

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
109TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. S-251)

COMMITTEE AMENDMENT "A" to S.P. 465, L.D. 1499, Bill,
"AN ACT to Regulate the Sale of Franchises."

Amend the bill by striking out all of the title and
inserting in its place the following:

'AN ACT to Regulate the Sale of Business Opportunities.'

Further amend the bill by striking out everything after
the amending clause and inserting in its place the following:

CHAPTER 69-B

REGULATIONS OF THE SALE OF BUSINESS OPPORTUNITIES

§4691. Definitions

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

1. Affiliated person. "Affiliated person" means a
person who:

A. Directly or indirectly controls, is controlled by
or is under common control with, a seller;

B. Directly or indirectly owns, controls or holds
with power to vote, 10% or more of the outstanding
voting securities of a seller; or

C. Has, in common with a seller, one or more partners,
officers, directors, trustees, branch managers or other
persons occupying similar status or performing similar
functions.

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2. Business day. "Business day" means any day other than Saturday, Sunday or the following national holidays: New Year's Day; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving and Christmas.

3. Business opportunity. "Business opportunity" means:
A. The sale, lease or distribution of any products, equipment, supplies, goods, commodities, including plants used for cultivation and animals used for breeding, or services which are sold, leased or distributed by the seller or an affiliated person, to the purchaser for the purpose of enabling the purchaser to start a business, and in which the seller represents:

(1) That the seller or an affiliated person will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices or currency-operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller;

(2) That the seller or an affiliated person will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser using in whole or in part, the supplies, services or chattels sold to the purchaser;

(3) That the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity;

(4) That if the purchaser is unsatisfied with the business opportunity, the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies or chattels supplied by the seller; or

(5) That upon payment by the purchaser of a fee or sum of money which exceeds \$50 to the seller or an affiliated person, the seller or an affiliated person will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity, provided that this subsection shall not apply to the sale of a marketing program made in conjunction with the licensing of a registered trademark or service mark;

B. "Business opportunity" does not include the sale of an ongoing business when the owner of that business sells and intends to sell only that one business opportunity; nor does it include the not-for-profit sale of sales demonstration equipment, materials or samples, for a total price of \$100 or less.

4. Permanent place of business. "Permanent place of business" means any building or other permanently affixed structure, including a home residence, which 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 or promotion of business opportunities.

5. Purchaser. "Purchaser" means a person who purchases, leases or communicates with a seller concerning the purchase or lease of a business opportunity.

6. Seller. "Seller" means a person who sells, leases or distributes or offers to sell, lease or distribute, advertises or undertakes any other act relating to the promotion of business opportunities.

§4692. When disclosure statement must be provided

Sellers shall provide all purchasers with a disclosure statement at the earlier of at least 72 hours before the purchaser signs a business opportunity agreement, at least 72 hours before the purchaser makes payment of any consideration in connection with the sales or proposed sale of the business opportunity or the first face-to-face meeting between the seller and the purchaser which is held for the purpose of discussing the sale or proposed sale of a business opportunity.

§4693. Required disclosure

The disclosure statement shall include the following information accurately, clearly and concisely stated, in a legible written document, except that a disclosure statement meeting the criteria of any rules or regulations of the Federal Trade Commission requiring disclosure statements by sellers shall also fulfill the requirements of this section to the extent that the substituted

disclosure statement meets or exceeds the requirements of this section:

1. Information. The official name, address and principal place of business of the seller and any affiliated person;

2. Notice. The following notice:

As required by Maine law, we have secured a bond in the amount of \$30,000 issued by _____ (Name and address of surety company) before signing a contract to purchase a business opportunity, you should check with the surety company to determine the current status of the bond,

or

As required by Maine law, we maintain an escrow account in the amount of \$30,000 in the _____ (Name and address of licensed bank or savings institute) .

Before signing a contract to purchase a business opportunity, you should check with the surety company to determine the current status of the escrow account.

3. Statement. A statement describing:

A. The total funds which shall be paid by the purchaser to the seller or an affiliated person in order to obtain or commence the business opportunity operation, such as deposits, down payments and fees;

B. As to each of these fees or deposits, whether they are refundable or returnable and under what conditions they may be refunded or returned; and

C. The recurring fees required to be paid by the purchaser to the seller, affiliated person or unaffiliated 3rd person;

4. Statement of cost. A statement describing and listing the cost to the purchaser of any services, supplies, products, inventories, signs, real estate, fixtures or equipment relating to the establishment or operation of the business opportunity which the purchaser is directly or indirectly required by the seller to purchase, lease or rent from any person, including a list of the names and addresses of those persons and whether they are affiliated persons;

5. Description of services provided. A description of the services that the seller or affiliated person provides to purchasers, including, but not limited to, a description of the services which the seller or affiliated persons provides with regard to securing retail outlets or sites for purchasers;

6. Limitations. A statement describing whether the purchaser is:

A. Limited in the goods or services which he may offer for sale;

B. Limited in the customers to whom he may sell goods or services;

C. Limited in the geographic area in which he may sell goods or services; or

D. Granted territorial protection by the seller, by which the seller will not establish another, or more than any fixed number of, similar business opportunities in a particular area or territory;

7. Other purchasers. The names and last known addresses of the greater of:

A. All purchasers of the seller who currently operate or have operated a business opportunity in the State within the previous 5 years; or

B. The 10 purchasers who currently operate or have operated a business opportunity nearest the prospective purchaser's intended location within the previous 5 years;

8. Statement of conditions of termination. A statement disclosing the conditions under which the business opportunity may be terminated by either the seller or purchaser;

9. Copy of contracts. A copy of all contracts or agreements relating to the sale of the business opportunity;

10. Sales. If the seller makes or intends to make any representations, oral or written, to a prospective purchaser concerning:

A. Estimated, projected or potential sales, income and gross or net profit for that prospective purchaser; or

B. The specific level of sales, income and gross or net profits of existing business opportunities:

A statement:

(1) Describing the representations;

(2) Setting forth the total number of purchasers operating business opportunities similar to that being offered by the seller who have received earnings in the amount or range specified within

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the 3 years preceding the date of the dis-
closure statement;

(3) Setting forth the total number of
purchasers operating business opportunities
similar to that being offered by the seller
within the 3 years preceding the date of the
disclosure statement; and

(4) Containing the following notice in
conspicuous type:

We are required by law to have in our
possession materials which constitute a
reasonable basis for representations
concerning estimated, projected and
actual sales, income and gross or net
profits. We will provide you with this
information upon your request.

11. Trademarks of seller. If the seller uses the trademark,
service mark, trade name, logotype, advertising or other
commercial symbol of any business which does not either control
the ownership interest in the seller or accept responsibility for
all representations made by the seller in regard to the business
opportunity, a statement that the owner of the commercial symbol
is not involved in the sale of the business opportunity; and

12. Notice. The following notice:

Pursuant to Maine statute you have the right to avoid the contract for purchase of this business opportunity within 3 business days following the signing of the contract. You should obtain and study a copy of the law regulating the sale of business opportunities before you attempt to avoid the contract. This law is found in the Maine Revised Statutes, Title 32, section 4698.

§4694. Printed notice

The following notice shall appear, in conspicuous type, on the front page of the disclosure statement:

DISCLOSURE REQUIRED BY MAINE LAW

The information contained in this disclosure statement has not been verified by the State of Maine. The State has not reviewed and does not approve or endorse any business opportunity. The disclosure statement contains information which should be carefully read before agreeing to purchase a business opportunity.

§4695. Bonds and escrow accounts

All sellers shall obtain either a surety bond issued by a surety company authorized to do business in this State or have established an escrow account with a licensed bank or savings institute located in this State. The surety bond or escrow account shall be in an amount of not less than \$30,000.

Any person who is damaged by a violation of any provision of this chapter, by the seller's breach of the contract for the business opportunity or by the seller's violation of Title 5, section 207, relating to the sale, offer for sale or promotion of a business opportunity may bring an action against the bond or escrow account to recover damages suffered. The Attorney General may bring an action against the bond or escrow account under Title 5, section 209, to recover damages relating to the sale or offer for sale of a business opportunity suffered by persons in this State. The aggregate liability of the surety or bank or savings institute shall be only for actual damages and shall not exceed the amount of the bond or escrow account.

1. Termination. Such a bond or escrow account shall not be terminated, cancelled or returned to the seller until:

A. Twelve months following expiration of the seller's registration under section 4696; and

B. The Department of Business Regulation certifies to the surety company issuing the bond or the licensed bank or savings institute holding the escrow account that it has no knowledge of any outstanding judgment, claims or notices of claims against the seller in this State.

2. Exception. No seller maintaining a permanent place of business in this State shall be required either to maintain an escrow account or bond or to issue the disclosure contained in section 4693, subsection 2.

§4696. Registration

Every seller shall register with the Department of Business Regulation prior to selling, offering to sell advertising or undertaking any other act relating to the promotion of business opportunities in this State. Registration shall be complete upon ^{paying} a \$25 fee, filing a copy of the disclosure statement required by section 4692 and providing evidence of a bond or escrow account satisfying the requirements of section 4695. The seller shall update the disclosure statement as material information changes.

§4697. Renewal of registration

Sellers shall annually renew their registration by paying a \$10 fee, filing a copy of a current disclosure statement and providing evidence of a bond or escrow account satisfying the requirements of section 4695.

§4698. Right of avoidance

A purchaser may avoid a contract for the purchase of a business opportunity by giving written notice of avoidance to the seller, by ordinary mail postage prepaid within 3 full business days following the day on which the contract was made. The notice shall be sufficient if addressed to the seller at the address given either in the disclosure statement or on the contract. Notice of avoidance shall be effective upon deposit in the United States mail. The notice of avoidance need not take a particular form and is sufficient if it expresses the intention of the purchaser not to be bound by the contract.

1. Return of goods. Within 20 days after avoidance is effective, the purchaser shall tender to the seller any goods or commodities delivered to the purchaser pursuant to the contract. Tender is sufficient if the purchaser makes the goods or commodities available to the seller at the purchaser's residence or business. If the seller fails to take possession of the goods or commodities within 20 days after the avoidance is effective, the goods or commodities shall become the property of the purchaser without obligation to pay for them.

2. Return of funds. Within 20 days after a notice of avoidance is effective, the seller shall return to the purchaser the full amount of any fees or deposits which were given by the purchaser to the seller or an affiliated person under the contract, unless the purchaser refuses to tender goods or commodities pursuant to subsection 1.

§4699. Prohibited acts

It shall be unlawful for any seller:

1. Noncompliance. To fail to comply with any provision of this chapter, including, but not limited to:

A. Failure to register pursuant to sections 4696 and 4697;

B. Failure to provide all purchasers with the disclosure statement required by section 4692;

C. Failure to secure a bond or an escrow account as required by section 4695; and

D. Failure to return funds after a contract is avoided pursuant to section 4698;

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2. Misrepresentation of sales, income and profits. To make any representation concerning estimated, projected or actual sales, income and gross or net profits unless, at the time the representation is made, the representation is relevant to the geographic market in which the business opportunity is to be located, a reasonable basis exists for the representations, the seller has in its possession material which constitutes a reasonable basis for the representation and the seller makes that material available to any prospective purchaser or the State upon their request;

3. Use of trademark. To use the trademark, service mark, trade name, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all misrepresentations made by the seller in regard to the business opportunity, unless the seller notifies all prospective purchasers, in writing, that the owner of the commercial symbol is not involved in the sales of the business opportunity; and

4. Misleading representations. To make any false, misleading or deceptive representations concerning the business opportunity.

§4700. Remedies

1. Violation. Any violation of this chapter shall constitute a violation of Unfair Trade Practices , Title 5, chapter 10.

, 2. Class D crime. An intentional violation of this chapter shall be a class D. crime.

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3. Temporary restraining order. Upon application to the Attorney General, the Superior Court shall issue a temporary restraining order, under Unfair Trade Practices, Title 5, section 209, enjoining any franchise seller who has committed an act prohibited by section 4699, subsection 1, paragraphs A, B or C, from engaging in any conduct relating to the sale, offering for sale or promotion of business opportunities in this State until such time as the seller satisfies the court that it has complied with the provisions of this chapter. The Superior Court shall grant such a temporary restraining order without requiring a showing of immediate and irreparable harm or injury.

§4700-A. Service of process

The Department of Business Regulation shall be an agent of each seller who sells, offers for sale, advertises or promotes business opportunities in this State for service or any process, notice or demand required or permitted by law to be served and this service shall be binding upon the seller. Service of any such process, notice or demand shall be made as provided for service upon the Secretary of State under the Maine Rules of Civil Procedure, Rule 4(d)(8).

Statement of Fact

The purpose of this amendment is to provide consumers with adequate protection against unfair and deceptive practices in the sale of business opportunities such as vending machines.

Reported by the Committee on Business Legislation.

Reproduced and distributed pursuant to Senate Rule 11-A