

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 699

S.P. 228

In Senate, February 25, 1993

An Act to Regulate Home Repair by Transient Contractors.

Submitted by the Department of the Attorney General pursuant to Joint Rule 24.
Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PARADIS of Aroostook.
Cosponsored by Representative HOGLUND of Portland and
Senators: ESTY of Cumberland, HANDY of Androscoggin, Representatives: BOWERS of
Washington, KILKELLY of Wiscasset, MELENDY of Rockland, RICHARDSON of Portland,
TOWNSEND of Portland.

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

2
4 Sec. 1. 32 MRSA c. 128 is enacted to read:

6 CHAPTER 128

8 DOOR-TO-DOOR SALES BY
HOME REPAIR CONTRACTORS

10 §14501. Definitions

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

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

18 2. Department. "Department" means the Department of
20 Professional and Financial Regulation.

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

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

34 5. Home repair contractor. "Home repair contractor" means
any person, individual, partnership, corporation, business, trust
36 or other legal entity that sells or provides home repair services.

38 6. Home repair services. "Home repair services" means to
fix, replace, alter, convert, modernize, improve or make an
40 addition to any real property primarily designed or used as a
residence. "Home repair services" includes the construction,
42 installation, replacement or improvement of driveways, swimming
pools, porches, kitchens, chimneys, chimney liners, garages,
44 fences, fall-out shelters, central air conditioning, central
heating, boilers, furnaces, hot water heaters, electric wiring,
46 sewers, plumbing fixtures, storm doors, storm windows, siding,
awnings, other improvements to structures within the residence or
48 upon the land adjacent to the residence and tree trimming.

50 7. Permanent place of business. "Permanent place of
business" means any building or other permanent fixed structure,

2 including a home residence that is owned or held under a 12-month
4 lease or rental agreement, from which business is commenced and
6 that is used in whole or in part for the purpose of engaging in
8 sales of home repair services.

10 8. Residence. "Residence" means a single-family or
12 multifamily dwelling, including, but not limited to, a
14 single-family home, apartment building, condominium, duplex or
16 town house that is used or intended to be used by its occupants
18 as their dwelling place.

20 9. Transient seller of home repair services. "Transient
22 seller of home repair services" means any home repair contractor
24 who engages in the business of door-to-door solicitations or
26 sales who does not have, at the time of the solicitation or
28 contract, a permanent place of business in the municipality in
30 which the door-to-door solicitation or sale occurs.

32 §14502. Exemptions

34 1. New homes. Nothing in this chapter may be construed to
36 apply to the original construction of a single-family or
38 multifamily residence.

40 2. Sales amount. Nothing in this chapter applies to home
42 repair services for which the gross sales price, including any
44 interest or carrying charges, is less than \$25.

46 §14503. Home repair services contract

48 It is a violation of this chapter if a home repair services
50 contract subject to this chapter fails to meet the written
contract requirements, if applicable, of:

1. Consumer solicitation sales. The laws governing
consumer solicitation sales, sections 4661 to 4670;

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

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

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

52 §14504. State registration

Any transient seller of home repair services engaging in
door-to-door sales must register with the department and acquire

2 a door-to-door sales registration in the manner set forth in
3 section 14505 before engaging in the door-to-door sales of home
4 repair services. A seller who solicits sales during the course
5 of a municipal or state repair contract is exempt from this
6 requirement.

7 **§14505. Door-to-door sales registration**

8
9 The department shall issue to each transient seller of home
10 repair services a door-to-door sales registration that must
11 indicate that the person whose name appears on the registration
12 is a registered home repair contractor under this chapter.

13 **§14506. Disclosure of registration**

14
15 Any contract for door-to-door sales of home repair services
16 must include the contractor's door-to-door sales registration
17 number in the following manner: State door-to-door sales
18 registration #: (fill in number).

19 **§14507. Application**

20
21 Each application for registration under this chapter must be
22 sworn to and must include:

23
24 1. Name and address. The name, local and permanent
25 business address, if any, of the home repair contractor, the
26 contractor's date of birth and the contractor's social security
27 number;

28
29 2. Employees of the home repair contractor. The names and
30 addresses of all employees of the home repair contractor, their
31 dates of birth and social security numbers; and

32
33 3. Statement. At the time of making the application, a
34 statement of all judgments secured or outstanding against the
35 home repair contractor arising out of home repair services during
36 the 4 years prior to making the application, all criminal or
37 civil suits pending against the applicant that arise out of home
38 repair services and all criminal convictions and criminal suits
39 pending for theft against the applicant.

40
41 The applicant shall promptly notify the department of all
42 changes or additions in the information required by this section.

43
44 Any false statement in an application, either original or
45 supplementary, is ground for denying the application and subjects
46 the contractor to the same penalty as if the contractor had no
47 registration.

2 **§14508. Renewal application**

4 An annual renewal application must be filed by the applicant
6 on October 31st or at such other times as the department may
8 designate. The renewal application must include all changes or
10 additions to the information required by section 14507. The
 department shall mail notice to each home repair contractor'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.

12 **§14509. Registration fee**

14 Each home repair contractor engaging in door-to-door sales
16 must pay to the department the following fees at the time an
 application is made for registration or renewal:

18 1. Transient seller registration. For an original
20 transient seller registration, \$200; and

22 2. Renewal. For a renewal application, \$100.

24 **§14510. Service of process**

26 The department is an agent of each home repair contractor
28 engaging in door-to-door sales of home repair services for
30 service of any process, notice or demand required or permitted by
 law. This service is binding upon the contractor. Service of
 any such process, notice or demand must be made as provided by
 the Maine Rules of Civil Procedure.

32 **§14511. Attorney General forms and model contract**

34 The Department of the Attorney General has rule-making
36 authority to promulgate all forms necessary to fully implement
38 this chapter. In addition, the Department of the Attorney
40 General shall prepare a brochure, including a form contract for
 door-to-door sales, that fully describes the obligations of a
 door-to-door seller of home repair services under this chapter.
 The Department of the Attorney General shall provide these forms
 and this brochure to the department.

42 **§14512. Home repair fraud**

44 A transient seller of home repair services engaging in
46 door-to-door sales is also in violation of this chapter when the
 seller or the seller's employee knowingly:

48 1. Misrepresentation. Misrepresents a material fact
50 relating to the terms of the contract or agreement of the

2 preexisting or existing condition of any portion of the property
3 involved, creates or confirms an impression that is false and
4 that the seller does not believe to be true, or promises
5 performance that the seller does not intend to perform or knows
6 will not be performed;

7 2. Deception. Uses any deception, false pretense or false
8 promises to induce, encourage or solicit a person to enter into
9 any contract or agreement;

10 3. Unconscionable agreement. Enters into any
11 unconscionable agreement or contract requiring payment to the
12 seller of at least \$500. A contract is unconscionable under this
13 chapter when an unreasonable difference exists between the value
14 of the services, materials and work to be performed and the
15 amount to be charged for those services, material and work. For
16 purposes of this section, prima facie evidence of an
17 unconscionable agreement exists if the total payment called for
18 by the contract or agreement is in excess of 4 times the fair
19 market value for those services, materials and work; or

20 4. False name. Uses an assumed or false name in the
21 conduct or transaction of the home repair services or in any way
22 attempts to keep the consumer from knowing the seller's or the
23 employee's identity.

24 **§14513. Violations and penalties**

25 1. Criminal penalty. A home repair contractor engaging in
26 the door-to-door sale of home repair services in violation of
27 this chapter commits a Class D crime.

28 2. Civil forfeiture. A home repair contractor or the
29 contractor's employee engaging in the door-to-door sales of home
30 repair services in violation of this chapter commits a civil
31 violation for which a forfeiture of up to \$1,000 may be adjudged
32 against the contractor and each employee. If the person violates
33 this chapter 2 or more times, or if the injured consumer is more
34 than 60 years of age, the civil violation penalty may be up to
35 \$2,000.

36 3. Unfair trade practice. A home repair contractor
37 engaging in the door-to-door sales of home repair services in
38 violation of this chapter commits an unfair trade practice in
39 violation of Title 5, section 207.

2

STATEMENT OF FACT

4 The purpose of this bill is to require transient
6 door-to-door sellers of home repair services to register with the
8 Department of Professional and Financial Regulation before they
10 may solicit any home repair work. Violations of these laws may
12 result in criminal and civil penalties. The Department of the
Attorney General shall provide the Department of Professional and
Financial Regulation with all forms necessary to conduct this
registration program.