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ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT " " to H.P. 1324, L.D. 1853, Bill, "An Act To Prohibit Door-to-door Marketing of Retail Energy Supply"

Amend the bill by striking out the title and substituting the following:

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

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 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 sales of electricity to the public at retail on behalf of the competitive electricity provider through direct contact accomplished by means of a personal visit to the consumer, other than at the 3rd-party sales agent's place of business, without the consumer soliciting the initial contact. "Third-party sales agent" does not include an employee of a competitive electricity provider.

Sec. 2. 35-A MRSA §1508-A, sub-§1, ¶B-1 is enacted to read:

B-1. In addition to any penalty imposed on a competitive electricity provider under paragraph A or B, the commission may:

- (1) For a willful violation of this Title by a 3rd-party sales agent, impose an administrative penalty 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 administrative penalty for any related series of violations may not exceed \$500,000 or 5% of the annual gross revenue that 3rd-party sales agent received from sales and commissions in the State, whichever amount is lower; and

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1 (2) For a violation in which a 3rd-party sales agent was explicitly notified by the
2 commission that it was not in compliance with the requirements of this Title, a
3 commission rule or a commission order and that failure to comply could result in
4 the imposition of administrative penalties, the commission may impose an
5 administrative penalty that does not exceed \$500,000 and may terminate the
6 registration of the 3rd-party sales agent.

7 **Sec. 3. 35-A MRSA §1508-A, sub-§1, ¶C**, as amended by PL 2011, c. 623, Pt.
8 B, §5, is further amended to read:

9 C. The commission may impose an administrative penalty in an amount that does not
10 exceed \$1,000 on any person that is not a public utility, voice service provider, dark
11 fiber provider, wholesale competitive local exchange carrier ~~or a~~ competitive
12 electricity provider or 3rd-party sales agent and that violates this Title, a commission
13 rule or a commission order. Each day a violation continues constitutes a separate
14 offense. The administrative penalty may not exceed \$25,000 for any related series of
15 violations.

16 **Sec. 4. 35-A MRSA §3203**, as amended by PL 2017, c. 74, §1, is further amended
17 to read:

18 **§3203. Licensing of competitive electricity providers; consumer protections;**
19 **enforcement**

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

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

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

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

31 C. Disclosure of all pending legal actions and customer complaints filed against the
32 competitive electricity provider at a regulatory body other than the commission in the
33 12 months prior to the date of license application;

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

36 E. Disclosure of the names and corporate addresses of all affiliates of the applicant;
37 and

38 F. Evidence that the applicant is registered with the State Tax Assessor as a seller of
39 tangible personal property pursuant to Title 36, section 1754-B, together with a
40 statement that the applicant agrees to be responsible for the collection and remission

1 of taxes in accordance with Title 36, Part 3 on all taxable sales of electricity made by
2 the applicant to consumers located in this State.

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

8 **2-A. Requirements for 3rd-party sales agents.** A 3rd-party sales agent
9 undertaking the retail sale or marketing of electricity in the State:

10 A. May not engage in any sales or marketing activity unless the 3rd-party sales agent
11 has registered with the commission. A 3rd-party sales agent shall provide to the
12 commission the following information in order to register:

13 (1) Name;

14 (2) Corporate address;

15 (3) The 3rd-party sales agent's transient seller's license number issued by the
16 Department of Professional and Financial Regulation pursuant to Title 32,
17 chapter 128, subchapter 2; and

18 (4) Any other information the commission determines is necessary.

19 The commission shall provide a registration number to each registrant;

20 B. Shall comply with the provisions of the Maine Unfair Trade Practices Act;

21 C. May not enter into an agreement on behalf of a competitive electricity provider to
22 provide service to a residential consumer when that service is solicited using door-to-
23 door sales practices without providing the residential consumer a standard disclosure
24 form that meets the requirements of this subsection and obtaining the consumer's
25 signature on the form. The commission shall prescribe, by rule, requirements for the
26 format and contents of the standard disclosure form. The requirements must include,
27 but are not limited to:

28 (1) A type size that is no less than 14 point; and

29 (2) The following information:

30 (a) Contact information, including telephone numbers, for the competitive
31 electricity provider, the Public Utilities Commission and the Office of the
32 Public Advocate;

33 (b) A telephone number and website where the consumer may obtain
34 information on the current standard-offer service rate and expiration date, and
35 the website address for electricity supply information available through the
36 Office of the Public Advocate;

37 (c) Information regarding the consumer's right to rescind service as provided
38 in subsection 4, paragraph C; and

1 (d) The 3rd-party sales agent's registration number issued by the commission
2 pursuant to paragraph A and the transient seller's license number issued by
3 the Department of Professional and Financial Regulation pursuant to Title 32,
4 chapter 128, subchapter 2;

5 D. Shall comply with all federal and state laws, federal regulations and state rules
6 regarding the prohibition or limitation of door-to-door sales practices; and

7 E. Shall comply with applicable standards or requirements established by the
8 commission by rule.

9 **3. ~~Informational filings~~ Filings; public information.** The commission shall
10 establish by rule information disclosure and filing requirements for competitive electricity
11 providers. The rules must require generation providers to file their generally available
12 rates, terms and conditions with the commission. The commission, subject to appropriate
13 protective orders, may require the submission of individual service contracts or any other
14 confidential information from a competitive electricity provider.

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

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

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

23 A. May not terminate generation service without at least 30-day prior notice to the
24 consumer;

25 B. ~~Must~~ Shall offer service to the consumer for a minimum period of 30 days;

26 C. ~~Must~~ Shall allow the consumer to rescind selection of the competitive electricity
27 provider orally or in writing within 5 days of initial selection;

28 D. ~~Must~~ Shall comply with all federal and state laws, federal regulations and state
29 rules regarding the prohibition or limitation of telemarketing;

30 E. ~~Must~~ Shall provide to the consumer within 30 days of contracting for retail
31 service a disclosure of information provided to the commission pursuant to rules
32 adopted under subsection 3 in a standard written format established by the
33 commission; and

34 F. ~~Must~~ Shall comply with any other applicable standards or requirements adopted
35 by the commission by rule or order.

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

1 charge to the transmission and distribution utility or, in the case of a consumer served by
2 a 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
19 rules regarding the prohibition or limitation of telemarketing; and

20 H. ~~Must~~ Shall comply with any other applicable standards or requirements
21 established 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
26 residential consumer, to the residential consumer where the residential consumer can
27 obtain information with which to compare the service provided by the competitive
28 electricity 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
32 more above the contract rate in the expiring contract without the express consent of
33 the 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
38 that 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.

1 **4-C. Residential consumer protection through transmission and distribution**
2 **utility bill information.** The monthly utility bill for a residential consumer that elects to
3 receive generation service from a competitive electricity provider must contain the
4 following:

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

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

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

19 **6. Consumer protection standards; rules.** The commission shall establish by rule
20 consumer protection standards and standards to protect and promote market competition
21 in order to protect retail consumers of electricity from fraud and other unfair and
22 deceptive business practices. The commission shall prohibit, by rule, a competitive
23 electricity provider or a 3rd-party sales agent from representing itself as an alternative to
24 a transmission and distribution utility. Notwithstanding Title 32, chapter 69, subchapter 5
25 or Title 32, section 14716, the commission may provide by rule that a competitive
26 electricity provider or a 3rd-party sales agent may satisfy the requirements of subsection
27 4-A, paragraph A by obtaining from the customer oral authorization obtained by an
28 independent 3rd party.

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

31 **8. Dispute resolution.** The commission shall resolve disputes between competitive
32 electricity providers and retail consumers and between 3rd-party sales agents and retail
33 consumers of electricity concerning standards or requirements established by or pursuant
34 to subsection 2-A, 4, 4-A, 4-B or 6.

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

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

40 A. Following an adjudicatory hearing held in conformance with Title 5, chapter 375,
41 subchapter ~~4~~ 4, if the commission finds that ~~any~~ a competitive electricity provider,
42 3rd-party sales agent or transmission and distribution utility has engaged or is
43 engaging in any act or practice in violation of any law or rule administered or

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

4 B. In an emergency, without hearing or notice, if the commission receives a written,
5 verified complaint or affidavit showing that a competitive electricity provider, 3rd-
6 party sales agent or a transmission and distribution utility is selling electricity to retail
7 consumers without being duly licensed or is engaging in conduct that creates an
8 immediate danger to the public safety or is reasonably expected to cause significant,
9 imminent and irreparable public injury. An emergency cease and desist order is
10 effective immediately and continues in force and effect until further order of the
11 commission or until stayed by a court of competent jurisdiction. In a subsequent
12 hearing the commission shall in a final order affirm, modify or set aside the
13 emergency cease and desist order and may employ simultaneously or separately any
14 other enforcement or penalty provisions available to the commission.

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

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

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

28 **13-A. Investigation.** The commission may investigate any matter relating to the
29 provision of service by a competitive electricity provider or the actions of a 3rd-party
30 sales agent pursuant to this chapter. In conducting an investigation under this subsection,
31 the commission shall use the procedures established under section 1303, subsection 2.

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

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

