24 the violator and the nature, circumstances, extent and
25 gravity of the prohibited acts;

26 B. The history of any previous violations;

27 C. The amount necessary to deter future violations;

28 D. Good faith attempts to comply after notification of a
29 violation; and

30 E. Such other matters as justice requires.

31 **Sec. 24. 35-A MRSA §1509**, as enacted by PL 1987, c. 141, Pt.
32 A, §6, is amended to read:

33 **§1509. Limitation on imposing penalty**

34 An action which that may result in the imposition of a civil
35 or--criminal an administrative penalty under this chapter shall
36 must be commenced within 5 years after the cause of action
37 accrues.

38 **Sec. 25. 35-A MRSA §1510**, as enacted by PL 1989, c. 86, is
39 repealed.

2 **Sec. 26. 35-A MRSA §1510-A** is enacted to read:

4 **§1510-A. Disposition of administrative penalty**

6 Administrative penalties collected by the commission must be
7 deposited in the Public Utilities Commission Reimbursement Fund
8 under section 117.

10 **Sec. 27. 35-A MRSA §§1511 and 1512** are enacted to read:

12 **§1511. Revocation; suspension**

14 The commission may, in an adjudicatory proceeding, suspend
15 or revoke the authority of a public utility to provide service
16 upon a finding that the public utility is unfit to provide safe,
17 adequate and reliable service at rates that are just and
18 reasonable. The commission shall provide notice and a reasonable
19 opportunity for the public utility to comply with its obligations
20 under this Title prior to suspending or revoking the authority of
21 a public utility to provide service pursuant to this section.
22 The authority granted in this section is in addition to the
23 commission's authority under section 1321.

24 **§1512. Unauthorized service**

26 The commission may order any person to cease and desist from
27 providing service if it finds that the person has not obtained
28 commission authorization to provide the service as required by
29 this Title. The commission may impose the sanctions and
30 penalties of this chapter upon any person that provides service
31 without first obtaining commission authorization as required by
32 this Title.

34 **Sec. 28. 35-A MRSA §3203, sub-§7**, as enacted by PL 1997, c.
35 316, §3, is repealed and the following enacted in its place:

37 **7. Penalties.** The commission may impose administrative
38 penalties upon a competitive electricity provider in accordance
39 with chapter 15.

41 **Sec. 29. 35-A MRSA §3206-A, sub-§1**, as enacted by PL 1999, c.
42 398, Pt. G, §4, is amended to read:

44 **1. Penalties.** The commission shall require an
45 investor-owned transmission and distribution utility to divest an
46 affiliated competitive provider if the commission determines in
47 an adjudicatory proceeding that:

2 A. The distribution utility or an affiliated competitive
3 provider has knowingly violated section 3205 or section 3206
4 or any rule adopted by the commission pursuant to those
5 sections; and

6 B. The violation resulted or had the potential to result in
7 substantial injury to retail consumers of electric energy or
8 to the competitive retail market for electric energy.

10 The commission may impose administrative penalties of up to
11 \$100,000 for a violation of section 3205 or section 3206 or any
12 rule adopted by the commission pursuant to those sections. Each
13 day of a violation constitutes a separate offense. In addition,
14 the commission may require disgorgement of profits or revenues
15 realized as a result of a violation of section 3205 or section
16 3206 or any rule adopted by the commission pursuant to those
17 sections. ~~Penalties--collected--by--the--commission--under--this
18 section--must--be--deposited--in--the--Public--Utilities--Commission
19 Reimbursement--Fund--under--section--117.~~

20 **Sec. 30. 35-A MRSA §4512, sub-§1**, as enacted by PL 1987, c.
21 141, Pt. A, §6, is repealed.

22 **Sec. 31. 35-A MRSA §4512, sub-§2**, as enacted by PL 1987, c.
23 141, Pt. A, §6, is amended to read:

24 **2. Damages.** In addition to the ~~forfeiture--provided--in~~
25 ~~subsection--1~~ administrative penalty imposed pursuant to this
26 Title, a natural gas pipeline utility that fails to comply with
27 an order of the commission shall reimburse any person whose
28 property is damaged as a result of the failure for the amount of
29 the property damage, and be liable in double damages for any
30 injury resulting to a person from the failure.

31 **Sec. 32. 35-A MRSA §4515**, as enacted by PL 1987, c. 141, Pt.
32 A, §6, is amended to read:

33 **§4515. Cease and desist orders**

34 ~~-A- The commission may order a natural gas pipeline utility~~
35 ~~to cease and desist from operating or acting in violation of a~~
36 ~~statute or rule or order of the commission may be enjoined from~~
37 ~~the operation or action upon complaint addressed to the Superior~~
38 ~~Court and brought by the commission.~~ Whenever practicable, the
39 commission shall notify a natural gas pipeline utility against
40 whom ~~an action for injunctive relief~~ a cease and desist order is
41 contemplated and afford it an opportunity to present its views
42 and, ~~except in the case of a knowing and willful violation,~~
43 shall afford it reasonable opportunity to comply. Failure to notify
44 and afford such an opportunity does not preclude the granting of
45 appropriate relief.

2 **Sec. 33. 35-A MRSA §4516**, as amended by PL 1993, c. 113, §1,
is repealed.

4 **Sec. 34. 35-A MRSA §4516-A** is enacted to read:

6 **§4516-A. Administrative penalty**

8 **1. Violation of this Title.** The commission may impose an
10 administrative penalty on a natural gas pipeline utility that
violates any provision of this Title relating to safety of
12 pipeline facilities or transportation of gas or any rule issued
under this Title in an amount not to exceed \$100,000 for each
14 violation. Each day of violation constitutes a separate offense.

16 **2. Maximum administrative penalty.** The maximum
administrative penalty may not exceed \$1,000,000 for any related
18 series of violations.

20 **3. Determining amount of penalty.** In determining the
amount of the penalty, the commission shall consider the
22 following:

24 A. The nature, circumstances and gravity of the violation;

26 B. The degree of the natural gas pipeline utility's
culpability;

28 C. The natural gas pipeline utility's history of prior
30 offenses;

32 D. The natural gas pipeline utility's ability to pay;

34 E. Any good faith by the natural gas pipeline utility in
attempting to achieve compliance;

36 F. The effect on the natural gas pipeline utility's ability
38 to continue in business; and

40 G. Such other matters as justice may require.

42 **4. Payment of penalty.** The amount of the administrative
penalty may be:

44 A. Deducted from any sums owing by the State to the natural
46 gas pipeline utility; or

48 B. Recovered in a civil action in the state courts.

2 5. Limitation on imposing penalty. Any action that may
3 result in the imposition of an administrative penalty pursuant to
4 this section must be commenced within 5 years after the cause of
5 action accrues.

6 **Sec. 35. 35-A MRSA §4704**, as enacted by PL 1987, c. 141, Pt.
7 A, §6, is amended to read:

8 **§4704. Cease and desist orders**

9
10 ~~--A- The commission may order a gas utility to cease and~~
11 ~~desist from operating or acting in violation of a statute or rule~~
12 ~~or order of the commission may be enjoined from the operation or~~
13 ~~action upon complaint addressed to the Superior Court and brought~~
14 ~~by the commission.~~ Whenever practicable, the commission shall
15 notify a gas utility against whom an ~~action for injunctive relief~~
16 a cease and desist order is contemplated and afford it an
17 opportunity to present its views and, ~~except in the case of a~~
18 ~~knowing and willful violation,~~ shall afford it reasonable
19 opportunity to comply. Failure to notify and afford such an
20 opportunity does not preclude the granting of appropriate relief.

21
22 **Sec. 36. 35-A MRSA §4705**, as amended by PL 1993, c. 113, §2,
23 is repealed.

24
25 **Sec. 37. 35-A MRSA §4705-A** is enacted to read:

26
27 **§4705-A. Administrative penalty**

28
29 1. Violation of this Title. The commission may impose an
30 administrative penalty on a gas utility that violates any
31 provision of this Title relating to safety of gas facilities or
32 any rule issued under this Title in an amount not to exceed
33 \$100,000 for each violation. Each day of violation constitutes a
34 separate offense.

35
36 2. Maximum administrative penalty. The maximum
37 administrative penalty may not exceed \$1,000,000 for any related
38 series of violations.

39
40 3. Determining amount of penalty. In determining the
41 amount of the penalty, the commission shall consider the
42 following:

43
44 A. The nature, circumstances and gravity of the violation;

45
46 B. The degree of the gas utility's culpability;

47
48 C. The gas utility's history of prior offenses;

49
50

2 D. The gas utility's ability to pay;

4 E. Any good faith by the gas utility in attempting to
achieve compliance;

6 F. The effect on the gas utility's ability to continue in
business; and

8 G. Such other matters as justice may require.

10 4. Payment of penalty. The amount of the penalty may be:

12 A. Deducted from any sums owing by the State to the gas
utility; or

14 B. Recovered in a civil action in the state courts.

16 5. Limitation on imposing penalty. Any action that may
18 result in the imposition of an administrative penalty pursuant to
20 this section must be commenced within 5 years after the cause of
22 action accrues.

24 **Sec. 38. 35-A MRSA §7105, sub-§3**, as enacted by PL 1991, c.
654, §4 and affected by §5, is repealed.

26 **Sec. 39. 35-A MRSA §7106, sub-§2, ¶A**, as enacted by PL 1997,
c. 702, §1, is amended to read:

28 A. The commission may impose an administrative penalty
30 against any person who violates this section or any rule or
order adopted pursuant to this section. In determining
32 whether to impose a penalty, the commission may consider
whether the violation was intentional. The penalty for a
34 violation may be in an amount not to exceed \$5,000 for each
day the violation continues, up to a maximum of \$40,000 for
36 a first offense and a maximum of \$110,000 for subsequent
offenses. The amount of the penalty must be based on:

38 (1) The severity of the violation, including the
40 intent of the violator, the nature, circumstances,
extent and gravity of any prohibited acts;

42 (2) The history of previous violations; and

44 (3) The amount necessary to deter future violations;

46 (4) Good faith attempts to comply after notification
48 of a violation; and

50 (5) Such other matters as justice requires.

2 **Sec. 40. 35-A MRSA §7106, sub-§2, ¶C**, as enacted by PL 1997,
c. 702, §1, is repealed.

4 **Sec. 41. 35-A MRSA §7106, sub-§2, ¶D** is enacted to read:

6 D. The commission may order a telephone utility to withhold
8 funds collected on behalf of a carrier that is subject to an
10 administrative penalty proceeding conducted pursuant to this
12 section if it finds that it is more likely than not that
14 penalties will be imposed or customer refunds will be
16 ordered that are equal to or greater than the amount ordered
18 withheld. The commission shall provide the carrier notice
20 and an opportunity to be heard prior to ordering funds to be
22 withheld. If the commission finds that there is a clear
24 danger that, if notified in advance, the carrier will
26 conceal or otherwise make funds unavailable to satisfy
28 penalties or customer refunds prior to providing notice and
30 an opportunity to be heard, it may issue an order to the
 public utility to withhold the funds without providing
 notice or an opportunity to be heard. To issue such an
 order, the commission must also make the first finding
 required by this paragraph. The commission shall, without
 delay, provide a copy of the order to the carrier along with
 written notice that the carrier, on request, will be
 provided with an opportunity to contest the finding that it
 is more likely than not that penalties will be imposed or
 customer refunds will be ordered that are equal to or
 greater than the amount ordered withheld.

32 **Sec. 42. 35-A MRSA §7107, sub-§3**, as enacted by PL 1999, c.
59, §1 and affected by §3, is repealed.

34 **Sec. 43. 35-A MRSA §7107, sub-§3-A** is enacted to read:

36 3-A. Denial or revocation of registration; notice. The
38 commission may by order, after notice and opportunity for
40 hearing, deny, suspend or revoke an application for registration
42 as, or the registration of, a service provider or billing
 aggregator if the commission finds that the order is in the
 public interest and that the applicant or registrant, or a
 principal of the applicant or registrant:

44 A. Has knowingly misrepresented or omitted a material fact
46 on the application for registration as a service provider or
48 billing aggregator or has filed an incomplete application
 and does not take reasonable steps to provide the missing
 information;

2 B. Has, in the case of a service provider, knowingly or
4 repeatedly billed one or more customers for unauthorized
6 service or, in the case of a billing aggregator, knowingly
8 or repeatedly forwarded the charge for a service or product
10 to a billing agent on behalf of a service provider who was
12 required to be registered with the commission under
14 subsection 2 and was not properly registered;

16 C. Has engaged in any other false or deceptive billing
18 practices prohibited by commission rule;

20 D. Has acted as a service provider or billing aggregator in
22 the State without being licensed to do so;

24 E. Is then permanently or temporarily enjoined by any court
26 of competent jurisdiction from violating any law governing
28 the conduct of billing aggregators or service providers or
30 from engaging in, or continuing, any conduct or practice
32 indicating a lack of fitness to engage in the business of a
34 billing aggregator or service provider;

36 F. Has, within the last 10 years, pleaded guilty or nolo
38 contendere to, or been convicted of, any crime indicating a
40 lack of fitness to engage in the business of a billing
42 aggregator or service provider;

44 G. Is the subject of any of the following orders currently
46 effective that were issued within the last 5 years:

48 (1) An order by a state or federal agency, entered
after notice and opportunity for hearing, denying,
suspending or revoking the person's license or
registration as a service provider or billing
aggregator, or the substantial equivalent of those
terms, as defined in this section;

(2) A cease and desist order issued by any state or
federal agency with general authority to enforce laws
prohibiting unfair or deceptive acts or practices in a
trade or business or with specific authority to
regulate billing aggregators or service providers; or

(3) An order entered by a court of competent
jurisdiction or entered after notice and an opportunity
for hearing by any state or federal occupational
licensing agency denying, suspending, revoking or
restricting the person's occupational license as a
result of allegations of misconduct. This subparagraph
also applies when the denial, suspension, revocation or

2 restriction of the license is pursuant to a consent
3 agreement between the person and the licensing agency,
4 whether or not the agency also issued an order; or

5 H. Has, within the last 5 years, entered into a consent
6 agreement with a state or federal enforcement or regulatory
7 agency in which the person agreed to discontinue engaging in
8 one or more practices alleged by the agency to have been an
9 unfair or deceptive act or practice.

10 **Sec. 44. 35-A MRSA §7107, sub-§5,** as enacted by PL 1999, c.
11 59, §1 and affected by §3, is amended to read:

12 **5. Enforcement authority.** In addition to any authority the
13 commission may have pursuant to other law, the commission may
14 enforce this section in accordance with this subsection.

15 A. In an adjudicatory proceeding, the commission may impose
16 an administrative penalty upon the following entities for
17 the following violations:

18 (1) A service provider who provides or charges for an
19 unauthorized service;

20 (2) A service provider or billing aggregator who is
21 required to be registered under subsection 2 and who is
22 not properly registered pursuant to that subsection;

23 (3) A billing agent who knowingly bills on behalf of a
24 service provider who is required to be registered under
25 subsection 2 and who is not properly registered
26 pursuant to that subsection at the time the billing
27 agent's bill is generated; and

28 (4) A billing agent that fails to comply with any of
29 the requirements of subsection 4.

30 B. The amount of any administrative penalty imposed under
31 paragraph A may not exceed \$1,000 per violator for
32 violations arising out of the same incident or complaint and
33 must be based on:

34 (1) The severity of the violation, including the
35 intent of the violator, the nature, circumstances,
36 extent and gravity of any prohibited acts;

37 (2) The history of previous violations; and

38 (3) The amount necessary to deter future violations.

2 (4) Good faith attempts to comply after notification
3 of a violation; and

4
5 (5) Such other matters as justice requires.

6
7 ~~Penalties collected by the commission under this subsection must~~
8 ~~be deposited in the General Fund.~~

10

SUMMARY

12

13 This bill replaces provisions of law that authorize the
14 Public Utilities Commission to issue penalties for noncompliance
15 with various laws and orders with provisions that treat
16 administrative penalties consistently throughout the statutes.
17 The bill establishes the conditions under which the commission
18 may issue administrative penalties and the maximum penalty levels
19 and considerations the commission must take into account when
20 determining penalty levels.