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H.P. 371

House of Representatives, February 19, 2021

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

Submitted by the Office of the Public Advocate pursuant to Joint Rule 204.

Received by the Clerk of the House on February 17, 2021. Referred to the Committee on Energy, Utilities and Technology pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BERRY of Bowdoinham.

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

2 **Sec. 1. 35-A MRSA §102, sub-§19-A** is enacted to read:

3 **19-A. Third-party sales agent.** "Third-party sales agent" means a person or entity
4 that has a business relationship with a competitive electricity provider in which the person
5 or entity conducts or arranges to conduct sales of electricity to the public at retail on behalf
6 of the competitive electricity provider through direct contact accomplished by means of a
7 personal visit to the consumer, other than at the 3rd-party sales agent's place of business,
8 without the consumer soliciting the initial contact. "Third-party sales agent" does not
9 include an employee of a competitive electricity provider.

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

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

13 (1) For a willful violation of this Title by a 3rd-party sales agent, impose an
14 administrative penalty in an amount that does not exceed \$5,000 or .25% of the
15 annual gross revenue that the 3rd-party sales agent received from sales and
16 commissions in the State. Each day a violation continues constitutes a separate
17 offense. The maximum administrative penalty for any related series of violations
18 may not exceed \$500,000 or 5% of the annual gross revenue that 3rd-party sales
19 agent received from sales and commissions in the State, whichever amount is
20 lower; and

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

27 **Sec. 3. 35-A MRSA §1508-A, sub-§1, ¶C**, as amended by PL 2011, c. 623, Pt. B,
28 §5, is further amended to read:

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

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

38 **§3203. Licensing of competitive electricity providers; consumer protections;**
39 **enforcement**

40 **1. Authority.** In order to provide effective competition in the market for the
41 generation and sale of electricity in the State ~~and to provide an orderly transition from the~~

1 ~~current form of regulation to retail access~~, the commission shall license competitive
2 electricity providers in accordance with this section.

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

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

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

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

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

15 E. Disclosure of the names and corporate addresses of all affiliates of the applicant;
16 and

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

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

27 **2-A. Requirements for 3rd-party sales agents.** A 3rd-party sales agent undertaking
28 the retail sale or marketing of electricity in the State:

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

32 (1) Name;

33 (2) Corporate address;

34 (3) The 3rd-party sales agent's transient seller's license number issued by the
35 Department of Professional and Financial Regulation pursuant to Title 32, chapter
36 128, subchapter 2; and

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

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

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

40 C. May not enter into an agreement on behalf of a competitive electricity provider to
41 provide service to a residential consumer when that service is solicited using door-to-

1 door sales practices without providing the residential consumer a standard disclosure
2 form that meets the requirements of this subsection and obtaining the consumer's
3 signature on the form. The commission shall prescribe, by rule, requirements for the
4 format and contents of the standard disclosure form. The requirements must include,
5 but are not limited to:

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

7 (2) The following information:

8 (a) Contact information, including telephone numbers, for the competitive
9 electricity provider, the Public Utilities Commission and the Office of the
10 Public Advocate;

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

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

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

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

23 E. Shall comply with applicable standards or requirements established by the
24 commission by rule.

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

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

34 Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter
35 375, subchapter 2-A.

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

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

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

- 1 C. Must Shall allow the consumer to rescind selection of the competitive electricity
2 provider orally or in writing within 5 days of initial selection;
- 3 D. Must Shall comply with all federal and state laws, federal regulations and state rules
4 regarding the prohibition or limitation of telemarketing;
- 5 E. Must Shall provide to the consumer within 30 days of contracting for retail service
6 a disclosure of information provided to the commission pursuant to rules adopted under
7 subsection 3 in a standard written format established by the commission; and
- 8 F. Must Shall comply with any other applicable standards or requirements adopted by
9 the commission by rule or order.

10 For purposes of this subsection, "residential consumer" means a consumer defined as
11 residential under the terms and conditions of the consumer's transmission and distribution
12 utility. For purposes of this subsection, "small commercial consumer" means, in the case
13 of a consumer served by an investor-owned transmission and distribution utility, a
14 nonresidential consumer that meets the availability criteria to take service under a core
15 customer class of the transmission and distribution utility that does not pay a demand
16 charge to the transmission and distribution utility or, in the case of a consumer served by a
17 consumer-owned transmission and distribution utility, a nonresidential consumer with a
18 demand of 20 kilowatts or less.

19 **4-A. General consumer protections.** As a condition of licensing, a competitive
20 electricity provider:

- 21 A. Shall obtain a consumer's authorization before serving the consumer;
- 22 B. May not release to any other entity, other than for purposes of debt collection or
23 credit reporting pursuant to state and federal law or to law enforcement agencies
24 pursuant to lawful process, any personal information regarding a customer, including
25 name, address, telephone number, usage and historical payment information, without
26 the consent of the customer;
- 27 C. Must Shall comply with the provisions of the Maine Unfair Trade Practices Act,
28 ~~Title 5, chapter 10~~;
- 29 D. May not collect or seek to collect unreasonable costs from a customer who is in
30 default;
- 31 E. Must Shall comply with all applicable provisions of the federal Equal Credit
32 Opportunity Act, 15 United States Code, Sections 1691 to 1691f;
- 33 F. Must Shall comply with all federal and state laws, federal regulations and state rules
34 regarding the prohibition or limitation of telemarketing; and
- 35 H. Must Shall comply with any other applicable standards or requirements established
36 by the commission by rule.

37 **4-B. Residential consumer protections.** As a condition of licensing, a competitive
38 electricity provider that provides or proposes to provide generation service to a residential
39 consumer:

- 40 A. Shall disclose, before entering into an agreement to provide service to a residential
41 consumer, to the residential consumer where the residential consumer can obtain

- 1 information with which to compare the service provided by the competitive electricity
2 provider and the standard-offer service;
- 3 B. May not renew a contract for generation service without providing a residential
4 consumer with notice of renewal in advance by mail;
- 5 C. May not renew a contract for generation service at a fixed rate that is 20% or more
6 above the contract rate in the expiring contract without the express consent of the
7 residential consumer;
- 8 D. May not renew a contract for generation service for a term that is longer than the
9 term of the expiring contract or 12 months, whichever is shorter, without the express
10 consent of the residential consumer; and
- 11 E. May not impose an early termination fee for any contract for generation service that
12 was renewed without express consent from the residential consumer.

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

15 **4-C. Residential consumer protection through transmission and distribution**
16 **utility bill information.** The monthly utility bill for a residential consumer that elects to
17 receive generation service from a competitive electricity provider must contain the
18 following:

- 19 A. A website address or other resource that residential consumers can access to obtain
20 information that provides independent information as determined by the commission
21 that allows residential consumers to compare terms, conditions and rates of electricity
22 supply; and
- 23 B. A statement that directs the residential consumer to the competitive electricity
24 provider for more information on the residential consumer's contract, including its
25 terms, and that provides the telephone number of the competitive electricity provider.

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

33 **6. Consumer protection standards; rules.** The commission shall establish by rule
34 consumer protection standards and standards to protect and promote market competition in
35 order to protect retail consumers of electricity from fraud and other unfair and deceptive
36 business practices. The commission shall prohibit, by rule, a competitive electricity
37 provider or a 3rd-party sales agent from representing itself as an alternative to a
38 transmission and distribution utility. Notwithstanding Title 32, chapter 69, subchapter 5 or
39 Title 32, section 14716, the commission may provide by rule that a competitive electricity
40 provider or a 3rd-party sales agent may satisfy the requirements of subsection 4-A,
41 paragraph A by obtaining from the customer oral authorization obtained by an independent
42 3rd party.

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

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

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

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

12 A. Following an adjudicatory hearing held in conformance with Title 5, chapter 375,
13 subchapter ~~IV~~ 4, if the commission finds that ~~any a~~ competitive electricity provider,
14 3rd-party sales agent or transmission and distribution utility has engaged or is engaging
15 in any act or practice in violation of any law or rule administered or enforced by the
16 commission or any lawful order issued by the commission. A cease and desist order is
17 effective when issued unless the order specifies a later effective date or is stayed
18 pursuant to Title 5, section 11004; or

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

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

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

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

43 **13-A. Investigation.** The commission may investigate any matter relating to the
44 provision of service by a competitive electricity provider or the actions of a 3rd-party sales

1 agent pursuant to this chapter. In conducting an investigation under this subsection, the
2 commission shall use the procedures established under section 1303, subsection 2.

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

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

15 **16. Access to load data.** Upon request from a competitive electricity provider, the
16 commission shall provide load data on a class basis that is in the possession of a
17 transmission and distribution utility, subject to reasonable protective orders to protect
18 confidentiality, if considered necessary by the commission.

19 **16-A. Customer information.** A transmission and distribution utility may not release
20 any customer-specific information to a licensed competitive electricity provider unless the
21 provider produces sufficient evidence, as defined by the commission by rule, that the
22 provider has obtained the customer's authorization.

23 **17. Rules.** Except as otherwise provided in this section, rules adopted pursuant to this
24 section are routine technical rules as defined by Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

25 **18. Confidentiality of consumer information.** Information concerning customers of
26 a competitive electricity provider or a 3rd-party sales agent is subject to the same
27 confidentiality protections afforded utility customer information under section 704,
28 subsection 5.

29 SUMMARY

30 This bill establishes requirements for and places certain limitations and penalties on
31 3rd-party sales agents, defined as a person or entity that is not an employee of a competitive
32 electricity provider but has a business relationship with a competitive electricity provider
33 in which the person or entity conducts or arranges to conduct sales of electricity to the
34 public at retail on behalf of the competitive electricity provider through direct contact
35 accomplished by means of a personal visit to the consumer, other than at the 3rd-party sales
36 agent's place of business, without the consumer soliciting the initial contact. The bill
37 requires 3rd-party sales agents to register with the Public Utilities Commission and to
38 comply with the Maine Unfair Trade Practices Act and other federal and state laws and
39 rules regarding door-to-door sales. The bill prohibits a 3rd-party sales agent from entering
40 into an agreement to provide service to a residential consumer when that service is solicited
41 using door-to-door sales practices without providing the residential consumer a standard
42 disclosure form that meets requirements prescribed by the commission by rule. The bill
43 prohibits a competitive electricity provider or a 3rd-party sales agent from representing
44 itself as an alternative to a transmission and distribution utility.