### MAINE STATE LEGISLATURE

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|    | L.D. 2436   |
|----|---|
| 2  | DATE: 3-30-00 (Filing No. H-982)  |
| 4  |   |
| 6  | MAJORITY<br>JUDICIARY   |
| 8  |   |
| 10 | Reproduced and distributed under the direction of the Clerk of the House.   |
| 12 | STATE OF MAINE  |
| 14 | HOUSE OF REPRESENTATIVES 119TH LEGISLATURE  |
| 16 | SECOND REGULAR SESSION  |
| 18 | COMMITTEE AMENDMENT " $\widehat{\mathcal{H}}$ " to H.P. 1730, L.D. 2436, Bill, "An  |
| 20 | Act to Permit the Attorney General, a Deputy Attorney General or a District Attorney to Request Records of Internet Service |
| 22 | Providers and Mobile Telecommunications Service Providers"  |
| 24 | Amend the bill by striking out all everything after the   |
| 26 | title and before the summary and inserting in its place the following:  |
| 28 | Be it enacted by the People of the State of Maine as follows:   |
| 30 | Sec. 1. 5 MRSA §200-B, as amended by PL 1999, c. 398, Pt. A, §1 and affected by §105, is further amended to read:           |
| 32 |   |
| 34 | §200-B. Authority of Attorney General to request utility records  |
| 36 | 1Public-utility-servicesAs-used-in-this-section/-the  |
| 38 | term-"public-utility-services"meansservices-furnished-bya public-utility-as-defined-in-Title-35-A,-section-102,-subsections |
| 40 | 7,-8,-12,-14,-15,-19,-20-B-and-22-whether-er-not-subject-to-the jurisdiction-of-the-Public-Utilities-Gommission.            |
| 42 | 1-A. Definitions. As used in this section, the following  |

terms have the following meanings.

A. "Internet service provider" means an entity that provides electronic communication or remote computation services, whether or not subject to the jurisdiction of the Public Utilities Commission.

B. "Utility services" means:

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## COMMITTEE AMENDMENT

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# COMMITTEE AMENDMENT "A" to H.P. 1730, L.D. 2436

|            | (1) Services furnished by a public utility, as defined   |
|------------|--|
| 2          | in Title 35-A, section 102, subsections 7, 8, 12, 14,  |
| 4          | 15, 19, 20-B and 22, whether or not subject to the   |
| 4          | jurisdiction of the Public Utilities Commission;   |
| 6          | (2) Services provided by an Internet service provider:   |
|            | and  |
| 8          |  |
|            | (3) Mobile telecommunications services, as defined in  |
| 10         | Title 35-A, section 102, subsection 9-A, whether or not  |
|            | the provider of the mobile telecommunications services   |
| 12         | is subject to the jurisdiction of the Public Utilities   |
|            | Commission.  |
| 14         |  |
|            | 2. Demand for records of utility services; cause. The  |
| 16         | Attorney General, a deputy attorney general or a district  |
| 1.0        | attorney may demand, in writing, all the records or information  |
| 18         | in the possession of the public utility or Internet service  |
| 20         | <u>provider</u> relating to the furnishing of public utility services <u>or</u> <u>Internet services</u> to a person or a location if the attorney has |
| 20         | reasonable grounds to believe that the services furnished to a   |
| 22         | person or to a location by a public utility or Internet service  |
| - <b>-</b> | provider are being or may be used for, or to further, an unlawful  |
| 24         | purpose. Upon-a-showing-of-cause-to-any-Justice-of-the-Superior  |
|            | Court-or-Judge-of-the-District-Court,-the-justice-or-judge-shall   |
| 26         | approve-the-demand Showing-of-cause-must-be-by-the-affidavit-of  |
|            | any-law-enforcement-officer.   |
| 28         |  |
|            | Records of utility services, as applied to Internet service  |
| 30         | providers, are limited to the following information and records  |
|            | in the possession of the Internet service provider: the  |
| 32         | subscriber's or customer's name, address, local and long-distance  |
|            | telephone billing records, telephone number or other subscriber  |
| 34         | number or identity and length of time the services have been   |
|            | provided to the subscriber or customer.  |
| 36         | Upon a showing of cause to any Justice of the Superior Court or  |
| 38         | Judge of the District Court, the justice or judge shall approve  |
|            | the demand. Showing of cause must be by the affidavit of any law   |
| 10         | enforcement officer.   |
| . •        | V *** A * A *** A * * * C * * * * C * * * *  |
| 12         | 3. Release of other information. An order approving a  |
|            | demand for utility records of utility services may include a   |
| 14         | provision prohibiting the publicutility provider of utility  |
|            | services from releasing the fact of the request or that the  |
| 16         | records or information will be or have been supplied. The public   |

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utility provider of utility services may not release the fact or

facts without obtaining a court order to that effect.

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4. Production of records of utility services. Upon receipt of a demand, approved by a justice or judge, the public-utility provider of utility services shall immediately deliver to the attorney, or the attorney's designee or agent, making the request all the records or information demanded. A public-utility provider of utility services or employee of that public-utility provider of utility services is not criminally or civilly liable for furnishing any records or information in compliance with the order approving the demand.

5. Orders permitted under federal law. The Attorney General, a deputy attorney general or a district attorney may, upon an affidavit of an investigating law enforcement officer, make application to any Justice of the Superior Court or any Judge of the District Court for any order permitted pursuant to 18 United States Code, Section 3122(a)(2).

6. Notification: extension. Within 60 days of approval of the demand under subsection 2, the Attorney General, deputy attorney general or district attorney making the demand shall notify the person receiving the services that the demand for utility service records has been made and approved. Upon showing of reasonable cause by the Attorney General, deputy attorney general or district attorney, the court may extend the period within which notice must be given for a definite period of time.'

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

#### FISCAL NOTE

The additional costs associated with the notification and extension provisions regarding access to certain records can be absorbed by the Department of the Attorney General and the Judicial Department utilizing existing budgeted resources.'

#### **SUMMARY**

This amendment replaces the bill. It rewrites the section of the statutes establishing the procedure for a prosecutor to demand certain records from providers of services to cover a wider range of services. Current law authorizes the procedure This amendment covers the for certain public utility records. same public utility services but includes mobile telecommunications service providers, even if they are not within the jurisdiction of the Public Utilities Commission, and Internet providers, which are not currently within jurisdiction of the Public Utilities Commission.

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This amendment uses the federal definition of "Internet service provider" and limits records of utility services to subscriber information: name, address, local and long-distance telephone billing records, telephone number or other subscriber number or identity and the length of time the services have been provided to the subscriber or customer. Content of electronic mail and other transmissions is excluded.

This amendment defines "utility services" subject to a demand for records as the following: services provided by ferries, gas utilities, public heating utilities, radio common carriers, radio paging services, telephone utilities, transmission and distribution utilities and water utilities, whether or not subject to the jurisdiction of the Public Utilities Commission; mobile telecommunications services, whether or not subject to the jurisdiction of the Public Utilities Commission; and services provided by Internet service providers.

The procedure a prosecutor must follow to demand and receive the records is not changed, except that a notice requirement is added. Within 60 days of the approval of the demand for utility service records, the prosecutor must notify the person who is the subject of the records. The prosecutor may ask the court to extend that period, which the court may do upon a showing of reasonable cause. The period of the extension may not be indefinite but must be to a certain time. Additional extensions may be requested.

The amendment also adds a fiscal note to the bill.

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