

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1659

H.P. 1134

House of Representatives, April 24, 1991

Reference to the Committee on Utilities suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

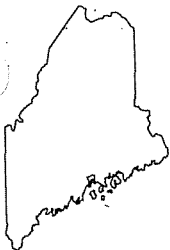
Presented by Representative ADAMS of Portland.

Cosponsored by Representative KONTOS of Windham, Representative MORRISON of Bangor and Senator CLEVELAND of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Protect Consumers from Unfair and Deceptive Telephone Practices.



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

4 Sec. 1. 9-A MRSA §3-508 is enacted to read:

6 §3508. Credit card charges

8 It is a violation of this part if the seller places charges
10 on the buyer's credit card before the buyer has signed the
12 contract required by section 3-503.

14 Sec. 2. 9-A MRSA §5-117 is enacted to read:

16 §5-117. Prohibited practices

18 A seller may not:

20 1. Misrepresentations. Misrepresent any material fact
22 relating to the terms or conditions of sale;

24 2. False impressions. Create an impression that is false
26 or the seller does not believe to be true; and

28 3. False promises. Promise performance that the seller
30 does not intend to perform or knows will not be performed.

32 Sec. 3. 10 MRSA §1498, sub-§3, as enacted by PL 1989, c. 775,
34 is amended to read:

36 3. Restriction. A person may not use an automated
38 telephone calling device to make solicitation calls to any
40 telephone number in the State except weekdays between 9 a.m. and
42 5 p.m., according to the time in this State, and may not complete
44 more than one solicitation call to any telephone number during
46 each 8-hour period. In addition, the person using the device to
48 place the call shall ensure that the device disconnects no more
50 than 5 seconds following the disconnection of the telephone
52 number called.

Sec. 4. 10 MRSA §1498, sub-§7, ¶A-1 is enacted to read:

A-1. A full transcript of every message that the registrant
will transmit to consumers in the course of a solicitation
call.

Sec. 5. 32 MRSA §4671 is enacted to read:

§4671. Prohibited practices

A seller may not:

1. Misrepresentations. Misrepresent any material fact
relating to the terms or conditions of sale;

2 3. Collecting utility. "Collecting utility" means the
3 local utility that is responsible for collecting from consumers
4 the charges imposed for audiotext services.

6 4. Provider. "Provider" means the person or entity
7 providing audiotext services to consumers for a charge.

8 5. Solicitation program. "Solicitation program" means all
9 advertising messages used by a provider to solicit purchases of
10 audiotext services, whether in print or a recorded or live
11 message, however transmitted.

12 **§802. Registration; fee**

14 1. Application. A provider shall, prior to conducting a
15 solicitation program or offering audiotext services to consumers
16 within the State, register with the Department of Professional
17 and Financial Regulation as a provider of audiotext services,
18 using a form designated for the purpose by the department. Each
19 application must be accompanied by a \$15 fee, and must set forth,
20 without limitations, the following information:

22 A. The names, addresses and telephone numbers of the
23 provider, any parent company or entity and the principal
24 individual owners of the provider or its parent company;

26 B. Whether the provider possesses a permanent place of
27 business within the State, as defined in Title 32, section
28 4681, subsection 4; and

30 C. Whether the provider will use an automated telephone
31 calling device to transmit a solicitation program to
32 consumers within the State.

34 2. Registration. If it appears from the application and
35 any other pertinent information available that the provider
36 possesses a permanent place of business within the State, the
37 Department of Professional and Financial Regulation shall issue a
38 registration to the provider. If it appears that the provider
39 does not possess a permanent place of business within the State,
40 the department shall reject the application and notify the
41 provider that it is required to register with the department as a
42 transient seller pursuant to Title 32, chapter 69-A, unless the
43 provider is already registered. If the application states that
44 the provider will use an automated telephone calling device to
45 transmit a solicitation program to consumers within the State,
46 the department shall notify the provider that in addition to
47 registration pursuant to this section or Title 32, chapter 69-A,
48 the provider is also required to register with the Secretary of
49 State pursuant to Title 10, section 1498. The department shall
50 provide the Secretary of State with a copy of such notices.

2 3. Collection prohibition. A collecting utility may not
3 bill or collect any charges for audiotext services rendered by a
4 provider that is not registered with the Department of
5 Professional and Financial Regulation pursuant to this section or
6 Title 32, chapter 69-A.

8 **§803. Disconnection prohibited**

10 A collecting utility may not disconnect service or send any
11 disconnection notice for a consumer's failure to pay an audiotext
12 service bill.

14 **§804. Blocking service**

16 Collecting utilities shall provide all telephone subscribers
17 with an opportunity to block the access of audiotext service
18 providers to subscribers' telephone lines free of charge and with
19 an opportunity to reopen such access. A utility may not charge
20 for customers' first exercise of either option. Thereafter,
21 collecting utilities shall continue to offer subscribers the
22 ability to block and reopen such access, but may charge a fee for
23 provision of this service, which may not exceed \$5 for each
24 occasion on which the service is provided.

26 **§805. Collection procedures**

28 When billing and collecting for audiotext services, a
29 collecting utility must bill as follows.

30 1. Separate bills. Charges for audiotext services must be
31 billed separately from charges for regular telephone service.
32 Bills for audiotext services must be sent to consumers under
33 separate cover and not with the consumer's monthly telephone bill.

34 2. Bill information. The following information must be
35 clearly and conspicuously displayed on each page of all bills for
36 audiotext services:

38 A. The heading, "AUDIOTEXT/900 NUMBER SERVICES";

40 B. A statement, displayed in bold type equal in size to the
41 largest type appearing elsewhere on the page, that failure
42 to pay an audiotext service charge can not result in
43 disconnection of service, with a description of what
44 qualifies as audiotext service, specifically referring to
45 900-number calls;

48 C. A statement that if a consumer believes the audiotext
49 service for which the collecting utility is billing, or the
50 related solicitation program, was in any way unfair or
51 deceptive, or if the consumer asserts that the audiotext
52 service was incomplete, garbled or otherwise unintelligible,

2 or if the consumer believes that the consumer is entitled to
3 an adjustment of the charge for any other reason, the
4 consumer may complain to the collecting utility and request
5 that the audiotext service charge be removed from the
6 consumer's bill; and

7 D. A local or toll-free telephone number the consumer can
8 call for information, to dispute charges or to get the name,
9 telephone number and address of the provider.

10 **§806. Complaint procedures**

11 Whenever a consumer complains to a collecting utility
12 concerning a bill or charge for audiotext services, the
13 collecting utility shall observe the following procedures.

14 1. Review for compliance with standards. The collecting
15 utility may not collect any disputed audiotext service charge
16 without first conducting a review of the provider's solicitation
17 program and audiotext services for compliance with the standards
18 set forth in subsection 2. The collecting utility need not
19 conduct a review if a review has been conducted within 30 days
20 prior to the date on which the audiotext services that are the
21 subject of the disputed charge were rendered.

22 2. Audiotext service standards. The review required by
23 subsection 1 must determine compliance with the following
24 standards.

25 A. Every solicitation program must contain a clear
26 statement of the nature of the audiotext services that will
27 be provided and the total cost or average total cost and
28 per-minute cost of a call to the 900 or other number. In
29 addition, at each mention of the telephone number to which
30 calls are solicited, the solicitation program must clearly
31 state that the call solicited is a toll call. If made in
32 print, the required statements must be in lettering equal in
33 size to the largest lettering used elsewhere in the
34 solicitation program; if made in a recording, the required
35 statements must be clear, articulate and intelligible, and
36 at a volume equal to the remainder of the solicitation
37 program.

38 B. All audiotext services must be preceded by a clearly
39 audible, articulate and intelligible statement of the nature
40 of the audiotext services that will be provided, and the
41 total cost or average total cost and per-minute cost of a
42 call to the 900 or other number. Following the statement of
43 cost, every audiotext statement must clearly state: "If you
44 wish to terminate this call without incurring any charge,
45 you must hang up within the next 10 seconds." The provider
46 must then afford the caller a 10-second opportunity to
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2 disconnect without incurring any charge. If a per-minute
3 charge applies to the call, the provider must employ a beep
4 tone at 60-second intervals to alert the consumer to the
5 passage of time during the call.

6 C. Live or recorded solicitation programs and audiotext
7 services must be clearly audible, articulate and
8 intelligible, in plain language and spoken at normal
9 cadence. Audiotext services must employ the same language
10 used in the related solicitation program.

11
12 3. Adjustment of charges. Unless the collecting utility
13 determines following the required review that the provider is in
14 full compliance with the standards set forth in subsection 2 and
15 further determines in the exercise of sound discretion that the
16 consumer's complaint is not justified, the collecting utility
17 shall adjust the consumer's audiotext service bill by removing
18 the disputed charge.

19
20 4. Compliance with commission rules. The collecting
21 utility must observe complaint procedures established by
22 applicable commission rules.

23
24 5. Access to records. Collecting utilities shall afford
25 reasonable access to all records and documents relating to
26 consumer complaints to the commission and to the Attorney General
27 upon request.

28 **§807. Commission rules**

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30 The commission may adopt rules pursuant to the Maine
31 Administrative Procedure Act to implement the requirements of
32 this chapter.

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34 **§808. Penalties**

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36 Violation of this chapter is a violation of the Maine Unfair
37 Trade Practices Act.

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41 **STATEMENT OF FACT**

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43 This bill regulates collection of charges for audiotext or
44 900-number services by local telephone companies within the
45 State; prohibits disconnection for nonpayment of audiotext or
46 900-number charges; and requires provision of a "blocking
47 service," whereby consumers can elect to block access to
48 audiotext or 900-number services from their telephones. It also
49 requires audiotext or 900-number providers to register with the
50 Department of Professional and Financial Regulation. This
registration requirement will facilitate enforcement of the Maine

2 Unfair Trade Practices Act, the transient seller's laws and the
automated telephone solicitation laws.

4 Consumers generally view telephone bills as items that must
be paid in order to avoid service disconnection. This bill
6 recognizes that audiotext or 900-number services are not the same
as regular local or long-distance telephone service and addresses
8 the consumer problems created by the fact that audiotext or
900-number solicitations and services have been widely misused.

10 The bill also amends the automated telephone solicitation
12 laws by limiting the number of solicitation calls that may be
made to a given telephone number during an 8-hour period and by
14 requiring solicitors to file transcripts of their solicitation
messages.

16 Finally, the bill prohibits any telemarketing enterprise
18 from placing a charge on a consumer's credit card prior to the
time the consumer has read and signed the contract required by
20 the home solicitation sales laws, in the Maine Revised Statutes,
Title 9-A, Article III, Part 5.

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