

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1402

H.P. 1004

House of Representatives, February 18, 1999

An Act to Create the Telemarketing Registration and Fraud Prevention Act.

Reference to the Committee on Utilities and Energy suggested and ordered printed.

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

JOSEPH W. MAYO, Clerk

Presented by Representative AHEARNE of Madawaska.
Cosponsored by Representatives: BOLDUC of Auburn, ETNIER of Harpswell, GERRY of Auburn, McALEVEY of Waterboro, STANLEY of Medway, WHEELER of Eliot, Senators: PARADIS of Aroostook, SMALL of Sagadahoc.

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

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Sec. 1. 10 MRSA §1499-A is enacted to read:

§1499-A. Telemarketing restrictions

1. Short title. This section may be known and cited as the "Telemarketing Registration and Fraud Prevention Act."

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

A. "Consumer" or "purchaser" means a person who is or may be required to pay for goods or services offered by a telemarketer through telemarketing.

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

C. "Goods" or "services" means any real property or any tangible or intangible personal property or services of any kind provided or offered to a person.

D. "Investment opportunity" means anything tangible or intangible that is offered, offered for sale, sold or traded based wholly or in part on representations, either expressed or implied, about past, present or future income, profit or appreciation.

E. "Material aspect or element" means any factor likely to affect a person's choice of or conduct regarding goods or services and includes currency values and comparative expressions of value including, but not limited to, percentages or multiples.

F. "Prize" means anything offered, purportedly offered and given or purportedly given to a person by chance.

G. "Prize promotion" means a sweepstakes or other game of chance or an oral or written, expressed or implied, representation that a person has won, has been selected to receive or is eligible to receive a prize or purported prize.

H. "Seller" means any person who, in connection with a telemarketing transaction, provides, offers to provide or arranges for others to provide goods or services to the customer in exchange for consideration.

2 I. "Solicitation" means a written or oral notification or
3 advertisement that meets any one of the following terms:

4 (1) The notification or advertisement is transmitted
5 by or on behalf of the seller and by any printed,
6 audio, video, cinematic, telephonic or electronic
7 means; or

8
9 (2) In the case of a notification or advertisement
10 other than by telephone, either of the following
11 conditions is met:

12 (a) The notification or advertisement is followed
13 by a telephone call from a telemarketer or seller;
14 or

15 (b) The notification or advertisement invites a
16 response by telephone, and through that response,
17 a telemarketer attempts to make a sale of goods or
18 services.

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21 J. "Telemarketing" means a plan, program or campaign that
22 is conducted to induce a consumer or purchaser to purchase
23 goods or services by the use of one or more telephones and
24 which plan, program or campaign involves more than one
25 telephone call.

26
27 K. "Telemarketer" means any person who, in connection with
28 telemarketing, initiates telephone calls to or receives
29 telephone calls from a consumer in this State, or, when such
30 calls are initiated or received, any person who is located
31 within this State acting in connection with telemarketing.
32 "Telemarketer" includes, but is not limited to, any person
33 who is an owner, operator, officer, director or partner in
34 the management activities of a business.

35
36 3. Registration of telemarketers. Registration of
37 telemarketers is governed as follows.

38
39 A. A person may not act as a seller or telemarketer without
40 first having registered with the department.

41
42 The initial application for registration must be made at
43 least 60 days prior to offering consumer goods or services
44 or offering for sale consumer goods or services through any
45 medium. An application for renewal must be made on an
46 annual basis thereafter.

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48 The application for registration or renewal must include, at
49 a minimum, the following information:

- 2 (1) The true name, current address, telephone number
4 and location of the seller, and each name under which
 the seller intends to engage in telemarketing;
- 6 (2) Each occupation or business that the seller's
8 principal owner has engaged in for the 2 years
 immediately preceding the date of the application;
- 10 (3) Whether any principal owner or manager has been
12 convicted of or has pled guilty to or is being
 prosecuted by indictment for racketeering, violations
 of state or federal securities laws or a theft offense;
- 14 (4) Whether there has been entered against any
16 principal owner or manager an injunction, temporary
18 restraining order or a final judgment in any civil or
20 administrative action, involving fraud, theft,
 racketeering, embezzlement, fraudulent conversion or
 misappropriation of property, including any pending
 litigation against the applicant;
- 22 (5) Whether the seller, at any time during the
24 previous 7 years, has filed for bankruptcy, been
 adjudged bankrupt or been reorganized because of
 insolvency;
- 26 (6) The true name, current home address, date of
28 birth, social security number and all names of the
 following:
- 30 (a) Each telemarketer or other person to be
32 employed by the seller;
- 34 (b) Each person participating in or responsible
36 for the management of the seller's business;
- 38 (c) Each person principally responsible for the
 management of the seller's business;
- 40 (7) The name, address and account number of every
42 institution where banking or any other monetary
 transactions are made by the seller; and
- 44 (8) A copy of all scripts, outlines or presentation
46 material the seller requires the telemarketer to use
48 when soliciting and all sales information to be
 provided by the seller to a purchaser in connection
 with any solicitation.

2 B. An applicant for registration or renewal shall provide
3 security as follows:

4 (1) The application for registration or renewal must
5 be accompanied by a surety bond in the amount of
6 \$100,000. The bond must provide for the
7 indemnification of any person suffering a loss as the
8 result of violation of this section. The surety for
9 any cause may cancel the bond upon giving a 6-day
10 written notice by certified mail to the principal owner
11 and to the department. Unless the bond is replaced by
12 that of another surety before the expiration of the
13 60-days notice of cancellation, the registration of the
14 principal owner under this section lapses.

15 The surety bond remains in effect for 3 years from the
16 period the telemarketing business ceases to operate in
17 this State.

18 (2) Any business required under this section to file a
19 bond with a registration application may instead file a
20 certificate of deposit, cash or government bond in the
21 amount of \$100,000.

22 The department may hold the cash, certificate of
23 deposit or government bond for 3 years from the period
24 the telemarketing business ceases to operate or its
25 registration lapses in order to pay claims made against
26 the telemarketing business during its period of
27 operation. The registration of the telemarketing
28 business lapses if at any time the amount of the bond,
29 cash, certificate of deposit or government bond falls
30 below the amount required by this paragraph.

31 C. The aggregate liability of the surety company to all
32 persons injured by a telemarketer's violations may not
33 exceed the amount of the bond. The following constitute
34 violations of this section and each is a Class C crime:

35 (1) Failure to register;

36 (2) Failure to meet the security requirement;

37 (3) Failure to maintain a certificate of registration;

38 (4) Including any false or misleading information on a
39 registration application; or

40 (5) Misrepresenting a seller as registered.

2 4. Record-keeping requirements. Record-keeping
requirements are as follows.

4 A. A telemarketer shall keep for a period of 24 months from
the date the record is produced, records of all financial
6 transactions, written notices, disclosures and
8 acknowledgments in the form, manner, format or place the
telemarketer keeps such records in the ordinary course of
business, including but not limited to:

10 (1) All substantially different advertising,
12 brochures, telemarketing scripts and promotional
materials;

14 (2) The name and last known address of each prize
16 recipient and the prize awarded;

18 (3) The name and last known address of each customer,
the goods or services purchased, the date the goods or
20 services were shipped or provided and the amount
22 provided and the amount paid by the customer for the
goods or services;

24 (4) The name, any fictitious name used, the last known
home address and telephone number and the job title for
26 all current and former employees directly involved in
telephone sales, except that if the seller permits
28 fictitious names to be used by employees, each
fictitious name must be traceable to only one specific
30 employee; and

32 (5) All written authorizations required to be provided
34 or received under this section.

36 B. In the event of a dissolution or termination of the
telemarketer's business, the principal owner of that
38 telemarketer shall maintain all records as required under
this section. In the event of any sale, assignment or other
40 change in ownership of the seller's business, the successor
shall maintain all records required under this section.

42 5. Acts or practices not covered. The following acts or
44 practices are not covered by this section:

46 A. Telephone calls in which the sale of goods or services
is not completed and payment or authorization of payment is
48 not required, until after a face-to-face sales presentation
by the telemarketer; and

2 B. Telephone calls initiated by a customer that are not the
3 result of any solicitation by a seller or telemarketer.

4 6. Disclosures and contract requirements. Disclosures and
5 contract requirements are as follows.

6
7 A. The telemarketer shall provide all of the following when
8 contacting a consumer:

9
10 (1) Within the first minute of the call and prior to
11 any sales pitch:

12 (a) That the true purpose of the telephone call
13 is to make a sale;

14 (b) The telemarketer's true name and the company
15 on whose behalf the solicitation is being made; and

16 (c) The identity of the goods or services being
17 sold.

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21 (2) The total cost of the goods or services that are
22 the subject of the telemarketing sales call.

23 (3) Any restrictions, limitations or conditions to
24 purchase the goods or services that are the subject of
25 a telemarketing sales call.

26 (4) Any material aspect of the performance, quality,
27 efficacy, nature or basic characteristics of goods or
28 services that are the subject of a telemarketing sales
29 call.

30 (5) Any material aspect of the nature or terms of the
31 refund, cancellation, exchange or repurchase policies;

32 (6) Any material aspect of an investment opportunity
33 being offered, including benefits, the price of the
34 land or other investment, the location of the
35 investment and the reasonable likelihood of success of
36 the investment opportunity; and

37 (7) Any material elements of a prize promotion,
38 including:

39 (a) A description of the prize;

40 (b) Its market value;

41 (c) All material conditions to receive or redeem
42 the prize;

- 2 (d) The actual number of each prize to be awarded;
- 4 (e) The odds of being able to receive the prize
6 and, if the odds are not calculable in advance,
8 the factors and methods used in calculating the
 odds;
- 10 (f) That no purchase or payment of any kind is
12 required to win a prize or to participate in a
14 prize promotion; and
- 16 (g) The no-purchase or no-payment method of
18 participating in the prize promotion, with either
 instructions on how to participate or an address
 or local or toll-free telephone number to which
 customers may write or call for information on how
 to participate.

20 B. The telemarketer's sales transaction may only be
22 considered final after the customer has received a notice as
 follows:

- 24 (1) The telemarketer shall furnish the purchaser, in
26 the same language as that principally used in the sales
28 presentation, a written notice that must contain, in
 not less than 12-point boldface type, a statement in
 substantially the following form:

30 "You the purchaser may cancel this transaction
32 without any penalty or obligation at any time prior to
34 midnight of the 3rd business day after receipt of this
36 notice. If you cancel, any payments made by you under
 the sale will be returned within 10 business days
 following receipt by the seller of your written notice
 of cancellation and any security interest arising out
 of the transaction will be cancelled.

38 If you cancel, you must make available to the
40 seller at your residence, in substantially as good
42 condition as when received, any goods delivered to you
44 under this contract of sale; or you may, if you wish,
 comply with the instruction of the seller regarding the
 return shipment of the goods at the seller's expense
 and risk.

46 If you do make the goods available to the seller
48 and the seller does not pick them up within 20 days of
50 the date of your notice of cancellation, or agree to
 pay the expense for their return, you may retain or

2 dispose of the goods without any further obligation.
3 If you fail to make the goods available to the seller,
4 or if you agree to return the goods to the seller and
5 fail to do so, then you remain liable for performance
6 of all obligations under the contract.

7 To cancel this transaction, mail or deliver a
8 written notice of cancellation or send a telegram to
9 (name of seller) at the following address (address of
10 seller)."

11 (2) The seller shall furnish the purchaser with the
12 seller's name and the name of the person to whom any
13 notice of cancellation is to be given if different from
14 the seller's name, the legal name of the company for
15 whom the seller is soliciting, the seller's street
16 address and the seller's phone number. The seller also
17 shall furnish the purchaser with the date of the
18 telephone solicitation and a description of the
19 telephone solicitation.

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22 C. It is an unfair and deceptive act or practice to fail to
23 represent or to misrepresent the requirements of this
24 subsection.

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26 D. It is a violation of this subsection for any seller or
27 telemarketer to engage in any other unfair or deceptive
28 conduct that may create a likelihood of confusion or
29 misunderstanding to any reasonable consumer.

30
31 E. Failure to comply with the provisions of this subsection
32 is a Class E crime.

33
34 7. Prohibited acts and practices. The following are
35 prohibited acts and practices.

36
37 A. It is a prohibited telemarketing act or practice and a
38 violation of this section for any seller or telemarketer to
39 engage in the following conduct:

40
41 (1) To advertise or represent that registration as a
42 telemarketer equals an endorsement or approval by any
43 government or governmental agency of the state;

44
45 (2) To assist, support or provide substantial
46 assistance to any telemarketer when the seller knows or
47 should know that the telemarketer is or has been
48 engaged in any act or practice under this subsection or
49 subsection 5;

2 (3) To request a fee in advance to remove derogatory
information from or improve a person's credit history
4 or credit record;

6 (4) To request or receive payment in advance from a
person to recover or otherwise aid in the return of
8 money or any other item lost by the consumer in a prior
telemarketing transaction;

10 (5) To obtain or submit for payment a check, draft or
other form of negotiable paper drawn on a person's
12 checking, savings or bond or other account without the
14 consumer's express written authorization; or

16 (6) To procure the services of any professional
delivery, courier or other pick-up service to obtain
18 immediate receipt or possession of a consumer's
payment, unless the goods are delivered with the
20 opportunity to inspect before any payment is collected.

22 B. A violation of any of the provisions of this subsection
is a Class E crime.

24 8. Abusive acts or practices. The following are abusive
26 acts or practices.

28 A. It is an abusive telemarketing act or practice and a
violation of this section for any seller or telemarketer to
30 engage in the following conduct:

32 (1) To threaten, intimidate or use profane or obscene
language;

34 (2) To cause the telephone to ring more than 5 times
in an intended telemarketing call;

36 (3) To engage any person repeatedly or continuously
38 with behavior a reasonable person consider annoying,
abusive or harassing;

40 (4) To initiate a telemarketing call to a person when
42 that person has stated previously that the person does
not wish to receive solicitation calls from that seller;

44 (5) To engage in telemarketing to a person's residence
46 at any time other than between 8 a.m. and 9 p.m. local
time, at the called person's location; or

48 (6) To engage in any other conduct that would be
50 considered abusive to any reasonable consumer.

2 B. The department may seek injunctive or declaratory relief
4 for any violations of this subsection.

6 9. Civil remedies. Civil remedies for a violation of this
8 section are as follows.

10 A. The sale of any goods or services by an unregistered
12 telemarketer or seller is void.

14 B. A consumer who suffers a loss or harm as a result of an
16 unfair and deceptive act or practice under this section
18 shall recover actual and punitive damages, attorney's fees,
20 court costs and any other remedies provided by law.

22 C. A consumer who suffers a loss or harm as a result of a
24 prohibited act or practice under this section shall recover
26 actual and punitive damages, attorney's fees and court costs.

28 D. A consumer who suffers harm as a result of an abusive
30 act or practice under this section shall receive injunctive
32 or declaratory relief.

34 E. The department, on behalf of residents who have suffered
36 a loss or harm as a result of a violation of this section,
38 may seek actual and punitive damages.

SUMMARY

This bill creates a registration requirement for telemarketers doing business in Maine. Telemarketers are required to register with the Department of the Attorney General and post security. Telemarketers are required to keep certain records and make certain disclosures to consumers. Various acts and practices of telemarketers are prohibited. Criminal penalties and civil remedies are provided for violations of the telemarketing requirements.