

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. H-710)

COMMITTEE AMENDMENT " A" to H.P. 218, L.D. 282, Bill,
"AN ACT Concerning Transient Sales of Consumer Merchandise."

Amend the Bill in section 2 by inserting after subsection
1 of that part designated "§4681." the following:

'2. Employee. "Employee" means ^{any} independent contractor,
agent or person working for a salary or commission.'

Further amend the Bill in section 2 in that part designated
"§4681." by renumbering subsections 2 to 6 to be subsections
3 to 7.

Further amend the Bill in section 2 by striking out all
of subsection 6 of that part designated "§4681." and inserting
in its place the following:

'6. Transient seller of consumer merchandise. "Transient
seller of consumer merchandise" means any person who engages in
the business of selling merchandise to consumers by means of
personal contact or telephone contact, whether or not the
seller is present in the State at the time of the contact or
the time of sale, and who does not have, for the purposes
of carrying on such business, any permanent place of business
within this State. "Transient sellers of consumer merchandise"
does not include persons who sell at public fairs, expositions or
bazaars or members selling on behalf of public service
organizations or who sell exclusively by mail contact.'

Further amend the Bill in section 2 in that part designated
"§4682." by striking out in the 4th line (3rd line in L.D.)
the underlined words "Secretary of State" and inserting in their

place the underlined words 'Department of Business Regulation'

Further amend the Bill in section 2 in that part designated "§4684." by striking out in the 4th line (3rd line in L.D.) the underlined words "Secretary of State" and inserting in their place the underlined words 'Department of Business Regulation'

Further amend the Bill in section 2 in that part designated "§4684." by striking out in the 2nd, 4th, 5th and 6th lines
6th in L.D.)
of subsection 5 (2nd, 4th and/the underlined words "Secretary
of State" and inserting in their place the/words 'Department
of Business Regulation'

Further amend the Bill in section 2 by inserting after that part designated "§4684." the following:

'§4684-A. Renewal application

A renewal application made upon a form prescribed by the Department of Business Regulation shall be filed each year by the applicant upon the anniversary date of the original application. The renewal application shall include all changes or additions in the information required by section 4684. The renewal application shall be accompanied by a \$5 filing fee.'

in section 2
Further amend the Bill/by striking out all of that part designated "§4685." and inserting in its place the following:

'§4685. License fee and security deposit

Every person, including the self-employed, who employs one or more transient sellers of consumer merchandise shall pay to the Department of Business Regulation a sum of \$10 as a state license fee at the time/an application is made for the

license.

Every person, including the self-employed, who employs one or more transient sellers of consumer merchandise shall also make a security deposit of \$10,000 or of a sum equal to the anticipated yearly gross revenues in this State, whichever is less, with the Department of Business Regulation for the protection of consumers as described in section 4687. The security deposit may be made by a bond as drawn by the Department of Business Regulation and as secured by a surety approved by the Department of Business Regulation. Only one security deposit shall be required of each business entity engaged in transient sales of consumer merchandise.

The Department of Business Regulation shall issue/^{to}a transient seller of consumer merchandise/^alicense upon receipt of a completed application in proper form, a license fee and a security deposit.

§4685-A. Waiver of security deposit.

Transient sellers of consumer merchandise may apply to the Department of Business Regulation for waiver of the security deposit required by section 4685 by presenting to the authorized person within the Department of Business Regulation the following information in addition to the information required under section 4684:

1. Consumer sales. ← A sworn statement by the applicant that the applicant has continuously engaged in consumer sales in this State for a period not less than 3 years;

2. Theft offenses; fraudulent or deceptive business practice. A sworn statement by the applicant that no employee of the applicant operating in this State has been convicted of any theft offense or fraudulent or deceptive business practice in any United States jurisdiction;

3. Complaints on file against applicant. A letter from the Attorney General's Office in the State where the applicant has its principal place of business, stating the nature or absence thereof of complaints on file against the applicant; and

4. Letter of recommendation. A letter of recommendation from an appropriate trade association which promotes sound and ethical trade practices and the processing of consumer complaints and that the applicant is a member in good standing of that association.

The authorized person within the Department of Business Regulation shall forward the completed application for waiver of security deposit to the Office of Attorney General for review and shall within 15 days of receipt of the completed application and with the advice of the Attorney General, grant or deny the application for waiver.

§4685-B. Revocation of right to waive security deposit

The authorized person within the Department of Business Regulation shall rescind the right of a transient seller of consumer merchandise to waive a security deposit upon occurrence of any of the following:

1. Conviction for theft or fraudulent business practices.

←--The transient seller or any employee is convicted of a theft offense or fraudulent or deceptive business practice;

2. Failure to defend action under Title 5, section 206 et seq.

← The transient seller or employee fails to successfully defend any action brought against it under Title 5, section 206 et seq.; or

3. Failure to negotiate consumer complaints. The transient seller or any employee fails to negotiate consumer complaints filed against it with the → Attorney General.'

Further amend the Bill in section 2 in that part designated "§4686." by striking out in the last line of paragraph A of subsection 1 the underlined words "Secretary of State" and inserting in their place the underlined words 'Department of Business Regulation'; and by striking out all of paragraph B of subsection 1 and inserting in its place the following: 'B. When the licensee fails to file a renewal application as required by section 4684-A.'

Further amend the Bill in section 2 by striking out all of that part designated "§4687." and inserting in its place the following:

'§4687. Security deposit subject to claims; order of preference; return of security deposit

Each security deposit made under section 4685 shall be subject, so long as it remains in the hands of the Department of Business Regulation, to the attachment and execution in behalf

of consumers whose claims arise in connection with the transient sale of consumer merchandise in this State. The Department of Business Regulation may be impleaded as a trustee in any civil action brought against any licensee, and shall pay over, under order of court, such sum of money as the Department of Business Regulation may be found chargeable. The security deposit shall be subject to the payment of any and all fines and penalties incurred by the licensee through any of the provisions of this chapter, and the clerk of the court in which such fine or penalty is imposed shall thereupon notify the Department of Business Regulation of the name of the licensee against whom such fine or penalty is adjudged and of the amount of such fine or penalty. The Department of Business Regulation, if they have in their hands a sufficient sum deposited by such licensee, shall pay the sum so specified to the clerk. If the Department of Business Regulation shall not have a sufficient sum so deposited, they shall make payment of so much as they have in their hands. All claims upon the deposit shall be satisfied after judgment, fine and penalty, in the order in which the order of court is entered in the respective suits, until all claims are satisfied or the security deposit is exhausted. No security deposit shall be paid over by the Department of Business Regulation to a licensee so long as there are any outstanding claims or notices of claims which are subject of suit against the licensee, in which case the Department of Business Regulation shall retain only such sum of the security deposit as is subject of claim.

The security deposit shall be returned to the person so designated in the licensee's application for license 12 months following the expiration of the license.'

Further amend the Bill in section 2 in that part designated "§4689." by striking out in the 2nd line (same in L.D.) the underlined words "Secretary of State" and inserting in their place the underlined words 'Department of Business Regulation'

Statement of Fact

This amendment provides a new definition of employee, removes mail contact from the definition of solicit and moves the administration of this law from the Office of the Secretary of State to the Department of Business Regulation. Hence, provisions for renewal applications, waiver of security deposit requirements and revocation of waiver are provided.

Reported by the Committee on Business Legislation.

Reproduced and distributed under the direction of the Clerk of the House.
6/20/77

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