

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

CHAPTER 597

H.P. 1514 - L.D. 2136

**AN ACT to Perfect the Maine Business
Opportunity Sales Act.**

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

Sec. 1. 32 MRSA §4691, sub-§3, as enacted by PL 1979, c. 571, is amended to read:

3. Business opportunity. "Business opportunity" means:

A. The sale, lease or distribution of any products, equipment, supplies, goods, commodities, including plants used for cultivation and animals used for breeding, or services which are sold, leased or distributed by the seller or an affiliated person, to the purchaser for the purpose of enabling the purchaser to start a business, for which the purchaser pays to the seller a fee which exceeds \$250 and in which the seller represents:

(1) That the seller or an affiliated person will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices or currency-operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller;

(2) That the seller or an affiliated person will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser using in whole or in part, the supplies, services or chattels sold to the purchaser;

(3) That the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity;

(4) That if the purchaser is unsatisfied with the business opportunity, the seller will refund all or part of the price paid for the business opportunity, or repurchase

any of the products, equipment, supplies or chattels supplied by the seller; or

(5) That upon payment by the purchaser of a fee or sum of money which exceeds \$50 to the seller or an affiliated person, the seller or an affiliated person will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity, provided that this subsection shall not apply to the sale of a marketing program made in conjunction with the licensing of a registered trademark or service mark;

B. "Business opportunity" does not include the sale of an ongoing business when the owner of that business sells and intends to sell only that business opportunity; nor does it include the not-for-profit sale of sales demonstration equipment, materials or samples, for a total price of ~~\$100~~ \$500 or less.

Sec. 2. 32 MRSA §4695, sub-§1, ¶B, as enacted by PL 1979, c. 571, is amended to read:

B. The Department of Business Regulation Superintendent of Banking or any person designated by the superintendent certifies to the surety company issuing the bond or the licensed bank or savings institute holding the escrow account that it has no knowledge of any outstanding judgment, claims or notices of claims against the seller in this State.

Sec. 3. 32 MRSA §4696, as enacted by PL 1979, c. 571, is amended to read:

§4696. Registration

Every seller shall register with the Department of Business Regulation Superintendent of Banking or any person designated by the superintendent prior to selling, offering to sell advertising or undertaking any other act relating to the promotion of business opportunities in this State. Registration shall be complete upon paying a \$25 fee, filing a copy of the disclosure statement required by section 4692 and providing evidence of a bond or escrow account satisfying the requirements of section 4695. The seller

shall update the disclosure statement as material information changes.

Sec. 4. 32 MRSA §4700, sub-§§4, 5 and 6 are enacted to read:

4. Administrative orders; rules; forms. The superintendent may make, amend and rescind rules, forms and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing disclosure documents, applications and reports and defining any terms, whether or not used in this chapter insofar as the definitions are not inconsistent with this chapter. For the purpose of rules and forms, the superintendent may classify business opportunities, persons and matters within his jurisdiction and prescribe different requirements for different classes.

5. Cease and desist orders. Whenever it appears to the superintendent that any person has engaged in or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter, the superintendent may issue an order directing the person to cease and desist from continuing the act or practice. Any person named in a cease and desist order issued by the superintendent may, within 30 days after receipt of the order, file a written request for a hearing with the superintendent. If the superintendent does not receive a written request for a hearing within the time specified, the cease and desist order will become permanent and the person named in the order will be deemed to have waived all rights to a hearing.

6. Rescission; surety bond. Any person who violates this chapter or any rule or order under this chapter, is liable to the purchaser who may sue either at law or in equity for rescission, for recovery of all money or other valuable consideration paid for the business opportunity and for actual damages, together with interest at the legal rate from the date of sale, reasonable attorney's fees and court costs.

The purchaser may sue the surety of the bond, either at law or in equity to recover all money or other valuable consideration paid for the business opportunity and actual damages, together with interest at the legal rate from the date of sale, reasonable attorney's fees and court costs for any violation of this chapter, of any rule or order under this chapter committed by a seller or for any breaches of any business opportunity contract or for any fraudulent

practices or unlawful representation, whether or not by way of advertising, perpetrated by a seller in connection with the offer or sale of any business opportunity. The liability of the surety shall not exceed the amount of the bond.

Sec. 5. 32 MRSA §4700-A, as enacted by PL 1979, c. 571, is amended to read:

§4700-A. Service of process

The Department of Business Regulation Superintendent of Banking or any person designated by the superintendent shall be an agent of each seller who sells, offers for sale, advertises or promotes business opportunities in this State for service of any process, notice or demand required or permitted by law to be served and this service shall be binding upon the seller. Service of any such process, notice or demand shall be made as provided for service upon the Secretary of State under the Maine Rules of Civil Procedure, Rule 4(d)(8).

Effective July 16, 1986.

CHAPTER 598

H.P. 1521 - L.D. 2141

AN ACT to Permit the Supreme Judicial Court to Authorize Employees of the Bureau of Taxation and of the Bureau of Employment Security to Participate in Court Proceedings.

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

Sec. 1. 4 MRSA §807, first ¶, as amended by PL 1985, c. 124, §8, is further amended to read:

No person may practice law or hold himself out to practice law within the State or before its courts, or demand or receive any remuneration for those services rendered in this State, unless he has been admitted to the bar of this State and has complied with section 806-A, or unless he has been admitted to try cases in the courts of this State under section 802. Any person who practices law in violation of these requirements is guilty of the unauthorized practice of law, which is a Class E crime. This section shall