

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

FIRST REGULAR SESSION
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Augusta, Maine
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severally, and also burdens the parcel and runs with the land upon the transfer of any owner's interest. The commissioner or board may cause to be recorded in the county's registry of deeds a notice of claim for money owed pursuant to section 3101, 3102 or 3103 that is more than 90 days delinquent and may add to the amount owed the recording costs. The recording of such notice does not constitute slander of title. Before recording such notice or service of process of a complaint for collection in a civil action, the commissioner or board shall give the owner against whom such action is to be taken written notice, in the same manner as written notices of meetings are provided for in section 3101, of the intended action if the debt is not paid within 20 days of the date of the written notice. This written notice to cure must be sent at least 30 days before the recording of the notice of claim or the service of process of the complaint for collection in a civil action.

See title page for effective date.

CHAPTER 199

H.P. 608 - L.D. 857

An Act To Examine Fees Charged by Municipalities Concerning Outdoor-related Activities

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

Sec. 1. 12 MRSA §13201, first ¶, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §421 and affected by §422, is further amended to read:

A municipality or political subdivision of the State may not enact any ordinance, law or rule regulating or charging a fee for the hunting, trapping or fishing for any species of fish or wildlife; the possession or use of any equipment expressly permitted for use in hunting under this Part; the operation, registration or numbering of all-terrain vehicles, watercraft or snowmobiles or any other subject matter relating to all-terrain vehicles, watercraft or snowmobiles regulated under chapter 935 or 937 or under any other provisions of this Part, except that a municipality may regulate the operation of all-terrain vehicles on municipal property and on rights-of-way and easements held by that municipality. For purposes of this section, except as provided in subsection 3, the regulation of fishing includes the regulation of ice fishing shacks. This section does not prohibit:

Sec. 2. 30-A MRSA §3007, sub-§5, as amended by PL 2003, c. 332, §1, is further amended to read:

5. Firearms and hunting equipment. A municipality shall consult with the Department of Inland Fisheries and Wildlife during the process of the consideration of the adoption or amendment of a firearm discharge ordinance. The area in which the discharge of firearms is prohibited by a firearm discharge ordinance must be described in the ordinance using clearly defined physical boundaries as points of reference. For purposes of this subsection, the term "clearly defined physical boundaries" includes but is not limited to roads, waterways and utility corridors. After January 1, 2000, a municipality that adopts or amends a firearm discharge ordinance shall provide the Commissioner of Inland Fisheries and Wildlife with a copy of the new or amended firearm discharge ordinance and a copy of any maps that show the areas in the municipality affected by the new or amended ordinance within 30 days from the date that the ordinance is enacted or amended. A municipality may not ~~include bows and arrows in any firearms discharge~~ adopt or enforce any ordinance prohibited under Title 12, section 13201.

See title page for effective date.

CHAPTER 200

H.P. 251 - L.D. 346

An Act Concerning the Collection of Sales Tax by Any Businesses Making Sales to Persons in Maine

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

Sec. 1. 36 MRSA §1754-B, sub-§1, ¶D, as amended by PL 2005, c. 218, §18, is further amended to read:

D. Every person that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution and that makes retail sales in this State of tangible personal property or taxable services on behalf of a principal that is outside of this State if the principal is not the holder of a valid registration certificate; For purposes of this paragraph, paragraph E and paragraph G, the following activities do not constitute a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution:

(1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the United States mail or by an interstate 3rd-party common carrier;

(2) Attending trade shows, seminars or conventions in this State;

(3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;

(4) Maintaining a bank account or banking relationship in this State; or

(5) Using a vendor in this State for printing;

Sec. 2. 36 MRSA §1754-B, sub-§1, ¶E, as amended by PL 1995, c. 640, §3, is amended to read:

E. Every agent, representative, salesperson, solicitor or distributor that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution and that receives compensation by reason of sales of tangible personal property or taxable services made outside this State by a principal for use, storage or other consumption in this State;

Sec. 3. 36 MRSA §1754-B, sub-§1, ¶G, as amended by PL 2007, c. 328, §5, is further amended to read:

G. Every seller of tangible personal property or taxable services that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. ~~The following activities do not constitute a substantial physical presence for the purpose of this paragraph:~~

~~(1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the United States mail or by an interstate 3rd party common carrier;~~

~~(2) Attending trade shows, seminars or conventions in this State;~~

~~(3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;~~

~~(4) Maintaining a bank account or banking relationship in this State; or~~

~~(5) Using a vendor in this State for printing, drop shipping or telemarketing services;~~

Sec. 4. 36 MRSA §1754-B, sub-§1-A is enacted to read:

1-A. Persons presumptively required to register. This subsection creates a rebuttable presumption that a seller not subject to subsection 1 is engaged in the business of selling tangible personal property or

taxable services for use in this State and is required to register as a retailer with the assessor.

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

(1) "Affiliated person" means a person that is a member of the same controlled group of corporations as the seller or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations. For purposes of this subparagraph, "controlled group of corporations" has the same meaning as in the Code, Section 1563(a).

(2) "Person" means an individual or entity that qualifies as a person under the Code, Section 7701(a)(1).

(3) "Seller" means a person that sells, other than in a casual sale, tangible personal property or taxable services.

B. A seller is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State if an affiliated person has a substantial physical presence in this State or if any person, other than a person acting in its capacity as a common carrier, that has a substantial physical presence in this State:

(1) Sells a similar line of products as the seller and does so under a business name that is the same or similar to that of the seller;

(2) Maintains an office, distribution facility, warehouse or storage place or similar place of business in the State to facilitate the delivery of property or services sold by the seller to the seller's customers;

(3) Uses trademarks, service marks or trade names in the State that are the same or substantially similar to those used by the seller;

(4) Delivers, installs, assembles or performs maintenance services for the seller's customers within the State;

(5) Facilitates the seller's delivery of property to customers in the State by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the State; or

(6) Conducts any activities in the State that are significantly associated with the seller's ability to establish and maintain a market in the State for the seller's sales.

A seller who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part. A seller may rebut the presumption created in this paragraph by demonstrating that the person's activities in the State are not significantly associated with the seller's ability to establish or maintain a market in this State for the seller's sales.

C. A seller that does not otherwise meet the requirements of paragraph B is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State if the seller enters into an agreement with a person under which the person, for a commission or other consideration, while within this State:

(1) Directly or indirectly refers potential customers, whether by a link on an Internet website, by telemarketing, by an in-person presentation or otherwise, to the seller; and

(2) The cumulative gross receipts from retail sales by the seller to customers in the State who are referred to the seller by all persons with this type of an agreement with the seller are in excess of \$10,000 during the preceding 12 months.

A seller who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part.

A seller may rebut the presumption created in this paragraph by submitting proof that the person with whom the seller has an agreement did not engage in any activity within the State that was significantly associated with the seller's ability to establish or maintain the seller's market in the State during the preceding 12 months. Such proof may consist of sworn, written statements from all of the persons within this State with whom the seller has an agreement stating that they did not engage in any solicitation in the State on behalf of the seller during the preceding 12 months; these statements must be provided and obtained in good faith.

A person who enters into an agreement with a seller under this paragraph to refer customers by a link on an Internet website is not required to register or collect taxes under this Part solely because of the existence of the agreement.

Sec. 5. Report and legislation regarding the Streamlined Sales and Use Tax Agreement.

The Office of Fiscal and Program Review shall prepare a report concerning the Streamlined Sales and Use Tax Agreement, referred to in this section as "the agreement," which is an effort of state governments, with input from local governments and the private

sector, to simplify and modernize sales and use tax collection and administration. The report must:

1. Provide information regarding any pending or recently enacted federal legislation that provides states with the authority to compel remote sellers, such as online and catalogue retailers, to collect and remit sales tax imposed on purchases made by residents of another state;

2. Identify the options available to Maine under the federal legislation referred to in subsection 1 and the steps needed in order to compel remote sellers to collect sales tax and remit the tax to Maine;

3. Identify any changes to the Maine Revised Statutes that are needed to conform the State's laws to the agreement and the options available to provide conformity;

4. Identify the impact of each option identified pursuant to subsection 3; and

5. Identify and explain any fiscal and policy issues associated with conformity with the agreement.

The Office of Fiscal and Program Review may enlist the assistance of an entity outside of the Legislature to aid the office in completion of the report. The office shall submit its report, along with different proposals for legislation to conform the State's sales and use tax laws with the agreement, to the Joint Standing Committee on Taxation no later than January 15, 2014. The Joint Standing Committee on Taxation may submit a bill relating to the subject matter of the report to the Second Regular Session of the 126th Legislature.

Sec. 6. Application. The provisions of the Maine Revised Statutes, Title 36, section 1754-B, subsection 1-A, paragraph C apply to sales made, uses occurring and services rendered on or after the effective date of this Act regardless of the date on which the seller and the person entered into the agreement described in that paragraph; except that, when calculating the 12-month period for purposes of determining whether the threshold amount specified in Title 36, section 1754-B, subsection 1-A, paragraph C, subparagraph (2) has been met, the 12-month period begins one year immediately preceding the seller's registering as a retailer pursuant to this Act.

See title page for effective date.

CHAPTER 201

H.P. 623 - L.D. 900

An Act Regarding the Disclosure of Certain Records in Criminal Matters