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**STATE OF MAINE
SENATE
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 484, L.D. 1377, Bill, “An Act To Protect Cellular Telephone Privacy”

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

Sec. 1. 16 MRSA c. 3, sub-c. 10 is enacted to read:

SUBCHAPTER 10

PORTABLE ELECTRONIC DEVICE CONTENT INFORMATION

§641. Definitions

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

- 1. Adverse result.** "Adverse result" means:
 - A. Immediate danger of death or serious physical injury;
 - B. Flight from prosecution;
 - C. Destruction of or tampering with evidence;
 - D. Intimidation of a potential witness;
 - E. Potentially jeopardizing an investigation;
 - F. Undue delay of a trial; or
 - G. Other significantly detrimental consequence.
- 2. Content information.** "Content information," when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication.

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1 **3. Electronic communication service.** "Electronic communication service" means a
2 service that provides to users the ability to send or receive spoken or electronic
3 communications.

4 **4. Government entity.** "Government entity" means a state or local government
5 agency, including but not limited to a law enforcement entity or any other investigative
6 entity, agency, department, division, bureau, board or commission or an individual acting
7 or purporting to act for or on behalf of a state or local government agency.

8 **5. Owner.** "Owner" means the person or entity having the legal title, claim or right
9 to a portable electronic device.

10 **6. Portable electronic device.** "Portable electronic device" means a portable device
11 that enables access to, or use of, an electronic communication service or remote
12 computing service.

13 **7. Remote computing service.** "Remote computing service" means computer
14 storage or processing services provided by means of an electronic communication
15 service.

16 **8. User.** "User" means a person or entity that uses a portable electronic device.

17 **§642. Authority to obtain and disclose content information**

18 **1. Authority to obtain.** A government entity may obtain portable electronic device
19 content information only in accordance with a valid warrant issued by a duly authorized
20 judge or justice using procedures established pursuant to Title 15, section 55 or as
21 otherwise provided in this subchapter.

22 **2. Authority to disclose.** A provider of electronic communication service may
23 disclose portable electronic device content information to a government entity only
24 pursuant to a warrant issued by a duly authorized judge or justice or as otherwise
25 provided in this subchapter.

26 **§643. Notice**

27 Notice must be given to the owner or user of a portable electronic device whose
28 content information was obtained by a government entity.

29 **1. Timing and content of notice.** Unless the court determines under subsection 2
30 that no notice is required, the government entity shall provide notice to the owner or user
31 that content information was obtained by the government entity from that owner's or
32 user's portable electronic device within 3 days of obtaining the content information. The
33 notice must be made by service or delivered by registered or first-class mail, e-mail or
34 any other means reasonably calculated to be effective as specified by the court issuing the
35 warrant. The notice must contain the following information:

36 A. The nature of the law enforcement inquiry, with reasonable specificity;

37 B. The content information of the owner or user that was supplied to or requested by
38 the government entity and the date on which it was provided or requested; and

1 C. If content information was obtained from a provider of electronic communication
2 service or other 3rd party, the identity of the provider of electronic communication
3 service or the 3rd party from whom the information was obtained.

4 **2. Notification not required.** A government entity acting under section 642 may
5 include in the application for a warrant a request for an order to waive the notification
6 required under this section. The court may issue the order if the court determines that
7 there is reason to believe that notification will have an adverse result.

8 **3. Preclusion of notice to owner or user subject to warrant for content**
9 **information.** A government entity acting under section 642 may include in its
10 application for a warrant a request for an order directing a provider of electronic
11 communication service to which a warrant is directed not to notify any other person of
12 the existence of the warrant. The court may issue the order if the court determines that
13 there is reason to believe that notification of the existence of the warrant will have an
14 adverse result.

15 **§644. Exceptions**

16 **1. Consent of owner or user.** When disclosure of portable electronic device content
17 information is not prohibited by federal law, a government entity may obtain the
18 information without a warrant with the informed, affirmative consent of the owner or user
19 of the portable electronic device concerned, except when the device is known or believed
20 by the owner or user to be in the possession of a 3rd party known to the owner or user.

21 **2. Emergency.** When a government entity cannot, with due diligence, obtain a
22 warrant in time to address an emergency that involves or is believed to involve an
23 imminent threat to life or safety, a government entity may obtain the content information
24 from a portable electronic device without a warrant, and a provider of electronic
25 communication service may disclose such information to the requesting government
26 entity without a warrant.

27 **§645. Use of content information obtained in violation of this subchapter not**
28 **admissible**

29 Except as proof of a violation of this subchapter, evidence obtained in violation of
30 this subchapter is not admissible in a criminal, civil, administrative or other proceeding.

31 **§646. Violations; injunctive relief**

32 A person damaged as a result of a violation of this subchapter has a cause of action in
33 court against a government entity that fails to comply with the provisions of this
34 subchapter, and the court may award injunctive relief.'

35 **SUMMARY**

36 This amendment is the majority report of the Joint Standing Committee on Judiciary.
37 It replaces the bill.

38 This amendment enacts provisions governing the disclosure of information regarding
39 the content of communications conveyed using portable electronic devices such as
40 cellular telephones. This amendment prohibits a government entity from obtaining

1 content information concerning the substance, purport or meaning of the communication
2 conveyed using a cellular telephone or other portable electronic device without a valid
3 warrant, except that a government entity may obtain such information with the consent of
4 the owner or user of the portable electronic device or in an emergency.

5 This amendment requires a government entity to inform the owner or user of a
6 portable electronic device that content information was obtained from that person's device
7 within 3 days of obtaining the information, unless the court determines there is good
8 cause to waive the notification requirement.

9 This amendment provides that a person damaged as a result of a violation of these
10 provisions has a cause of action in court against a government entity that fails to comply
11 with these provisions, and the court may award injunctive relief.

12 **FISCAL NOTE REQUIRED**

13 **(See attached)**