

# 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)



# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

---

Legislative Document

No. 1305

H.P. 981

House of Representatives, March 5, 2001

---

### **An Act to Consolidate the Laws Regulating Transient Sellers and Door-to-door Home Repair Transient Sellers.**

---

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative CLOUGH of Scarborough.  
Cosponsored by Senator SHOREY of Washington and  
Representatives: DORR of Camden, HATCH of Skowhegan, MICHAUD of Fort Kent,  
MURPHY of Kennebunk, THOMAS of Orono.

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

4 **Sec. 1. 32 MRSA c. 69-A**, as amended, is repealed.

6 **Sec. 2. 32 MRSA c. 128** is amended by repealing the chapter headnote and enacting the following in its place:

8 **CHAPTER 128**

10 **REGULATION OF TRANSIENT SALES**

12 **SUBCHAPTER I**

14 **DOOR-TO-DOOR HOME REPAIR TRANSIENT SELLERS**

16 **Sec. 3. 32 MRSA §14501, first ¶**, as enacted by PL 1993, c. 444, §1, is amended to read:

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

22 **Sec. 4. 32 MRSA §14502**, as enacted by PL 1993, c. 444, §1, is amended to read:

26 **§14502. Exemptions**

28 1. **New homes.** This chapter ~~chapter~~ subchapter does not apply to the original construction of a single-family or multifamily residence.

32 2. **Sales amount.** This chapter ~~chapter~~ subchapter does not apply to home repair services for which the gross sales price, including any interest or carrying charges, is less than \$25.

36 **Sec. 5. 32 MRSA §14503, first ¶**, as enacted by PL 1993, c. 444, §1, is amended to read:

38 It is a violation of this chapter ~~chapter~~ subchapter if a contract for home repair services to be provided by a transient seller of home repair services fails to meet the written contract requirements, if applicable, of:

44 **Sec. 6. 32 MRSA §14503, sub-§2**, as enacted by PL 1993, c. 444, §1, is amended to read:

46 2. **Transient sales.** The laws governing transient sales, sections ~~4681-to-4689~~ 14701 to 14716;

2           **Sec. 7. 32 MRSA §§14504 and 14505**, as enacted by PL 1993, c.  
444, §1, are amended to read:

4           **§14504. Registration required**

6           A transient seller of home repair services must register  
7 with the department and acquire a door-to-door sales registration  
8 in the manner set forth in section 14505 before engaging in the  
9 door-to-door sales of home repair services. The registration  
10 requirement under this section is in addition to the licensing  
11 requirements applicable to the occupation, trade or profession  
12 for which a license is required. A transient seller who solicits  
13 sales during the course of a municipal or state repair contract  
14 is exempt from this requirement.

16           **§14505. Evidence of registration**

18           Upon registration, the department shall issue to a transient  
19 seller of home repair services a door-to-door sales registration  
20 that indicates that the person whose name appears on the  
21 registration is a registered transient seller of home repair  
22 services under this ~~chapter~~ subchapter. The registration must  
23 also include the name of the seller's company.

24           **Sec. 8. 32 MRSA §14508**, as enacted by PL 1993, c. 444, §1, is  
25 amended to read:

28           **§14508. Renewal application**

30           An annual renewal application must be filed by the seller on  
31 October 31st or at such other times as the department  
32 designates. The renewal application must include changes or  
33 additions to the information required by section 14507. The  
34 department shall mail notice to the transient seller's last known  
35 address 30 days in advance of the expiration date. The renewal  
36 application must be accompanied by a the required renewal fee, ~~as~~  
~~provided in section 14509.~~

38           **Sec. 9. 32 MRSA §14509**, as amended by PL 1999, c. 685, §25,  
40 is further amended to read:

42           **§14509. Registration fee**

44           A transient seller must pay to the department required  
45 original and renewal license fees established by the department  
46 by rule in an amount not to exceed \$300 annually. Rules adopted  
47 pursuant to this section are routine technical rules pursuant to  
48 Title 5, chapter 375, subchapter II-A.

2       ~~The aggregate of fees provided for by this section is~~  
appropriated for the use of the department. ~~Any balance of funds~~  
4       ~~may not lapse but must be carried forward to be expended for the~~  
~~same purposes in the following fiscal year.~~

6       **Sec. 10. 32 MRSA §14511**, as enacted by PL 1993, c. 444, §1,  
is amended to read:

8  
10       **§14511. Forms and model contract**

12       The Department of the Attorney General has rule-making  
authority to adopt all forms necessary to fully implement this  
14       ~~chapter~~ subchapter. The Department of the Attorney General shall  
prepare a form contract for door-to-door sales, that fully meets  
the obligations of a transient seller of home repair services  
16       under this ~~chapter~~ subchapter. The Department of the Attorney  
General shall provide these forms at no cost to the department.

18  
20       **Sec. 11. 32 MRSA §14512, sub-§§2 and 3**, as enacted by PL 1993,  
c. 444, §1, are amended to read:

22       **2. Civil penalty.** A transient seller of home repair  
services or the seller's employee failing to register in  
24       violation of this ~~chapter~~ subchapter commits a civil violation  
for which a civil penalty of up to \$2,000 may be adjudged against  
26       the seller and each employee. If the person violates this  
~~chapter~~ subchapter 2 or more times, or if the injured consumer is  
28       more than 60 years of age, the civil violation penalty may be up  
to \$5,000. Subsection 1 and this subsection are enforceable by  
30       either the Department of the Attorney General or the District  
Attorney.

32  
34       **3. Unfair trade practice.** A transient seller of home  
repair services who fails to register in violation of this  
~~chapter~~ subchapter commits an unfair trade practice in violation  
36       of Title 5, section 207.

38       **Sec. 12. 32 MRSA c. 128, sub-c. II** is enacted to read:

40                               **SUBCHAPTER II**

42                               **TRANSIENT SELLERS OF CONSUMER MERCHANDISE**

44       **§14701. Definitions**

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

1           **1. Consumer.** "Consumer" means any person who purchases or  
2 contracts for the purchase of merchandise for any purpose except  
3 resale in the ordinary course of trade or business.

4           **2. Department.** "Department" means the Department of  
5 Professional and Financial Regulation.

6           **3. Employee.** "Employee" means any independent contractor,  
7 agent or person working for a salary or commission.

8           **4. Merchandise.** "Merchandise" includes any objects, wares,  
9 goods, promises, commodities, intangibles, services or other  
10 things of value but does not include food or technical or  
11 vocational schools located outside of the State that are  
12 registered pursuant to Title 20-A, section 9501. "Merchandise"  
13 does not include securities that are registered or exempt from  
14 registration pursuant to chapter 105, the Revised Maine  
15 Securities Act and rules adopted pursuant to that Act.

16           **5. Permanent place of business.** "Permanent place of  
17 business" means any building or other permanently affixed  
18 structure, including a home residence, that is owned or held  
19 under a 12-month lease or rental agreement at the time business  
20 is commenced and is used in whole or in part for the purpose of  
21 engaging in sales of consumer merchandise.

22           **6. Person.** "Person" includes natural persons, corporations,  
23 trusts, partnerships, incorporated or unincorporated associations  
24 and any other legal entities.

25           **7. Sale.** "Sale" includes any sale, transfer, exchange or  
26 barter, offer for sale, promise to sell or attempt to sell, or  
27 advertisement for sale, of any merchandise for cash or for credit.

28           **8. Transient seller of consumer merchandise or transient**  
29 **seller.** "Transient seller of consumer merchandise" or "transient  
30 seller" means any person who engages in the business of selling  
31 merchandise to consumers by means of personal contact or  
32 telephone contact, whether or not the seller is present in the  
33 State at the time of the contact or the time of sale, and who  
34 does not have, for the purposes of carrying on such business, any  
35 permanent place of business within this State. "Transient seller  
36 of consumer merchandise" does not include a person who sells at  
37 public fairs, expositions or bazaars or a member selling on  
38 behalf of public service organizations. "Transient seller of  
39 consumer merchandise" does not include a person who sells  
40 exclusively by mail contact, except for a person who offers  
41 merchandise or money prizes as free of charge, such as contest  
42 prizes or gifts for answering a survey, but who requires the  
43 recipient to pay something of value in order to participate in  
44  
45  
46  
47  
48  
49  
50

2 this offer, including, but not limited to, entrance fees,  
3 processing fees or handling charges. A "transient seller of  
4 consumer merchandise" does not include a supervised lender as  
5 defined in Title 9-A, section 1-301, subsection 39.

6 **§14702. Registration**

8 Every person that engages in the business of transient  
9 sellers of consumer merchandise, including the self-employed or  
10 those who employ one or more transient sellers of consumer  
11 merchandise, shall apply to the department and acquire a  
12 registration in the manner set forth in section 14706 before  
13 engaging in sales of consumer merchandise in this State.

14 **§14703. Registrations**

16 1. Issuance. The department shall issue to each transient  
17 seller of consumer merchandise and employee of that transient  
18 seller a registration that, among other things, must indicate  
19 that the person whose name appears on the registration is a  
20 registered seller or employee of a registered seller under this  
21 subchapter.

24 2. Possession and presentation. Every transient seller of  
25 consumer merchandise and each of the seller's employees must have  
26 a valid registration, as required by this subchapter, in the  
27 seller's or employee's immediate possession at all times when  
28 engaging in sales of consumer merchandise in this State and shall  
29 present the registration for inspection upon request of any  
30 person.

32 **§14704. Disclosure of registration number and permanent place of**  
33 **business**

34 1. Registration number and permanent place of business  
35 disclosed in advertisements. Every time a transient seller of  
36 consumer merchandise advertises in this State for the sale of  
37 merchandise, whether in print or electronic media, the  
38 advertisement must disclose the transient seller's registration  
39 number in the following manner: "State Department of  
40 Professional and Financial Regulation Transient Seller's  
41 Registration Number: (Fill in number)" and must disclose the  
42 address of the seller's permanent place of business.

44 2. Registration number and place of business disclosed in  
45 written receipt. Every time a transient seller of consumer  
46 merchandise sells merchandise to a consumer in this State, the  
47 transient seller shall provide the purchaser with a written  
48 receipt, at the time of sale, disclosing the transient seller's  
49 registration number in the following manner: "State Department  
50 of Professional and Financial Regulation Transient Seller's

2 of Professional and Financial Regulation Transient Seller's  
3 Registration Number: (Fill in number)" and disclosing the  
4 transient seller's name and permanent place of business.

6 **§14705. Local registration**

8 Nothing in this subchapter affects the right of any town or  
9 municipality to make such regulations relative to transient  
10 sellers of consumer merchandise as may be permissible under the  
11 general law or under any municipal charter.

12 **§14706. Application**

14 Each application for a transient seller of consumer  
15 merchandise registration required by section 14702 must be made  
16 upon a form prescribed by the department, must be sworn to and  
17 must include:

18 1. Name and address. The name and local and permanent  
19 business address of the applicant;

22 2. Employees of applicant. Names of all employees of the  
23 applicant employed in this State;

24 3. Statement. A statement of all judgments secured or  
25 outstanding against the applicant arising out of sales to  
26 consumers during the 2 years immediately prior to making the  
27 application and of all suits of either a criminal or civil nature  
28 pending against the applicant that arise out of sales to  
29 consumers, at the time of making the application;

32 4. Statement of yearly gross revenues. A statement of  
33 anticipated yearly gross revenues from sales of consumer  
34 merchandise in this State;

36 5. Security deposits. The name and address of the person  
37 to whom security deposits made with the department pursuant to  
38 this subchapter are returned; and

40 6. Seller's certificate. The number of a valid transient  
41 seller of consumer merchandise's registration certificate issued  
42 to the applicant by the State Tax Assessor pursuant to Title 36,  
43 chapter 211 or satisfactory evidence that the applicant is not  
44 required to be registered under that Title.

46 The applicant shall promptly notify the department of all  
47 changes or additions in the information required in this section  
48 upon a form prescribed by the department.



2        Any false statement in an application, either original or  
3        supplementary, for a registration subjects the applicant to the  
4        same penalty as if the applicant had no registration.

6        **§14707. Renewal application**

8        A renewal application made under this subchapter and made  
9        upon a form prescribed by the department must be filed by the  
10       applicant on October 31st annually or at such other times as the  
11       Commissioner of Professional and Financial Regulation may  
12       designate. The renewal application must include all changes or  
13       additions in the information required by section 14706. Notice  
14       must be mailed to each applicant's last known address 30 days in  
15       advance of the expiration date of the applicant's current  
16       registration. The renewal application must be accompanied by a  
17       renewal fee, as provided in section 14708.

18       **§14708. Registration fee and security deposit**

20       1. Fees. The department shall establish fees by rule for  
21       applications, registrations and renewals under this subchapter in  
22       an amount not to exceed \$300 annually for any one purpose. Rules  
23       adopted pursuant to this subsection are routine technical rules  
24       pursuant to Title 5, chapter 375, subchapter II-A.

26       2. Dedicated revenues. All fees received under this  
27       subchapter must be paid to the Treasurer of State to be used for  
28       carrying out this subchapter. Any balance of these fees may not  
29       lapse, but must be carried forward as a continuing account to be  
30       expended for the same purpose in the following fiscal year.

32       3. Security deposit. Every person that engages in the  
33       business of transient sellers of consumer merchandise, including  
34       the self-employed or those who employ one or more transient  
35       sellers of consumer merchandise, shall also make a security  
36       deposit of \$10,000 or of a sum equal to the anticipated yearly  
37       gross revenues in this State, whichever is less, with the  
38       department for the protection of consumers as described in  
39       section 14712. The security deposit may be made by a bond as  
40       drawn by the department and as secured by a surety approved by  
41       the department. Only one security deposit is required of each  
42       person engaged in transient sales of consumer merchandise.

44       4. Registration issued. The department shall issue to a  
45       transient seller of consumer merchandise and to employees of that  
46       transient seller a registration upon receipt of a completed  
47       application in proper form with required fees and a security  
48       deposit.

50       **§14709. Waiver of security deposit**

2           Transient sellers of consumer merchandise may apply to the  
3 department for waiver of the security deposit required by section  
4 14708 by presenting to the authorized person within the  
5 department the following information in addition to the  
6 information required under section 14706:

8           1. Consumer sales. A sworn statement by the applicant that  
9 the applicant has continuously engaged in consumer sales in this  
10 State for a period not less than 3 years;

12           2. Theft offenses; fraudulent or deceptive business  
13 practice. A sworn statement by the applicant that neither the  
14 applicant nor any employee of the applicant operating in this  
15 State has been convicted of any theft offense or fraudulent or  
16 deceptive business practice in any United States jurisdiction;

18           3. Complaints on file against applicant. A letter from the  
19 Attorney General's office in the state where the applicant has  
20 its principal place of business stating the nature or absence  
21 thereof of complaints on file against the applicant; and

22           4. Letter of recommendation. A letter of recommendation  
23 from an appropriate trade association that promotes sound and  
24 ethical trade practices and the processing of consumer complaints  
25 that states the applicant is a member in good standing of that  
26 association.

28           The authorized person within the department shall forward  
29 the completed application for waiver of the security deposit to  
30 the Office of the Attorney General for review and shall within 15  
31 days of receipt of the completed application and with the advice  
32 of the Attorney General grant or deny the application for waiver.

34           **§14710. Revocation of right to waive security deposit**

36           The authorized person within the department shall rescind  
37 the right of a transient seller of consumer merchandise to waive  
38 a security deposit upon occurrence of any of the following:

40           1. Conviction for theft or fraudulent business practices.  
41 The transient seller of consumer merchandise or any employee is  
42 convicted of a theft offense or fraudulent or deceptive business  
43 practice;

46           2. Failure to defend action under Title 5, chapter 10. The  
47 transient seller of consumer merchandise or any employee fails to  
48 successfully defend any action brought against it under Title 5,  
49 chapter 10; or

50

2           3. Failure to negotiate consumer complaints. The transient  
seller of consumer merchandise or any employee fails to negotiate  
consumer complaints filed against it with the Attorney General.

4  
6           **§14711. Expiration**

8           1. Registrations. Registrations issued under section 14703  
expire:

10           A. On the date that the registrant establishes a permanent  
place of business and surrenders the registrant's  
12           registration to the department;

14           B. When the registrant fails to file a renewal application  
as required by section 14707; or

16           C. Upon the surrender of the registration for cancellation.

18  
20           **§14712. Security deposit subject to claims; order of**  
**preference; return of security deposit**

22           Each security deposit made under section 14708 is subject,  
so long as it remains in the hands of the department, to the  
24           attachment and execution in behalf of consumers whose claims  
arise in connection with the transient sale of consumer  
26           merchandise in this State. The department may be impleaded as a  
trustee in any civil action brought against any registrant and  
28           shall pay over, under order of court, such sum of money as the  
department may be found chargeable. The security deposit is  
30           subject to the payment of any fines and penalties incurred by the  
registrant through any of the provisions of this subchapter, and  
32           the clerk of the court in which that fine or penalty is imposed  
shall notify the department of the name of the registrant against  
34           whom that fine or penalty is adjudged and of the amount of that  
fine or penalty. The department, if it has in its possession a  
36           sufficient sum deposited by that registrant, shall pay the sum so  
specified to the clerk. If the department does not have a  
38           sufficient sum so deposited, it shall make payment of so much as  
it has in its possession. All claims upon the deposit must be  
40           satisfied after judgment, fine and penalty, in the order in which  
the order of court is entered in the respective suits, until all  
42           claims are satisfied or the security deposit is exhausted. A  
security deposit may not be paid over by the department to a  
44           registrant so long as there are any outstanding claims or notices  
of claims that are subject of suit against the registrant, in  
46           which case the department shall retain only such sum of the  
security deposit as is subject of claim.

48  
50           The security deposit required under section 14708 must be  
returned to the person so designated pursuant to section 14706.

2 subsection 5 in the registrant's application for registration  
3 made under section 14702 12 months following the expiration of  
4 the registration.

6 **§14713. Violations and penalties**

8 1. Criminal penalty. Violation of section 14702, section  
9 14703, subsection 2 or section 14704 is a Class E crime for which  
10 the State need not plead or prove a culpable state of mind,  
11 except that a violation of section 14702, section 14703,  
12 subsection 2 or section 14704 is a Class D crime if the State  
13 pleads and proves that the act or omission was intentional.

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

16 **§14714. Service of process**

18 The department is an agent of each person, including the  
19 self-employed, who employs one or more transient sellers of  
20 consumer merchandise for service of any process, notice or demand  
21 required or permitted by law to be served, and this service is  
22 binding upon the person. Service of any such process, notice or  
23 demand must be made as provided by Rule 4(d)(b) of the Maine  
24 Rules of Civil Procedure, as amended.

26 **§14715. Prohibited practices**

28 A transient seller of consumer merchandise may not:

30 1. Misrepresentations. Misrepresent any material fact  
31 relating to the terms or conditions of sale;

34 2. False impressions. Create an impression that is false  
35 or the transient seller of consumer merchandise does not believe  
36 to be true; and

38 3. False promises. Promise performance that the transient  
39 seller of consumer merchandise does not intend to perform or  
40 knows will not be performed.

42 **§14716. Telemarketers**

44 1. Incorporation of federal standards. Violation of any  
45 provision of the Federal Trade Commission's Telemarketing Sales  
46 Rule, 16 Code of Federal Regulations, Part 310, as in effect on  
47 January 1, 2000, by a transient seller of consumer merchandise is  
48 a violation of this subchapter.

2 2. Additional prohibitions. A transient seller of consumer  
3 merchandise who is a telemarketer, as defined in the Federal  
4 Trade Commission's Telemarketing Sales Rule, 16 Code of Federal  
5 Regulations, Section 310.2, as in effect on January 1, 2000, and  
6 who initiates telephone contact with a consumer may not procure  
7 the services of any professional delivery courier or other  
8 pick-up service to obtain immediate receipt or possession of a  
9 consumer's payment, unless the goods are delivered with the  
10 opportunity to inspect before any payment is collected.

11 3. Do-not-call list. A transient seller of consumer  
12 merchandise who is a telemarketer, as defined in the Federal  
13 Trade Commission's Telemarketing Sales Rule, 16 Code of Federal  
14 Regulations, Section 310.2, as in effect on January 1, 2000:

15 A. Shall semiannually obtain subscription listings of  
16 consumers in this State who have arranged to be included on  
17 the national do-not-call list maintained by the Telephone  
18 Preference Service of the Direct Marketing Association,  
19 Inc., Farmingdale, New York or its successor organization;  
20 and

21 B. May not call any consumer in this State whose name is on  
22 the national do-not-call list unless the seller has an  
23 established business relationship with the consumer at the  
24 time the call is made.

25 A person is not in violation of paragraph B if the person  
26 obtained the listing of a consumer in accordance with paragraph A  
27 but called that consumer as the result of a good faith error.

28 4. Other applicable law. A transient seller of consumer  
29 merchandise who is a telemarketer, as defined in the Federal  
30 Trade Commission's Telemarketing Sales Rule, 16 Code of Federal  
31 Regulations, Section 310.2, as in effect on January 1, 2000, is  
32 subject to and shall comply with the provisions of chapter 69,  
33 subchapter V.

## 34 SUMMARY

35 This bill consolidates laws pertaining to transient sellers  
36 into the laws governing door-to-door home repair transient  
37 sellers for ease of administration. It repeals the Maine Revised  
38 Statutes, Title 32, chapter 69-A and incorporates provisions from  
39 that chapter into Title 32, chapter 128, subchapter II. In  
40 addition, the bill clarifies that the registration requirement  
41 for door-to-door home repair sellers is in addition to the  
42 licensure requirements for a trade, occupation or profession for  
43 which a license is required.  
44  
45  
46  
47  
48  
49  
50

2           The bill also clarifies that investment securities that are  
3 registered, or exempt from registration, under the Revised Maine  
4 Securities Act, Maine Revised Statutes, Title 32, chapter 105 are  
5 excluded from the definition of merchandise because they are  
6 subject to regulation by the Maine Securities Division and the  
7 Securities and Exchange Commission.