

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 282

H. P. 218

House of Representatives, February 9, 1977

Referred to Committee on Business Legislation. Sent up for concurrence and 1,500 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Boudreau of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Concerning Transient Sales of Consumer Merchandise.

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

Sec. 1. 32 MRSA c. 69, sub-cc I - IV, as amended, are repealed.

Sec. 2. 32 MRSA c. 69-A is enacted to read :

**CHAPTER 69-A
TRANSIENT SALES**

§ 4681. Definitions

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose except resale in the ordinary course of trade or business.

2. Merchandise. "Merchandise" includes any objects, wares, goods, promises, commodities, intangibles, services or other things of value but does not include food.

3. Permanent place of business. "Permanent place of business" means any building or other permanently affixed structure, including a home residence, which is owned or held under a 12-month lease or rental agreement at the time business is commenced, and is used in whole or in part for the purpose of engaging in sales of consumer merchandise.

4. Person. "Person" includes natural person, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity.

5. Sale. "Sale" includes any sale, transfer, exchange or barter, offer for sale, promise to sell, attempt to sell, or advertisement for sale, of any merchandise for cash or for credit.

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 and including, but not limited to, personal contact, telephone contact or mail 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.

§ 4682. State license

Every person including the self-employed, who employs one or more transient sellers of consumer merchandise shall apply to the Secretary of State and acquire a state license in the manner set forth in section 4684 before engaging in sales of consumer merchandise in this State.

§ 4683. Local license

Nothing in this chapter shall affect the right of any town or municipality to make such regulations relative to transient sellers of consumer merchandise as may be permissible under the general law or under any municipal charter.

§ 4684. Application

Each application for a transient seller of consumer merchandise license shall be made upon a form prescribed by the Secretary of State and shall be sworn thereto and shall include:

1. Name and address. Name, local and permanent business address of the applicant;
2. Employees of the applicant. Names of all employees of the applicant employed in this State;
3. Statement. A statement of all judgments secured or outstanding against the applicant arising out of sales to consumers, during the 2 years immediately prior to making the application, and of all suits of either a criminal or civil nature pending against the applicant which arise out of sales to consumers, at the time of making the application;
4. Statement of yearly gross revenues. A statement of anticipated yearly gross revenues from sales of consumer merchandise in this State; and
5. Security deposits. Name and address of the person to whom security deposit made with the Secretary of State pursuant to this chapter shall be returned.

The applicant shall promptly notify the Secretary of State of all changes or additions in the above required information upon a form prescribed by the Secretary of State.

Any false statement in an application, either original or supplementary, for a license shall subject the applicant to the same penalty as if he had no license.

§ 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 Secretary of State a sum of \$10 as a state license fee at the time 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 Secretary of State for the protection of consumers as described in section 4687. The security deposit may be made by a bond as drawn by the Secretary of State and as secured by a surety approved by the Secretary of State. Only one security deposit shall be required of each business entity engaged in transient sales of consumer merchandise.

The Secretary of State shall issue a transient seller of consumer merchandise license upon receipt of a completed application in proper form, a license fee and a security deposit.

§ 4686. Expiration

1. Licenses issued under section 4685 shall expire :

A. On the date that the licensee establishes a permanent place of business and surrenders his license to the Secretary of State ;

B. When the licensee fails to promptly file changes or additions in the information required in section 4684 ; or

C. Upon the surrender of the license for cancellation.

§ 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 Secretary of State, 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 Secretary of State may be impeded 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 Secretary of State 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 Secretary of State of the name of the licensee against whom such fine or penalty is adjudged and of the amount of such fine or penalty. The Secretary of State, if he has in his hands a sufficient sum deposited by such licensee, shall pay the sum so specified to the clerk. If the Secretary of State shall not have a sufficient sum so deposited, he shall make payment of so much as he has in his 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 satis-

fied or the security deposit is exhausted. No security deposit shall be paid over by the Secretary of State 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 Secretary of State 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.

§ 4688. Violations and penalties

Any person engaging in transient sales of consumer merchandise without a license lawfully issued pursuant to this chapter shall be punished for each offense as a Class D crime pursuant to Title 17-A.

Failure to comply with this chapter shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act.

§ 4689. Service of process

The Secretary of State shall be an agent of each person, including the self-employed, who employs one or more transient sellers of consumer merchandise for service of any process, notice or demand required or permitted by law to be served and this service shall be binding upon the person. Service of any such process, notice or demand shall be made as provided by Rule 4(d)(b) of the Maine Rules of Civil Procedure, as the same has been or may hereafter be amended.

STATEMENT OF FACT

The purpose of this bill is to repeal a statute that is not used and to replace it with one which provides significant consumer protection in workable form. The bill requires itinerant businesses who are not operating out of a permanent place of business in this State, to register with the Secretary of State and place a returnable security deposit with that office. Many Maine consumers and legitimate small businesses suffer losses to hit and run operations each year which cannot be recouped because the persons causing the damage cannot be found or have no assets when they are found.

This bill will not require the appropriation of any new moneys, and will be administered by an office already in existence. Also, the registration fees for a state license have been lowered.