

ORDINANCE

DOOR TO DOOR SALES OF CONSUMER MERCHANDISE

LICENSE. No person (as defined in Title 32, M.R.S.A. 4681 (1978 as amended) shall expose for sale or sell upon the public streets, nor go from place to place in the Town, offering, or exposing for sale and selling goods, merchandise, wares or other things (as defined in Title 32 M.R.S.A. 4681), until he shall have procured a license to do so as hereinafter provided.

APPLICATION: The Board of Selectmen may grant a license to offer or expose for sale or sell upon the public streets, or go from place to place in the Town, offering or exposing for sale and selling goods, wares, or merchandise.

Every person to whom a license is issued under this ordinance, shall make written application therefore, signed by him, stating the name and address of the applicant, the nature, and the quality of goods, wares and merchandise which he then has in his possession within the Town in which he intends to expose for the sale or sell, and the fair market value thereof, and the license herein before provided for when issued, shall apply only to such goods, wares or merchandise as are listed in said application, and no other property of any nature shall be exposed for sale or sold under this license.

The Town Clerk shall cause to be inserted in every license issued under this ordinance, the name and address of the person applying for such license, and the amount paid as a license fee, therefore, and the duration of said license, that duration not to exceed one (1) year from the date of issue thereof.

FEES: Each applicant granted a license hereunder shall pay a fee to the Town Clerk as follows:

1 day	\$ 25.00
1 week	\$ 50.00
1 month	\$ 100.00
3 months	\$ 150.00
6 months	\$ 200.00
1 year	\$ 300.00

The following persons or organizations are exempt from the above fee requirements:


- Newspaper sales
- Religious literature
- Non-profit organizations
- Farmers market, so established

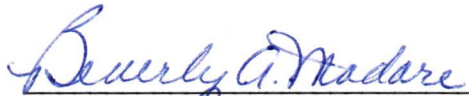
Every person to whom a license is issued hereunder, whenever demanded by the Board of Selectmen, a constable or police officer of the Town, shall exhibit such license to the person demanding the same, and, if he neglects or refuses to do so, shall be liable of the same punishment as is provided for in this ordinance and his license, upon conviction, shall be revoked.

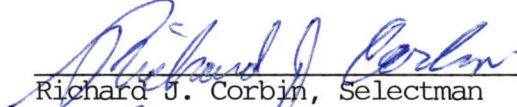
PENALTY: Whoever shall offer or expose for sale or sell upon the public streets of the Town, or go from place to place in the Town offering or exposing for sale or selling goods, wares or merchandise in violation of this ordinance shall be subject to a civil penalty of not less than \$100 and not more than \$2,500, which penalty shall not be less than an amount equal to the license fee, if issued, plus \$100, the imposition and payment of which fine shall not waive or release, in any manner, the obligation to comply with the licensing requirements of this ordinance.

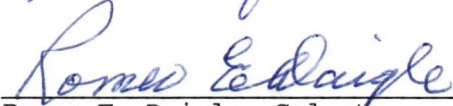
This ordinance approved by voters at a special town meeting held on June 17, 1986 and becomes effective when signed by the Board of Selectmen of the Town of Madawaska.

MADAWASKA BOARD OF SELECTMEN


Richard L. Marston, Chairman


Beverly A. Madore, Selectman


Richard J. Corbin, Selectman


Romeo E. Daigle, Selectman


Maurice R. Cyr, Selectman

JUNE 18, 1986
DATE

**WARRANT
ANNUAL TOWN MEETING**

Aroostook, ss.

State of Maine

TO: Ronald F. Pelletier, a constable of the Town of Madawaska, County and State aforesaid.

GREETINGS:

In the name of the State of Maine, you are hereby required to notify and warn the voters of the Town of Madawaska, in said County, qualified by law to vote in town affairs to notify and warn said voters to meet at the K of C Hall in said Town on Tuesday the thirteenth day of June A.D., 2000, at 9 o'clock in the morning, then and there to act on Articles 1 and 2.

And to notify and warn said voters to meet at the Madawaska High School Cafeteria in said Town on Tuesday the twentieth day of June, A.D., 2000, at 7 o'clock in the evening, then and there to act on Articles 3 through 51 and of said articles being set out below to wit:

Article 1. To choose a moderator to preside at said meeting

Article 2. To elect all necessary officers as are required to be elected by secret ballot
(M.R.S.A., Title 30, Section 2025)

(The polls for voting on Article 2 will be opened immediately upon completion of Article 1 and will close at 8 o'clock in the evening.)

Article 3. To see if the Town will vote to choose one (1) member of the Board of Trustees of the Madawaska Public Library for a term of three (3) years

(Term of Barbara Hale expires in 2000)

- G. All other applicable standards of this Ordinance shall also be observed.

RECOMMENDED BY PLANNING BOARD
RECOMMENDED BY BOARD OF APPEALS
RECOMMENDED BY BOARD OF SELECTMEN

- Article 51. To see if the Town of Madawaska shall vote to amend the 1986 Door to Door Sales of Consumer Merchandise Ordinance to the Itinerant Vending Ordinance. If this ordinance is accepted, our door to door sales ordinance will become and be known as the Itinerant Vending Ordinance.

The new Itinerant Vending Ordinance will read as follows:

ITINERANT VENDING ORDINANCE

1. LICENSE REQUIRED:

- A. No person shall offer for sale and food, drink, or merchandise as an itinerant vendor without first obtaining a license from the Town of Madawaska. Landowners offering space to vendors must still obtain a license for the facility which vending shall take place. This pertains to vehicles, push carts, temporary stands or other types of distribution units. Promoters of carnivals, festivals, or mass gatherings shall obtain a license for the event which will cover all vendors.
- B. A license could be obtained from the Town Office weekdays and at the Police Department on weekends.
- C. Before receiving a license, the Police Department may review the application so that the vendor will not create safety problems for either traffic or pedestrians.
- D. Any license issued under this ordinance may be revoked by the Board of Selectmen after notice and hearing.
- E. Exempt from fees are charitable, service, religions, and municipal organizations or agencies.

2. LOCATIONS:

- A. A letter of agreement from the owner of record of said property that the vendor shall be located on shall be submitted to the Town of Madawaska.

7. FEES:

A. Each applicant granted a license hereunder shall pay a fee to the Town Clerk as follows:

1 week	\$200
1 month	\$300
3 months	\$500
1 year	\$1,500

The following persons or organizations are exempt from the above fee requirements:

- Newspaper sales
- Religious literature
- Non-profit organizations
- Farmers market, so established - **ONLY manufactured products are charged; not on food products of any kind.**

Every person to whom a license is issued hereunder, whenever demanded by the Board of Selectmen, a constable or police officer of the Town, shall exhibit such license to the person demanding the same, and, if he neglects or refuses to do so, shall be liable of the same punishment as is provided for in this ordinance and his license upon conviction shall be revoked.


8. PENALTY:

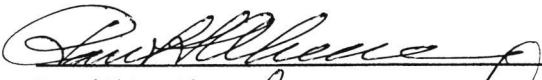
A. Whoever shall offer or expose for sale or sell upon the public streets of the Town, or go from place to place in the Town offering or exposing for sale or selling goods, wares or merchandise in violation of this ordinance shall be subject to a civil penalty of not less than \$100 and not more than \$2500, which penalty shall not be less than an amount equal to the license fee, if issued, plus \$100, the imposition and payment of which fine shall not waive or release in any manner, the obligation to comply with the licensing requirements of this ordinance.

The Selectmen hereby give notice that the Board of Voter Registration will be in session for the purpose of registering and correcting the list of voters at the Madawaska Town Office from 9 a.m. to 12 noon on June 5, 6, 7, 8, and 9, 2000.

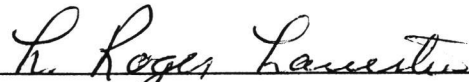
Given under our hands this first day of June A.D., two thousand.

MADAWASKA BOARD OF SELECTMEN


Vernon Doucette, Chairman

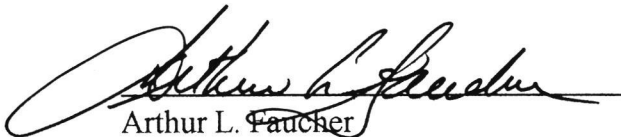

Daniel P. Ahearn


Real J. Hebert


L. Roger Lavertu


Lloyd J. Tardif

A TRUE COPY


Arthur L. Faucher
Town Clerk

State of Maine

DEPARTMENT OF ATTORNEY GENERAL

M E M O R A N D U M

To: Law Enforcement Officers

From: James A. McKenna, Assistant Attorney General

Date: May 11, 1992

Subject: Door-to-Door Driveway Pavers; 1992-93 Legal Guide

The Attorney General's Consumer and Antitrust Division runs a statewide information exchange system dealing with door-to-door driveway pavers and sealers who operate in violation of our door-to-door sales laws. Our office receives a steady stream of complaints from home owners across the State detailing criminal acts by transient driveway pavers. If we can keep an up to date information sharing network, we believe it will become difficult for transient driveway pavers to operate illegally in the State of Maine.

DOOR-TO-DOOR SALES LEGAL GUIDE

First, please find attached an updated guide to the Maine door-to-door criminal statutes. Door-to-door driveway pavers in Maine are very often in violation of either the Consumer Solicitation Sales Act (a Class D crime to not use a written contract and to not wait at least three days before beginning a permanent addition to a home, such as a driveway paving job or a chimney lining job), or the Transient Sales Act (Class D crime to solicit without a State license if you are a transient seller without a permanent place of business in Maine).

STATE-WIDE INFORMATION CLEARING HOUSE

Further, the Consumer and Antitrust Division would like to serve as a clearing house for information on door-to-door pavers and other door-to-door solicitors operating in the State. We will maintain a file on each door-to-door seller who has been identified as operating in Maine in an illegal manner. We ask that police officers around the State send us as much information as possible. (e.g., photos, fingerprints, copies of their criminal records, identification of the vehicles they are driving, etc.).

The Consumer and Antitrust Division will also provide advice over the phone to police officers confronted with a possibly illegal door-to-door solicitation in their municipality. Finally, in serious cases that deserve prosecution, the Attorney General will work with the local District Attorney to insure that criminal violations are vigorously enforced.

If you have any information or questions concerning door-to-door sellers operating in your area, please consult with either me, Complaint Examiner Gladys Guban (626-8800) or Brian MacMaster, the Director of the Attorney General's Investigation Division (626-8520).

NECESSARY EVIDENCE IN A CRIMINAL DOOR-TO-DOOR SALES CASE

A. Consumer Solicitation Sales Act (32 M.R.S.A. §§ 4661-4670).

Most door-to-door itinerant driveway pavers will be in violation of the Consumer Solicitation Sales Act. Their sales will be cash sales (not credit); they will typically solicit the home owner and then begin the job the same day as the solicitation; they will use a contract that does not disclose that on driveway paving they must wait 3 days before beginning the job; typically the contract will also not disclose the mailing address of the business. Here is a brief summary of the evidence you would need to commence a driveway paving Class D criminal action against the owner of a driveway paving business for violation of the Consumer Solicitation Sales Act:

1. The driveway paver must have solicited the job, either by calling on the home owner in his home or by telephoning. The home owner cannot have first contacted the paver and asked the paver to do the job or provide an estimate. Consumer testimony or an admission by the paver will be needed to prove this element.

2. Either (A) the work was started before the 3 day waiting period had elapsed (again you will need consumer testimony, a paver admission, or the fact that you saw them in the act of doing the work before the 3 day waiting period); or (B) The paving contract itself is in violation of the Consumer Solicitation Sales Act. For example

- (1) The contract does not specifically state that the work cannot begin before the 3 day right to revoke has expired;

(2) The contract does not list the company's permanent place of business mailing address (the evidence needed for this count is a copy of the contract).

If the above evidence is in hand and the sale is a cash or check sale then a Class D crime has probably been committed (32 M.R.S.A. § 4667).

B. Transient Sales Act (32 M.R.S.A. §§ 4681-4689)

The evidence you will need for a Transient Sales Act criminal violation is:

1. The driveway paver does not have a permanent place of business in the State of Maine (a building which is either owned or rented with at least a 12 month written lease). The best way to satisfy this evidentiary requirement is to interview the owner of the paving business and determine whether he has a permanent place of business and its exact address. Ask him whether he owns the building or whether he has a 12 month lease. If he does not then he is a transient seller.
2. All transient sellers must be registered with the Department of Professional and Financial Regulation in Augusta (582-8723). The best way to find out whether he is licensed is to ask to see his identification number. All transient sellers and their employees must carry at all times a copy of the license when engaging in transient sales. Also, his written receipt must also disclose his permanent place of business and his state license number.

As you can see, a door-to-door driveway paver may very well be in violation of the Consumer Solicitation Sales Act (not waiting 3 business days before beginning work and not using the required contract) and the Transient Sales Act (not being registered with the State if he does not have a permanent place of business in Maine. Violations of both statutes are Class D crimes. Both of these door-to-door sales laws are explained in greater detail in the attached 1992 Legal Guide to Door-to-Door Criminals. Please do not hesitate to contact me if you wish to discuss these matters further.

JAMES A. MCKENNA
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 626-8800

Police Dept.

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
DIVISION OF LICENSING AND ENFORCEMENT
DOOR-TO-DOOR HOME REPAIR
TRANSIENT SELLERS
STATE HOUSE STATION #35
AUGUSTA, MAINE 04333
Tel.: (207) 582-8723 Fax: (207) 582-5415

M E M O R A N D U M

TO: All Interested Parties

FROM: Marlene M. McFadden *mmm*
Registrar

RE: Door-to-Door-Home Repair Transient Sellers

In July 1993, Governor John McKernan signed L.D. 699 "An Act to Regulate Home Repair by Transient Contractors". Title 32 Chapter 128 Door-to-Door Home Repair Transient Sellers will be effective on October 13, 1993.

Please find enclosed a copy of Title 32 Chapter 128. Also, I've enclosed a information sheet about the statute.

Copies of the application, statute and contract will be available after October 13, 1993 at the Division of Licensing and Enforcement.

If you have any questions and/or concerns, please contact this office at the above address, telephone and/or fax number.

/mmm

DOOR-TO-DOOR HOME REPAIR TRANSIENT SELLERS

"Door-to-door sales" are the solicitation or sale of home repair services by a home repair seller and/or his/her employees to a consumer. This must be the result of or in connection with the seller's and/or the employee's direct contact. This is accomplished by means of a personal visit to the consumer and must be held other than the seller's place of business. The consumer **does not** initiate contact with the seller and/or his/her employees. This is only direct contact and does not include mail or telephone soliciting.

An employee means any independent contractor and/or person working for a salary or a commission and is affiliated with a home repair seller.

A transient seller of home repair services does not have a permanent place of business in the municipality in which the direct solicitation or sale occurs.

Exemptions to this statute includes: (1.) new homes and (2.) sales amount - the gross sales price (including interest and/or carrying charges) is under \$25.00.

The Department of Attorney General has rule-making authority and will adopt all forms necessary to implement the statute. The Attorney General's Office will prepare a form contract for all door-to-door sales. All contracts must meet the following: (1.) the laws governing consumer sales; (2.) transient sales statutes (transient vendors); (3.) statutes governing home solicitation sales; (4.) and the laws governing home construction contracts.

All sellers must register with the Department of Professional and Financial Regulation on and/or before **October 31** of each year. Each registration must include the name of the seller and his/her company. Each contract must include the seller's registration number. Those who solicits sales from a municipal or state repair contract is exempt from registering.

Only the transient sellers of home repair must register. The following are required on the application: name, business, residential and mailing addresses of seller; seller's date of birth and social security number; a list of all employees which includes their names, addresses, dates of birth and social security numbers; a statement from the applicant stating all civil judgements or criminal convictions outstanding or secure that have arisen from out-of-home-repair services during the prior four (4) years, all pending criminal and civil suits arisen from home repair and all criminal suits and convictions pending for theft against the applicant. Also required is a recent photograph of the seller. Making a false statement knowingly, intentionally or recklessly on an application is grounds for denial or revocation of the seller's registration.

Original registration fee for a transient seller of home repair services is \$100.00. The renewal fee is \$75.00. Renewal mailers will be mailed to renewees 30 days prior to the expiration date. Each renewal fee must be sent to the Department of Professional and Financial Regulation, Division of Licensing and Enforcement along with the renewal application.

The home repair seller will promptly notify the Department of all changes or additions of information required by statute on the application.

Penalties are as follows:

1. Criminal Penalty: engages in those services in violation of 32 M.R.S.A. Chapter 128 commits a Class D crime.
2. Civil Penalty: failure to register for a transient seller of home repair and/or his/her employee is in violation to Chapter 128. Civil penalty is up to \$2,000.00 may be adjudged against the seller and employee. If the individual violates this chapter more than twice, or if the injured consumer is over sixty (60) years of age, the civil violation penalty may be up to \$5,000.00. This is enforceable by either the District Attorney or the Attorney General's Offices.
3. Unfair Trade Practice: a seller who fails to register commits an unfair trade practice in violation to Title 5 Section 207.
4. Revocation: in any of the above penalties, the court may revoke the seller's registration.

TITLE 32

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 person 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 service fails to meet the written contract requirements applicable, of:

1. **Consumer solicitations or sales.** The laws governing consumer solicitations or sales, section 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 engaged 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 full 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.

Enacted by P.L. Ch. 444, October 13, 1993

PUBLIC LAWS OF MAINE

First Regular Session of the 120th

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.

Effective September 21, 2001, unless otherwise indicated.

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