

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 912

H. P. 677

House of Representatives, March 9, 1977

On Motion of Ms. Clark of Freeport referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Kelleher of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Establishing Alternative Compliance Status for Itinerant Vendors.

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

Sec. 1. 32 MRSA § 4503 is amended to read:

§ 4503. State and local license required

Every itinerant vendor, whether principal or agent, before commencing business shall take out a state license and a local license or in lieu of the local license comply with subchapter III-A in the manner set forth, but nothing herein contained shall affect the right of any municipal officers to make such regulations relative to itinerant vendors as may be permissible under the general law or under any municipal charter.

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

SUBCHAPTER III-A

ALTERNATIVE COMPLIANCE STATUS

§ 462I. Requirements for alternative compliance

1. Application. Subchapter III shall not apply to itinerant vendors which:

A. Subscribe to and are bound by a policy statement, code or regulation established either by the company, firm, corporation or partnership individually, or subscribe to and are bound by the policy statement, code or regulation or a trade association of which the company, firm, corporation or partnership is a member in good standing and which policy statement, code or regulation requires:

- (1) That the offer of products or services for sale, either through oral representation or advertising literature shall be truthful and accurate as to price, grade, quality, make, value, performance, quantity, currency of model and availability; and
- (2) That the terms of any guaranty offered by the seller in connection with the sale shall be furnished to the buyer in writing and shall clearly state the nature and extent of such guaranty; and
- (3) That the policy statement, code or regulation prohibit the initiation or continuation of any deceptive or unlawful trade practices as defined by any statute or ordinance in force and effect within this jurisdiction.

B. Recognizes a responsibility to consumers for violations of either its policy statement, code or regulation or deceptive or unlawful trade practices statutes and ordinances by the independent solicitors of its products or services even if the company, firm, corporation or partnership had no knowledge of such violations or acts, and such lack of knowledge is the result of failure by the company, firm, corporation or partnership to establish procedures whereby it would be kept informed of the activity of the independent solicitors selling its products or services. Such responsibility shall not be construed to be a negotiation of the independent status of the salespeople, but rather is a necessary effort to preserve the good name and public image of the products manufactured.

C. Have established a procedure for processing consumer complaints within a reasonable time and providing for consumer redress if, after the fact finding is completed, it is determined that the consumer was aggrieved by a violation of the policy statement, code or regulation or a statutory deceptive or unlawful practice.

§ 4622. Application for alternative compliance

1. Who may make application. Application for alternative compliance status may be made by a trade association on behalf of its member companies or by a company, firm, corporation or partnership, individually.

2. Information required. Application for alternative compliance as provided herein shall be completed and alternative compliance status shall be granted upon the filing of the following information and items with the Secretary of State:

A. Five current copies of the policy statement, code or regulation which meet the requirements specified in section 4621, subsection 1, paragraph A;

B. A notarized statement containing the name of the company, firm, corporation or partnership subscribing to it and listing the address, telephone number and the name of the executive within the company, firm, corporation or partnership designated to administer the policy statement, code or regulation. In the case of a trade association making application on behalf of its membership based upon an association policy statement, code or regulation to which the membership must subscribe and be bound by the

application must contain the above required information for each of its individual members who desire alternative compliance status, and, in addition, shall list the name, address and telephone number of the officer or agent in charge of administering the association policy statement, code or regulation; and

C. The application, whether submitted by an individual company, firm, corporation or partnership, or by a trade association recognized by the State on its membership's behalf, shall be signed by the chief executive officer of the individual applicant or trade association applicant and shall be notarized.

§ 4623. Processing of complaints

1. Filing of consumer complaint. A consumer complaint against a company, firm, corporation or partnership having alternative compliance status may be filed in the following ways:

A. A consumer may register a complaint against an alternative compliance company, firm, corporation, partnership or trade association with the Consumer Protection Division of the Attorney General's Office in person, by telephone or in writing; or

B. A consumer, or his duly authorized representative, including but not limited to legal counsel, may file a written complaint directly with the alternative compliance company, firm, corporation, partnership or trade association, so long as the written complaint filed directly with the alternative compliance company, firm, corporation, partnership or trade association clearly indicates that the Consumer Protection Division of the Attorney General's office has been so notified.

2. Notification of complaint by Consumer Protection Division. In the situation where the complaint is filed with the Consumer Protection Division of the Attorney General's Office, the Attorney General may notify the alternative compliance company, firm, corporation, partnership or trade association that the complaint has been lodged by sending the complaint in writing to the person, officer, agent or employee designated by the company, firm, corporation or partnership to receive such information in its alternative compliance application.

3. Information required in complaint. The complaint, as filed with the alternative compliance company, firm, corporation, partnership or trade association shall contain the following information:

A. Name and address of consumer;

B. Name or trade name of the produce or service purchased;

C. Name of the company, firm, corporation or partnership, manufacturing or distributing or manufacturing and distributing the product or service, if such name differs from the trade name of the product or service and if it is known by the consumer;

D. Name of the solicitor involved in the transaction remembered by the consumer;

- E. Purchase date, if known;
- F. Identifying contract or receipt numbers, if available; and
- G. Copy of the contract, invoice or receipt, if available.

4. Handling of certain complaints by Consumer Protection Division.

Upon receipt of a consumer complaint or an official complaint against an alternative compliance company, firm, corporation or partnership which does not necessarily involve a sales transaction, but alleges a violation of a deceptive or unlawful trade practice statute or ordinance in force and effect in the jurisdiction, the Consumer Protection Division of the Attorney General's Office shall submit the information surrounding the allegation to the person, officer, agent or employee designated by the company, firm, corporation, partnership or trade association to receive such complaints in its alternative compliance application.

5. Company response. Each company, firm, corporation, partnership or trade association on behalf of its membership that has received alternative compliance status shall, upon receipt of a complaint, file a written statement with the Consumer Protection Division of the Attorney General's Office and the individual consumer complainant, or his duly authorized representative, containing the disposition of the complaint. The statement shall contain the findings of fact upon which the disposition was based and shall be filed within a reasonable time of receipt thereof. For purposes of this provision "reasonable time" shall be defined as within 20 business days from the date of the receipt of the complaint.

§ 4624. Loss of alternative compliance status

1. Revocation authorized. Any company, firm, corporation or partnership having received alternative compliance status as provided for in section 4503 which fails to honor the provisions of the policy statement, code or regulation upon which the alternative compliance status was granted or which violates any of the other requirements for obtaining and maintaining alternative compliance status shall be subject to revocation of alternative compliance status for not less than one year.

2. Criteria for revocation. The authority to revoke the alternative compliance, status as provided in section 4503 shall rest with the Secretary of State, who shall consider the following criteria in making that determination:

A. Failure by the company to file any responses with the Consumer Protection Division of the Attorney General's Office concerning a consumer complaint forwarded by the Attorney General's Office to the person, officer, agent or employees designated by the company, firm, corporation, partnership or trade association to receive such information;

B. Failure to return money or replace products which were received by the consumer in a defective condition;

C. A pattern of failure to deliver ordered goods without adequate explanation shall constitute grounds for automatic revocation. For purposes

of this provision a pattern shall be defined as 10 instances of failure to deliver without explanation; or

D. Failure to correct or adequately explain repeated allegations of violation of statutory deceptive or unlawful trade practices in force and effect within the corporation limits of the company, firm, corporation, partnership or trade association or violation of the policy statement, code or regulation filed with the Secretary of State as part of the application for alternative compliance even where a sale did not result, when such allegations have been forwarded by the Consumer Protection Division of the Attorney General's Office, individual consumer or his authorized representative to the person, officer, agent or employee designated by that company, firm, corporation or partnership to receive such material.

3. Notice to company. Prior to a revocation of alternative compliance status becoming final, the Secretary of State shall give written notice at least 15 business days in advance of the effective revocation date, to the company, firm, corporation or partnership informing it of the effective date of the revocation for that company, firm, corporation or partnership, and the finding upon which the determination was based and, in addition, notice that such company, firm, corporation or partnership can appeal the determination to revoke the alternative compliance status by filing a notice of review with the Secretary of State not later than 15 business days after receipt of the notice of revocation.

§ 4625. Review of revocation

1. Appeal. The determination of the Secretary of State to revoke the alternative compliance status of a company, firm, corporation or partnership as provided for in this chapter shall be subject to review. An appeal is perfected if the company, firm, corporation or partnership within 15 business days after receipt of the notice of revocation, files a written petition for review with the Secretary of State.

2. Hearing. Upon receipt of a petition for review, the Secretary of State shall set a hearing date within 30 days, at which time the petitioner may present written and oral testimony and evidence contesting the revocation of its alternative compliance status to the Secretary of State or his designee.

3. Decision. The Secretary of State shall notify the petitioning company, firm, corporation or partnership of its decision to either uphold or reverse the revocation within 10 days from the date of the review hearing.

§ 4626. Nonexclusive remedy

Nothing herein shall be construed as prohibiting a consumer from seeking any other legal or nonlegal remedies, prior to, concurrent with or subsequent to any action hereunder.

STATEMENT OF FACT

The purpose of this bill is to provide that itinerant vendors when they comply with the provisions of the alternative compliance section of the

Itinerant Vendor's Law, will not have to comply with the local licensing statute. In order to comply with the alternative compliance statute, the itinerant vendors or the companies whose products they sell will have to subscribe to and be bound by a code of ethics and complaint handling program whereby all meritorious consumer complaints lodged against the company or its independent dealers or both are satisfied. This bill mandates a standard of conduct which the vendor, the company or organization pledges to uphold upon demonstration of a code of ethics and complaint handling program. Every applicant who applies for an itinerant vendor's license to sell his products can choose to either comply with the licensing or local licensing requirement or develop a code of ethics and complaint handling program or join a company, corporation or association which has an existing program of this type. More specifically, the code of ethics and complaint handling program is an alternative means of satisfying the local jurisdiction's licensing requirements.

The code of ethics and complaint handling program is unique in that it provides the community with a procedure to insure quick, nonlegal, no-cost attention and satisfaction of complaints about the products or services of any itinerant vendor or company receiving alternative compliance status. As a general rule, under normal licensing ordinances, the city or county can only prosecute a violating salesman for a misdemeanor, but this does not provide aggrieved consumers with a right to recover their money or with a replacement for defective merchandise. Through the code of ethics and complaint handling program, a company must satisfactorily resolve the consumer's complaint or it risks loss of the alternative compliance status for its entire sales force.

Fly-by-night and fraudulent operators are not expected to be able to satisfy the requirements and qualify under the alternative compliance program and therefore, must apply for licenses. Thus, legitimate dealers will not be unduly burdened with the licensing requirements and the police still have the statutory tools to work against fly-by-night and criminal operators.