

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

29 United States Code, Sections 796 to 796f (1999) and administered by the Bureau of Rehabilitation Services, through a standing committee on recreational opportunities for persons with disabilities, shall perform the following duties:

1. Advise commissioners. Advise the Commissioner of Labor, the Commissioner of Human Services, the Commissioner of Conservation, the Commissioner of Transportation, the Commissioner of Marine Resources, the Commissioner of Economic and Community Development and the Commissioner of Inland Fisheries and Wildlife on ways:

A. To provide technical consultation for increasing participation and inclusion for persons with disabilities in all areas of recreation, which are a matter of public policy; and

B. To promote the expansion of existing and the creation of new public recreational areas that are accessible to persons with disabilities;

2. Educate public. Make the public aware of existing recreational opportunities that are accessible to persons with disabilities;

3. Provide information. Provide and disseminate information and education to public and private clubs, organizations and civic groups and to individuals on making recreation accessible to persons with disabilities; and

4. Conduct evaluations and provide technical assistance. In conjunction with the Bureau of Rehabilitation Services' staff, conduct accessibility evaluations upon request and provide technical assistance to recreation providers and users with regard to providing access for persons with disabilities.

See title page for effective date.

CHAPTER 59

H.P. 428 - L.D. 570

**An Act Relating to the Protection of
Maine Consumers in the
Telecommunications Market**

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

Whereas, it is necessary that the State immediately prohibit misleading and abusive market practices affecting telecommunications consumers; and

Whereas, the Public Utilities Commission currently lacks authority to take effective consumer protection measures to protect Maine telecommunications consumers; 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. 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 section, a charge for a collect call is deemed to be authorized by the customer receiving the call.

2. Registration requirements. The following acts are prohibited.

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

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

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

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

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

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

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

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

- (1) Knowingly or repeatedly billed one or more customers for unauthorized service; or
- (2) Engaged in any other false or deceptive billing practices prohibited by commission rule.

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

- (1) Knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider who was required to be registered with the commission under subsection 2 and who was not properly registered; or
- (2) Engaged in any other false or deceptive billing practices prohibited by commission rule.

Service providers who are telephone utilities and who are not required to register with the commission under

subsection 2 are subject to the jurisdiction and control of the commission as otherwise provided under this Title.

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

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

A. Immediately suspend collection efforts on that portion 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 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 sub-

section 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.

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

Effective April 9, 1999.

CHAPTER 60

H.P. 399 - L.D. 541

An Act to Clarify the Jurisdiction of the Public Utilities Commission with Regard to Wireless Carriers

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

Whereas, the available supply of central office codes in the State is in danger of exhaustion, which would require the adoption of a 2nd area code within the State; and

Whereas, it is necessary to provide immediate authority for the Public Utilities Commission to institute central office code conservation measures applicable to wireless carriers; 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. 35-A MRSA §7104, sub-§3, as enacted by PL 1997, c. 692, §1, is amended to read:

3. Authority. The commission shall adopt rules to implement this section and may require providers of intrastate telecommunications services to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of this Title and the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56. Prior to requiring that providers of intrastate telecommunica-