

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 191

H.P. 142

House of Representatives, January 13, 2005

An Act Requiring Internet Auction Registration

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DAVIS of Falmouth.
Cosponsored by Representatives: COLLINS of Wells, McKENNEY of Cumberland.

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

4 **Sec. 1. 32 MRSA c. 135** is enacted to read:

6 **CHAPTER 135**

8 **INTERNET AUCTION LISTING SERVICES**

10 **§15301. Definitions**

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

14 1. **Bid.** "Bid" means an offer to buy.

16 2. **Commissioner.** "Commissioner" means the Commissioner of Professional and Financial Regulation.

18 3. **Interactive computer service.** "Interactive computer service" means an information service or system that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet.

20 4. **Internet auction listing service.** "Internet auction listing service" means a publicly accessible site on the Internet or other interactive computer service that is designed to allow, or is advertised as a means of allowing, users to offer personal property or services for sale or lease to a prospective buyer or lessee through an on-line bid submission process and that does not examine, set the price of or prepare the description of the personal property or service to be offered or in any way use the services of a natural person as an auctioneer.

24 5. **Office.** "Office" means the Department of Professional and Financial Regulation, Office of Licensing and Registration.

26 **§15302. Registration required**

28 It is unlawful for a person to provide an Internet auction listing service in this State for compensation without being registered with the office, if:

30 1. **Located in this State.** The person is located or maintains an office in this State;

32 2. **User located in this State.** A seller, purchaser, lessor or lessee, or prospective seller, purchaser, lessor or lessee, of personal property or a service offered through the Internet auction listing service is located in this State; or

2 3. Property or service located in this State. Personal
property or a service offered for sale or lease through the
4 Internet auction listing service is located or is provided in
this State.

6 **§15303. Form; fee; elements of registration**

8 A person required to register under section 15302 shall make
10 its registration on a form provided by the office and shall pay
an accompanying registration fee to be determined by the
12 commissioner by rule. As part of its registration, the person
shall certify to the office that the person:

14 1. Not an agent. Does not act as the agent of users who
16 sell items on its publicly accessible site on the Internet and
acts only as a venue for user transactions;

18 2. Requires registration. Requires sellers and bidders to
20 register with the publicly accessible site on the Internet and
provide their names, addresses, telephone numbers and e-mail
22 addresses;

24 3. Retains information. Retains the information described
in subsection 2 for at least 2 years;

26 4. Transaction information. Retains transactional
28 information consisting of at least seller identification, high
bidder identification and item sold for at least 2 years from the
30 close of a transaction and has a mechanism to identify all
transactions involving a particular seller or buyer;

32 5. Complaints. Has a mechanism to receive complaints or
34 inquiries from users;

36 6. Suspensions. Adopts and reasonably implements a policy
of suspending, in appropriate circumstances, the accounts of
38 users who are found to have engaged in a pattern of activity that
appears to be deliberately designed to defraud consumers using
40 the publicly accessible site on the Internet; and

42 7. Inspection of data. Agrees to comply with requests from
the office to inspect stored data in its possession, in
44 accordance with state and federal law.

46 **§15304. Penalty; injunction**

48 A person who operates as an Internet auction listing service
without first registering in accordance with this chapter commits
50 a Class E crime.

2 The State may bring an action in Superior Court to enjoin
4 any person from violating this chapter, regardless of whether
6 proceedings have been or may be instituted in the District Court
 or whether criminal proceedings have been or may be instituted.

8 **§15305. Renewals**

10 Registration under this chapter is valid for 2 years and
12 expires at a time the commissioner designates. A registration
14 may be renewed up to 90 calendar days after the date of its
16 expiration upon payment of a late fee in addition to the renewal
 fee. Any registrant who submits an application for renewal more
 than 90 calendar days after the expiration date is subject to all
 requirements governing new registrations under this chapter.

18 **§15306. Denial or suspension of registration or renewal**

20 The office may refuse to accept a registration under this
22 chapter, suspend a registration or deny an application for
 renewal if:

24 1. Incomplete. The registration or renewal is incomplete
 or is not accompanied by the required fee;

26 2. False representation. The registrant makes a false or
28 fraudulent material representation in connection with its
30 registration, renewal or any records or reports kept or filed
 relating to Internet auction listing services;

32 3. Certain crimes. The registrant is convicted of a felony
34 or a crime of which an essential element is dishonesty, fraud,
 larceny, embezzlement or obtaining money, property or credit by
 false pretenses;

36 4. Discipline in other jurisdiction. The registrant has
38 been subject to discipline by another state, the United States, a
40 foreign nation or another governmental agency and at least one of
 the grounds for discipline is the same or equivalent to the
 grounds described in this section;

42 5. Records unavailable. The registrant fails to reasonably
44 make available to the office relevant records and documents
 relating to its Internet auction listing services upon request; or

46 6. Failure to provide information. The registrant fails to
48 provide information to the office in response to a written
 request within 30 days of the request.

50 **§15307. Rules**

2 The commissioner may adopt rules to implement this chapter.
3 Rules adopted pursuant to this section are routine technical
4 rules pursuant to Title 5, chapter 375, subchapter 2-A.

6

SUMMARY

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10 This bill requires an Internet auction listing service to
11 register with the Department of Professional and Financial
12 Regulation, Office of Licensing and Registration if that service
13 is located in the State, if a user of the service is located in
14 the State or if personal property or a service offered for sale
15 or lease is located or provided in the State. As part of this
16 registration, among other requirements, the bill requires that
17 covered Internet auction listing services collect and maintain
18 users' contact information and have policies enabling complaints
19 to be made and users to be suspended. The bill additionally
20 makes operation of a covered Internet auction listing service
21 without registering a Class E crime, enumerates grounds for
22 denial or suspension of a registration and gives the Commissioner
 of Professional and Financial Regulation authority to adopt rules
 to implement the registration process.