

# MAINE STATE LEGISLATURE

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L.D. 570

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UTILITIES AND ENERGY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
119TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 428, L.D. 570, 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 emergency clause and inserting in its place the following:

Sec. 1. 35-A MRSA §7107 is enacted to read:

§7107. Unauthorized services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Billing agent" means a telephone utility that includes in a bill it sends to a customer a charge for a product or service offered by a service provider.

B. "Billing aggregator" means any person, other than a service provider, who forwards the charge for a product or service offered by a service provider to a billing agent.

C. "Service provider" means any person, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

D. "Unauthorized service" means the provision of any service or product by a service provider from whom a billing agent has not obtained sufficient evidence of customer authorization and for which a charge appears on the customer's telephone bill. For the purposes of this

COMMITTEE AMENDMENT

2 section, a charge for a collect call is deemed to be  
3 authorized by the customer receiving the call.

4 2. Registration requirements. The following acts are  
5 prohibited.

6  
7 A. A service provider may not offer a product or service to  
8 a customer, the charge for which appears on the bill of a  
9 billing agent, unless the service provider is properly  
10 registered with the commission.

11  
12 B. A billing aggregator may not forward to a billing agent  
13 charges for a service or product offered by a service  
14 provider unless the billing aggregator is properly  
15 registered with the commission.

16  
17 C. A billing aggregator may not forward charges to a billing  
18 agent from a service provider who is required to be  
19 registered under this subsection and who is not properly  
20 registered under this subsection.

21  
22 D. A billing agent may not knowingly bill on behalf of a  
23 service provider who is required to be registered under this  
24 subsection and who is not properly registered under this  
25 subsection.

26  
27 A telephone utility that is authorized by the commission or by  
28 law to provide telephone services in this State is not required  
29 to be registered under this subsection.

30  
31 The commission by rule may establish the manner and form of the  
32 registration. A registration properly filed with the commission  
33 takes effect 14 days after the filing date unless the commission  
34 objects to the registration and provides notice of its objection  
35 to the registrant within the 14 days. If the commission objects  
36 to the registration, the registration does not become effective  
37 unless expressly approved by the commission. The commission  
38 shall offer a person whose registration has been rejected an  
39 opportunity for a hearing. A registration, once effective,  
40 remains effective until revoked by the commission or surrendered  
41 by the service provider or billing aggregator.

42  
43 3. Revocation of registration; notice. After notice and an  
44 opportunity for a hearing, the commission may revoke a  
45 registration in accordance with this subsection.

46  
47 A. The commission may revoke the registration of a service  
48 provider who has:

49  
50 (1) Knowingly or repeatedly billed one or more  
customers for unauthorized service; or

2           (2) Engaged in any other false or deceptive billing  
4           practices prohibited by commission rule.

6           B. The commission may revoke the registration of a billing  
8           aggregator who has:

10           (1) Knowingly or repeatedly forwarded the charge for a  
12           service or product to a billing agent on behalf of a  
14           service provider who was required to be registered with  
16           the commission under subsection 2 and who was not  
18           properly registered; or

20           (2) Engaged in any other false or deceptive billing  
22           practices prohibited by commission rule.

24           Service providers who are telephone utilities and who are not  
26           required to register with the commission under subsection 2 are  
28           subject to the jurisdiction and control of the commission as  
30           otherwise provided under this Title.

32           Immediately following a revocation of registration under this  
34           subsection, the commission shall provide notice of the  
36           revocation, in a form and manner established by the commission by  
38           rule, to all telephone utilities doing business in Maine.

40           4. Procedure upon complaint. If a customer of a billing  
42           agent notifies the billing agent that a charge for an  
44           unauthorized service has been included in the customer's  
46           telephone bill, the billing agent shall:

48           A. Immediately suspend collection efforts on that portion  
50           of the customer's bill; and

B. Either cease collection efforts entirely with regard to  
          the disputed charge or request evidence from the service  
          provider that the customer authorized the service for which  
          payment is sought. If the billing agent ceases collection  
          efforts or sufficient evidence of customer authorization is  
          not presented to the billing agent within a reasonable time,  
          as defined by the commission by rule, the billing agent  
          shall:

(1) Immediately remove any charges associated with the  
          unauthorized service from the customer's bill; and

(2) Refund to the customer any amounts paid for the  
          unauthorized service that were billed by the billing  
          agent during the 6 months prior to the customer's  
          complaint or during any longer period in which the

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customer can prove the customer was billed by the billing agent for unauthorized services.

If sufficient evidence of customer authorization is provided to the billing agent, the billing agent may restore the charges on the customer's bill and reinstitute collection efforts. The customer or the service provider may appeal the billing agent's determination to the commission.

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.

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

6. **Rulemaking.** The commission shall adopt rules to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Rules adopted by the commission must at least:

A. Establish clear standards for interpreting and applying the state-of-mind standard applicable to billing agents who bill on behalf of service providers not properly registered with the commission;

B. Define types of evidence that constitute sufficient evidence of customer authorization in a manner that imposes the least economic and technical burdens on customers and service providers; and

C. With regard to direct-dialed telecommunications services, provide that evidence that a call was dialed from the number that is the subject of the charge is sufficient evidence of authorization for the charge for that call.

**Sec. 2. Report; authority.** No later than January 1, 2000, the Public Utilities Commission shall submit to the Joint Standing Committee on Utilities and Energy copies of rules adopted pursuant to the Maine Revised Statutes, Title 35-A, section 7107. The committee may report out to the Second Regular Session of the 119th Legislature legislation concerning any matter related to the subject matter of Title 35-A, section 7107.

**Sec. 3. Application.** The Public Utilities Commission may not enforce the provisions of the Maine Revised Statutes, Title 35-A, section 7107 until it has adopted rules pursuant to subsection 6 of that section.'

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

#### **FISCAL NOTE**

The Public Utilities Commission will incur some minor additional costs to adopt rules and administer new provisions to protect telecommunications consumers from certain fraudulent industry practices. These costs can be absorbed within the commission's existing budgeted resources.

The imposition of any administrative penalties will increase General Fund revenue. The amount of any increase can not be determined at this time.'

**SUMMARY**

This amendment replaces the bill. The bill and the amendment both concern a practice known as "cramming." The amendment provides for methods different from those proposed in the bill for dealing with cramming. The amendment provides as follows.

1. It requires service providers who bill for their services on a telephone utility's telephone bill to be registered with the Public Utilities Commission.

2. It requires billing aggregators who forward service provider's charges to telephone utilities for inclusion on the utilities' bills to be registered with the commission.

3. It exempts telephone utilities who are authorized to provide telephone service in Maine from the registration requirements.

4. It permits the Public Utilities Commission to revoke the registration of a service provider who charges customers for services not authorized by the customers or who engages in other false or deceptive practices.

5. It permits the Public Utilities Commission to revoke the registration of a billing aggregator who forwards charges of unregistered service providers to a telephone utility for inclusion on a customer's bill.

6. It requires billing agents, such as telephone utilities that bill on behalf of service providers, upon receiving a complaint from a customer, to suspend collecting for unauthorized services. The billing agent is required either to obtain evidence from the service provider that the services are in fact authorized or to remove the charges from the customer's bill and refund to the customer amounts paid during the prior 6 months or during any longer period during which the customer can prove the customer was billed.

7. It authorizes the Public Utilities Commission to impose administrative penalties of up to \$1,000 per violation for service providers who engage in cramming, service providers or billing agents who are not properly registered, billing agents who knowingly bill on behalf of unregistered service providers and billing agents that fail to comply with the procedures governing the handling of customer complaints regarding unauthorized services.

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2           8. It requires the Public Utilities Commission to adopt  
routine technical rules implementing these provisions; the  
4           commission is required to submit its rules to the Joint Standing  
Committee on Utilities and Energy by January 1, 2000; and the  
6           committee is authorized to report out legislation on cramming.

8           9. It prohibits the commission from enforcing any of these  
provisions until it adopts rules implementing the provisions.  
10

10           10. It adds a fiscal note to the bill.