

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1287

H. P. 1020

House of Representatives, March 16, 1979

On Motion of Mr. Howe of South Portland, referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. LaPlante of Sabattus.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Provide Security Deposits or Bonding of Businesses in the State which
Warrant Consumer Goods and Services.

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

32 MRSA c. 69, sub-c. VI is enacted to read:

SUBCHAPTER VI

MANUFACTURERS OF WARRANTED CONSUMER GOODS AND SERVICES

§ 4671. Purpose

Since a warranty is of no benefit to the consumer if the manufacturer fails to comply with it or the manufacturer has ceased business in the State, the purpose of this subchapter is to provide funds which will satisfy the claims of consumers which arise from the sale of warranted merchandise.

§ 4672. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms shall have the following meanings.

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. **Manufacturer.** “Manufacturer” is a person who converts personal property into a different form, composition or character from that in which it originally existed.

3. **Merchandise.** “Merchandise” includes any objects, wares, goods, promises, commodities, intangibles, services or other things of value but does not include food.

4. **Person.** “Person” includes any individual, firm, partnership, association, society, club, corporation, estate, trust and any agent, employee, salesman, partner, officer, director, member, stockholder or trustee thereof.

5. **Sale.** “Sale” includes any sale, transfer, exchange or barter, offer for sale or attempt to sell any merchandise for cash or on credit.

6. **Warranty.** “Warranty” means full warranty as defined by the United States Magnuson-Moss Warranty - Federal Trade Commission Improvement Act, P.L. 93-637.

§ 4673. Applicability

Manufacturers who warrant their merchandise and whose products are sold to consumers in Maine with a warranty which has a monetary remedy, in addition to any other remedy, in excess of the purchase price or the value of which exceeds \$200 shall comply with this subchapter.

§ 4674. Security deposit

Every manufacturer who qualifies according to section 4673 shall make a security deposit of \$100,000 or a sum equal to 10% of the anticipated yearly gross revenue 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 shall be made by a bond as drawn by the department and as secured by a surety approved by the department. Only one security deposit shall be required of each manufacturer.

§ 4675. Waiver of security deposit

Manufacturers of consumer merchandise may apply to the Department of Business Regulation for waiver of the security deposit required by section 4674 by presenting to the department the following information:

1. **Theft offenses; fraudulent or deceptive business practices.** A sworn statement by the manufacturer that he has not been convicted of any criminal offenses of theft, fraud or deceptive business practice in any court in the United States;

2. **Complaints on file against manufacturer.** A letter from the Attorney General in the state where the manufacturer has his principal place of business, stating the nature or absence thereof of complaints on file against the manufacturer; and

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

The authorized person within the department shall forward the completed application for waiver of security deposit to the 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.

§ 4676. Revocation of right to waive security deposit

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

1. Conviction for theft or fraudulent business practices. The manufacturer or any employee in the course of his employment is convicted of a criminal offense of theft, fraud or deceptive business practices; or

2. Refusing to negotiate consumer complaints. The manufacturer or his employee refuses to negotiate consumer complaints filed against it with the Attorney General.

§ 4677. Security deposit subject to claims; order of preference; return of security deposit

Each security deposit made under section 4674 shall be subject, so long as it remains in the hands of the Department of Business Regulation, to attachment and execution in behalf of consumers whose claims arise in connection with the manufacturer's sale of warranted consumer merchandise in this State. The Department of Business Regulation may be impleaded as a trustee in any civil action brought against any manufacturer and shall pay over, under order of court, such sum of money as the department may be found chargeable. The security deposit shall be subject to the payment of any and all fines and penalties incurred by the manufacturer through any of the provisions of this chapter, and the clerk of the court in which the fine or penalty is imposed shall thereupon notify the Department of Business Regulation of the name of the manufacturer against whom the fine or penalty is adjudged and of the amount of the fine or penalty. The department if it has in its hands a sufficient sum deposited by the manufacturer shall pay the sum so specified to the clerk. If the Department of Business Regulation shall not have a sufficient sum so deposited, it shall make payment of as much as it has in its 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 to a manufacturer as long as there are any outstanding claims or notices of claims which are subject of suit against the manufacturer, in which case the department shall retain only such sum of the security deposit as is subject of claim.

The security deposit shall be returned to the manufacturer so designated 12 months following the expiration of any warranty on the manufacturer's merchandise sold in Maine or until final judgment on claims on warranted merchandise filed against the manufacturer, whichever occurs first.

§ 4678. Violations and penalties

It is unlawful for a manufacturer to use undue influence, coercion, intentional misrepresentation or any other willful act or representation to interfere with the consumer's exercise of his rights under this subchapter.

Any manufacturer of consumer merchandise whose product is sold in Maine without complying with this chapter shall be punished for each offense as a Class D crime.

§ 4679. Limitation

This subchapter shall not apply to warranties given on sales in any transaction covered by Title 9-A, sections 3-501 to 3-507 nor shall it apply to any sale by any dealer or agent or salesman of a registered dealer, registered pursuant to chapter 13, of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to chapter 13 or expressly exempt from registration thereof, nor shall it apply to any sale of insurance covered by Title 24-A, sections 2515-A and 2717.

§ 4680. Service or process

The Department of Business Regulation shall be an agent of each person, when the person has no agent registered in this State or is not a foreign corporation for whom the Secretary of State is agent for service of process, including the self-employed who manufacture 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 the Maine Rules of Civil Procedure, Rule 4(d) (9) as the same has been or may hereafter be amended.

STATEMENT OF FACT

This bill will require a security deposit my manufacturers whose warranted merchandise is sold in Maine to consumers.