

# MAINE STATE LEGISLATURE

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SAC  
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L.D. 508

Date:

4/28/21

(Filing No. H-106)

**ENERGY, UTILITIES AND TECHNOLOGY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
130TH LEGISLATURE  
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 371, L.D. 508, "An Act To Improve Regulation of Door-to-door Marketing of Retail Energy Supply"

Amend the bill by striking out all of section 1 and inserting the following:

**'Sec. 1. 35-A MRSA §102, sub-§4-C** is enacted to read:

**4-C. Door-to-door sales.** "Door-to-door sales" means the practice by which a representative of a competitive electricity provider, including a 3rd-party sales agent, solicits or sells electric services to residential or small commercial consumers by means of personal visits to consumers at locations other than the representative's place of business. "Door-to-door sales" does not include sales conducted entirely by mail, telephone or other electronic means; sales conducted during a scheduled appointment at a consumer's residence or place of business; or sales conducted following an initial contact that was solicited by the consumer.

**Sec. 2. 35-A MRSA §102, sub-§19-A** is enacted to read:

**19-A. Third-party sales agent.** "Third-party sales agent" means a person or entity that has a business relationship with a competitive electricity provider in which the person or entity conducts or arranges to conduct residential or small commercial consumer sales of electricity to the public at retail on behalf of the competitive electricity provider through door-to-door sales. "Third-party sales agent" does not include an employee of a competitive electricity provider.'

Amend the bill in section 2 in paragraph B-1 by striking out all of subparagraph (1) (page 1, lines 13 to 20 in L.D.) and inserting the following:

**(1) For a willful violation of this Title by any 3rd-party sales agent undertaking the retail sale or marketing of electricity on behalf of a competitive electricity provider, impose an additional administrative penalty on the competitive electricity provider in an amount that does not exceed \$5,000 or .25% of the annual gross revenue that the 3rd-party sales agent received from sales and commissions in the State. Each day a violation continues constitutes a separate offense. The maximum**

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1 administrative penalty for any related series of violations may not exceed \$500,000  
2 or 5% of the annual gross revenue that 3rd-party sales agent received from sales  
3 and commissions in the State, whichever amount is lower; and'

4 Amend the bill in section 2 in paragraph B-1 in subparagraph (2) in the 4th line (page  
5 1, line 24 in L.D.) by inserting after the following: "penalties" the following: 'or the  
6 termination of the 3rd-party sales agent's registration'

7 Amend the bill in section 3 in paragraph C in the 4th line (page 1, line 32 in L.D.) by  
8 inserting after the following: "agent" the following: 'undertaking the retail sale or marketing  
9 of electricity on behalf of a competitive electricity provider'

10 Amend the bill by striking out all of section 4 and inserting the following:

11 'Sec. 4. 35-A MRSA §3203, as amended by PL 2017, c. 74, §1, is further amended  
12 to read:

13 **§3203. Licensing of competitive electricity providers; consumer protections;**  
14 **enforcement**

15 **1. Authority.** In order to provide effective competition in the market for the  
16 generation and sale of electricity in the State ~~and to provide an orderly transition from the~~  
17 ~~current form of regulation to retail access~~, the commission shall license competitive  
18 electricity providers in accordance with this section.

19 **2. Requirements.** A competitive electricity provider may not undertake the sale of  
20 electricity at retail in this State without first receiving a license from the commission.  
21 Before approving a license application, the commission must receive from the applicant:

22 A. Evidence of financial capability sufficient to refund deposits to retail customers in  
23 the case of bankruptcy or nonperformance or for any other reason;

24 B. Evidence of the ability to enter into binding interconnection arrangements with  
25 transmission and distribution utilities;

26 C. Disclosure of all pending legal actions and customer complaints filed against the  
27 competitive electricity provider at a regulatory body other than the commission in the  
28 12 months prior to the date of license application;

29 D. Evidence of the ability to satisfy the renewable resource portfolio requirement  
30 established under section 3210;

31 E. Disclosure of the names and corporate addresses of all affiliates of the applicant;  
32 and

33 F. Evidence that the applicant is registered with the State Tax Assessor as a seller of  
34 tangible personal property pursuant to Title 36, section 1754-B, together with a  
35 statement that the applicant agrees to be responsible for the collection and remission of  
36 taxes in accordance with Title 36, Part 3 on all taxable sales of electricity made by the  
37 applicant to consumers located in this State;:

38 G. Disclosure of the names and corporate addresses of all 3rd-party sales agents  
39 proposed to be used by the applicant, in a form to be prescribed by the commission.  
40 The disclosure must include:

41 (1) A sworn statement by each proposed 3rd-party sales agent attesting to the 3rd-  
42 party sales agent's understanding of its compliance obligations with the State's

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1 door-to-door sales law, the Maine Unfair Trade Practices Act and the applicable  
2 commission rules;

3 (2) Any transient seller license number issued to each proposed 3rd-party sales  
4 agent by the Department of Professional and Financial Regulation pursuant to Title  
5 32, chapter 128, subchapter 2;

6 (3) All pending legal actions and customer complaints filed against each proposed  
7 3rd-party sales agent at a regulatory body other than the commission in the 12  
8 months prior to the date of the applicable license application; and

9 (4) Any other information the commission determines is necessary; and

10 H. An acknowledgement by each 3rd-party sales agent proposed to be used by the  
11 applicant of the 3rd-party sales agent's submission to the jurisdiction of the  
12 commission.

13 A 3rd-party sales agent undertaking the retail sale or marketing of electricity in the State  
14 may not engage in any sales or marketing activity unless the 3rd-party sales agent has been  
15 registered by the commission as part of the licensing process of a competitive electricity  
16 provider in accordance with this subsection. The commission shall provide a registration  
17 number to a 3rd-party sales agent proposed to be used by a competitive electricity provider  
18 in the competitive electricity provider's application for a license.

19 The commission shall consider the need for requiring and, if it determines there is a need,  
20 may require a competitive electricity provider to file a bond with the commission as  
21 evidence of financial ability to withstand market disturbances or other events that may  
22 increase the cost of providing service or to provide for uninterrupted service to its  
23 customers if a competitive electricity provider stops service.

24 **3. ~~Informational filings~~ Filings; public information.** The commission shall  
25 establish by rule information disclosure and filing requirements for competitive electricity  
26 providers. The rules must require a competitive electricity provider to submit updated  
27 disclosures of 3rd-party sales agents prior to any agent undertaking any activities on behalf  
28 of the provider in order to maintain the accuracy of the information required pursuant to  
29 subsection 2, paragraphs G and H and to require the registration of a 3rd-party sales agent  
30 not already registered by the commission. The rules must require generation providers to  
31 file their generally available rates, terms and conditions with the commission. The  
32 commission, subject to appropriate protective orders, may require the submission of  
33 individual service contracts or any other confidential information from a competitive  
34 electricity provider.

35 The commission by rule shall establish standards for making available, through any means  
36 considered appropriate, information that enhances consumers' ability to effectively make  
37 choices in a competitive electricity market.

38 Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter  
39 375, subchapter 2-A.

40 **4. Consumer protection provisions.** As a condition of licensing, a competitive  
41 electricity provider that provides or proposes to provide generation service to a residential  
42 consumer or to a small commercial consumer:

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- A. May not terminate generation service without at least 30-day prior notice to the consumer;
- B. ~~Must~~ Shall offer service to the consumer for a minimum period of 30 days;
- C. ~~Must~~ Shall allow the consumer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection receipt of the first bill or invoice from the competitive electricity provider, which the consumer is responsible for paying in full;
- D. ~~Must~~ Shall comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing;
- E. ~~Must~~ Shall provide to the consumer within 30 days of contracting for retail service a disclosure of information provided to the commission pursuant to rules adopted under subsection 3 in a standard written format established by the commission; ~~and~~
- F. ~~Must~~ Shall comply with any ~~other~~ applicable standards or requirements adopted by the commission by rule or order;:
- G. May not enter, or allow any of the provider's 3rd-party sales agents on the provider's behalf, to enter into an agreement to provide service to a residential or small commercial consumer when that service is solicited using door-to-door sales without providing the consumer with a standard disclosure form that meets the requirements of this paragraph. The standard disclosure form requirements include, but are not limited to, the following:
  - (1) A type size that is no less than 14 points;
  - (2) Contact information, including the telephone numbers for the competitive electricity provider, the commission and the Office of the Public Advocate;
  - (3) A telephone number and publicly accessible website where the consumer may obtain information on the current standard-offer service rate and expiration date and the publicly accessible website for electricity supply information available through the Office of the Public Advocate;
  - (4) Information regarding the consumer's right to rescind service as provided in paragraph C;
  - (5) The registration number of the 3rd-party sales agent issued by the commission pursuant to subsection 2 and any transient seller's license number issued by the Department of Professional and Financial Regulation pursuant to Title 32, chapter 128, subchapter 2; and
  - (6) Any other information the commission determines is necessary; and
- H. Shall comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation on door-to-door sales.

For purposes of this subsection, "residential consumer" means a consumer defined as residential under the terms and conditions of the consumer's transmission and distribution utility. For purposes of this subsection, "small commercial consumer" means, in the case of a consumer served by an investor-owned transmission and distribution utility, a nonresidential consumer that meets the availability criteria to take service under a core customer class of the transmission and distribution utility that does not pay a demand

# COMMITTEE AMENDMENT

1 charge to the transmission and distribution utility or, in the case of a consumer served by a  
 2 consumer-owned transmission and distribution utility, a nonresidential consumer with a  
 3 demand of 20 kilowatts or less.

4 **4-A. General consumer protections.** As a condition of licensing, a competitive  
 5 electricity provider:

6 A. Shall obtain a consumer's authorization before serving the consumer;

7 B. May not release to any other entity, other than for purposes of debt collection or  
 8 credit reporting pursuant to state and federal law or to law enforcement agencies  
 9 pursuant to lawful process, any personal information regarding a customer, including  
 10 name, address, telephone number, usage and historical payment information, without  
 11 the consent of the customer;

12 C. ~~Must~~ Shall comply with the provisions of the Maine Unfair Trade Practices Act;  
 13 Title 5, ~~chapter 10~~;

14 D. May not collect or seek to collect unreasonable costs from a customer who is in  
 15 default;

16 E. ~~Must~~ Shall comply with all applicable provisions of the federal Equal Credit  
 17 Opportunity Act, 15 United States Code, Sections 1691 to 1691f;

18 F. ~~Must~~ Shall comply with all federal and state laws, federal regulations and state rules  
 19 regarding the prohibition or limitation of telemarketing; and

20 H. ~~Must~~ Shall comply with any other applicable standards or requirements established  
 21 by the commission by rule.

22 **4-B. Residential consumer protections.** As a condition of licensing, a competitive  
 23 electricity provider that provides or proposes to provide generation service to a residential  
 24 consumer:

25 A. Shall disclose, before entering into an agreement to provide service to a residential  
 26 consumer, to the residential consumer where the residential consumer can obtain  
 27 information with which to compare the service provided by the competitive electricity  
 28 provider and the standard-offer service;

29 B. May not renew a contract for generation service without providing a residential  
 30 consumer with notice of renewal in advance by mail;

31 C. May not renew a contract for generation service at a fixed rate that is 20% or more  
 32 above the contract rate in the expiring contract without the express consent of the  
 33 residential consumer;

34 D. May not renew a contract for generation service for a term that is longer than the  
 35 term of the expiring contract or 12 months, whichever is shorter, without the express  
 36 consent of the residential consumer; and

37 E. May not impose an early termination fee for any contract for generation service that  
 38 was renewed without express consent from the residential consumer.

39 If a residential consumer does not provide the express consent required by paragraphs C  
 40 and D, the residential consumer must be transferred to standard-offer service.

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**4-C. Residential consumer protection through transmission and distribution utility bill information.** The monthly utility bill for a residential consumer that elects to receive generation service from a competitive electricity provider must contain the following:

A. A website address or other resource that residential consumers can access to obtain information that provides independent information as determined by the commission that allows residential consumers to compare terms, conditions and rates of electricity supply; and

B. A statement that directs the residential consumer to the competitive electricity provider for more information on the residential consumer's contract, including its terms, and that provides the telephone number of the competitive electricity provider.

**5. Licensing renewals and revocations.** Consistent with all applicable requirements of Title 5, chapter 375, the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

**6. Consumer protection standards; rules.** The commission shall establish by rule consumer protection standards and standards to protect and promote market competition in order to protect retail consumers of electricity from fraud and other unfair and deceptive business practices. The commission shall prohibit, by rule, a competitive electricity provider or a 3rd-party sales agent from representing itself as an alternative to or affiliated in any way with a transmission and distribution utility. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, the commission may provide by rule that a competitive electricity provider or a 3rd-party sales agent may satisfy the requirements of subsection 4-A, paragraph A by obtaining from the customer oral authorization obtained by an independent 3rd party.

**7. Penalties.** The commission may impose administrative penalties upon a competitive electricity provider or a 3rd-party sales agent in accordance with chapter 15.

**8. Dispute resolution.** The commission shall resolve disputes between competitive electricity providers, including 3rd-party sales agents undertaking the retail sale or marketing of electricity on behalf of a provider, and retail consumers of electricity concerning standards or requirements established by or pursuant to subsection 4, 4-A, 4-B or 6.

**9. Additional actions.** The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider.

**10. Cease and desist orders.** The commission may issue a cease and desist order:

A. Following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter ~~IV~~ 4, if the commission finds that ~~any~~ a competitive electricity provider or transmission and distribution utility has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the commission or any

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lawful order issued by the commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004; or

B. In an emergency, without hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider or a transmission and distribution utility is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues in force and effect until further order of the commission or until stayed by a court of competent jurisdiction. In a subsequent hearing the commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the commission.

**11. Restitution.** The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.

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

**13. Notice to Attorney General.** If the commission has reason to believe that ~~any a~~ competitive electricity provider, 3rd-party sales agent or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

**13-A. Investigation.** The commission may investigate any matter relating to the provision of service by a competitive electricity provider or the actions of a 3rd-party sales agent undertaking the retail sale or marketing of electricity on behalf of a provider pursuant to this chapter. In conducting an investigation under this subsection, the commission shall use the procedures established under section 1303, subsection 2.

**14. Disconnection restricted.** A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under section 3212.

**15. Standard billing.** The commission shall consider requiring standard billing information on bills for electric power service. If standard billing information is required, the commission shall investigate the possibility of adopting standards consistent with other New England states. The commission may not prohibit transmission and distribution utilities from contracting with generation service providers to include both entities' charges on a single bill. The commission may not preclude the inclusion of other information on bills for electric power service.







# 130th MAINE LEGISLATURE

LD 508

LR 445(02)

**An Act To Improve Regulation of Door-to-door Marketing of Retail Energy Supply**

**Fiscal Note for Bill as Amended by Committee Amendment**

**Committee: Energy, Utilities and Technology**

**Fiscal Note Required: Yes**

*A' (H-106)*

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## Fiscal Note

Minor revenue increase - Other Special Revenue Funds

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

This bill establishes regulations regarding requirements for, and places certain limitations and penalties on, competitive electricity providers who utilize 3rd-party sales agents to contact prospective customers. The new penalties will increase Other Special Revenue Funds revenue to the Public Utilities Commission (PUC). The additional revenue is not anticipated to be significant. Additional costs to the PUC as a result of the establishment of regulations are anticipated to be minor and can be absorbed within existing budgeted resources.