

# 29

## MISCELLANEOUS CONSUMER PROTECTION RIGHTS

### § 29. 1. Introduction

This consumer rights chapter describes a variety of areas in which consumers often seek assistance. It contains the following sections:

- § 29. 2. **Time Shares (Condominiums And Campgrounds)**
- § 29. 3. **Pet Purchaser Rights**
- § 29. 4. **Auctions**
- § 29. 5. **Bailments, Common Carriers And Hotelkeepers**
- § 29. 6. **Lawyers**
- § 29. 7. **Doctors**
- § 29. 8. **Regulated Business Professions**
- § 29. 9. **Private Correspondence And Vocational Schools**
- § 29. 10. **Assistive Devices For Persons With Disabilities**
- § 29. 11. **Eye Glasses**
- § 29. 12. **Franchise and Business Opportunities**
- § 29. 13. **Health Spas**
- § 29. 14. **Water Testing Scams**
- § 29. 15. **Games Of Chance**
- § 29. 16. **Radon Gas Reduction**
- § 29. 17. **Lead Poisoning**
- § 29. 18. **Warranties For Solar Energy Equipment**
- § 29. 19. **Condominium Complaints**
- § 29. 20. **Hotels And Motels (Vacation Rentals)**

**§ 29. 21. Weights And Measures (Gas, Oil, Wood)****§ 29. 22. Weight Loss Claims****§ 29. 23. Public Utility Complaints****§ 29. 24. Cable Television****§ 29. 25. Furniture Movers****§ 29. 26. Unsafe Consumer Products****§ 29. 27. Gold And Platinum Cards****§ 29. 28. Life And Health Insurance****§ 29. 29. Employment Agencies****§ 29. 30. Solicitations In The Guise Of Invoices****§ 29. 31. Gift Certificates That Have Expired****§ 29. 32. Arbitration Clauses****§ 29. 33. Sending Money Via Western Union And MoneyGram****§ 29. 34. Self-Service Storage****§ 29. 35. Gasoline Prices and Profiteering in Necessities****§ 29. 2. Time Shares (Condominiums And Campgrounds)**

When selling Maine condominium Time Shares, developers must make extensive disclosures about the services being provided and the expenses involved. *See* 33 M.R.S.A. § 592. Most importantly the disclosure must include this cancellation statement:

A statement that:

- A. Within 10 calendar days after receipt of the current written statement or execution of a contract, whichever is later, a purchaser may cancel any conveyance or contract for purchase of a unit from the developer; and
- B. If the purchaser elects to cancel, the purchaser may do so by hand delivering a notice of cancellation or by mailing the notice by prepaid United States mail to the developer. The cancellation must be without penalty and any deposits made by the purchaser must be promptly refunded in its entirety.<sup>1</sup>

If the developer fails to make all required disclosures, it is a violation of the Maine Unfair Trade Practices Act (5 M.R.S.A. § 207) and you can demand your money back and cancellation of the contract. Maine has also enacted a similar disclosure law, which applies to membership shares in a

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<sup>1</sup> 33 M.R.S.A. § 592 (10).

campground, except that the cancellation period is seven calendar days after the contract date.<sup>2</sup> Violation of this statute can also be an unfair trade practice.<sup>3</sup>

## § 29. 3. Pet Purchaser Rights

Maine law (7 M.R.S.A. §§ 4151 - 4163) sets forth consumer rights concerning the sale of dogs and cats. This law gives purchasers of dogs or cats a recourse when the animal they purchase from a pet dealer (e.g., the owner of a kennel or pet shop) is either ill at the time of the purchase or dies within a year of the purchase due to a disease, an illness, or a congenital or hereditary condition. To obtain these remedies the purchaser must meet certain notification deadlines. For example, 7 M.R.S.A. § 4155 (1) requires the following:

If, within 10 days after receipt of the animal by the purchaser, a veterinarian states in writing that the animal has a health problem that existed in the animal at the time of delivery or if, within one year after receipt of the animal by the purchaser, a veterinarian states in writing that due to a hereditary or congenital defect the animal has died or has a condition that will shorten its life or will require constant treatment during its life, the animal is considered to have been unfit for sale at the time of sale.

The pet dealer must also make certain mandatory disclosures to customers. For example, the pet dealer must provide a summary of the purchaser's consumer rights under this law and a signed statement that the animal at the time of delivery has no known health problem or a statement disclosing any known health problem (*See* 7 M.R.S.A. § 4160).

As of 2007, a person may not advertise more than one cat or dog under the age of 6 months in a twelve-month period unless that person has a valid animal shelter, kennel or pet shop license or a valid vendor's license<sup>4</sup> obtained from the Maine Department of Agriculture.

Caution: It is very risky to purchase pets over the internet. Scammers are very skilled in emotionally hooking you, constantly escalating the fees, and then leaving you empty-handed at the airport or bus station.

## § 29. 4. Auctions

It is important to remember that auctioneers are licensed by the State and are required to disclose certain information prior to commencing the auction. Maine law<sup>5</sup> requires that each auctioneer post for display the following information:

- A. Whether the property is sold "as is";
- B. Whether the highest bidder will be acknowledged by the auctioneer;
- C. Whether the auction is with reserve or without reserve and the acceptable manner of bids;
- D. Whether absentee bids will be allowed;
- E. The sales tax requirements;

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<sup>2</sup> 33 M.R.S.A. § 589-A.

<sup>3</sup> 33 M.R.S.A. § 589-A.

<sup>4</sup> 7 M.R.S.A. § 4163.

<sup>5</sup> 32 M.R.S.A. § 299.

- F. Whether or not the auctioneer or consignor reserves the right to bid;
- G. A statement of the buyer's premium and any other charges to the bidders or any other persons in attendance;
- H. The title and address of the Board of Licensing of Auctioneers; and
- I. A statement that the Uniform Commercial Code, 11 M.R.S.A. § 2-328 applies to this auction sale. This section requires:
  - (1) In a sale by auction if goods are put up in lots, each lot is the subject of a separate sale.
  - (2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of prior bid, the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer is falling.
  - (3) Such a sale is with reserve unless goods are in explicit terms put up without reserve. In an auction with reserve, the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case, a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
  - (4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good-faith bid prior to the completion of the sale. This last requirement shall not apply to any bid at a forced sale.

Of course, when new or used *consumer* goods (e.g., for personal or household use) are sold at an auction the Maine Implied Warranty of Merchantability applies and *cannot* be disclaimed. Therefore, unless a serious defect is disclosed prior to sale, consumers purchasing seriously defective items may be able to claim a violation of the Maine Implied Warranty law.<sup>6</sup>

When a motor vehicle dealer sells a car through an auction, the dealer must comply with all disclosure requirements set forth in the Used Car Information Act.<sup>7</sup>

## § 29. 5. Bailments, Common Carriers and Hotelkeepers

A "bailor" places personal property in the care of a "bailee." If a bailment agreement is supported by consideration (value) then a contract probably exists. A bailee is not an insurer. A bailee has a duty of *ordinary care* which, if breached, will expose the bailee to liability for negligence.<sup>8</sup>

A bailee's negligence must be proved by the bailor. However, this is not as hard as it seems:

- A. If a bailor can prove that the goods were delivered to the bailee and that the bailee

<sup>6</sup> 11 M.R.S.A. § 2-314; 2-316 (5) (a); *see* Chapter 4 of this Guide.

<sup>7</sup> *See* 10 M.R.S.A. § 1475 and Chapter 9 in this Guide.

<sup>8</sup> *LeVasseur v. Field*, 332 A.2d 765 (Me. 1975).

- failed to return the item undamaged;
- B. Then the bailor has established a *prima facie* case of negligence by the bailee;
  - C. The bailee must then present facts that show the bailee's actions were consistent with due care; if not, the bailee will be found negligent.

When have you entered into a bailment agreement? Parking your car in a commercial parking lot? Yes, if you surrender the keys. Leaving your coat with a checkroom attendant? Yes, but not if you simply hang your coat on a restaurant's coat rack.

If you rent equipment (e.g., a rototiller), then *you* are a bailee. If you find lost property, then you have a legal duty to return the property to the owner if that person can be found. However, if the lost item is found in a public place, such as a restaurant, the item must be left with the proprietor. If the item is not claimed then the person holding it must treat it as "abandoned property". See § 14.10 and § 16.3 (P) in this *Guide*.

"Common carriers" transport people or goods for pay and offer their facilities to the general public. Examples of common carriers are railroads, express companies, trucking companies and airlines. Unlike private or contract carriers, common carriers insure all goods they accept for shipment. Common carriers have a right to collect fees. They can place liens on goods for the amount of the shipping charge, and they can charge a "demurrage" charge for storage.

Hotels, inns, lodges and campgrounds are bailees and must provide a minimum standard of comfort, safety and sanitation. They are liable to their guests for injuries caused by their negligence and are required to use reasonable care. However, their guests do not have the rights of tenants and can be ejected for failure to pay.<sup>9</sup>

## § 29. 6. Lawyers

A lawyer is like any other business or professional who provides commercial services. If they fail to do the work contracted for (intentionally or through negligence) or if they deceptively charge for services not provided, then consumers have a right to bring a civil action in court. Such court actions must be begun within 6 years from the date of the act or omission giving rise to the injury and *not* from the discovery of the malpractice, negligence or breach of contract.<sup>10</sup> The major exceptions to this rule are for actions alleging professional negligence in the rendering of a real estate title opinion or in an action alleging professional negligence in the drafting of a last will and testament. In such cases, a court case must be brought within six (6) years of discovery.

Remember, lawyers as well as other professionals such as doctors and dentists, can perform so poorly as possibly to be in violation of the Maine Unfair Trade Practices Act<sup>11</sup> and their services may possibly come with implied warranties of merchantability and fitness for a particular purpose.<sup>12</sup> See Chapter 4 in this *Guide*.

The Board of Overseers of the Bar (P.O. Box 1820, Augusta, ME 04332-1820) conducts the Fee Arbitration Commission, which resolves fee disputes between clients and lawyers. Call 207-623-1121 for an application.

Complaints against lawyers should be first directed to the Board of Overseers of the Bar, P.O. Box 1820, Augusta, ME 04332 (207-623-1121). Typical examples of lawyer practices that are prohibited include:

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<sup>9</sup> 30-A M.R.S.A. § 3838.

<sup>10</sup> 14 M.R.S.A. § 753-A.

<sup>11</sup> 5 M.R.S.A. §§ 205-A *et seq.*

<sup>12</sup> 11 M.R.S.A. § 2-316(5).

- A. Serious neglect of a client's case or a client. Examples would be a lawyer's failure to file papers or documents with the Court within time periods prescribed by law, or persistent failure to communicate with clients on a timely basis.
- B. Failure to return a client's property on request as required by the Code of Professional Responsibility.
- C. Failure to account to clients as required by the Code of Professional Responsibility, concerning the status of funds being held by the lawyer.
- D. Commingling or failure to keep a client's funds separate from a lawyer's own funds.
- E. Engaging in work for a client notwithstanding the existence of a conflict of interests, as defined and prohibited by the Code of Professional Responsibility.

The Maine Lawyer Referral Service in Augusta is run by the Maine Bar Association and can refer you to a lawyer in your area. This lawyer will have experience in your area of concern. The cost of this program is \$25 for a half hour interview with the lawyer. The Bar will also connect you with a mediator or arbitrator, who can help resolve your dispute without going to court. There is also a \$20 fee for this service.

This program can be reached at:

Maine Lawyer Referral Service and Alternate Dispute Resolution  
 124 State Street  
 Augusta, Maine 04330  
 Telephone: 207-622-1460 or 1-800-860-1460

The Bar also provides a series of recorded messages and brochures about various areas of law. Call 207-622-1470. This service is free (unless you are making a long-distance phone call) and you can call 24 hours a day.

Some organizations which offer free legal services to persons with low income are:

Pine Tree Legal Assistance, Inc.  
 (civil cases only)  
 Augusta 207-622-4731  
 Portland 207-774-8211  
 Lewiston 207-784-1558  
 Bangor 207-942-8241  
 Rockland 207-594-8300  
 Presque Isle 207-764-4349  
 Machias 207-255-8656

Cumberland Legal Aid Clinic  
 (civil, minor criminal and divorce cases)  
 246 Deering Avenue  
 Portland, Maine 04102  
 Telephone: 207-780-4370

Legal Services for the Elderly  
 (miscellaneous cases for people over 60 years old)  
 Hot line: 1-800-750-5353 or 207-623-1797

Maine Civil Liberties Union  
 (constitutional rights and veterans classification cases)  
 97A Exchange Street  
 Portland, Maine 04101  
 Telephone: 207-774-5444

## § 29. 7. Doctors

Doctors are licensed professionals. But, like lawyers and other professionals, they are also businesspersons. If they breach their contract with you (either through negligence or failure to do the acts contracted for), they can be subject to a civil suit for damages.<sup>13</sup> Complaints against doctors can be registered with the Board of Registration in Medicine, 137 State House Station, Augusta, ME 04333-0137 (207-287-3601). The following kinds of conduct by a physician can result in a discipline action:

- A. Engaging in intemperate use of alcohol or drugs.
- B. Demonstrating incompetence in the practice of medicine through lack of adequate knowledge and skill, ability to apply principals of good medical practice, or lack of fitness and ability to discharge the duty owed by a physician to his patients, a client, or the public in general.
- C. Being convicted of a crime of dishonesty or false statement, or which relates to the practice of medicine, or which may result in imprisonment for more than one year.
- D. Engaging in false, deceptive, or misleading advertising.
- E. Prescribing narcotic, hypnotic, or other dangerous substances for other than recognized therapeutic purposes.
- F. Failing to report another physician to the Board for addiction to alcohol or other drugs or for mental illness except when that other physician is his or her patient.
- G. Failing to inform a patient whom he or she is treating for breast cancer of risk and benefits of all treatment alternatives.

## § 29. 8. Regulated Business Professions

The State has numerous licensing boards that seek to ensure that professions such as barbers, dietitians, dentists, etc. are well qualified to provide services to the public.<sup>14</sup> The various licensing boards for the State of Maine are located in the Department of Professional and Financial Regulation. Unless otherwise indicated, the address of these boards is 122 Northern Avenue, 35 State House Station, Gardiner, ME 04333-0035. Telephone: 207-624-8603. These various licensing boards are as follows:

- |    |                                  |              |
|----|----------------------------------|--------------|
| A. | Bureau of Financial Institutions | 207-624-8570 |
| B. | Bureau of Insurance              | 207-624-8478 |
| C. | Real Estate Commission           | 207-624-8516 |

<sup>13</sup> 14 M.R.S.A. § 753, 24 M.R.S.A. § 2902.

<sup>14</sup> These professions are like any other business: if they fail to provide the services contracted for or do so in a negligent manner, they can be subject to a suit for damages. Also, a serious violation of your contract or the licensing standards may also be a violation of the Maine Unfair Trade Practices Act. If consumers successfully sue under the Unfair Trade Practices Act (5 M.R.S.A § 213), they can receive not only damages or their money back but also attorney's fees. *See* Chapter 3, Maine Unfair Trade Practices.

D.	Accountants	207-624-8603
E.	Acupuncturists	207-624-8603
F.	Arborists	207-624-8603
G.	Auctioneers	207-624-8603
H.	Barbers and Cosmetologists	207-624-8603
I.	Chiropractors	207-624-8603
J.	Dietitians	207-624-8603
K.	Electricians	207-624-8603
L.	Foresters	207-624-8603
M.	Funeral Services	207-624-8603
N.	Geologists and Social Scientists	207-624-8603
O.	Itinerant Vendors	207-624-8603
P.	Land Surveyors	207-624-8603
Q.	Maine Pilots	207-624-8603
R.	Manufactured Housing	207-624-8603
S.	Nursing Home Administrators	207-624-8603
T.	Occupational Therapists	207-582-8723
U.	Oil and Solid Fuel Sellers	207-624-8603
V.	Pharmacists	207-624-8603
W.	Physical Therapists	207-624-8603
X.	Plumbers	207-624-8603
Y.	Psychiatrists	207-624-8603
Z.	Psychologists	207-624-8603
AA.	Radiologic Technicians	207-624-8603
BB.	Respiratory Care Therapists	207-624-8603
CC.	Social Workers	207-624-8603
DD.	Speech Pathologists & Audiologists	207-624-8603
EE.	Veterinarians	207-624-8603
FF.	Architects & Interior Designers	207-624-8603
GG.	Dentists	207-287-3333
HH.	Professional Engineers	207-287-3236
II.	Nurses	207-624-5275
JJ.	Optometrists	207-287-2535
KK.	Osteopaths	207-287-2480
LL.	Podiatrists	207-624-8603

MM. Office of Consumer Credit Regulation 207-624-8527

If you have a complaint against any of these licensed professionals you should contact the Licensing Board and discuss the most effective way to resolve your complaint. If the Board cannot satisfy your complaint and you still feel that you have been treated unfairly, then you can consider taking your complaint to Small Claims Court (if the amount in controversy is less than \$4,500 dollars), or by consulting with a lawyer if more money is involved.

## **§ 29. 9. Private Correspondence And Vocational Schools**

Any correspondence or vocational school which has a physical presence in Maine must be licensed and bonded by the State Department of Education.<sup>15</sup> Physical presence includes a business address or a school representative in the State. Correspondence schools located out-of-state that merely advertise in state newspapers or on state media are not required to be licensed. Violation of these licensing laws can result in a “civil violation” and a forfeiture of up to \$1,000.<sup>16</sup> Additionally, a violation of these licensing laws would most probably be an unfair trade practice violation.<sup>17</sup>

Under Maine regulations of the Department of Educational and Cultural Services, the school’s contract must tell you:

- A. The names of the courses you’ll take; the number of hours that classes meet each week or the number of lessons for home study schools.
- B. The amount of tuition, with the enrollment fee and all other charges – for equipment, books, tools, deposits, and so on – listed separately.
- C. The total cost of the course or an explanation of the payment plan if you pay installments instead of all at once.

The law also requires schools to make refunds if you change your mind. Here’s how the refunds work:

- A. You can get all your money back if classes have not started and you change your mind within three days of signing the contract.
- B. If you wait more than three days, but classes still haven’t started, you can get most of your money back. In this case the school can keep the registration fee (which cannot exceed \$100).

For information or to file complaints against vocational or correspondence schools write or call:

Department of Educational and Cultural Services  
23 State House Station  
Augusta, Maine 04333-0023  
Telephone: 207-287-5800

<sup>15</sup> 20-A M.R.S.A. §§ 9204, 9501-9507.

<sup>16</sup> 20-A M.R.S.A. §§ 9203, 9503.

<sup>17</sup> 5 M.R.S.A. § 207.

## § 29. 10. Assistive Devices For Persons With Disabilities

Pursuant to 10 M.R.S.A. §§1500-1500(F), consumers with disabilities who purchase an “assistive device” receive an express warranty for at least one year from the date of the initial set up of the assistive device for the consumer. This express warranty guarantees that the device is free from any condition or defect that substantially impairs its value to the consumer during the warranty period. If the consumer is leasing the device, then this express warranty extends for the duration of the lease.

An “assistive device” is defined as including, but not limited to, manual wheel chairs, motorized wheel chairs, motorized scooters and other aids that enhance the mobility of the individual; telephone communication devices for the deaf, or TDD assistive listening devices and other aids that enhance an individual’s ability to hear; voice synthesized computer modules, optical scanners, talking software, Braille printers and other devices that enhance a sight-impaired individual’s ability to communicate; and other assistive devices that enable a person with a disability to communicate, see, hear or maneuver. However, assistive device does *not* include a hearing aid as defined by 32 M.R.S.A. §1658(5).<sup>18</sup>

If the new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the lessor or any of the manufacturer’s authorized dealers, and makes the assistive device available for repair during the warranty period, the nonconformity must be repaired at no charge to the consumer or the funding source.

If the seller, after a reasonable number of repair attempts cannot repair the device, the manufacturer must accept the return of it and either replace the device or refund the full purchase price, at the option of the consumer.

If the consumer goes to court to enforce this law and wins, the court shall award the consumer twice the amount of any losses, plus reasonable costs and attorney’s fees.

This law is fairly complex and consumers who believe they might have been sold a defective assistive device are encouraged to read 10 M.R.S.A. §§1500-1500(F) in its entirety.

## § 29. 11. Eye Glasses

If, like many Americans, you wear eyeglasses, you probably know that comparison-shopping can help you find inexpensive, quality glasses. Your ability to comparison shop for eyeglasses is aided by a Federal Trade Commission Trade Regulation Rule that prohibits professionals who examine your eyes from requiring you to buy your glasses from them. In the past, they could keep the results of your examination and you could not do much if you did not like their prices, quality, or selection.

The law now requires eye doctors to give patients their eyeglass prescriptions at no extra cost, immediately after an eye exam. This law also applies to contact lens prescriptions.<sup>19</sup> You have a legal right to your prescription, so request it if it is not provided. With prescription in hand, you can

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<sup>18</sup> For a discussion of hearing aids, see §21.10 in this Guide.

<sup>19</sup> 32 M.R.S.A. § 3300. Except in the case of a physician who has previously seen the wearer, a contact lens prescription may not be filled by mail, but must be filled by being personally dispensed to the contact lens wearer.

shop for eyeglasses just as you would for any other product, looking for the best quality at the best price.

Consumers may also order contact lenses through the mail, as long as the mail order contact lens supplier is licensed by Maine.<sup>20</sup>

## § 29. 12. Franchise and Business Opportunities

Buying a franchise or business opportunity may be appealing to you if you want to be your own boss, but have limited capital and business experience. However, without a careful investigation before you purchase you may make a serious mistake. It is important to find out if a particular business is right for you and if it has real potential to yield the financial return you expect. A Federal Trade Commission Rule requires that franchise and business opportunity sellers provide certain information to help you in this decision.

Under the FTC rule, a franchise or business opportunity seller must give you a detailed disclosure document at least 10 business days before you pay any money or legally commit yourself to a purchase. This document gives 20 important items of information about the business, including:

- A. The names, addresses and telephone numbers of other purchasers;
- B. A fully-audited financial statement of the seller;
- C. The background and experience of the businesses' key executives;
- D. The cost required to start and maintain the business; and
- E. The responsibility you and the seller will have to each other once you buy.

The disclosure statement is a valuable tool that not only helps you obtain information about a proposed business but also assists you in comparing it with other businesses. Some franchise or business opportunity sellers may not be required to give you a disclosure document. If any franchise or business opportunity says it is not covered by the rule, you may want to verify it with the FTC, an attorney, or a business advisor. Even if the business is not legally required to give you the document, you may still want to ask for the information anyway, since it will help you make an informed investment decision.

Maine also regulates the sale of business opportunities. *See* 32 M.R.S.A. §§ 4691-4700-B. A “business opportunity” involves a wide variety of business ventures for which the purchaser pays to the seller of the business opportunity more than \$250 during a consecutive 6-month period.<sup>21</sup> A typical business opportunity would include vending machines or coin operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller.

Sellers of business opportunities must be bonded by the State for \$30,000 and also provide a disclosure statement that fully describes the nature of the business opportunity.<sup>22</sup> For example, if the seller makes claims about the potential profit of the franchise he must fully substantiate those claims in writing (*e.g.*, by disclosing how many buyers operated businesses similar to the one he is selling during the previous three years and how many of these buyers actually achieved the results

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<sup>20</sup> 32 M.R.S.A. § 2417.

<sup>21</sup> 32 M.R.S.A. § 4691. *See Fraser v. A Superior Snack, Inc.*, 704 A.2d 395, 396 (1998) (seller of marketing plan alone, even without the sale of any goods, in violation of “business opportunities” law).

<sup>22</sup> 32 M.R.S.A. § 4693.

claimed).

Violation of this Maine business franchise law is also a violation of the Maine Unfair Trade Practices Act.<sup>23</sup> If the violation is intentional it can be a Class D crime.<sup>24</sup> Business opportunities are regulated by the Maine Bureau of Financial Institutions, Office of Securities at 35 State House Station, Augusta, ME 04333-0036 (207-624-8551).

## § 29. 13. Health Spas

Consumer complaints concerning health spas are quite frequent. Often disagreements arise because the consumer did not carefully read the health spa contract. Indeed, a health spa contract offers a valuable illustration as to the many aspects consumers should consider before signing a consumer services contract. Included among these aspects are:

- A. Is everything the salesperson promised written in the contract? If a problem arises after you join, the contract will probably govern the dispute. So, if it is not written in the contract, don't rely on it.
- B. Is there a "cooling off" period? Some spas give you several days to reconsider your decision to join after you have signed the contract.
- C. Can you get a refund if you need to cancel? If you move, become disabled, or just want to stop using the spa, can you get a refund or get out of the contract? This is especially important if you choose a long-term membership.
- D. Can you join for a short time only? It may be to your advantage to pay a little money and join for only a few "trial" months. That way, if you are not enjoying the membership or using it as much as you planned, you will not be committed to many years of payments.
- E. Can you afford the payments? Take into consideration the finance charges and annual percentage rates when you figure the total cost of your membership. Figure this per-week and per-day to give you a better idea of what it will cost you to use the spa.

Remember, if you join a health spa and discover that the sales presentation was deceptive (it misrepresented conditions or failed to mention a material fact) then you may have been the victim of an unfair trade practice. A presentation is deceptive if it misrepresents conditions or fails to mention a material fact.

## § 29. 14. Water Testing Scams

Worried about the safety of your drinking water? You're not alone. Fears about the purity of our water have increased dramatically in recent years, along with news reports of leaking landfills, corroding lead pipes, and crumbling gasoline storage tanks tainting water supplies. Although most households using water from public sources should have few concerns, potentially harmful contaminants have been found in some water supplies. If you have serious questions about the safety of your drinking water, you can take the suggestions provided below and have your water tested. If necessary, you can buy a water treatment unit.

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<sup>23</sup> 32 M.R.S.A. § 4700(1).

<sup>24</sup> 32 M.R.S.A. § 4700(2).

In the case of *State v. Mountain Springs Water Treatment Co.*<sup>25</sup> the State sued for allegedly deceptive practices in selling water softeners. When Mountain Springs closed and left no assets the state went after the three companies that had financed the consumers' purchases. These companies agreed to provide \$507,771 in financial relief to 200 Maine consumers.

The suggestions below warn you about some home water testing scams, where unscrupulous sales people use scare tactics and fraudulent methods to sell their water treatment devices.

The Federal Trade Commission suggests that you take the following steps before you have your water tested or before you purchase any type of water treatment system:

- A. *Avoid "Free" Home Water Tests.* Offers to test the tap water in your home for free are almost always part of a sales promotion. More important, in-home testing does not provide the specific, in depth analysis that is required to determine if your water needs treatment and what kind of system is suited to your needs. For example, in-home water tests may only check for acidity/alkalinity, water hardness, iron, manganese, and color, but none of these is harmful. Avoid dealing with salespersons that tell you strictly on the basis of their in-home testing that your drinking water is polluted, contaminated, or bad for your family's health.
- B. *Be Wary Of Claims Of Government Approval.* Fraudulent sellers use many different sales techniques. Some fraudulent sellers claim that certain government agencies require or recommend widespread use of purification systems. Others claim that the government has approved a particular method for in-home water testing. Still others claim that the government has approved or licensed a particular water treatment or purification system. All of those claims are false. The government does not endorse water tests or water treatment products. If you see an Environmental Protection Agency (EPA) registration number on a water treatment product label, it merely means that the manufacturer has registered its product with the EPA. A registration number does not mean the EPA has tested or approved the product.
- C. *Arrange for An Independent Test.* If you are concerned about the results you got from your local water superintendent or are worried about possible contaminants in your water supply, have your water tested by a private laboratory that is certified by your state health department or environmental agency. To find out how to get your water tested you can call the Maine Department of Human Services' Health Engineering Testing lab at 1-207-287-2727 or 1-800-452-1999. You can also call the EPA's Safe Drinking Hotline at 1-800-426-4791. In the Washington, DC area, call 202-382-5533. When having your water tested, be sure to deal with the laboratory directly. Some fraudulent sellers ask for a sample of your water to send to an independent laboratory for testing, and then alter or misrepresent the laboratory's test results. You should understand that the costs of different water tests vary widely. Tests for bacteria range from \$15 to \$45, while tests for chemical contamination can cost hundreds, even thousands of dollars, depending on the depth of the analysis.
- D. *How to Seek Help.* To report problems about fraudulent sales practices, write: Federal Trade Commission, Division of Marketing Practices, Washington, DC 20580. Although the FTC cannot intervene in individual disputes, it needs to learn about home water treatment sales practices you believe to be deceptive. You can also contact the Attorney General's Consumer Protection Division at 6 State House

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<sup>25</sup> *State of Maine v. Mountain Springs Water Treatment Co.*, No. CV-95-419 (Me. Super. Ct., Kenn. Cty. 1995) (Consent Decree); *see also In the Matter of Aquion Partners* (Me. Super. Ct. Kenn. Cty., August 21, 2001) (Unfair Trade Practices Act Assurance of Discontinuance).

Station, Augusta, ME 04333, 207-626-8849 or the State Department of Human Services, Health Engineering Office at 10 State House Station, Augusta, ME 04333-0010 (Drinking Water) (207-287-2070).

## § 29. 15. Games of Chance

All gambling in Maine is regulated by the State Police. All questions concerning raffles, beano, and other games of chance should be referred to the State Police Licensing Division at 36 Hospital Street, 42 State House Station, Augusta, Maine 04333, 207-624-8775. Maine statutes regulate games of chance at 17 M.R.S.A. §§ 1831-2011. No person, firm, corporation, association or organization shall operate a game of chance unless a license is obtained from the Chief of the State Police.<sup>26</sup>

While 17 M.R.S.A. 1833 sets forth exceptions to this licensing requirement, any organization considering raising money through some form of gambling or game of chance should certainly contact the State Police to make certain that they are not violating Maine law. Violation of the game of chance statute can be a Class D crime.

## § 29. 16. Radon Gas Reduction

Breathing the air in homes with elevated levels of radon over an extended period of time increases the risk of developing lung cancer. The higher the radon concentration and the longer the time of exposure, the greater the risk. Radon is normally present either due to radon gas entering the home through the basement floor from the soil or from a privately drilled well. Radon concentration is expressed as Pico curies per liter (pCi/l). There is no known “safe level” of radioactivity. The Maine Department of Human Services has established “goal values” based on estimated health risks and economics. *However, the higher the concentration and the longer the exposure, the larger the risk.*

Two types of measurements for radon are recommended: an *initial screening* test to determine if a house may have a problem and a *follow-up* test to determine appropriate remedial action. For *screening purposes*, a house on a public water supply should perform an air radon test at the lowest livable area. A house on a private water supply should perform this same air radon test plus a water radon test; a gross alpha test is also recommended. *Follow-up* tests should be determined to better evaluate the health risk in the *living area* plus appropriate remedial action.

The Maine Public Health Laboratory at 12 State House Station, Augusta, ME 04333-0012 can provide you with test kits for all recommended air or water radon tests. The cost of these test kits is quite reasonable. For example, the water radon test kit costs \$22. The air radon test kit cost \$18. Contact the Department of Human Services, Division of Health Engineering 10 State House Station, Augusta, ME 04333-0010, 207-287-5689 for information on how to obtain these test kits and how to have the State inform you of the test results.

## § 29. 17. Lead Poisoning

Too much lead in the body can cause serious damage to the brain, kidneys, nervous system and red blood cells. High levels can cause retardation, convulsions, coma and sometimes death. Low levels can slow a child’s normal development and cause learning and behavioral problems. **Lead**

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<sup>26</sup> 17 M.R.S.A. §1832. An exception to this is “social gambling” as defined by 17-A M.R.S.A. § 952(8). “Social gambling” is gambling, or a contest of chance, in which the only participants are players and from which no personal organization receives or becomes entitled to receive something of value or any profit whatsoever, directly or indirectly, other than as a player, including selling or supplying for profit refreshments, food or drink to participants.

paint is considered one of Maine's most dangerous threats to children.

While most interior and exterior house paints sold since the mid-1970's have not contained lead, most older Maine homes still have surfaces painted with lead-based paint. Lead poisoning is caused by eating, chewing or sucking on lead painted objects such as windowsills, railings, toys, furniture, jewelry or printed material. Other sources include contaminated soil or dust and fumes created by home renovation and sand blasting. The risk of lead poisoning is increased by normal hand-to-mouth activity in young children. Renovations of older homes (e.g., painting) can often result in freeing up lead paint particles.

Maine law requires landlords to make certain disclosures to their tenants concerning lead paint. See Chapters 14 and 16 in this Guide. The Department of Human Services, Division of Health Engineering is responsible for establishing approved methods for removal, replacement, covering and disposal precautions of lead-based substances.<sup>27</sup> Lead paint removers must now be certified by the State.<sup>28</sup> The Lead Poisoning Control Act provides significant remedies to injured consumers.<sup>29</sup> Contact the DHS Indoor Air Program at 207-287-5689 or the Childhood Lead Poisoning Prevention Program at 207-287-4311.

## **§ 29. 18. Warranties For Solar Energy Equipment**

Maine law requires a minimum express warranty for the sale and installation of all solar energy equipment in Maine. This express warranty provides, at a minimum, a 5-year manufacturer's warranty against defects in materials or manufacture of solar collectors. Failure to provide such express warranties with solar energy equipment can result in a civil fine and also a violation of the Maine Unfair Trade Practices Act.<sup>30</sup>

## **§ 29. 19. Condominium Complaints**

The Maine Condominium Act<sup>31</sup> regulates the rights and responsibilities of condominium owners. As in the purchase of any real estate this office strongly recommends that prospective buyers seek the advice of a private attorney with skills in real estate matters.

## **§ 29. 20. Hotels And Motels (Vacation Rentals)**

One of the most common complaints regarding hotel or cottage accommodations involves refusal to return deposits when vacation reservations are canceled. You might think you have a good reason (e.g., a child is sick, the weather turns bad, your work intervenes) but that does not mean you are free to cancel without any penalty. Generally, hotels and motels have the right to set their own policies regarding deposit refunds. They are entitled to keep the entire deposit or the portion of it that offsets administrative costs such as bookkeeping and rental loss as a result of cancellation.<sup>32</sup> If the hotel owner or manager is able to rent your room to someone else and has no similar vacancies, you may have a legitimate claim that there has been no lost profit. However, you may find it hard to prove your claim. It's up to you to find out about the cancellation policies before

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<sup>27</sup> 22 M.R.S.A. § 1321(3).

<sup>28</sup> 22 M.R.S.A. § 1323.

<sup>29</sup> 22 M.R.S.A. § 1324-A.

<sup>30</sup> 10 M.R.S.A. §§ 1491-1494.

<sup>31</sup> 33 M.R.S.A. §§ 1603-101-604-118.

<sup>32</sup> 11 M.R.S.A. § 1-718.

you make reservations

Hotels, motels, cottages and other places of lodging must be licensed to do business in Maine.<sup>33</sup> These establishments must meet state safety and health standards. They are subject to routine inspection by state officials. If you stay at a hotel, motel, cottage or other place of lodging which seems to have health or safety violations (extreme dirtiness, mice, etc.) you should contact the Maine Bureau of Health, Division of Health Engineering at 11 State House Station, Augusta, Maine 04333 (207-287-3201).

Motels, hotels and campgrounds can refuse accommodations: because the customers cannot pay, the customer is a minor without parental written approval or possesses dangerous property, such as a firearm or explosives, or because the number in the party exceeds reasonable or statutory limits.<sup>34</sup>

## § 29. 21. Weights And Measures

In Maine, the Office of the Sealer of Weights and Measures is responsible for enforcing the State's weights and measure laws.<sup>35</sup>

State inspectors check and calibrate:

- A. All commercial large capacity scales and most small capacity scales;
- B. Liquid flow meters;
- C. LP Gas meters;
- D. Most gas pump meters;
- E. Linear measuring; and
- F. Packages for correct labeling and correct net weight and measure.

The office is also responsible for establishing standards for measurement of wood,<sup>36</sup> and the verification of radar guns used by state and local police to monitor excessive speeding. All questions and complaints should be addressed to:

Office of the Sealer of Weights and Measures  
28 State House Station  
Augusta, ME 04333-0028  
207-287-3621

Gas stations must make sure their pumps display and compute at the advertised price. If the station has mechanical pumps that are not capable of offering a cash/credit selection, then the station must designate one pump for cash and one for credit and label each as cash and credit with the offered price. Gas stations must make sure their pumps display and compute at the advertised price. If the station has mechanical pumps that are not capable of offering a cash/credit selection, then the station should designate one pump for cash and one for credit and label each as cash and credit with the offered price.

## § 29. 22. Weight Loss Claims

The FTC informs us that every year about eight million Americans enroll in some kind of structured weight-loss program involving liquid diets, special diet regimens, or medical or other

<sup>33</sup> 22 M.R.S.A. §§ 2491 *et seq.*

<sup>34</sup> 30-A M.R.S.A. § 3838.

<sup>35</sup> 10 M.R.S.A. §§ 2301-2755.

<sup>36</sup> See Chapter 19 of this Guide.

supervision. Yet weight loss experts caution against fad diets, which rarely have a permanent effect. And they recommend that very-low calorie diets be pursued only under medical supervision because of their risks. The FTC also advises consumers to be skeptical of plans or products that promote easy or effortless long-term weight loss. They just do not work, according to the agency, which oversees the advertising and marketing of foods, non-prescription drugs, medical devices and health care services. Which weight-loss programs and products should you be skeptical of? The FTC advises that you avoid products that make the following claims:

- A. Claim: “Lose weight while you sleep.” Fact: Losing weight requires significant changes affecting what kind of food—and how much—you eat. Claims for diet products and programs that promise weight loss without sacrifice or effort are bogus.
- B. Claim: “Lose weight and keep it off for good.” Fact: Weight loss maintenance requires permanent changes in what you eat and how much you exercise.
- C. Claim: “John Doe lost 84 pounds in six weeks.” Fact: Someone else’s claim of weight loss success may have little or no relevance to your own chances of success. Do not be misled.
- D. Claim: “Lose all the weight you can for just \$99.00.” Fact: There may be no hidden costs. For example, some products do not publicize the fact that you must buy pre-packaged meals from them at cost that exceed program fees.
- E. Claim: “Lose 30 pounds in just 30 days.” Fact: As a rule, the faster you loss weight, the more likely you are to gain it back. In addition, fast weight loss may harm your health.
- F. Claim: “Scientific breakthrough...medical miracle.” Fact: to loss weight, you have to reduce your intake of calories and increase your physical activity. Be skeptical of extravagant claims.

## § 29. 23. Public Utility Complaints

The Maine Public Utilities Commission (PUC) regulates the utilities that provide electric, gas, telephone and water services. The PUC does not regulate sewer districts or cable T.V. If you have a problem with your bill or service you must try to resolve it with the utility first. Ask to speak to a supervisor or manager. Press your case calmly and clearly. If you cannot agree on a solution, you have the right to file a complaint with the Consumer Assistance Division (CAD) of the PUC. Call them at 207-287-3831 or toll free at 1-800-452-4699. You can also file a complaint by visiting the PUC’s webpage on [Maine.gov/mpuc](http://Maine.gov/mpuc).

The Consumer Assistance Division can issue oral or written orders to the utility to resolve disputes, such as:

- A. Terms to reconnect service following disconnection;
- B. Payment arrangement terms;
- C. Amount of deposits;
- D. Determination of whether violations occurred; and
- E. Whether or not a disconnection should occur.

The Commission does not have the authority to order monetary damages. Such damages can only be obtained by filing a claim in court. The PUC can, however, determine if the utility has acted in accordance with its own policies and the Commission rules.

Decisions of the Consumer Assistance Division can be appealed to the Commission by either you or the utility. The office of the Maine Public Advocate may be able to help you. This independent utility “watch dog” can be reached at 207-287-2445.

Cable TV operators who also offer internet phone services are currently not subject to PUC regulation. However, pursuant to Resolve Chapter 69 (2011) the PUC has been ordered to study this issue and report to the Maine Legislature by December 31, 2011. In the meantime our advice if you have a complaint about internet telephone service that you cannot resolve is to contact the PUC’s Consumer Assistance Service (see below) and it will attempt to help you. If the PUC cannot assist you then contact the Attorney General’s Consumer Mediation Service at 626-8849, 1-800-436-2131 or [www.maine.gov/ag](http://www.maine.gov/ag).

Here is how you file a consumer complaint with the PUC:

- A. First, contact the utility and attempt to work out a solution.
- B. If you are not successful, file your complaint with the PUC’s Consumer Assistance Division (CAD). The CAD investigates complaints involving quality of service, billing disputes, appropriate applications of rates, disconnection of utility service, including cable telephone services but not cable TV or internet services.
- C. The CAD will investigate your complaint and notify you of its decision and your options for further action.

## § 29. 24. Cable Television

Pursuant to 30-A M.R.S.A. § 3008 municipalities may enact ordinances governing the franchising and regulation of cable television systems. Therefore, complaints concerning your cable television system should be first directed to *your municipal officers*. *Please note:* cable companies must disclose the name and phone number of the local municipal franchise authority.

Additionally, the legislature has enacted specific rights and protections for users of cable television systems. For example, in the event service to any subscriber is interrupted for 24 or more consecutive hours the cable television service will upon request grant that subscriber a credit or rebate.<sup>37</sup> Further, every cable television system shall keep a record of all written complaints received regarding quality of service, equipment malfunctions, billing procedures, etc. The Attorney General’s Office is authorized to receive consumer complaints concerning matters *other* than channel selection and rates.<sup>38</sup>

Violation of these specific consumer rights is also a violation of the Maine Unfair Trade Practices Act.<sup>39</sup>

Cable television companies in Maine cannot charge late fees that exceed 1.5% per month. A payment is not late until at least 30 days after the services to which late fee applies have been received by the consumer.<sup>40</sup>

Also, be wary of “negative option” plans. Cable companies cannot simply inform you about a new cable service and then bill you if you do not specifically request the service.

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<sup>37</sup> 30-A M.R.S.A. § 3010(1).

<sup>38</sup> 30-A M.R.S.A. § 3010(2).

<sup>39</sup> 30-A M.R.S.A. § 3010(7); 5 M.R.S.A. § 207.

<sup>40</sup> 30-A M.R.S.A. § 3010(6).

## § 29. 25. Furniture Movers

The Federal Motor Carrier Safety Administration (FMCSA) enforces regulations, which protect consumers on interstate moves and define the rights and responsibilities of consumers and movers. You can contact the FMCSA by calling a 24-hour toll-free hotline (888-368-7238) or accessing its Web site at <http://www.fmcsa.gov/factsfigs/moving.htm>.

The of *Rini v. United Van Lines*, 903 F. Supp. 224 (D. Mass.1995) is a good example of how both federal law and a state Unfair Trade Practices Act can provide remedies for injured consumers. In *Rini* the consumer collected \$50,000 for lost property (federal law) and then \$100,000 in damages for the mover's misrepresentations and unfair practices in the handling of the consumer's loss claim.

The main areas of concern when hiring a mover are as follows:

A. ***Binding Estimates***

Consumers should ask whether the mover will provide them with a "binding estimate." Binding estimates must clearly describe the shipment and also the services provided. When you receive a binding estimate, you cannot be required to pay any more than the amount of the estimate. To be effective, a binding estimate must be in writing and a copy given to you before you move. A copy of the binding estimate must also be attached to the bill of lading.

If you agree to a binding estimate, you are responsible for paying the charges by cash, certified check, or money order at time of delivery unless the mover agrees before you move to extend credit or to accept payment by charge card. If you are unable to pay the amount required at the time the shipment is delivered, the mover may place your shipment in storage at your expense until the charges are paid.

B. ***Non-binding Estimates of Approximate Cost***

The mover is not permitted to charge for giving a non-binding estimate. A non-binding estimate does not bind the mover. When you receive a non-binding estimate there is no guarantee that the final cost will not be more than the estimate. Non-binding estimates must be in writing and clearly describe the shipment and all services provided. If you are given a non-binding estimate, the mover cannot require you to pay more than the amount of the original estimate plus 10% at the time of delivery. You will then have at least 30 days after the date of delivery to pay any remaining charges. If you request that the mover provide more services than those included in the estimate, the mover may demand full payment for those added services at time of delivery.

C. ***Order for Service***

Moving companies are required to prepare an order for service on every shipment transported for an individual shipper. You are entitled to a copy of the order for service when it is prepared. The order for service is *not* a contract. Should your move be canceled or delayed, or if you decide not to use the services of a mover, you should promptly cancel the move.

D. ***Bill of Lading Contract***

The bill of lading *is* the *contract* between you and the mover. The mover is required by law to prepare a bill of lading for every shipment it transports. The information on the bill of lading is required to be the same information shown on the order for service. The driver who loads your shipment must give you a copy of the bill of lading before loading your furniture. You must also sign the bill of lading. *It is your responsibility to read the bill of lading before you sign it.* If you do not agree with something on the bill of lading, do not sign it until you are satisfied that the bill of lading shows what services you want. The bill of lading requires the mover to provide the services you have requested, and you must pay the mover the charges for the service. The bill of lading is an important document. Do not lose or misplace your copy.

E. ***Inventory***

It is important that you and the driver agree to complete an inventory of each item you are shipping. After completing the inventory, the driver will usually sign each page and ask you to sign each page. At the time your shipment is delivered, it is your responsibility to check the items delivered against the items listed on your inventory.

F. ***Weight***

Movers usually have a minimum weight or volume charge for transporting a shipment. Usually, a minimum is the charge for transporting a shipment of at least 500 pounds. If your shipment appears to weigh less than the movers' minimum weight, the mover is required to advise on the "order for service" of the minimum cost before agreeing to transport the shipment.

G. ***Picking Up and Delivering***

Agree with your mover on set times for pick up and delivery. You and your mover must reach an agreement as to when your shipment is to be picked up and delivered. It is your responsibility to determine on what date, or between what dates, you need to have the shipment picked up and on what date, or between what dates, you require delivery. It is the movers' responsibility to tell you if the service can be provided on or between these dates, or if not, on what other dates the service can be provided.

## H. *Filing A Claim*

If you have loss or damage of your property, you have 9 months from the date of delivery to file your claim. A claim in writing by letter to the mover is acceptable as long as it meets the following minimum requirements:

- (1) Claim is filed within the time limits specified in the bill of lading (not less than nine months).
- (2) Claim has facts sufficient to identify the shipment and items, which is the subject of the claim—i.e., shipment or bill of lading number, inventory number and description.
- (3) Claim asserts the mover is liable for alleged loss, damage, injury or delay (“You lost/...my [item, etc.] and I expect you to repair/replace.”)
- (4) Claim declares a specified or determinable amount of money for each lost/damaged item(s). (My item is worth \$\_\_\_\_.00) (*Give a grand total for all the items on your claim.*)

Be sure to send the claim form or letter with claim information directly to the mover at its main office. *Do not send the claim to the mover’s local agent.* The claim should be sent *Return-Receipt-Requested*. Movers must acknowledge, in writing, receipt of your claim within 30 days after receiving it from you. Movers are allowed 120 days from the date a claim is filed to process it to conclusion. Otherwise, the mover must give the claimant a written status report every 60 days after the end of the 120-day period.

## § 29. 26. Unsafe Consumer Products

The mission of the Consumer Product Safety Commission is to protect the public from unreasonable risks of injury and death associated with consumer products. The Commission’s objective is to reduce the estimated 28.5 million injuries and 29,600 deaths associated each year with the 15,000 different types of different products under the CPSC’s jurisdiction.

To report an unsafe consumer product or product-related injury, the consumers may call the U. S. Consumer Product Safety Commission’s toll free hot line at 1-800-638-2772. A teletypewriter for the hearing impaired is available at 1-800-638-8270. The Maine law dealing with defective or unreasonably dangerous goods is found at 14 M.R.S.A. § 221.<sup>41</sup>

In addition to faulty consumer products, federal and state agencies also seek information about unsafe foods or drinks. Here are some government agencies which can help.

- A. U.S. Department of Agriculture  
Meat and Poultry Hotline (1-800-535-4555);
- B. Food and Drug Administration (207-622-8268); [www.fda.gov](http://www.fda.gov);
- C. Maine Division of Health Engineering  
Department of Human Services (responsible for restaurant complaints) (207-287-5338).

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<sup>41</sup> See *Lorfano v. Dura Stone Steps, Inc.*, 569 A.2d 195 (Me. 1990) (Manufacturer of concrete steps did not have duty to warn of dangers posed by use of steps without handrails as those dangers were obvious and apparent to all); *Stanley v. Schiavi Mobile Homes, Inc.*, 462 A.2d 1144 (Me. 1983) (Manufacturer was found to be not liable for consumer fall from a display mobile home); *St. Germain v. Husqvarna Corp.*, 544 A.2 1283 (Me. 1988) (Evidence was sufficient to permit the finding that chainsaw was in defective condition and unreasonably dangerous to user).

## § 29. 27. Gold And Platinum Cards

If you are looking for credit, be wary of some “gold” or “platinum” card offers promising to get you credit cards or improve your credit rating. While sounding like general-purpose credit cards, some gold or platinum cards only permit you to buy merchandise from specialized catalogs. Marketers of these cards often promise that participating in their credit programs you will be able to get major credit cards such as an unsecured Visa or MasterCard, lines of credit from national specialty and department stores, better credit reports, and other financial benefits.

Rarely, however, can you improve your credit rating or obtain major credit cards by purchasing gold or platinum credit cards. Often the only major credit card you might obtain is a secured credit card that requires you to make a substantial security deposit with a bank. In addition, many of these credit card offerors do not report to credit bureaus, as they promise, and their cards seldom help secure lines of credit with other creditors.

Such “gold” and “platinum” credit card offers are usually promoted through television or newspaper advertisements, direct mail, or telephone solicitations using automatic dialing machines and recorded messages. People who live in lower-income areas are often the target of these sales pitches.

## § 29. 28. Life And Health Insurance

Purchasing life and health insurance is a very complicated process. Sellers will often contact you in your home and persuade you that a particular policy provides good benefits for the money when, in fact, the opposite is true.<sup>42</sup>

There are even greater opportunities for unfair practices when selling health insurance. The Federal government has taken a strong stand in this area. The Omnibus Reconciliation Act of 1990 standardizes Medicare supplement insurance, or Medigap, into 10 benefits packages and strengthens the minimum standards which insurers must meet before they can sell insurance. The American Association of Retired Persons (AARP) has published the award winning Consumers’ Guide “Medigap: Medicare Supplement Insurance” which explains this new Medigap legislation. To obtain a copy, write to AARP Fulfillment, 601 E Street, N.W., Washington, DC 20049. Request Publication D 14042.

Your best source of Maine information if you have a question about an insurance purchase is the State Bureau of Insurance. It maintains a Consumer Services Division (34 State House Station), Augusta, Maine 04333-0006, phone: 207-582-8707). Maine has also enacted strict laws against unfair deceptive practices when selling insurance.<sup>43</sup>

## § 29. 29. Employment Agencies

Maine law<sup>44</sup> protects consumers from unfair practices by employment agencies. For example, the placement fee charged to an applicant for employment to an employment agency shall not exceed the equivalent of the first full week’s gross wages.

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<sup>42</sup> In late 1990, Washington State’s Supreme Court upheld a unique State Insurance Regulation that defines as an unfair practice the sale of whole life insurance policies valued under \$25,000 when benefits will not exceed a specified multiple of premiums. The regulation is significant because deceptive sales practices need not be present: It is unfair simply when the benefits will never substantially exceed paid-in premiums. *See Omega National Insurance Co., v. Marquardt*, 779 P.2d 235 (1990).

<sup>43</sup> *See* 24-A M.R.S.A. §§ 2151-2183, Trade Practice and Fraud.

<sup>44</sup> 26 M.R.S.A. §§ 611-613. *See Marquis v. Farm Family Mutual Insurance Co.*, 628 A.2d 644, 648 (Me. 1993) (every insurer owes a duty to act in good faith and deal fairly with the insured).

## § 29. 30. Solicitations In The Guise Of Invoices

A common scam is to send a bill to a business for a product or service it never asked for. Some of these phony bills are supplies that were never ordered or for advertising in a bogus law enforcement directory. How can you spot such scams? The Better Business Bureau offers the following good advice:

### **Are these things legal?**

There are laws and regulations against the deception. It is illegal to mail a bill, invoice or statement of account due that is in fact a solicitation unless it clearly bears either of two disclaimers in specified type size, layout and color.

Mailing solicitations that do not meet requirements can result in a U.S. Postal Service stop order under which responses would be returned to the senders, thus cutting off the soliciting firm's source of money.

Either one of the following disclaimers must be on any mailed solicitation that looks like a bill:

1. "THIS IS A SOLICITATION FOR THE ORDER OF GOODS OR SERVICES, OR BOTH, AND NOT A BILL, INVOICE, OR STATEMENT OF ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE ANY PAYMENTS ON ACCOUNT OF THIS OFFER UNLESS YOU ACCEPT THIS OFFER."

or:

2. "THIS IS NOT A BILL. THIS IS A SOLICITATION. YOU ARE UNDER NO OBLIGATION TO PAY UNLESS YOU ACCEPT THIS OFFER."

**One of these two disclaimers must be conspicuously printed on the face of the solicitation in at least 30-point type.**

That's type:

# THIS BIG.

Print color must be reproductive on copying machines and cannot be obscured by folding or other means. If the solicitation is more than one page, the disclaimer must appear on each one, and, if it is perforated, the required language must appear on each section that could be construed as a bill. Finally, regulations prohibit any language that modifies or qualifies the disclaimer, such as "legal notice required by law."

### **Be on guard.**

Of course there will always be schemers who flout the regulations and continue to send disguised solicitations. The best protection against them is knowledge and vigilance. Your accounting department or the persons responsible for paying bills should be made aware of the fake bill racket and watch out for dubious bills from businesses with whom you have not done business before. If you become aware of the scheme only after payments have been made on the fraudulent invoices, immediately contact the Chief Postal Inspector, your local police department and the

BBB. In most cases you will be instructed to stop payment on your check or money order. The postal authorities should also inform you if any recourse is possible. If potential losses are considerable, contact your attorney for help in expediting your case.

For further information on how to respond to such scams you may contact either the U.S. Postal Inspector at Gateway 2 Center, 9<sup>th</sup> Floor So., Newark, N.J. 07175-003, 1-800-372-8347 or the Better Business Bureau at 20 Park Plaza, Suite 820, Boston, MA 02116-4344 (617-426-9000).

## § 29. 31. Gift Certificates Cannot Expire

Gift cards or gift certificates cannot have an expiration date. However, after two years the value of unclaimed gift certificates that have expired or not been claimed are considered “abandon property” and *must* be turned over to the State.<sup>45</sup> See Unclaimed Property Act, 33 M.R.S.A. § 1953(1)(G). So, as a practical matter, a business should not ignore a consumer who presents it with an expired gift certificate. The Abandon Property Division of the State Department of Treasury has a short hand-summary of how gift certificates should be handled. It likes to say there are four “Rs” when it comes to business’s alternatives in gift certificates. They are:

- A. Redeem the certificate and make the customer happy;
- B. Refund to the consumer the purchase price;
- C. Re-issue the gift certificate (its face value); or
- D. Report to the Abandon Property Division by sending its cash value.

How should you handle a common problem of possessing a gift certificate to a restaurant that has shut its doors? Your options are not good. Most of the time, when a local restaurant closes it’s because it ran out of money. So you’re going to have a difficult time recovering the amount of your gift certificate. If the company files for bankruptcy, you can put in a claim (all you need to do is file Form B10 available on the Federal Court system website, [www.uscourts.gov](http://www.uscourts.gov)). However, if a company has filed for bankruptcy then there is probably not going to be much money for you. But if the company hasn’t filed for bankruptcy, you can complain to the Maine Attorney General’s Consumer Protection Division office and it might be able to help.

What if the restaurant has closed down but has re-opened in another location, under a different name? Then you have a good claim that your gift certificate should be valid at the new restaurant. Again, contact the Attorney General’s office if you think you are being treated unfairly.

For additional information on gift cards and state and federal laws regulating them, go to [www.maine.gov/treasurer/unclaimed\\_property](http://www.maine.gov/treasurer/unclaimed_property).

## § 29. 32. Arbitration Clauses

It is increasingly common that a seller’s express warranty will require that any disputes be resolved through Binding Arbitration, thereby denying a consumer the right to receive a court’s decision if the warranty has been breached. In some cases a Binding Arbitration clause may be so onerous as to be unenforceable. If you are concerned about this issue, we advise you to consult an

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<sup>45</sup> The only exception is a gift certificate which was donated or issued as a promotional item. Since no money was exchanged for the gift certificate, there is no obligation after the expiration date.

attorney.<sup>46</sup>

In a 2011 case, *AT&T Mobility, LLC v. Concepcion*, the U.S. Supreme Court held that the Federal Arbitration Act (“FAA”) preempted California statutory law and allowed arbitration agreements in which a consumer is required to agree to not file a consumer class action. The California courts had found that such contract clauses were illegal.

In a 5-4 ruling, the Supreme Court said that California’s ruling “interferes with arbitration” and “stands as an obstacle to the accomplishment and execution of the Federal Arbitration Act,” including the faster resolution of disputes. Still, the court acknowledged that arbitration agreements *may* be invalidated under the FAA by “generally applicable contract defenses,” such as “fraud, duress or unconscionability.”

In a 2005 case,<sup>47</sup> the Maine Law Court cited a Montana decision that suggested the following factors could be considered in deciding whether a mandatory arbitration clause was unconscionable:

...the Montana Supreme Court suggested eight factual issues that should be addressed in determining whether a mandatory arbitration clause and a contract of adhesion may be unconscionable:

1. Are potential arbitrators disproportionately employed in one or the other party’s field of business;
2. Do arbitrators tend to favor “repeat players” as opposed to workers or consumers who are unlikely to be involved in arbitration again? In other words, is there a tendency by arbitrators to avoid decisions which will result in the loss of future contracts for their services?
3. What are the filing fees for arbitration compared to the filing fees in Montana’s district courts?
4. What are arbitrators’ fees? Do they make small claims prohibitive? Do they discriminate against consumers or workers of modest means?
5. Are arbitration proceedings shrouded in secrecy so as to seal illegal, oppressive or wrongful business practices?
6. To what extent are arbitrators bound by the law?
7. To what extent are arbitrators bound by the facts?

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<sup>46</sup> The various courts that have ruled on this issue have been divided when warranties have been the issue. Some arguments for not enforcing an express warranty’s requirement for Binding Arbitration are:

- A. It is fundamentally unfair to deny consumer’s access to the courts when they’ve been sold a defective item and that such arbitration requirements are illegal “adhesion contracts.”
- B. A breach of warranty can be so severe as to also violate the Maine Unfair Trade Practices Act (UTPA) (5 M.R.S.A. § 207) and consumers cannot be forced to waive their rights under the UTPA.
- C. *Implied* warranties on consumer goods cannot be waived in Maine (except on used cars) and an express warranty’s arbitration requirement cannot trump a consumer’s implied warranty right to go to court.
- D. The Magnuson-Moss Warranty Federal Trade Commission Improvement Act preserves for consumers the right to ultimately have their disputes with warranties settled in court and therefore precludes binding arbitration clauses. See *Borowiec v. Gateway 2000, Inc.*, 772 N.E. 256, 259-60 (Ill. 2002); *Pitchford v. Oakwood Mobile Homes, Inc.*, 124 F. Supp. 2d 1322 (M.D. Va. 2000). But other jurisdictions have held that binding arbitration clauses must be honored and consumers cannot go to court for a breach of warranty.

<sup>47</sup> *Barrett v. MacDonald Investments, Inc.*, 870 A.2d 146, 155(Me. 2005).

8. What opportunity do claimants have to discover the facts necessary to prove a claim such as a company's business practices?

## § 29. 33. Sending Money Via Western Union and MoneyGram

Increasingly, scammers are using cash sending services such as Western Union and MoneyGram as a means to steal your money. Our advice is simple: *never* send money through such services to somebody you do not personally know and trust. Be especially wary of requests for money from Canada, Jamaica and African nations such as Nigeria. Here are a few more “nevers” for you to follow:

- A. Never send money to pay taxes or fees on lottery or prize winnings;
- B. Never send your banking information to unknown individuals or businesses;
- C. Never send money in advance to obtain a loan or credit card;
- D. Never send money because of an emergency situation unless you have verified that the emergency is real and not a scam;
- E. Never send money from a check that you have deposited in your account until it *officially* clears, which will often take several weeks;
- F. Never send money for any gambling or other activities prohibited by law;
- G. Never send money to a lover you've met over the internet but not in person.

This problem of fraud-induced transfers is substantial. In 2003, a survey conducted in seven states of transfers over \$300 to Canada by Western Union estimated that over 29% of those transfers were fraud-induced, resulting in consumer losses in the year 2002 of approximately \$113 million. That was 2003. It has undoubtedly become worse.

Both MoneyGram and Western Union have a current policy of reimbursing the amount of any transfer to a consumer who requests, prior to pick up, that the transfer be stopped. So act quickly if you think you've been scammed. Consumers can also get back the transfer fees if the consumer reasonably claims that the transfer was fraud-induced.

But the harsh reality is, once you have wired the money to a scammer, you likely will never see it again. Scammers use wire transfer companies Western Union and MoneyGram because such transfers are fast and there are transfer agents in most communities and funds can be picked up in multiple locations. What are some of the top scams that involve money wire transfers? Here is a listing:

- A. **Advance Fee/Prepayment:** In this type of fraud the victim sends money to a fraudster in advance of receiving a certain product or service. The fraudster might ask the victim for a small fee in advance to open a new credit or to secure a loan. Some examples of this type of fraud are credit cards, loans, investments, etc.
- B. **Mystery Shopping:** There are multiple ways this type of fraud can occur. A common one is when fraudsters contact victims through employment websites and ask them to evaluate the Western Union Money Transfer service. The fraudster sends the victim a check and instructs them to deposit a check and use the funds to send a money transfer. The victim sends the money transfer and the fraudster picks it up and when the check bounces the victim is left responsible.

- C. **Over payment:** This is a common fraud in which the victim is sent a check in payment of a service or product that appears to valid, but will eventually bounce. Typically, the amount of the check exceeds what the victim expects to receive and he or she is instructed to send the excess to the fraudster. When the check bounces, the victim is left responsible.
- D. **Employment:** The fraudster will send a check to the victim who has accepted a job. The check can be for multiple reasons such as a signing bonus, supplies, etc. The victim will be instructed to deposit the check and use the money for any of these reasons and then send the remaining funds to the fraudster. The check will bounce, the fraudster has your money, and you're left to pay the bank in full.
- E. **Emergency Funds:** This usually occurs in two ways. Fraudsters will either make you believe that they are someone you know or acting on behalf of someone you know. The fraud is based on you sending money for an urgent situation or emergency. The fraudster will create a story such as the need for bail, fines, medical expenses, etc. The fraudster may also use social media sites to further this type of fraud.
- F. **Grandparents:** This is a variation on the Emergency Funds fraud. The fraudster will contact grandparents and impersonate either their grandchildren or person of authority such as law enforcement, medical professional or an attorney. The fraudster describes an urgent situation or emergency that requires money to be sent immediately.
- G. **Lottery/Prize:** Victims are informed that they have won a large lottery prize or sweepstakes. The victim receives a check for part of the winnings from the fraudster and is told to pay a small amount to cover taxes and/or processing fees. The victim uses the check to pay for the taxes or processing fees and is left responsible for the bounced check.
- H. **Rental Property:** Fraudsters advertise a rental property usually at a considerable discount. This allows the fraudsters to receive as many replies or inquiries as possible. The fraudster goes to great lengths to make this property look as legitimate as possible and might include pictures, floor plans, etc. To make sure you express an interest in the property the fraudster will ask you to send money for a deposit, verify funds, or other legitimate sounding reasons.

## § 29. 34. Self-Service Storage

Maine has enacted the Maine Self-Service Storage Act, 10 M.R.S.A. §§1371-1376. This law sets forth regulations on late fees, restrictions on use, liens on the stored property if the occupant is in default and other matters.

For example, this law allows a late fee of \$20 for each late rental payment or 20% of the amount of each rental payment, whichever is greater.<sup>48</sup> Also, it can be an Unfair Trade Practice for both the occupant or the operator to not safeguard personal information stored in the facility.<sup>49</sup>

## § 29. 35. Gasoline Prices and Profiteering in Necessities

A common consumer complaint is that gasoline prices are too high. Is there any law that restricts how much you can be charged when you pull up to the gasoline pump? The simple answer

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<sup>48</sup> 10 M.R.S.A. §1376(3).

<sup>49</sup> 10 M.R.S.A. §1377.

is that there is no state law restricting the amount of profit a retailer can set for gasoline or any other retail product. Therefore, a retailer can charge any price above the wholesale cost for the product.<sup>50</sup>

However, if a natural or manmade emergency occurs, the state's "price gouging" law may come into effect. If the governor declares an emergency, then sellers of "necessities" such as food, gasoline, medicine, clothing, heat and power cannot charge an "unconscionable price."<sup>51</sup>

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<sup>50</sup> The Federal Trade Commission monitors the wholesale and retail prices of gasoline and diesel fuel in order to help detect possible anti-competitive activities and determine whether law enforcement investigation is warranted. For more information go to: <http://www.ftc.gov/os/2011/09/110901gasolinepricereport.pvf>.

<sup>51</sup> See 10 M.R.S.A. §1105, Profiteering in Necessities. A sign that a price may be illegal after the Governor has declared an emergency is when it exceeds by more than 15% the price at which similar goods or services were offered for sale or sold by the seller immediately prior to the beginning of the declared emergency.