

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
116TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 228, L.D. 699, Bill, "An Act to Regulate Home Repair by Transient Contractors"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 32 MRSA c. 128 is enacted to read:

CHAPTER 128

DOOR-TO-DOOR HOME REPAIR  
TRANSIENT SELLERS

§14501. Definitions

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

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of home repair services.

2. Department. "Department" means the Department of Professional and Financial Regulation, Division of Licensing and Enforcement.

3. Door-to-door sales. "Door-to-door sales" means the solicitation or sale of home repair services by a home repair seller or the seller's employees to a consumer as a result of or in connection with the seller's or the employee's direct contact accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact.

2 4. Employee. "Employee" means any independent contractor,  
agent or person working for a salary or a commission who is  
4 affiliated with a home repair seller.

6 5. Home repair seller. "Home repair seller" means any  
person, partnership, corporation, business, trust or other legal  
8 entity that sells or provides home repair services.

10 6. Home repair services. "Home repair services" means to  
fix, replace, alter, convert, modernize, improve or make an  
12 addition to real property primarily designed or used as a  
residence. "Home repair services" includes, but is not limited  
14 to, the construction, installation, replacement, improvement or  
cleaning of driveways, swimming pools, porches, kitchens,  
16 chimneys, chimney liners, garages, fences, fall-out shelters,  
central air conditioning, central heating, boilers, furnaces, hot  
18 water heaters, electric wiring, sewers, plumbing fixtures, storm  
doors, storm windows, siding or awnings or other improvements to  
20 structures within the residence or upon the land adjacent to the  
residence, including tree trimming.

22 7. Permanent place of business. "Permanent place of  
business" means a building or other permanent structure,  
24 including a home residence, that is owned or held under a  
12-month lease or rental agreement, from which business is  
26 commenced and that is used in whole or in part for the purpose of  
engaging in sales of home repair services.

28 8. Residence. "Residence" means a single-family or  
30 multifamily dwelling, including but not limited to a  
single-family home, apartment building, condominium, duplex or  
32 town house that is used or intended to be used by its occupants  
as a dwelling place.

34 9. Transient seller of home repair services. "Transient  
36 seller of home repair services," "transient seller" or "seller"  
means a home repair seller who engages in the business of  
38 door-to-door solicitations or sales of home repair services who  
does not have, at the time of the solicitation or contract, a  
40 permanent place of business in the municipality in which the  
door-to-door solicitation or sale occurs.

42 **§14502. Exemptions**

44 1. New homes. This chapter does not apply to the original  
46 construction of a single-family or multifamily residence.

48 2. Sales amount. This chapter does not apply to home  
repair services for which the gross sales price, including any  
50 interest or carrying charges, is less than \$25.

2 **§14503. Home repair services contract**

4 It is a violation of this chapter if a contract for home  
6 repair services to be provided by a transient seller of home  
8 repair services fails to meet the written contract requirements,  
10 if applicable, of:

12 1. Consumer solicitations or sales. The laws governing  
14 consumer solicitations or sales, sections 4661 to 4670;

16 2. Transient sales. The laws governing transient sales,  
18 sections 4681 to 4689;

20 3. Home solicitation sales. The laws governing home  
22 solicitation sales, Title 9-A, sections 3-501 to 3-507; and

24 4. Home construction contracts. The laws governing home  
26 construction contracts, Title 10, sections 1486 to 1490.

28 **§14504. Registration required**

30 A transient seller of home repair services must register  
32 with the department and acquire a door-to-door sales registration  
34 in the manner set forth in section 14505 before engaging in the  
36 door-to-door sales of home repair services. A transient seller  
38 who solicits sales during the course of a municipal or state  
40 repair contract is exempt from this requirement.

42 **§14505. Evidence of registration**

44 Upon registration, the department shall issue to a transient  
46 seller of home repair services a door-to-door sales registration  
48 that indicates that the person whose name appears on the  
50 registration is a registered transient seller of home repair  
services under this chapter. The registration must also include  
the name of the seller's company.

**§14506. Disclosure of registration number**

A contract for door-to-door sales of home repair services by  
a transient seller of home repair services must include the  
seller's door-to-door sales registration number in the following  
manner: State door-to-door sales registration #: (fill in  
number).

**§14507. Application**

An application for registration under this chapter must be  
sworn to and must include:

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1. Application information. The name, local and permanent business and residential address or addresses, date of birth and social security number of the home repair seller;

2. Employees of the seller. The names and addresses of employees of the seller, their dates of birth and social security numbers;

3. Statement. At the time of making the application, a statement of all civil judgments or criminal convictions secured or outstanding against the seller that arises out of home repair services during the 4 years prior to making the application, all criminal and civil suits pending against the seller that arise out of home repair services and all criminal convictions and criminal suits pending for theft against the seller.

The seller shall promptly notify the department of all changes or additions in the information required by this section.

Knowingly, intentionally or recklessly making a false statement in an application is grounds for denial of the application or revocation of the registration; and

4. Photograph. A recent photograph of the home repair seller.

**§14508. Renewal application**

An annual renewal application must be filed by the seller on October 31st or at such other times as the department designates. The renewal application must include changes or additions to the information required by section 14507. The department shall mail notice to the transient seller's last known address 30 days in advance of the expiration date. The renewal application must be accompanied by a renewal fee, as provided in section 14509.

**§14509. Registration fee**

A transient seller must pay to the department the following fees at the time an application is made for registration or renewal:

1. Transient seller registration. For an original transient seller of home repair services registration, \$100; and

2. Renewal. For a renewal application, \$75.

2 The aggregate of fees provided for by this section is  
3 appropriated for the use of the department. Any balance of funds  
4 may not lapse but must be carried forward to be expended for the  
5 same purposes in the following fiscal year.

6 **§14510. Service of process**

8 The department is an agent of a transient seller of home  
9 repair services engaging in those services for service of any  
10 process, notice or demand required or permitted by law. This  
11 service is binding upon the seller. Service of any such process,  
12 notice or demand must be made as provided by the Maine Rules of  
13 Civil Procedure.

14 **§14511. Forms and model contract**

16 The Department of the Attorney General has rule-making  
17 authority to adopt all forms necessary to fully implement this  
18 chapter. The Department of the Attorney General shall prepare a  
19 form contract for door-to-door sales, that fully meets the  
20 obligations of a transient seller of home repair services under  
21 this chapter. The Department of the Attorney General shall  
22 provide these forms at no cost to the department.

24 **§14512. Penalties**

26 1. Criminal penalty. A transient seller of home repair  
27 services who engages in those services in violation of this  
28 chapter commits a Class D crime.

30 2. Civil penalty. A transient seller of home repair  
31 services or the seller's employee failing to register in  
32 violation of this chapter commits a civil violation for which a  
33 civil penalty of up to \$2,000 may be adjudged against the seller  
34 and each employee. If the person violates this chapter 2 or more  
35 times, or if the injured consumer is more than 60 years of age,  
36 the civil violation penalty may be up to \$5,000. Subsection 1  
37 and this subsection are enforceable by either the Department of  
38 the Attorney General or the District Attorney.

40 3. Unfair trade practice. A transient seller of home  
41 repair services who fails to register in violation of this  
42 chapter commits an unfair trade practice in violation of Title 5,  
43 section 207.

44 4. Revocation. In any action under this section the court  
45 may also revoke the seller's registration to engage in the  
46 door-to-door sale of home repair services.

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FISCAL NOTE

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This bill establishes a new Class D crime. Sentences imposed for Class D offenses must be served in a county jail. The average cost per sentence for a Class D crime is \$7,439 based upon an average length of stay of 119 days. The additional costs to the counties for the housing of each offender sentenced under this new crime will not require reimbursement by the State.

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The Judicial Department may require additional General Fund appropriations to cover indigent defense costs related to these new cases. The amounts can not be estimated at this time. The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department's administrative account. The collection of additional fines may also increase General Fund revenues by a minor amount.

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The Department of Professional and Financial Regulation will incur some minor additional costs to register transient sellers. These costs can be absorbed within the department's existing budgeted resources.

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The additional costs to enforce the home repair services law can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.

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STATEMENT OF FACT

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The bill requires the registration of transient sellers of home repair services. This amendment eliminates the section of the bill which would have specifically made fraudulent sales tactics a violation of provisions of this new home repair services law. It reduces the initial registration fee from \$200 to \$100 and the renewal fee from \$100 to \$75. The amendment raises the civil penalties for violation of the law from \$1,000 to \$2,000 and from \$2,000 to \$5,000 for subsequent offenses or an offense against a person over 60 years old. The amendment makes the law enforceable by both the Attorney General and the District Attorney. The amendment also adds a fiscal note to the bill.

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The Department of Corrections prepared the following correctional impact statement on the original bill pursuant to the Maine Revised Statutes, Title 34-A, section 1402.

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2 "This bill would make it a Class D offense for violation of  
this section. A sentence imposed for a Class D offense must be  
4 served in a county jail facility. Looking at sentences served  
for Class D offenses in county jails, the average length of stay  
6 was found to be about 119 days. The average cost per day in a  
county jail is \$62.51. The average cost per sentence for a Class  
D crime is \$7,439."

Reported by Senator Cianchette for the Committee on Business  
Legislation. Reproduced and Distributed Pursuant to  
Senate Rule 12.  
(4/13/93) (Filing No. S-72)