

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

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NON-EMERGENCY LAWS IS  
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J.S. McCarthy Company  
Augusta, Maine  
1991

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**

**1991**

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	1991-92	1992-93
<b>LOBSTER PROMOTION COUNCIL</b>		
<b>Lobster Promotion Fund</b>		
Positions	(1.5)	(1.5)
Personal Services	\$32,426	\$46,975
All Other	217,421	289,894
Capital Expenditures	25,000	

Provides funds for a part-time Executive Director, a full-time Clerk Typist II, per diem and expenses for the Lobster Promotion Council, contractual services for the promotion and marketing of lobsters, computer equipment, a vehicle and general operating expenses.

LOBSTER PROMOTION COUNCIL		
<b>TOTAL</b>	<u>\$274,847</u>	<u>\$336,869</u>

See title page for effective date.

## CHAPTER 524

H.P. 1134 - L.D. 1659

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

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

Sec. 1. 9-A MRSA §5-117 is enacted to read:

#### §5-117. Prohibited practices

A seller may not:

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

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

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

Sec. 2. 10 MRSA §1498, sub-§3, as enacted by PL 1989, c. 775, is amended to read:

**3. Restriction.** A person may not use an automated telephone calling device to make solicitation calls to any telephone number in the State except weekdays between 9 a.m. and 5 p.m., according to the time in this State, and may not complete more than one solicitation call to any telephone number during each 8-hour period. In addition, the person using the device to place the call shall ensure

that the device disconnects no more than 5 seconds following the disconnection of the telephone number called.

Sec. 3. 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. 4. 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. False impressions. Create an impression that is false or the seller does not believe to be true; and

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

Sec. 5. 32 MRSA §4690 is enacted to read:

#### §4690. Prohibited practices

A seller may not:

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

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

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

Sec. 6. 35-A MRSA c. 8 is enacted to read:

## CHAPTER 8

### COLLECTION FOR AUDIOTEXT SERVICE CHARGES

#### §801. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Audiotext services. "Audiotext services" means informational or other services for which, in addition to any message toll service charge, a fee is levied on a per-call or per-minute basis by a provider that leases telephone lines from a long-distance telephone company for the purpose of providing such services to consumers. "Audiotext services"

includes informational or other services provided for a charge, in addition to any message toll service charges by means of prerecorded messages on 900, 976 and similar leased telephone lines and includes usage-sensitive or interactive recordings. "Audiotext services" also includes informational or other services provided for a charge by means of collect telephone calls to consumers.

**2. Carrier.** "Carrier" means the long-distance telephone company or other person or entity that is the lessor of the telephone lines leased to the provider for the purpose of providing audiotext services to consumers for a charge.

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

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

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

### **§802. Disconnection prohibited**

**1. Prohibition.** A collecting utility may not disconnect a customer's basic telephone service or send a customer any notice of basic telephone service disconnection because of a customer's failure to pay an audiotext service charge.

**2. Expedited procedures.** If requested by a local exchange carrier, the commission shall adopt expedited procedures to allow blocking of audiotext services by a collecting utility when a customer repeatedly fails to pay undisputed charges assessed for use of audiotext services.

### **§803. Blocking service**

Where facilities are available, a collecting utility shall provide all one-party residential and single-line business telephone subscribers with an opportunity to block the access of audiotext service providers to subscribers' telephone lines free of charge and with an opportunity to reopen such access. A utility may not charge for customers' first exercise of either option. Thereafter, collecting utilities shall continue to offer subscribers the ability to block and reopen such access, but may charge a fee for provision of this service, which may not exceed \$5 for each occasion on which the service is provided. Every 4 years, beginning on January 1, 1995, the commission shall review the appropriateness of this \$5 fee and shall report to the joint standing committee of the Legislature having jurisdiction over utility matters its recommendations for any change in the fee. The collecting utility may appeal to the commission for an extension to meet the requirements of this section. The commission may, for good cause shown, grant an extension.

### **§804. Collection procedures**

**1. Billing.** A collecting utility that includes charges for audiotext services in a bill for basic telephone services must individually highlight or identify the charges for audiotext services. In addition, a collecting utility shall on a quarterly basis, either on the bill or on an insert, provide information describing the consumer's rights and responsibilities regarding audiotext services.

**2. Rules.** No later than April 1, 1992 the commission must complete a rule-making proceeding to determine the bill and insert formats described in subsection 1. Collecting utilities may appeal to the commission for an extension to meet the requirements of this section. The commission may, for good cause shown, grant an extension.

**3. Special considerations.** In establishing a compliance deadline and specific requirements under this section, the commission may take into account the costs incurred by the collecting utility and the utility's ability to shift those costs to carriers or providers of audiotext services.

### **§805. Complaint procedures**

**1. Review for compliance with standards.** When a consumer disputes a charge for audiotext services, the collecting utility, if responsible for billing for audiotext services, must either delete the charges from the customer's bill for basic telephone service or investigate and in good faith attempt to resolve the dispute. At a minimum, "investigate and in good faith attempt to resolve the dispute" means that the collecting utility, if responsible for billing audiotext services, must require the provider or carrier to demonstrate compliance with applicable rules of the Federal Communications Commission and any applicable rules adopted by the Attorney General pursuant to the Maine Unfair Trade Practices Act.

**2. Compliance with commission rules.** The collecting utility must observe complaint procedures established by applicable commission rules.

**3. Access to records.** Collecting utilities shall afford reasonable access to all records and documents relating to consumer complaints to the commission and to the Attorney General upon request.

### **§806. Audiotext service standards**

Any audiotext provider who does business in this State providing live or recorded solicitation programs and audiotext services must provide these programs and services in a manner that is free of extraneous sounds or other distractions that unduly delay the conveyance of the message, that is clearly audible, articulate and intelligible, and that uses plain language spoken at a normal cadence. Audiotext services must employ the same language used in the related solicitation program.

**§807. Commission rules**

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

**§808. Penalties**

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

See title page for effective date.

**CHAPTER 525**

H.P. 1340 - L.D. 1932

**An Act to Correct a Conflict in the Law Relating to Sentencing Considerations and Appellate Review**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** recent decisions of the Maine Supreme Judicial Court indicate that legislative clarification of sentencing criteria and the role of a reviewing court is essential; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 15 MRSA §2154, sub-§1,** as enacted by PL 1989, c. 218, §5, is repealed and the following enacted in its place:

1. **Sentence correction.** To provide for the correction of sentences imposed without due regard for the sentencing factors set forth in this chapter;

**Sec. 2. 15 MRSA §2155,** as enacted by PL 1989, c. 218, §5, is amended to read:

**§2155. Factors to be considered by Supreme Judicial Court**

In reviewing a criminal sentence, the Supreme Judicial Court ~~is authorized to~~ shall consider:

**1. Propriety of sentence.** The propriety of the sentence, having regard to the nature of the offense, the character of the offender, ~~and~~ the protection of the public inter-

est, the effect of the offense on the victim and any other relevant sentencing factors recognized under law; and

**2. Manner in which sentence was imposed.** The manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.

**Sec. 3. 15 MRSA §2156, sub-§1,** as enacted by PL 1989, c. 218, §5, is repealed.

**Sec. 4. 15 MRSA §2156, sub-§1-A** is enacted to read:

1-A. **Remand.** If the Supreme Judicial Court determines that relief should be granted, it must remand the case to the court that imposed the sentence for any further proceedings that could have been conducted prior to the imposition of the sentence under review and for resentencing on the basis of such further proceedings provided that the sentence is not more severe than the sentence appealed.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 30, 1991.

**CHAPTER 526**

H.P. 598 - L.D. 849

**An Act to Stabilize the Maine Dairy Industry**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the producer price of milk has dropped approximately 40% as a result of a milk surplusage west of the Mississippi River; and

**Whereas,** the magnitude of these price fluctuations jeopardizes the economic viability and stability of the Maine dairy industry and Maine agriculture as a whole; and

**Whereas,** the Maine dairy industry is essential to the viability of the State's rural communities and contributes to the general welfare of the State by generating business activity and employment and preserving open space and other benefits for the people of Maine; and

**Whereas,** helping to stabilize the Maine dairy industry during temporary periods of price fluctuations constitutes a public purpose and an appropriate expenditure of tax revenues; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as