

MAINE STATE LEGISLATURE

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STATE OF MAINE
LEGISLATURE
AUGUSTA, MAINE

L.D. 1294

DATE: 2/29/96

(Filing No. H- 731)

CRIMINAL JUSTICE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 918, L.D. 1294, Bill, "An Act to Prohibit Home Repair Fraud and Establish Aggravated Penalties When the Victim Is an Older Person"

Amend the bill by striking out the title and substituting the following:

'An Act to Prohibit Home Repair Fraud'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 17-A MRSA §908 is enacted to read:

§908. Home repair fraud

1. A home repair seller is guilty of home repair fraud if that seller knowingly enters into an agreement or contract, written or oral, with any person for home repair services and the seller, at the time of entering into that agreement or contract:

A. Intentionally misrepresents a material fact relating to the terms of the agreement or contract or misrepresents a preexisting or existing condition of any portion of the property that is the subject of the home repair services;

B. Intentionally creates or reinforces an impression relating to the terms of the agreement or contract that is false and that the seller does not believe to be true or fails to correct such an impression that the seller had previously created or reinforced;

COMMITTEE AMENDMENT

2 C. Intentionally promises performance under the terms of
3 the agreement or contract that the seller does not intend to
4 perform or that the seller knows will not be performed;

6 D. Intentionally uses or employs deception, false pretense
7 or false promise in securing the agreement or contract; or

8 E. Knows that the property that is the subject of the home
9 repair services was previously damaged or destroyed by the
10 seller with the intent to obtain the agreement or contract.

12 2. In a prosecution under subsection 1, paragraph A,
13 whether a fact relating to the terms of the agreement or contract
14 is material is a question of law to be determined by the court.

16 3. As used in this section, unless otherwise indicated, the
17 following terms have the following meanings.

18 A. "Home repair services" means fixing, replacing,
19 altering, converting, modernizing, improving or making an
20 addition to real property primarily designed or used as a
21 residence. "Home repair services" includes the
22 construction, installation, replacement, improvement and
23 cleaning of driveways, swimming pools, porches, kitchens,
24 chimneys, chimney liners, garages, fences, fall-out
25 shelters, central air conditioning, central heating,
26 boilers, furnaces, hot water heaters, electric wiring,
27 sewers, plumbing fixtures, storm doors, storm windows,
28 siding or awnings and other improvements to structures
29 within the residence or upon the land adjacent to the
30 residence, including tree trimming.

32 B. "Home repair seller" or "seller" means a person,
33 partnership, corporation, business, trust or other legal
34 entity that sells or provides home repair services.

36 C. "Residence" means a single-family or multifamily
37 dwelling, including a single-family home, apartment
38 building, condominium, duplex or townhouse that is used or
39 intended to be used by its occupants as a dwelling place.

42 4. Home repair fraud is a Class D crime, except that a
43 violation of this section when the actor has 2 or more prior
44 Maine convictions for violations of this section is a Class C
45 crime. For purposes of this subsection, the dates of both of the
46 prior convictions must precede the commission of the offense
47 being enhanced by no more than 10 years, although both prior
48 convictions may have occurred on the same day. Home repair fraud
49 is not a Class C crime if the commission of the 2 prior offenses
50 occurred within a 3-day period. The date of the conviction is

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deemed to be the date that sentence is imposed, even though an appeal was taken. The date of a commission of a prior offense is presumed to be that stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent.

Sec. 2. 32 MRSA §4667, as amended by PL 1987, c. 202, §3, is repealed and the following enacted in its place:

§4667. Criminal penalties

A violation of section 4662, section 4664-A or section 4666 is a Class E crime for which the State need not plead or prove a culpable state of mind, except that a violation of section 4662, section 4664-A or section 4666 is a Class D crime if the state pleads and proves that the act or omission was intentional.

Sec. 3. 32 MRSA §4682-A, sub-§3, as amended by PL 1991, c. 714, §11, is repealed.

Sec. 4. 32 MRSA §4688, as amended by PL 1985, c. 763, Pt. A, §94, is repealed and the following enacted in its place:

§4688. Violations and penalties

1. Criminal penalty. Violation of section 4682, section 4682-A, subsection 2 or section 4682-B is a Class E crime for which the State need not plead or prove a culpable state of mind, except that a violation of section 4682, section 4682-A, subsection 2 or section 4682-B is a Class D crime if the state pleads and proves that the act or omission was intentional.

2. Unfair trade practice. A person who fails to comply with this chapter commits a violation of Title 5, chapter 10.

Sec. 5. 32 MRSA §14512, sub-§1, as enacted by PL 1993, c. 444, §1, is repealed and the following enacted in its place:

1. Criminal penalty. Violation of section 14504 or section 14506 is a Class E crime for which the State need not plead or prove a culpable state of mind, except that a violation of section 14504 or 14506 is a Class D crime if the state pleads and proves that the act or omission was intentional.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

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This bill may increase prosecutions for Class C crimes. Sentences of more than 9 months imposed for Class C crimes must be served in a state correctional institution. The cost to the State per sentence is \$55,711 based upon an average length of stay of 1 year and 10 months. The State also must reimburse counties for sentences served in county jails of 9 months or less for Class C crimes.

This bill also may increase prosecutions for Class D and Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.70 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The Judicial Department may require additional General Fund appropriations to cover indigent defense costs related to some of these new cases. The amounts can not be estimated at this time. The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.'

STATEMENT OF FACT

This amendment replaces the bill and makes the following changes.

1. It creates in the Maine Criminal Code the Class D crime of home repair fraud.

2. It makes home repair fraud after 2 or more prior convictions for home repair fraud a Class C crime.

3. It makes a violation of contract content requirements, of a seller's performance requirements or of a seller's obligation to return consideration to a buyer when proper notice of avoidance is given under the consumer solicitation sales laws a Class E crime for which the State need not plead or prove a culpable state of mind.

4. It makes a violation of any of the same provisions under the consumer solicitation sales laws a Class D crime if the State pleads and proves that the act or omission by the seller was intentional.

2 5. It makes a violation of registration requirements and
4 requirements for disclosure of registration number and place of
6 business under the transient sales laws a Class E crime for which
8 the State need not plead or prove a culpable state of mind.

10 6. It makes a violation of any of the same provisions under
12 the transient sales laws a Class D crime if the State pleads and
14 proves that the act or omission by the seller was intentional.

16 7. It makes a violation of the registration requirement or
18 disclosure of registration requirement under the door-to-door
20 home repair transient seller laws a Class E crime for which the
State need not plead or prove a culpable state of mind.

 8. It makes a violation of any of the same provisions under
the door-to-door home repair transient seller laws a Class D
crime if the state pleads and proves that the act or omission by
the seller was unintentional.

 9. It also adds a fiscal note.