

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

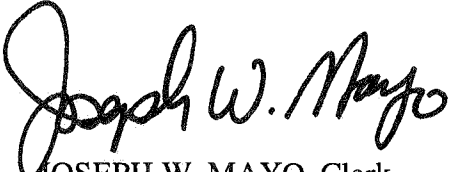
No. 1215

H.P. 898

House of Representatives, February 25, 1997

An Act to Restrict Telephone Solicitation.

Reference to the Committee on Business and Economic Development suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative AHEARNE of Madawaska.
Cosponsored by Senator PARADIS of Aroostook and
Representatives: CLARK of Millinocket, DUNLAP of Old Town, JONES of Greenville, JOY
of Crystal, LEMKE of Westbrook, MURPHY of Kennebunk, WATERHOUSE of Bridgton.

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

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Sec. 1. 10 MRSA §1500 is enacted to read:

§1500. Unsolicited telephone solicitation; restrictions

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commission" means the Public Utilities Commission.

B. "Consumer" means an actual or prospective purchaser, lessee or recipient of consumer goods or services.

C. "Consumer goods or services" means any real property or any tangible or intangible personal property that is normally used for personal, family or household purposes, including, without limitation, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates and any services related to such property.

D. "Department" means the Department of the Attorney General.

E. "Doing business in this State" means conducting telephonic sales calls from a location in the State or from other states or nations to consumers located in the State.

F. "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

G. "Telephone solicitor" means a natural person, firm, organization, partnership, association or corporation, or a subsidiary or affiliate thereof, doing business in this State, who makes or causes to be made a telephonic sales call, including, but not limited to, a call made by use of automated dialing or a recorded message device.

H. "Telephonic sales call" means a call made by a telephone solicitor to a consumer, for the purpose of soliciting a sale of any consumer goods or services or an extension of credit for consumer goods or services, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

2 I. "Unsolicited telephonic sales call" means a telephonic
3 sales call other than a call made:

4 (1) In response to an express request of the person
5 called;

6 (2) Primarily in connection with an existing debt or
7 contract, payment or performance of which has not been
8 completed at the time of the call;

9 (3) To a person with whom the telephone solicitor has
10 a prior or existing business relationship; or

11 (4) By a newspaper publisher or the publisher's agent
12 or employee in connection with the publisher's business.

13 2. Identify self. A telephone solicitor who makes an
14 unsolicited telephonic sales call to a residential, mobile or
15 telephonic paging device telephone number shall give the
16 telephone solicitor's true first and last names and the business
17 on whose behalf the telephone solicitor is soliciting,
18 immediately upon making contact by telephone with the person who
19 is the object of the telephone solicitation.

20 3. List. A residential, mobile or telephonic paging device
21 telephone subscriber desiring to be placed on a "no sales
22 solicitation calls" listing indicating that the subscriber does
23 not wish to receive unsolicited telephonic sales calls may notify
24 the department and be placed on that listing upon receipt by the
25 department of a \$8 initial listing charge.

26 A. This listing must be renewed by the department annually
27 for each consumer upon receipt of a renewal notice and a \$3
28 assessment.

29 B. The department shall update this listing upon receipt of
30 initial consumer subscriptions or renewals and provide this
31 listing for a fee to telephone solicitors upon request.

32 C. All fees imposed pursuant to this subsection must be
33 used for the administration of this section.

34 4. Prohibition. A telephone solicitor may not make or
35 cause to be made an unsolicited telephonic sales call to any
36 residential, mobile or telephonic paging device telephone number
37 if the number for that telephone appears in the current listing
38 published by the department. A telephone solicitor or person who
39 offers for sale any consumer information that includes
40 residential, mobile or telephonic paging device telephone
41 numbers, except directory assistance and telephone directories
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2 sold by telephone companies and organizations exempt under the
3 Internal Revenue Code, Section 501(c)(3) or 501(c)(6), shall
4 screen and exclude those numbers that appear on the department's
5 current listing. This subsection does not apply to a person who
6 calls an actual or prospective seller or lessor of real property
7 when the call is made in response to a yard sign or other form of
8 advertisement placed by the seller or lessor.

9
10 **5. Contracts.** A contract made pursuant to a telephonic
11 sales call is not valid or enforceable against a consumer, unless
12 it:

13 A. Is reduced to writing and signed by the consumer;

14 B. Complies with all other applicable laws and rules;

15 C. Matches the description of goods or services as
16 principally used in the telephone solicitations;

17 D. Contains the name, address and telephone number of the
18 seller, the total price of the contract and a detailed
19 description of the goods or services being sold;

20 E. Does not exclude from its terms any oral or written
21 representations made by the telephone solicitor to the
22 consumer in connection with the transaction; and

23 F. Contains in bold, conspicuous type, immediately
24 preceding the signature, the following statement:

25 "You are not obligated to pay any money unless you sign this
26 contract and return it to the seller."

27
28 This subsection does not apply to contractual sales regulated
29 under other provisions of law, to the sale of financial services,
30 security sales or sales transacted by companies or their wholly
31 owned subsidiaries or agents, to the sale of cable television
32 services to the duly franchised cable television operator's
33 existing subscribers within that cable television operator's
34 franchise area or to a sale in which no prior payment is made to
35 the merchant and an invoice accompanies the goods or services,
36 allowing the consumer 7 days to cancel or return the goods or
37 services without obligation for payment.

38
39 **6. Copy of contract.** A merchant who engages a telephone
40 solicitor to make or cause to be made a telephonic sales call may
41 not make or submit any charge to the consumer's credit card
42 account or make or cause to be made any electronic transfer of
43 funds until after the merchant receives from the consumer a copy
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2 of the contract, signed by the purchaser, that complies with this
3 section.

4 7. Exceptions. The provisions of subsection 6 do not apply
5 to a transaction:

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7 A. Made in accordance with prior negotiations in the course
8 of a visit by the consumer to a merchant operating a retail
9 business establishment that has a fixed permanent location
10 and where consumer goods are displayed or offered for sale
11 on a continuing basis;

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13 B. In which the consumer may obtain a full refund for the
14 return of undamaged and unused goods or a cancellation of
15 services through notice to the seller within 7 days after
16 receipt by the consumer, and the seller will process the
17 refund within 30 days after receipt of the returned
18 merchandise by the consumer;

19
20 C. In which the consumer purchases goods or services
21 pursuant to an examination of a television, radio or print
22 advertisement or a sample, brochure or catalog of the
23 merchant that contains:

24
25 (1) The name, address and telephone number of the
26 merchant;

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28 (2) A description of the goods or services being sold;
29 and

30
31 (3) Any limitations or restrictions that apply to the
32 offer; or

33
34 D. In which the merchant is a bona fide charitable
35 organization or a newspaper.

36
37 8. Investigation. The department shall investigate any
38 complaints received concerning violations of this section. If,
39 after investigating any complaints, the department finds that
40 there has been a violation of this section, the department may
41 bring an action to impose a civil penalty and to seek other
42 relief, including injunctive relief, as the court determines
43 appropriate against the telephone solicitor. The civil penalty
44 may not exceed \$10,000 per violation. This civil penalty may be
45 recovered in any action brought under this section by the
46 department or the department may terminate any investigation or
47 action upon agreement by the telephone solicitor to pay a
48 stipulated civil penalty. The department or the court may waive
49 any civil penalty if the telephone solicitor has previously made

2 full restitution or reimbursement or has paid actual damage to
3 the consumers who have been injured by the violation.

4 9. Attorney's fees. The award of attorney's fees is
5 governed by the following.

6
7 A. In any civil litigation resulting from a transaction
8 involving a violation of this section, the prevailing party,
9 after judgment in the trial court and exhaustion of all
10 appeals, if any, is entitled to receive reasonable
11 attorney's fees and costs from the nonprevailing party.

12
13 B. The attorney for the prevailing party shall submit a
14 sworn affidavit of the time spent on the case and costs
15 incurred for all the motions, hearings and appeals to the
16 trial judge who presided over the civil case.

17
18 C. The trial judge shall award the prevailing party the sum
19 of reasonable costs incurred in the action plus a reasonable
20 legal fee for the hours actually spent on the case as sworn
21 to in an affidavit.

22
23 D. Any award of attorney's fees or costs becomes a part of
24 the judgment and is subject to execution as the law allows.

25
26 E. In any civil litigation initiated by the department, the
27 court may award to the prevailing party reasonable
28 attorney's fees and costs if the court finds that there was
29 a complete absence of a justiciable issue of either law or
30 fact raised by the nonprevailing party or if the court finds
31 bad faith on the part of the nonprevailing party.

32
33 10. Inform customers. The commission shall by rule ensure
34 that telecommunications companies inform their customers of the
35 provisions of this section. The notification may be made by:

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37 A. Annual inserts in the billing statements mailed to
38 customers; and

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40 B. Conspicuous publication of the notice in the consumer
41 information pages of the local telephone directories.

42
43 Rules adopted pursuant to this section are routine technical
44 rules as defined in Title 5, chapter 375, subchapter II-A.

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SUMMARY

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This bill, which is modeled on similar legislation enacted
4 in Florida, amends the law governing telephone solicitation as
follows.

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1. It requires a telephone solicitor to state his or her
8 name and the business on whose behalf he or she is soliciting.

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2. It permits telephone customers to be placed on a list
indicating that the customer does not wish to receive unsolicited
12 sales calls.

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3. It prohibits telephone solicitors from making
unsolicited sales calls to any telephone customers on the list.

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4. It provides that contracts made pursuant to a telephone
18 sales call are not enforceable unless certain conditions are met.

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5. It authorizes the Attorney General to investigate
complaints and bring actions against persons who violate the
22 requirements in this bill.