

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1294

H.P. 918

House of Representatives, April 11, 1995

An Act to Prohibit Home Repair Fraud and Establish Aggravated Penalties When the Victim Is an Older Person.

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Speaker GWADOSKY of Fairfield.
Cosponsored by Representatives: AHEARNE of Madawaska, BOUFFARD of Lewiston, BUCK of Yarmouth, CHASE of China, CHICK of Lebanon, CHIZMAR of Lisbon, CLOUTIER of South Portland, DESMOND of Mapleton, DRISCOLL of Calais, FISHER of Brewer, GAMACHE of Lewiston, GERRY of Auburn, GREEN of Monmouth, HARTNETT of Freeport, JACQUES of Waterville, JONES of Pittsfield, JOSEPH of Waterville, LEMAIRE of Lewiston, McALEVEY of Waterboro, MERES of Norridgewock, MORRISON of Bangor, NADEAU of Saco, O'GARA of Westbrook, POVICH of Ellsworth, REED of Dexter, ROTONDI of Madison, SAVAGE of Union, SAXL of Bangor, SIROIS of Caribou, TUFTS of Stockton Springs, TUTTLE of Sanford, TYLER of Windham, WATSON of Farmingdale, Senators: ABROMSON of Cumberland, BUTLAND of Cumberland, CAREY of Kennebec, FERGUSON of Oxford, LAWRENCE of York, MICHAUD of Penobscot, PARADIS of Aroostook, STEVENS of Androscoggin.

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48

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

Sec. 1. 10 MRSA c. 208-B is enacted to read:

CHAPTER 208-B

HOME REPAIR FRAUD

§1286. Definitions

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

1. Home repair. "Home repair" means to fix, replace, alter, convert, modernize, improve or make an addition to real property primarily designed or used as a residence. Home repair includes, but is not limited to, the construction, installation, replacement, improvement or cleaning of driveways, swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fall-out shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electric wiring, sewers, plumbing fixtures, storm doors, storm windows, siding or awnings or other improvements to structures within the residence or upon the land adjacent to the residence, including tree trimming.

2. Home repair contractor. "Home repair contractor" means any person, partnership, corporation, business, trust or other legal entity that sells or provides home repair services.

§1287. Home repair fraud

A home repair contractor commits the offense of home repair fraud when the contractor knowingly enters into an agreement or contract, written or oral, with a person for home repair and that contractor knowingly:

1. Misrepresentation of material fact. Misrepresents a material fact relating to the terms of the contract or agreement or the preexisting or existing condition of any portion of the property involved; creates or confirms another's impression that is false and that the contractor does not believe to be true; or promises performance that the contractor does not intend to perform or knows will not be performed;

2. Deception. Uses or employs any deception, false pretense or false promises to induce, encourage or solicit such a person to enter into any contract or agreement; or

2 3. Damage. Damages the property of a person with the
3 intent to enter into an agreement or contract for home repair.

4 **§1288. Intentional violations**

6 1. Presumption. For the purpose of this chapter, it is a
7 rebuttable presumption of intent and knowledge that a contractor
8 promises performance that the contractor does not intend to
9 perform and knows will not be performed when, after no
10 performance or no substantial performance of a contract or an
11 agreement for home repair, the contractor fails or refuses to
12 return payments made by the victim and, in addition, the
13 contractor:

14 A. Fails to acknowledge or respond to a written demand for
15 commencement or completion of home repair within 10 days
16 after such a demand is mailed or presented to the contractor
17 by the victim, by the victim's legal representative or by a
18 law enforcement or consumer agency acting on behalf of the
19 victim;

20 B. Fails to notify the victim in writing of a change of
21 business name or address prior to the completion of the home
22 repair;

23 C. Makes false statements or representations to the victim
24 to excuse the contractor's nonperformance or nonsubstantial
25 performance;

26 D. Uses deception to obtain the victim's consent to
27 modification of the terms of the original contract or
28 agreement;

29 E. Fails to employ qualified personnel necessary to perform
30 the home repair;

31 F. Fails to order or purchase the basic materials required
32 for performance of the home repair; or

33 G. Fails to comply with the municipal, county, state or
34 federal regulations or codes relating to the performance of
35 home repair.

36 2. Intent and knowledge. For the purpose of this section,
37 intent and knowledge must be determined by an evaluation of all
38 circumstances surrounding a transaction and the determination may
39 not be limited to the time of contract or agreement.

40 3. Substantial performance. For the purpose of this
41 section, substantial performance does not include work performed

2 in a manner of little or no value or work that fails to comply
3 with the appropriate municipal, county, state or federal
4 regulations or codes.

6 **§1289. Penalties**

8 1. Class of crime. A violation of section 1287 is a
9 crime. Classification of such a crime is as follows:

10 A. If the value of the contract exceeds \$5,000, a Class C
11 crime;

12 B. If the value of the contract is more than \$1,000, but
13 not more than \$5,000, a Class D crime; and

14 C. If the value of the contract does not exceed \$1,000, a
15 Class E crime.

16 2. Cumulative amounts. If the contractor enters into 2 or
17 more contracts for home repair in violation of this chapter with
18 the same victim, or in furtherance of a common fraudulent scheme,
19 design or intention, the amount of the contracts must be added
20 together and the total amount of the contracts determines the
21 class of crime as set forth in subsection 1.

22 **§1290. Aggravated home repair fraud**

23 1. Aggravated home repair fraud. A contractor commits the
24 offense of aggravated home repair fraud when the contractor
25 commits a violation of section 1287 against a person 60 years of
26 age or older. The classification of crime of such a violation is
27 as follows:

28 A. If the value of the contract exceeds \$5,000, a Class B
29 crime;

30 B. If the value of the contract is more than \$1,000, but not
31 more than \$5,000, a Class C crime; and

32 C. If the value of the contract does not exceed \$1,000, a
33 Class D crime.

34 2. Defense. A defense to aggravated home repair fraud does
35 not exist merely because the accused reasonably believed the
36 victim to be a person less than 60 years of age.

37 **§1291. Unconscionable contract**

38 A contractor commits an unfair trade practice in violation
39 of Title 5, section 207 when the contractor enters into an
40 unconscionable contract.

2 unconscionable agreement or contract. A contract is
4 unconscionable within the meaning of this section when an
6 unreasonable difference exists between the value of the services,
8 materials and work to be performed and the amount charged for
10 those services, materials and work. For purposes of this
12 section, prima facie evidence exists that the contract or
14 agreement is unconscionable if the total payment called for the
16 by the contract or agreement is in excess of 4 times the fair
18 market value for those services, materials and work.

STATEMENT OF FACT

14 This bill explicitly defines different practices that
16 typically occur when home repair contractors defraud their
18 customers. A violation of the provisions of the Maine Revised
20 Statutes, Title 10, chapter 208-B is considered criminal conduct
and may result in criminal penalties. If the victim is more than
60 years of age the penalties are increased.