

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1838

S.P. 670

In Senate, February 8, 1994

An Act to Establish the Door-to-door and Telemarketing Consumer Solicitation Sales Act.

Submitted by the Department of the Attorney General pursuant to Joint Rule 24.
Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland.
Cosponsored by Representatives: ADAMS of Portland, GWADOSKY of Fairfield, KILKELLY of Wiscasset.

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

4 Sec. 1. 32 MRSA c. 69, sub-c. V, first 2 lines, are repealed and the
following enacted in their place:

6 SUBCHAPTER V
8 DOOR-TO-DOOR AND TELEMARKETING
10 CONSUMER SOLICITATION SALES ACT

12 Sec. 2. 32 MRSA §4660 is enacted to read:

14 §4660. Title

16 This subchapter may be known and cited as the "Door-to-door
18 and Telemarketing Consumer Solicitation Sales Act."

20 Sec. 3. 32 MRSA §4661, sub-§§1, 3 and 4, as enacted by PL 1969,
22 c. 395, are amended to read:

24 1. Consumer. "Consumer" means any person who purchases or
contracts for the purchase of merchandise for any purpose, except
26 resale in the ordinary course of trade or business. A "consumer"
28 includes a nonresident who is contacted by a seller located in
30 this State.

32 3. Seller. "Person Seller" includes any individual, firm,
34 principal, copartnership, association, society, club,
36 corporation, estate, trust and any agent, employee, salesman
38 salesperson, telemarketer, partner, officer, director, member,
40 stockholder or trustee thereof.

42 4. Sale. "Sale" includes any sale, transfer, exchange or
44 barter, handling charge, offer for sale or attempt to sell any
46 merchandise for cash or on credit, including any transaction or
48 attempted transaction in which a consumer pays \$25 or more in
50 order to receive a gift, prize, promotion or contest winning.

Sec. 4. 32 MRSA §4661, sub-§5 is enacted to read:

5. Telemarketer. "Telemarketer" means a seller who uses
the telephone to initiate direct contact with a consumer.

Sec. 5. 32 MRSA §4662, as amended by PL 1987, c. 202, §2, is
further amended to read:

§4662. Contents of contract

Where merchandise is sold or contracted to be sold, whether
under a single contract or under multiple contracts, to a
consumer as a result of or in connection with a salesman's

2 seller's direct contact accomplished by means of and including,
3 but not limited to, a personal visit or a telephone call upon the
4 consumer, other than at the seller's place of business, without
5 the consumer soliciting the initial contact, the contract to be
6 binding shall be in writing, bear the signature of the seller and
7 the consumer, contain the date of the transaction, the terms of
8 the sale or offer, the name and the mailing address of the
9 seller's permanent place of business, a statement of the
10 consumer's right to avoid as provided in this subchapter and a
11 statement of the limitation contained in section 4664-A. A
12 completely executed copy of the contract or agreement shall be
13 furnished by the seller to the consumer immediately after the
14 consumer signs the agreement or contract.

15 **Sec. 6. 32 MRSA §4663**, as repealed and replaced by PL 1977,
16 c. 331, is amended to read:

17 **§4663. Consumer's right of avoidance**

18 Where merchandise is sold or contracted to be sold, whether
19 under a single contract or under multiple contracts, to a
20 consumer as a result of or in connection with a salesman's
21 seller's direct contact accomplished by means of and including,
22 but not limited to, a personal visit or a telephone call, upon
23 the consumer other than at the seller's place of business,
24 without the consumer soliciting the initial contact or sale, the
25 consumer may void the contract or sale by giving notice of his
26 intention not to be bound by the contract or sale and returning
27 or making available for return any merchandise delivered pursuant
28 to the terms of this subchapter.
29

30 **Sec. 7. 32 MRSA §4664, first ¶**, as enacted by PL 1969, c. 395,
31 is amended to read:

32 The consumer may avoid a contract or sale by giving written
33 notice of avoidance to the seller by ordinary mail, postage
34 prepaid, within 3 full business days following the day on which
35 the contract or sale was made binding, or within 15 days if the
36 sale is to a consumer who is not a resident of this State. The
37 notice shall be sufficient if addressed to the seller at the
38 address given on the contract or agreement. Notice of avoidance
39 shall be effective upon deposit in the United States mail. The
40 notice of avoidance given under this section need not take a
41 particular form and is sufficient if it expresses the intention
42 of the consumer not to be bound by the sale.
43

44 **Sec. 8. 32 MRSA §4672** is enacted to read:

45 **§4672. Telemarketers**

46

1. Disclosures to law enforcement officials. Upon the request of the Department of the Attorney General or a local law enforcement official, a telemarketer shall provide the following information within 7 days of the request:

A. A list of names and principal residence addresses of each seller, including principals and salespersons;

B. A copy of all sales information and literature, including, but not limited to, scripts, outlines, instructions and information regarding how to conduct telephone sales, sample introductions, sample closings, product information and contest premium award information, provided by the telemarketer to salespersons or of which the telemarketer informs the salespersons, and a copy of all written materials and contracts the seller sends to any prospective or actual purchaser;

C. The names, addresses and phone numbers of all consumers who have entered into transactions with the telemarketer;

D. The name and address of any financial institution in which the telemarketer has deposited funds received from a consumer who has contracted or attempted to contract with the telemarketer; and

E. Confirmation of the surety bond or escrow account required by this section.

2. Bonds and escrow accounts. All telemarketers shall obtain either a surety bond issued by a surety company authorized to do business in this State or have established an escrow account with a licensed bank or savings institute located in this State. The surety bond or escrow account must be in an amount of not less than \$50,000.

A person who is damaged by a violation of a provision of this subchapter, by a telemarketer's breach of the contract or by a telemarketer's violation of Title 5, section 207 may, in addition to other available remedies, bring an action against the bond or escrow account to recover damages suffered. The Attorney General may, in addition to other available remedies, bring an action against the bond or escrow account under Title 5, section 209 to recover damages relating to the telemarketing sale. The aggregate liability of the surety or bank or savings institute is only for actual damages and may not exceed the amount of the bond or escrow account.

2 A. A bond or escrow account may not be terminated, canceled
3 or returned to the seller until 12 months following the date
4 the telemarketer ceases to do business in this State.

6 3. Required disclosure. Any contract or sales materials
7 used by a telemarketer must contain the following:

8 A. The information that the seller has secured a bond or
9 maintains an escrow account in the amount of \$50,000;

10 B. The name, address and phone number of the surety
11 company, licensed bank or savings institute; and

12 C. The recommendation that the consumer, before signing a
13 contract should check with the surety company, bank or
14 saving institute to determine the current status of the bond
15 or escrow account.

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22 **STATEMENT OF FACT**

23 This bill establishes the Door-to-door and Telemarketing
24 Consumer Solicitation Sales Act.

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30 This document has not yet been reviewed to determine the
31 need for cross-reference, stylistic and other technical
32 amendments to conform existing law to current drafting standards.