

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1499

S. P. 465

In Senate, March 26, 1979

Referred to the Committee on Business Legislation. Sent down for concurrence and ordered printed.

Presented by Senator Trafton of Androscoggin.

Cosponsors: Senator Chapman of Sagadahoc and Senator Clark of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Regulate the Sale of Franchises.

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

32 MRSA c. 69-B is enacted to read:

CHAPTER 69-B

REGULATIONS OF THE SALE OF FRANCHISES

§ 4691. Definitions

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

1. **Affiliated person.** "Affiliated person" shall mean a person who:

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

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

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

2. Franchise. “Franchise” shall mean any continuing commercial arrangement whereby:

A. A franchisee offers, sells or distributes to any person other than a franchisor goods, services or commodities, including plants used for cultivation and animals used for breeding, which are:

- (1) Supplied by the franchisor;
- (2) Supplied by an affiliated person with whom the franchisee is required or advised to do business by the franchisor;
- (3) Sold or distributed through vending machines, racks, display cases or any other sales displays supplied by the franchisor; or
- (4) Sold or distributed through vending machines, racks, display cases or any other sales displays supplied by an affiliated person with whom the franchisee is required or advised to do business by the franchisor;

B. The franchisor:

- (1) Secures for the franchisee 2 or more retail outlets or accounts for goods, commodities or services;
- (2) Secures for the franchisee 2 or more locations or sites for vending machines, racks, display cases or any other sales displays used by the franchisee in the offering, sale or distribution of goods, commodities or services; or
- (3) Represents, orally or in writing, to the franchisee that it will provide or offer assistance in securing the location or sites referred to in subparagraph (1); and

C. The franchisee is required as a condition of obtaining or commencing the franchise operation to make a payment or commitment to pay to the franchisor or affiliated person a sum of \$500 or greater.

3. Franchisee. “Franchisee” shall mean a person who purchases, leases or communicates with a franchisor concerning the purchase or lease of a franchise.

4. Franchisor. “Franchisor” shall mean a person who sells, offers to sell, advertises or undertakes any other act relating to the promotion of franchises.

5. Permanent place of business. “Permanent place of business” shall mean 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 franchises.

§ 4692. When disclosure statement must be provided

Franchisors shall provide all franchisees with a disclosure statement at the earlier of at least 72 hours before the franchisee signs a franchise agreement, at

least 72 hours before the franchisee makes payment of any consideration in connection with the sales or proposed sale of the franchise or the first face-to-face meeting between the franchisor and the franchisee which is held for the purpose of discussing the sale or proposed sale of a franchise.

§ 4693. Required disclosures

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 regulation of the Federal Trade Commission requiring disclosure statements by franchisors shall also fulfill the requirements of this section:

1. **Information.** The official name, address and principal place of business of the franchisor 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 franchise, you should check with the surety company to determine the current status of the bond.

or

As required by Maine law, we maintain a trust 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 franchise, you should check with the surety company to determine the current status of the trust account.

3. **Statement.** A statement describing:

A. The total funds which must be paid by the franchisee to the franchisor or an affiliated person in order to obtain or commence the franchise operation, such as deposits, down payments and franchise 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 franchisee to the franchisor, affiliated person or unaffiliated 3rd person.

4. **Statement of cost.** A statement describing and listing the cost to the franchisee of any services, supplies, products, inventories, signs, real estate, fixtures or equipment relating to the establishment or operation of the franchise business which the franchisee is directly or indirectly required by the franchisor 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 franchisor or affiliated person provides to franchisees, including, but not limited

to, a description of the services which the franchisor or affiliated persons provide with regard to securing retail outlets or sites for franchisees.

6. **Limitations.** A statement describing whether the franchisee 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 franchisor by which the franchisor will not establish another, or more than any fixed number of, similar franchises in a particular area or territory.

7. **Other franchisees.** The names, addresses and telephone numbers of the greater of:

- A. All franchisees of the franchisor who currently operate or have operated a franchise in the State within the previous 5 years; or
- B. The 10 franchisees who currently operate or have operated a franchise nearest the prospective franchisee's intended location within the previous 5 years.

8. **Statement of conditions of termination.** A statement disclosing the conditions under which the franchise may be terminated by either the franchisor or franchisee.

9. **Copy of contracts.** A copy of all contracts or agreements relating to the sale of the franchise.

10. **Sales.** If the franchisor makes or intends to make any representations, oral or written, to a prospective franchisee concerning:

- A. Estimated, projected or potential sales, income and gross or net profit for that prospective franchisee; or
- B. The specific level of sales, income and gross or net profits of existing franchises.

A statement:

- (1) Describing such representations;
- (2) Setting forth the total number of franchisees operating franchises similar to that being offered by the franchisor who have received earnings in the amount of range specified within the 3 years preceding the date of the disclosure statement;
- (3) Setting forth the total number of franchisees operating franchises similar to that being offered by the franchisor 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 franchisor. If the franchisor 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 franchisor or accept responsibility for all representations made by the franchisor in regard to the franchise, a statement that the owner of the commercial symbol is not involved in the sale of the franchise.

§ 4694. Printed notice

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

DISCLOSURES 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 franchise. The disclosure statement contains information which should be carefully read before agreeing to purchase a franchise.

§ 4695. Bonds and trust accounts

All franchisors shall obtain either a surety bond issued by a surety company authorized to do business in this State or have established a trust account with a licensed bank or savings institute located in this State. The surety bond or trust 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 franchisor's breach of the contract for the franchise or by the franchisor's violation of Title 5, section 207, relating to the sale, offer for sale or promotion of a franchise may bring an action against the bond or trust account to recover damages suffered. The Attorney General may bring an action against the bond under Title 5, section 209, to recover damages, relating to the sale or offer for sale of a franchise, suffered by persons in this State. The aggregate liability of the surety or trustee shall be only for actual damages and shall not exceed the amount of the bond or trust account.

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

A. Twelve months following expiration of the franchisor's registration under either this section or 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 trust account that it has no knowledge of any outstanding judgment, claims or notices of claims against the franchisor.

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

§ 4696. Registration

Every franchisor 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 franchises 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 satisfying the requirements of section 4695. The franchisor shall update the disclosure statement as material information changes.

§ 4697. Renewal of registration

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

§ 4698. Right of avoidance

A franchisee may avoid a contract for the purchase of a franchise by giving written notice of avoidance to the franchisor, 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 franchisor 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 franchisee not to be bound by the contract.

1. Return of goods. Within 20 days after avoidance is effective, the franchisee shall tender to the franchisor any goods or commodities delivered to the franchisee pursuant to the contract. Tender is sufficient if the franchisee makes such goods or commodities available to the franchisor at the franchisee's residence or business. If the franchisor 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 franchisee without obligation to pay for them.

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

§ 4699. Prohibited acts

It shall be unlawful for any franchisor:

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 prospective franchisees with the disclosure statement required by section 4692;

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

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

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 franchise is to be located, a reasonable basis exists for the representations, the franchisor has in its possession material which constitutes a reasonable basis for the representation and the franchisor makes that material available to any prospective franchisee 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 franchisor or accept responsibility for all misrepresentations made by the franchisor in regard to the franchise, unless the franchisor notifies all prospective franchisees, in writing, that the owner of the commercial symbol is not involved in the sales of the franchise; and

4. **Misleading representations.** To make any false, misleading or deceptive representations concerning the franchise.

§ 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.

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 franchisor 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 franchises in this State until such time as the franchisor 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 franchisor who sells, offers for sale, advertises or promotes franchises in this State for service of any process, notice or demand required or permitted by law to be

served and this service shall be binding upon the franchisor. 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 bill is to regulate the sale of franchises.