

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1206

H.P. 840

House of Representatives, March 20, 1991

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative DORE of Auburn.
Cosponsored by Representative RYDELL of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act Relating to the Sale of Business Opportunities.



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

2
3 Sec. 1. 32 MRSA §4691, sub-§3, ¶A, as amended by PL 1985, c.
4 597, §1, is further amended to read:

6 A. The sale, lease or distribution of any services,
7 products, equipment, supplies, goods, or commodities,
8 including plants used for cultivation and animals used for
9 breeding, ~~or--services--which~~ that are sold, leased or
10 distributed by the seller or an affiliated person, to the
11 purchaser for the purpose of enabling the purchaser to start
12 a business, for which the purchaser ~~pays to the seller a fee~~
13 which is required to pay an amount that exceeds \$250 either
14 as a single payment or in multiple payments during any
15 consecutive 6-month period and in which the seller
16 represents that:

18 (1) ~~That--the~~ The seller or an affiliated person will
19 provide locations or assist the purchaser in finding
20 locations for the use or operation of vending machines,
21 racks, display cases or other similar devices or
22 currency-operated amusement machines or devices, on
23 premises neither owned nor leased by the purchaser or
24 seller;

26 (2) ~~That--the~~ The seller or an affiliated person will
27 purchase any or all products made, produced,
28 fabricated, grown, bred or modified by the purchaser
29 using in whole or in part, the supplies, services or
30 chattels sold to the purchaser;

32 (3) ~~That--the~~ The seller guarantees that the purchaser
33 will derive income from the business opportunity ~~which~~
34 that exceeds the price paid for the business
35 opportunity;

36 (4) ~~That--if~~ If the purchaser is unsatisfied with the
37 business opportunity, the seller will refund all or
38 part of the price paid for the business opportunity, or
39 repurchase any of the products, equipment, supplies or
40 chattels supplied by the seller; or

42 (5) ~~That--upon payment by the purchaser of a fee or sum~~
43 ~~of money to the seller or an affiliated person, the~~ The
44 seller or an affiliated person will provide a sales
45 program or marketing program ~~which will enable the~~
46 ~~purchaser to derive income from the business~~
47 ~~opportunity which exceeds the price paid for the~~
48 ~~business opportunity, provided~~ except that this
49 subsection shall does not apply to the ~~sale of~~ a
50 marketing program made provided in conjunction with the
51 licensing of a federally registered trademark or
52 service mark; and

2 **Sec. 2. 32 MRSA 4692**, as enacted by PL 1979, c. 571, is
4 amended to read:

6 **§4692. When disclosure statement must be provided**

8 Seller shall provide all purchasers with a disclosure
10 statement meeting the requirements of this chapter at the ~~earlier~~
12 earliest of: at least 72 hours before the purchaser signs a
14 business opportunity agreement; at least 72 hours before the
16 purchaser makes payment of any consideration in connection with
the sales or proposed sale of the business opportunity or the
first face-to-face meeting between the seller; and the purchaser
which that is held for the purpose of discussing the sale or
proposed sale of a business opportunity.

18 **Sec. 3. 32 MRSA §4693, first ¶**, as enacted by PL 1979, c. 571,
is amended to read:

20 The disclosure statement shall must include the following
22 information accurately, clearly and concisely stated, in a
legible written document, ~~except that a~~ A disclosure statement
24 meeting the criteria of any rules or regulations of the Federal
Trade Commission requiring disclosure statements by sellers shall
26 ~~also fulfill~~ fulfills the requirements of this section to the
extent that the substituted disclosure statement meets or exceeds
the requirements of this section:

28 **Sec. 4. 32 MRSA §4693, sub-§3, ¶A**, as enacted by PL 1979, c.
30 571, is amended to read:

32 A. The total funds which ~~shall~~ that must be paid by the
34 purchaser to the seller or an affiliated person in order to
obtain or commence the business opportunity operation, such
36 as including, but not limited to, deposits, down payments
and fees;

38 **Sec. 5. 32 MRSA §4693, sub-§§5-A and 13** is enacted to read:

40 5-A. Licenses and permits. A detailed description of any
42 licenses or permits that are necessary in order for the purchaser
to engage in or operate the business opportunity.

44 13. Additional information. Any additional information
46 that the Securities Administrator requires by rule.

48 **Sec. 6. 32 MRSA §4697**, as enacted by PL 1979, c. 571, is
amended to read:

50 **§4697. Renewal of registration**

2 A registration is effective for one year commencing on the
3 date of effectiveness. Sellers-shall A seller may annually renew
4 their the registration by paying a \$10 fee, filing a copy of a
5 current disclosure statement and providing evidence of a bond or
6 escrow account satisfying the requirements of section 4695.
7 Failure to renew at the close of the one-year period of
8 effectiveness results in expiration of the registration.

9
10 **Sec. 7. 32 MRSA §4698, sub-§1, as enacted by PL 1979, c. 571,**
11 **is amended to read:**

12 **1. Return of goods.** Within 20 days after a notice of
13 avoidance is effective, the purchaser shall tender to the seller
14 any goods or commodities delivered to the purchaser pursuant to
15 the contract. Tender is sufficient if the purchaser makes the
16 goods or commodities available to the seller at the purchaser's
17 residence or business. If the seller fails to take possession of
18 the goods or commodities within 20 days after the notice of
19 avoidance is effective, the goods or commodities shall become the
20 property of the purchaser without obligation to pay for them.

21
22 **Sec. 8. 32 MRSA §4700, sub-§3, as enacted by PL 1979, c. 571,**
23 **is amended to read:**

24
25 **3. Temporary restraining order.** Upon application ~~to~~ by the
26 Attorney General, the Superior Court shall issue a temporary
27 restraining order, under Unfair Trade Practices, Title 5, section
28 209, enjoining any franchise business opportunity seller who has
29 committed an act prohibited by section 4699, subsection 1,
30 paragraphs paragraph A, B or C, from engaging in any conduct
31 relating to the sale, offering for sale or promotion of business
32 opportunities in this State until such time as the seller
33 satisfies the court that it has complied with the provisions of
34 this chapter. The Superior Court shall grant such a temporary
35 restraining order without requiring a showing of immediate and
36 irreparable harm or injury.

37
38
39
40 **STATEMENT OF FACT**

41
42 **This bill revises the laws regulating the sales of business**
43 **opportunities. This bill makes certain that persons selling**
44 **business opportunities such as franchises can not avoid the**
business opportunities registration laws by charging an initially
small fee and then charging larger amounts thereafter.