

MAINE STATE LEGISLATURE

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UTILITIES AND ENERGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1494, L.D. 2093, Bill, "An Act Relating to the Protection of Maine Consumers in the Telecommunications Market"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 35-A MRSA §7106 is enacted to read:

§7106. Consumer protection

1. Unauthorized change of carrier. This subsection governs the initiation of a change in a customer's local or intrastate interexchange carrier that is not authorized by that consumer.

A. Except as otherwise provided by the commission by rule adopted pursuant to subsection 3, no local or intrastate interexchange carrier may initiate the change of a customer's local or intrastate carrier unless the change is verified by one of the following methods:

- (1) Written authorization from the customer;
(2) Toll-free electronic authorization placed from the telephone number that is the subject of the change order; or
(3) Oral authorization obtained by an independent 3rd party.

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2 B. When a customer's service is changed to a new local or
4 intrastate interexchange carrier, the new local or
6 intrastate interexchange carrier shall maintain for 12
 months a record of nonpublic customer-specific information
 that establishes that the customer authorized the change.

8 C. If a local or intrastate interexchange carrier initiates
10 a change that is not made or verified consistent with this
12 section or commission rules adopted under this section, that
 carrier, upon request by the customer, shall reverse the
 change within a time period established by commission rule.

14 D. A local or intrastate interexchange carrier that has
 initiated an unauthorized customer change shall:

16 (1) Pay all usual and customary charges associated
18 with returning the customer to the customer's original
20 local or intrastate interexchange carrier;

22 (2) Return to the customer any amount paid to that
 carrier by the customer or on the customer's behalf;

24 (3) Pay any access charges and related charges to
26 access providers or to an underlying carrier when
 applicable; and

28 (4) Upon request, provide all billing records to the
30 original local or intrastate interexchange carrier from
32 which the customer was changed to enable the original
 local or intrastate interexchange carrier to comply
 with this section and any commission rules adopted
 under this section.

34 E. Except as otherwise provided by the commission by rule
36 in accordance with subsection 3, a customer subjected to an
38 unauthorized change of local or intrastate interexchange
40 carrier is responsible for charges of the authorized carrier
 for the customer's usage during the period the customer was
 served by the unauthorized carrier unless:

42 (1) The customer has paid the unauthorized carrier for
44 the usage; and

46 (2) The amount paid by the customer has not been
48 returned by the unauthorized carrier to the customer in
 accordance with paragraph D, subparagraph (2).

50 If the unauthorized carrier has not returned to the customer
 the amount paid by the customer to the unauthorized carrier

2 in accordance with paragraph D, subparagraph (2), the
3 unauthorized carrier shall pay to the authorized carrier the
4 charges of the authorized carrier for the customer's usage
5 during the period the customer was served by the
6 unauthorized carrier.

7 **2. Penalty.** A local or intrastate interexchange carrier
8 that violates this section is subject to penalty in accordance
9 with this subsection.

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

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

22 (2) The history of previous violations; and

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

24 B. If the commission finds that a local or intrastate
25 interexchange carrier has repeatedly violated this section
26 or rules adopted under this section, the commission shall
27 order the utility to take corrective action as necessary.
28 In addition, the commission, if consistent with the public
29 interest, may suspend, restrict or revoke the registration
30 or certificate of the local or intrastate interexchange
31 carrier, so as to deny the local or intrastate interexchange
32 carrier the right to provide service in this State.

33 C. Penalties collected by the commission under this section
34 must be deposited in the Public Utilities Commission
35 Reimbursement Fund under section 117.

36 **3. Rules.** The commission shall adopt nondiscriminatory and
37 competitively neutral rules to further implement this section.

38 A. Except as otherwise provided in this subsection, rules
39 adopted by the commission under this subsection, including
40 rules regarding customer verification of a change of
41 carrier, must be consistent with the rules adopted by the
42 Federal Communications Commission governing the initiation
43 of service.

2 of a change of a customer's interstate carrier, except that
3 the commission's rules on customer verification need not
4 conform to the customer verification method involving a
5 customer information package as defined in 47 Code of
6 Federal Regulations, Section 64.1100(d).

7 B. The commission, in adopting rules governing customer
8 verification of a change of carrier, shall consider whether
9 customer verification is necessary in the case of
10 customer-initiated calls.

11 C. The commission shall adopt by rule a definition of those
12 actions that constitute initiation of a change of carrier
13 under this section and a definition of actions that do not
14 constitute the initiation of a change of carrier. The
15 commission shall consider whether actions not constituting
16 the initiation of a change of a customer's carrier include
17 actions of a local exchange carrier to change a customer's
18 carrier:

19 (1) Undertaken at the direction of a carrier to which
20 the customer's service is changed or with the oral or
21 written authorization of the customer; and

22 (2) That do not result in the customer being changed
23 to the service of the carrier undertaking the actions
24 or to an affiliate of the carrier undertaking the
25 actions.

26 D. Notwithstanding subsection 1, paragraph E, if the
27 Federal Communications Commission provides by rule that
28 customers are not responsible for charges of an authorized
29 interstate carrier for the customer's usage during the
30 period the customer was served by an unauthorized interstate
31 carrier, the commission by rule may provide that a customer
32 is not responsible for charges of an authorized local or
33 intrastate carrier for the customer's usage during the
34 period the customer was served by an unauthorized local or
35 intrastate carrier.

36 Rules adopted pursuant to this subsection are routine technical
37 rules as defined in Title 5, chapter 375, subchapter II-A.

38 4. Enforcement. The commission through its own counsel or
39 through the Attorney General may apply to the Superior Court of
40 any county of the State to enforce any lawful order made or
41 action taken by the commission pursuant to this section. The
42 court may issue such orders, preliminary or final, as it
43 considers proper under the facts established before the court.

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2 5. Notice to the Attorney General. If the commission has
3 reason to believe that any carrier has violated any provision of
4 the law for which criminal prosecution is provided and would be
5 in order or any law regarding fraud or consumer protection, the
6 Commission shall notify the Attorney General. The Attorney
7 General shall promptly institute any actions or proceedings the
8 Attorney General considers appropriate.'

9 Further amend the bill by inserting at the end before the
10 summary the following:

11
12
13 **FISCAL NOTE**

14
15 This bill may increase the number of civil suits filed in
16 the court system. The additional workload and administrative
17 costs associated with the minimal number of new cases filed can
18 be absorbed within the budgeted resources of the Judicial
19 Department. The collection of additional filing fees may also
20 increase General Fund revenue by minor amounts.

21 The Public Utilities Commission will incur some minor
22 additional costs to administer certain telecommunication
23 prohibitions and to adopt certain rules. These costs can be
24 absorbed within the commission's existing budgeted resources.

25 Authorizing the Public Utilities Commission to impose
26 certain administrative penalties may result in additional
27 dedicated revenue to the Public Utilities Commission
28 Reimbursement Fund. The amounts can not be determined at this
29 time.'

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31
32
33 **SUMMARY**

34
35 This amendment replaces the bill. This amendment provides
36 the following:

37
38 1. Provides protections against unauthorized changes of a
39 customer's local or intrastate carrier;

40
41 2. Requires the Public Utilities Commission to adopt
42 implementing rules consistent with rules of the Federal
43 Communications Commission;

44
45 3. Allows the Public Utilities Commission to impose
46 administrative penalties, establishes guidelines for the
47 imposition of these penalties and establishes a cap on the amount
48 of the penalty that may be imposed;

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2 4. Requires a customer to pay the intrastate carrier from
4 which the customer was illegally switched the carrier's charges
6 for the customer's usage during the time the customer was served
8 by an unauthorized carrier; the commission is authorized to
provide that the customer is not responsible for these charges if
the Federal Communications Commission provides that customers are
not responsible for the charges of interstate carriers during the
time the customer was served by an unauthorized interstate
carrier; and

10

5. Adds a fiscal note to the bill.

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