

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Augusta, Maine
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boiler or pressure vessel. The fee under subsection 9 must be set by the ~~board and may not exceed \$100~~ director. Inspection certificates must specify the maximum pressure that the boiler or pressure vessel inspected is allowed to carry. The inspection certificate may be valid for not more than 14 months from its date in the case of boilers and 38 months from its date in the case of pressure vessels and must be posted under glass in the engine or boiler room containing the boiler or pressure vessel or an engine operated by it or, in the case of a portable boiler, in the office of the plant where it is temporarily located. The board may adopt rules setting forth criteria by which a temporary extension of an inspection certificate beyond 14 months in the case of boilers and beyond 38 months in the case of pressure vessels may be authorized. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 44. 32 MRSA §15118, first ¶, as amended by PL 1999, c. 386, Pt. W, §28, is further amended to read:

The owner or user of each boiler or pressure vessel required by this chapter to be inspected by the chief inspector or a deputy inspector shall pay an inspection fee to the inspector upon inspection a fee or fees under section 15109, subsection 9 to be determined by the ~~board~~ director. Not more than ~~\$500~~ one inspection fee may be collected for the inspection of any one boiler or pressure vessel made in any one year, unless additional inspections are required by the owners or users of the boiler or pressure vessel or unless the boiler or pressure vessel has been inspected and an inspection certificate has been refused, withheld or withdrawn or unless an additional inspection is required because of the change of location of a stationary boiler or pressure vessel. The nature and size of miniature boilers or pressure vessels to be inspected may be determined by the board.

See title page for effective date.

CHAPTER 324

H.P. 981 - L.D. 1305

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

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

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

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

CHAPTER 128

REGULATION OF TRANSIENT SALES

SUBCHAPTER I

DOOR-TO-DOOR HOME REPAIR TRANSIENT SELLERS

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

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

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

§14502. Exemptions

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

2. Sales amount. This ~~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.

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

It is a violation of this ~~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:

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

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

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

§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. The registration requirement under this section is in addition to the licensing requirements applicable to the occupation, trade or profession for which a license is required. 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~~ subchapter. The registration must also include the name of the seller's company.

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

§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 the required renewal fee, ~~as provided in section 14509~~.

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

§14509. Registration fee

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

~~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.~~

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

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

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

2. Civil penalty. A transient seller of home repair services or the seller's employee failing to register in violation of this ~~chapter~~ subchapter 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~~ subchapter 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~~ subchapter commits an unfair trade practice in violation of Title 5, section 207.

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

SUBCHAPTER II

TRANSIENT SELLERS OF CONSUMER MERCHANDISE

§14701. Definitions

As used in this subchapter, 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 merchandise for any purpose except resale in the ordinary course of trade or business.

2. Department. "Department" means the Department of Professional and Financial Regulation.

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

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

5. Permanent place of business. "Permanent place of business" means any building or other permanently affixed structure, including a home

residence, that is owned or held under a 12-month lease or rental agreement at the time business is commenced and is used in whole or in part for the purpose of engaging in sales of consumer merchandise.

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

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

8. Transient seller of consumer merchandise or transient seller. "Transient seller of consumer merchandise" or "transient seller" means any person who engages in the business of selling merchandise to consumers by means of personal contact or telephone contact, whether or not the seller is present in the State at the time of the contact or the time of sale, and who does not have, for the purposes of carrying on such business, any permanent place of business within this State. "Transient seller of consumer merchandise" does not include a person who sells at public fairs, expositions or bazaars or a member selling on behalf of public service organizations. "Transient seller of consumer merchandise" does not include a person who sells exclusively by mail contact, except for a person who offers merchandise or money prizes as free of charge, such as contest prizes or gifts for answering a survey, but who requires the recipient to pay something of value in order to participate in this offer, including, but not limited to, entrance fees, processing fees or handling charges. A "transient seller of consumer merchandise" does not include a supervised lender as defined in Title 9-A, section 1-301, subsection 39.

§14702. Registration

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

§14703. Registrations

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

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

§14704. Disclosure of registration number and permanent place of business

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

2. Registration number and place of business disclosed in written receipt. Every time a transient seller of consumer merchandise sells merchandise to a consumer in this State, the transient seller shall provide the purchaser with a written receipt, at the time of sale, disclosing the transient seller's registration number in the following manner: "State Department of Professional and Financial Regulation Transient Seller's Registration Number: (Fill in number)" and disclosing the transient seller's name and permanent place of business.

§14705. Local registration

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

§14706. Application

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

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

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

3. Statement. A statement of all judgments secured or outstanding against the applicant arising out of sales to consumers during the 2 years immediately prior to making the application and of all suits of either a criminal or civil nature pending against the

applicant that arise out of sales to consumers, at the time of making the application;

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

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

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

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

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

§14707. Renewal application

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

§14708. Registration fee and security deposit

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

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

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

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

§14709. Waiver of security deposit

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

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

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

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

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

The authorized person within the department shall forward the completed application for waiver of the security deposit to the Office of the Attorney General for review and shall within 15 days of receipt of the completed application and with the advice of the

Attorney General grant or deny the application for waiver.

§14710. Revocation of right to waive security deposit

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

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

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

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.

§14711. Expiration

1. Registrations. Registrations issued under section 14703 expire:

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

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

C. Upon the surrender of the registration for cancellation.

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

Each security deposit made under section 14708 is subject, so long as it remains in the hands of the department, to the attachment and execution in behalf of consumers whose claims arise in connection with the transient sale of consumer merchandise in this State. The department may be impleaded as a trustee in any civil action brought against any registrant and shall pay over, under order of court, such sum of money as the department may be found chargeable. The security deposit is subject to the payment of any fines and penalties incurred by the registrant through any of the provisions of this subchapter, and the clerk of the court in which that fine or penalty is imposed shall notify the department of the name of the registrant against 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 sufficient

sum deposited by that registrant, shall pay the sum so specified to the clerk. If the department does not have a sufficient sum so deposited, it shall make payment of so much as it has in its possession. All claims upon the deposit must be satisfied after judgment, fine and penalty, in the order in which the order of court is entered in the respective suits, until all claims are satisfied or the security deposit is exhausted. A security deposit may not be paid over by the department to a registrant so long as there are any outstanding claims or notices of claims that are subject of suit against the registrant, in which case the department shall retain only such sum of the security deposit as is subject of claim.

The security deposit required under section 14708 must be returned to the person so designated pursuant to section 14706, subsection 5 in the registrant's application for registration made under section 14702 12 months following the expiration of the registration.

§14713. Violations and penalties

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

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

§14714. Service of process

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

§14715. Prohibited practices

A transient seller of consumer merchandise may not:

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

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

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

§14716. Telemarketers

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

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

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

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

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

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

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

See title page for effective date.

CHAPTER 325

H.P. 1165 - L.D. 1565

An Act to Expand the Collection of DNA Samples from Convicted Offenders

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

Sec. 1. 25 MRSA §1574, sub-§1, as repealed and replaced by PL 1997, c. 608, §2, is amended to read:

1. Conviction subsequent to effective date. A person convicted, on or after January 1, 1996 and before October 1, 2001, of a crime listed in subsection 4 or a person convicted on or after October 1, 2001, of a crime listed in subsection 5 shall submit to having a DNA sample drawn and at the time of sentencing the court shall enter an order directing that the DNA sample be drawn. If the convicted person's sentence includes a straight term of imprisonment or a split term of imprisonment, the DNA sample may be drawn at any time following the commencement of the straight term or initial unsuspended portion of the term of imprisonment. If the convicted person's sentence includes a period of probation but no immediate imprisonment, the DNA sample may be drawn at any time following commencement of the probation period as directed by the probation officer. If the convicted person's sentence includes a period of probation, the court may attach the duty to submit to having a DNA sample drawn as a condition of probation.

Sec. 2. 25 MRSA §1574, sub-§2, as enacted by PL 1995, c. 457, §1, is amended to read:

2. Conviction prior to effective date. A person convicted and incarcerated prior to January 1, 1996, as a result of a conviction for a crime listed in ~~this section~~ subsection 4, shall must have a DNA sample drawn before release from the corrections system.

Sec. 3. 25 MRSA §1574, sub-§3, as enacted by PL 1995, c. 457, §1, is repealed.

Sec. 4. 25 MRSA §1574, sub-§4, as amended by PL 1997, c. 608, §3, is further amended to read:

4. Applicable offenses after January 1, 1996 and before October 1, 2001. This section applies to a person convicted after January 1, 1996 and before October 1, 2001 of one or more of the following offenses or an attempt of one or more of the following offenses:

A. Murder or criminal homicide in the first or 2nd degree;