

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION
October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION
October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
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PUBLISHED BY THE REVISOR OF STATUTES
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J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

person of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Maine or laws of the State, the person whose exercise or enjoyment of these rights has been interfered with, or attempted to be interfered with, may institute and prosecute in that person's own name and on that person's own behalf a civil action for legal or equitable relief. A person who knowingly violates a temporary restraining order or preliminary or permanent injunction issued under this section commits a Class D crime. Each temporary restraining order or preliminary or permanent injunction issued under this section must include a statement describing the penalties provided in this section for a knowing violation of the order or injunction. The clerk of the Superior Court shall transmit one certified copy of each order or injunction issued under this section to the appropriate law enforcement agency having jurisdiction over locations where the defendant is alleged to have committed the act giving rise to the action, and service of the order or injunction must be accomplished pursuant to the Maine Rules of Civil Procedure. Unless otherwise ordered by the court, service must be made by the delivery of a copy in hand to the defendant.

See title page for effective date.

CHAPTER 443

H.P. 654 - L.D. 892

An Act to Extend Criminal Sanctions to Certain Child Protective Orders

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

Sec. 1. 22 MRSA §4036, sub-§5 is enacted to read:

5. Notice of criminal penalties. If an order is issued under this section that contains a provision subject to criminal penalties under section 4036-A, the order must indicate in a clear and conspicuous manner the potential consequences of violating the order.

Sec. 2. 22 MRSA §4036-A is enacted to read:

§4036-A. Criminal penalty

1. Definition. For purposes of this section, "order" means an order entered in a case filed pursuant to this chapter.

2. Crime committed. When disposition under section 4036 includes a provision that a party named in a petition not have contact with a child or children named in the petition or a provision that a party named in the petition not enter the residence of a child or children

named in the petition, and the party has prior actual notice of the order containing those provisions, violation of that provision is a Class D crime. The criminal sanctions in this subsection are in addition to and not in lieu of contempt powers of the court.

3. Warrantless arrest. Notwithstanding any statutory provision to the contrary, an arrest for criminal violation of an order may be without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of an order by telephone or radio communication with an agency with knowledge of the order.

See title page for effective date.

CHAPTER 444

S.P. 228 - L.D. 699

An Act to Regulate Home Repair by Transient Contractors

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

Sec. 1. 32 MRSA c. 128 is enacted to read:

CHAPTER 128

DOOR-TO-DOOR HOME REPAIR TRANSIENT SELLERS

§14501. Definitions

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

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of home repair services.

2. Department. "Department" means the Department of Professional and Financial Regulation, Division of Licensing and Enforcement.

3. Door-to-door sales. "Door-to-door sales" means the solicitation or sale of home repair services by a home repair seller or the seller's employees to a consumer as a result of or in connection with the seller's or the employee's direct contact accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact.

4. Employee. "Employee" means any independent contractor, agent or person working for a salary or a commission who is affiliated with a home repair seller.

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

6. Home repair services. "Home repair services" means to fix, replace, alter, convert, modernize, improve or make an addition to real property primarily designed or used as a residence. "Home repair services" 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.

7. Permanent place of business. "Permanent place of business" means a building or other permanent structure, including a home residence, that is owned or held under a 12-month lease or rental agreement, from which business is commenced and that is used in whole or in part for the purpose of engaging in sales of home repair services.

8. Residence. "Residence" means a single-family or multifamily dwelling, including but not limited to a single-family home, apartment building, condominium, duplex or town house that is used or intended to be used by its occupants as a dwelling place.

9. Transient seller of home repair services. "Transient seller of home repair services," "transient seller" or "seller" means a home repair seller who engages in the business of door-to-door solicitations or sales of home repair services who does not have, at the time of the solicitation or contract, a permanent place of business in the municipality in which the door-to-door solicitation or sale occurs.

§14502. Exemptions

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

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

§14503. Home repair services contract

It is a violation of this chapter 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:

1. Consumer solicitations or sales. The laws governing consumer solicitations or sales, sections 4661 to 4670;

2. Transient sales. The laws governing transient sales, sections 4681 to 4689;

3. Home solicitation sales. The laws governing home solicitation sales, Title 9-A, sections 3-501 to 3-507; and

4. Home construction contracts. The laws governing home construction contracts, Title 10, sections 1486 to 1490.

§14504. Registration required

A transient seller of home repair services must register with the department and acquire a door-to-door sales registration in the manner set forth in section 14505 before engaging in the door-to-door sales of home repair services. A transient seller who solicits sales during the course of a municipal or state repair contract is exempt from this requirement.

§14505. Evidence of registration

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

§14506. Disclosure of registration number

A contract for door-to-door sales of home repair services by a transient seller of home repair services must include the seller's door-to-door sales registration number in the following manner: State door-to-door sales registration #: (fill in number).

§14507. Application

An application for registration under this chapter must be sworn to and must include:

1. Application information. The name, local and permanent business and residential address or addresses, date of birth and social security number of the home repair seller;

2. Employees of the seller. The names and addresses of employees of the seller, their dates of birth and social security numbers;

3. Statement. At the time of making the application, a statement of all civil judgments or criminal convictions secured or outstanding against the seller that

arises out of home repair services during the 4 years prior to making the application, all criminal and civil suits pending against the seller that arise out of home repair services and all criminal convictions and criminal suits pending for theft against the seller.

The seller shall promptly notify the department of all changes or additions in the information required by this section.

Knowingly, intentionally or recklessly making a false statement in an application is grounds for denial of the application or revocation of the registration; and

4. Photograph. A recent photograph of the home repair seller.

§14508. Renewal application

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

§14509. Registration fee

A transient seller must pay to the department the following fees at the time an application is made for registration or renewal:

1. Transient seller registration. For an original transient seller of home repair services registration, \$100; and

2. Renewal. For a renewal application, \$75.

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

§14510. Service of process

The department is an agent of a transient seller of home repair services engaging in those services for service of any process, notice or demand required or permitted by law. This service is binding upon the seller. Service of any such process, notice or demand must be made as provided by the Maine Rules of Civil Procedure.

§14511. Forms and model contract

The Department of the Attorney General has rule-making authority to adopt all forms necessary to fully

implement this chapter. 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 under this chapter. The Department of the Attorney General shall provide these forms at no cost to the department.

§14512. Penalties

1. Criminal penalty. A transient seller of home repair services who engages in those services in violation of this chapter commits a Class D crime.

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

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

4. Revocation. In any action under this section the court may also revoke the seller's registration to engage in the door-to-door sale of home repair services.

See title page for effective date.

CHAPTER 445

H.P. 845 - L.D. 1150

An Act to Promote Electronic Transfer of Funds and Other Information System Improvements in State Government

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

Sec. 1. 5 MRSA §1543, first ¶, as repealed and replaced by PL 1979, c. 312, §3, is amended to read:

~~No money shall~~ Money may not be drawn from the State Treasury; except in accordance with appropriations duly authorized by law. Every disbursement from the State Treasury ~~shall must~~ be upon the authorization of the State Controller and the Treasurer of State, as evidenced by their facsimile signatures, except that the Treasurer of State may authorize interbank and intrabank transfers for purposes of pooled investments. Disbursements ~~shall must~~ be in the form of a check ~~or an electronic transfer of funds~~ against a designated bank or trust