



126th MAINE LEGISLATURE

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Legislative Document

No. 346

H.P. 251

House of Representatives, February 12, 2013

**An Act To Require the Collection of Sales Tax by any Business
Making Sales to Persons in Maine**

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative KNIGHT of Livermore Falls.
Cosponsored by Senator KATZ of Kennebec and
Representatives: BENNETT of Kennebunk, BERRY of Bowdoinham, CHASE of Wells,
KESCHL of Belgrade, NUTTING of Oakland, WILSON of Augusta, Senators: President
ALFOND of Cumberland, FLOOD of Kennebec.

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

2 **Sec. 1. 36 MRSA §1752, sub-§10**, as repealed and replaced by PL 1997, c. 393,
3 Pt. A, §41, is amended to read:

4 **10. Retailer.** "Retailer" means a person who makes retail sales ~~or~~ and who is
5 ~~required to register by section 1754-A or 1754-B or who is registered under section~~
6 ~~1756;~~

7 A. Required to register by section 1754-A or 1754-B; or

8 B. Registered under section 1756.

9 **Sec. 2. 36 MRSA §1754-B, sub-§1, ¶D**, as amended by PL 2005, c. 218, §18, is
10 further amended to read:

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

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

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

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

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

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

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

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

35 **Sec. 4. 36 MRSA §1754-B, sub-§1, ¶G**, as amended by PL 2007, c. 328, §5, is
36 further amended to read:

37 G. Every seller of tangible personal property or taxable services that has a substantial
38 physical presence in this State sufficient to satisfy the requirements of the due process

1 and commerce clauses of the United States Constitution. ~~The following activities do~~
2 ~~not constitute a substantial physical presence for the purpose of this paragraph:~~

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

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

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

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

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

12 **Sec. 5. 36 MRSA §1754-B, sub-§1, ¶H**, as amended by PL 2009, c. 373, §5, is
13 repealed.

14 **Sec. 6. 36 MRSA §1754-B, sub-§1-A** is enacted to read:

15 **1-A. Persons presumptively required to register.** This subsection creates a
16 rebuttable presumption that a seller not subject to subsection 1 is engaged in the business
17 of selling tangible personal property or taxable services for use in this State and is
18 required to register as a retailer with the assessor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 **Sec. 7. 36 MRSA §1754-B, sub-§4** is enacted to read:

