

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Lewiston, Maine
2003

sources or a percentage no less than that provided in the year prior to the year of allocation, whichever is greater.

~~The amount of the teacher recognition grants authorized in section 13503-A which are paid or deemed eligible to be paid on August 15, 1986, shall be added to the actual local operating costs expended by local units in 1986-87. The minimum amount of the cost of the total allocation from General Fund revenue sources for 1988-89 shall be increased by the total amount expended by the State in 1986-87 for teacher recognition grants in accordance with section 13503-A and block grants in accordance with section 13509. The resulting percentage shall be used to define the minimum percentage contribution from General Fund revenue sources in 1988-89 and subsequent years.~~

Sec. B-3. 20-A MRSA §15602, sub-§4, as enacted by PL 1989, c. 875, Pt. E, §27, is repealed.

Sec. B-4. 20-A MRSA §15602, sub-§5, as enacted by PL 1991, c. 528, Pt. I, §7 and affected by Pt. RRR and enacted by c. 591, Pt. I, §7, is repealed.

Sec. B-5. 20-A MRSA §15602, sub-§6, as enacted by PL 1991, c. 625, §1 and affected by §5, is repealed.

Sec. B-6. 20-A MRSA §15602, sub-§7, as renumbered by RR 1991, c. 2, §70, is repealed.

Sec. B-7. 20-A MRSA §15602, sub-§8, as enacted by PL 1993, c. 410, Pt. F, §5, is repealed.

Sec. B-8. 20-A MRSA §15602, sub-§9, as enacted by PL 1993, c. 684, §3, is repealed.

Sec. B-9. 20-A MRSA §15602, sub-§10, as enacted by PL 1995, c. 368, Pt. Y, §1, is repealed.

Sec. B-10. 20-A MRSA §15602, sub-§11, as enacted by PL 1997, c. 469, §1, is repealed.

Sec. B-11. 20-A MRSA §15602, sub-§12, as enacted by PL 1997, c. 643, Pt. D, §1, is repealed.

Sec. B-12. 20-A MRSA §15602, sub-§13, as enacted by PL 1999, c. 401, Pt. GG, §1, is repealed.

Sec. B-13. 20-A MRSA §15602, sub-§14, as enacted by PL 1999, c. 731, Pt. D, §1, is repealed.

Sec. B-14. 20-A MRSA §15602, sub-§§15 and 15-A, as enacted by PL 2001, c. 358, Pt. U, §1, are repealed.

Sec. B-15. 20-A MRSA §15602, sub-§16, as enacted by PL 2001, c. 559, Pt. D, §1, is repealed.

Sec. B-16. 20-A MRSA §15603, sub-§28-A, as enacted by PL 1999, c. 401, Pt. JJ, §1, is repealed.

Sec. B-17. 20-A MRSA §15612, sub-§1, as enacted by PL 1983, c. 859, Pt. G, §§2 and 4, is repealed.

Sec. B-18. 20-A MRSA §15612, sub-§5, as amended by PL 1995, c. 303, §1, is repealed.

Sec. B-19. 20-A MRSA §15612, sub-§6, as amended by PL 1989, c. 554, §1, is repealed.

Sec. B-20. 20-A MRSA §15612, sub-§8, as enacted by PL 1983, c. 859, Pt. K, §§6 and 7, is repealed.

Sec. B-21. 20-A MRSA §15612, sub-§12, as amended by PL 1989, c. 875, Pt. E, §31, is repealed.

Sec. B-22. 20-A MRSA §15612, sub-§12-A, as enacted by PL 1999, c. 401, Pt. JJ, §2, is repealed.

Sec. B-23. 20-A MRSA §15612, sub-§13, as amended by PL 1999, c. 401, Pt. JJ, §3, is further amended to read:

13. Adjustment limitations. The amounts of the adjustments paid to school administrative units or municipalities in subsections ~~1~~, 2, 4, ~~6~~, 7, 10; and 11; ~~12 and 12-A~~ are limited to the amounts appropriated by the Legislature for these adjustments.

Sec. B-24. 20-A MRSA §15612, sub-§14, as enacted by PL 1991, c. 625, §3 and affected by §5, is repealed.

Sec. B-25. Revisor's review; cross-references. The Revisor of Statutes shall review the Maine Revised Statutes and include in the errors and inconsistencies bill submitted to the Second Regular Session of the 121st Legislature pursuant to Title 1, section 94 any sections necessary to correct and update any cross-references in the statutes to provisions of law repealed in this Act.

See title page for effective date.

CHAPTER 505

H.P. 1088 - L.D. 1483

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

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

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

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.

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

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

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.

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

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;

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

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

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

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

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

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

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

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

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

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

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

4. Penalties. On petition by the bureau, the Public Utilities Commission, in an adjudicatory proceeding, may impose 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 ~~H-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.~~

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

B. A suit to recover enforce any ~~forfeiture or administrative~~ penalty may be brought in the name of the State in the Superior Court in the

county where the main office of the public utility is located or in Kennebec County.

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

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

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

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

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

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

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

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

4. Property loss suffered by a customer. Upon a finding by the District Court of a property loss suffered by a customer causally related to a willful or reckless violation by a public 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 customer for the actual loss, less any ~~set off~~ setoff for a balance found to be due the utility by the customer for unpaid utility service. That loss may not include consequential damages. No action for damages resulting from a termination ~~which that~~ was in willful or reckless violation of the ~~commissions~~ commission's rules may be commenced until at least 60 days after notice of a claim setting forth the nature of the termination and the damages suffered has been provided to the utility. That notice ~~shall~~ must be provided to the utility in writing within 30 days of the termination.

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

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

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

CHAPTER 15

SANCTIONS AND ADMINISTRATIVE PENALTIES

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

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

§1507-A. False statements

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

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

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

§1508-A. Administrative penalty

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

A. For willful violations of this Title, a commission rule or a commission order by a public utility or a competitive electricity provider, the commission may impose an administrative penalty for each violation in an amount that does not exceed \$5,000 or .25% of the annual gross revenue that the public utility or the competitive electricity provider received from sales in the State, whichever amount is lower. Each day a violation continues constitutes a separate offense. The maximum administrative penalty for any related series of violations may not exceed \$500,000 or 5% of the annual gross revenue that the public utility or the competitive electricity provider received from sales in the State, whichever amount is lower.

B. For a violation in which a public utility or a competitive electricity provider was explicitly notified by the commission that it was not in

compliance with the requirements of this Title, a commission rule or a commission order and that failure to comply could result in the imposition of administrative penalties, the commission may impose an administrative penalty that does not exceed \$500,000.

C. The commission may impose an administrative penalty in an amount that does not exceed \$1,000 on any person that is not a public utility or a competitive electricity provider and that violates this Title, a commission rule or a commission order. Each day a violation continues constitutes a separate offense. The administrative penalty may not exceed \$25,000 for any related series of violations.

D. In addition to the administrative penalties authorized by this subsection, the commission may require disgorgement of profits or revenues realized as a result of a violation of this Title, a commission rule or a commission order.

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

A. The severity of the violation, including the intent of the violator and the nature, circumstances, extent and gravity of the prohibited act;

B. The reasonableness of the violator's belief that the violator's action or lack of action was in conformance with this Title, a commission rule or a commission order;

C. The violator's history of previous violations;

D. The amount necessary to deter future violations;

E. The violator's good faith attempts to comply after notification of a violation; and

F. Such other matters as justice requires.

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

§1509. Limitation on imposing penalty

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

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

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

§1510-A. Disposition of administrative penalty

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

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

§1511. Revocation; suspension

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

§1512. Unauthorized service

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

Sec. 28. 35-A MRSA §2102, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Approval required. Except as provided in subsection 2 and in section 4507, ~~no~~ a public utility may not furnish any of the services set out in section 2101 in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service without the approval of the commission. The commission may condition approval upon the submission of a bond or other financial security if the commission determines that such a requirement is necessary to ensure that a public utility has the financial ability to meet its obligations under this Title.

Sec. 29. 35-A MRSA §3203, sub-§7, as enacted by PL 1997, c. 316, §3, is repealed and the following enacted in its place:

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

Sec. 30. 35-A MRSA §3206-A, sub-§1, as enacted by PL 1999, c. 398, Pt. G, §4, is amended to read:

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

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

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

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

Sec. 31. 35-A MRSA §4512, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. 32. 35-A MRSA §4512, sub-§2, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

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

Sec. 33. 35-A MRSA §4515, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§4515. Cease and desist orders

~~A— The commission may order a natural gas pipeline utility to cease and desist from operating or acting in violation of a statute or rule or order of the commission may be enjoined from the operation or action upon complaint addressed to the Superior Court and brought by the commission.~~ Whenever practicable, the commission shall notify a natural gas pipeline

utility against whom ~~an action for injunctive relief a cease and desist order~~ is contemplated and afford it an opportunity to present its views and, ~~except in the case of a knowing and willful violation,~~ shall afford it reasonable opportunity to comply. Failure to notify and afford such an opportunity does not preclude the granting of appropriate relief.

Sec. 34. 35-A MRSA §4516, as amended by PL 1993, c. 113, §1, is repealed.

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

§4516-A. Administrative penalty

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

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

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

- A. The nature, circumstances and gravity of the violation;
- B. The degree of the natural gas pipeline utility's culpability;
- C. The natural gas pipeline utility's history of prior offenses;
- D. The natural gas pipeline utility's ability to pay;
- E. Any good faith by the natural gas pipeline utility in attempting to achieve compliance;
- F. The effect on the natural gas pipeline utility's ability to continue in business; and
- G. Such other matters as justice may require.

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

- A. Deducted from any sums owing by the State to the natural gas pipeline utility; or
- B. Recovered in a civil action in the state courts.

5. Limitation on imposing penalty. Any action that may result in the imposition of an administrative

penalty pursuant to this section must be commenced within 5 years after the cause of action accrues.

Sec. 36. 35-A MRSA §4704, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§4704. Cease and desist orders

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

Sec. 37. 35-A MRSA §4705, as amended by PL 1993, c. 113, §2, is repealed.

Sec. 38. 35-A MRSA §4705-A is enacted to read:

§4705-A. Administrative penalty

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

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

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

- A. The nature, circumstances and gravity of the violation;
- B. The degree of the gas utility's culpability;
- C. The gas utility's history of prior offenses;
- D. The gas utility's ability to pay;
- E. Any good faith by the gas utility in attempting to achieve compliance;
- F. The effect on the gas utility's ability to continue in business; and
- G. Such other matters as justice may require.

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

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

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

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

Sec. 39. 35-A MRSA §7105, sub-§3, as enacted by PL 1991, c. 654, §4 and affected by §5, is repealed.

Sec. 40. 35-A MRSA §7106, sub-§2, ¶A, as enacted by PL 1997, c. 702, §1, is amended to read:

A. The commission may impose an administrative penalty against any person who violates this section or any rule or order adopted pursuant to this section. In determining whether to impose a penalty, the commission may consider whether the violation was intentional. The penalty for a 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 a first offense and a maximum of \$110,000 for subsequent offenses. The amount of the penalty must be based on:

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

(2) The history of previous violations; ~~and~~

(3) The amount necessary to deter future violations;

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

(5) Such other matters as justice requires.

Sec. 41. 35-A MRSA §7106, sub-§2, ¶C, as enacted by PL 1997, c. 702, §1, is repealed.

Sec. 42. 35-A MRSA §7106, sub-§2, ¶D is enacted to read:

D. The commission may order a telephone utility to withhold funds collected on behalf of a carrier that is subject to an administrative penalty proceeding conducted pursuant to this section if it finds 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. The commission shall provide the carrier notice and an opportunity to

be heard prior to ordering funds to be withheld. If the commission finds that there is a clear danger that, if notified in advance, the carrier will conceal or otherwise make funds unavailable to satisfy penalties or customer refunds prior to providing notice and 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.

Sec. 43. 35-A MRSA §7107, sub-§3, as enacted by PL 1999, c. 59, §1 and affected by §3, is repealed.

Sec. 44. 35-A MRSA §7107, sub-§3-A is enacted to read:

3-A. Denial or revocation of registration; notice. The commission may by order, after notice and opportunity for hearing, deny, suspend or revoke an application for registration 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:

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

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

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

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

E. Is then permanently or temporarily enjoined by any court of competent jurisdiction from vio-

lating any law governing the conduct of billing aggregators or service providers or from engaging in, or continuing, any conduct or practice indicating a lack of fitness to engage in the business of a billing aggregator or service provider;

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

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

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

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

Sec. 45. 35-A MRSA §7107, sub-§5, as enacted by PL 1999, c. 59, §1 and affected by §3, is amended to read:

5. Enforcement authority. In addition to any authority the commission may have pursuant to other

law, the commission may enforce this section in accordance with this subsection.

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

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

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

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

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

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

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

(2) The history of previous violations; ~~and~~

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

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

(5) Such other matters as justice requires.

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

See title page for effective date.

CHAPTER 506

S.P. 86 - L.D. 163

An Act To Provide Energy Opportunities to Northern Maine