

MAINE STATE LEGISLATURE

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OK
R.O.S.

L.D. 364

(Filing No. S-155)

STATE OF MAINE
SENATE
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 127, L.D. 364, Bill, "An
Act to Include Snowmobiles under the Franchise Laws"

Amend the bill by striking out the title and substituting
the following:

'An Act to Create a Franchise Law for Power Equipment, Machinery
and Appliances'

Further amend the bill by striking out everything after the
enacting clause and before the statement of fact and inserting in
its place the following:

'Sec. 1. 10 MRSA c. 211-A is enacted to read:

CHAPTER 211-A

FRANCHISE LAWS FOR POWER EQUIPMENT,
MACHINERY AND APPLIANCES

§1361. Definitions

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

1. Dealer. "Dealer" means a person who sells goods or
solicits or advertises the sale of goods to the public. "Dealer"
does not include receivers, trustees, administrators, executors,
guardians or other persons appointed by or acting under judgment,
decree or order of any court nor does it include public officers
performing their duties as officers.

2. Distributor. "Distributor" means a person who sells or
distributes goods to dealers of those goods.

3. Franchise. "Franchise" means an oral or written
arrangement for a definite or indefinite period pursuant to which
a manufacturer grants to a dealer or distributor of goods a
license to use a trade name, trademark, service mark or related

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characteristic and in which there is a community of interest in the marketing of goods and related services at wholesale, retail, by leasing or otherwise.

4. **Franchisee.** "Franchisee" means a person, dealer or distributor of goods to whom a franchise is offered or granted.

5. **Franchisor.** "Franchisor" means a manufacturer who grants a franchise to a distributor or dealer of goods.

6. **Fraud.** "Fraud" includes, in addition to its normal legal connotation, a misrepresentation, whether intentionally false or due to gross negligence, of a material fact, a promise or a representation not made honestly and in good faith and an intentional failure to disclose a material fact.

7. **Good faith.** "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade as defined and interpreted in the Uniform Commercial Code, Title 11, section 2-103, subsection (1), paragraph (b).

8. **Goods.** "Goods" means residential, recreational, agricultural, farm, commercial or business equipment, machinery or appliances that use electricity, gas, wood, a petroleum product or a derivative of a petroleum product, for operation. "Goods" does not include motor vehicles as defined in section 1171, subsection 11.

9. **Manufacturer.** "Manufacturer" means a person, partnership, firm, association, corporation or trust, resident or nonresident, who manufactures, assembles or imports goods for distribution through distributors or a partnership, firm, association, joint venture, corporation or trust, resident or nonresident, that is controlled by such an entity.

10. **Person.** "Person" means a natural person, corporation, partnership, trust or other entity and, in the case of an entity, includes any other entity in which it has a majority interest or effective control as well as the individual officers, directors and other persons in active control of the activities of each entity.

11. **Sale.** "Sale" means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or otherwise, of goods or interest in goods or of any franchise related to those goods and any option, subscription or other contract, solicitation looking to a sale or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of goods or equipment or a franchise with respect to those goods or equipment, with or as a

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bonus on account of a sale, is deemed a sale of the goods, equipment or franchise.

§1362. Civil remedies

A dealer, distributor or franchisee who has been damaged by violation of this chapter may bring an action to enjoin the violation and to recover damages arising from the violation. A final judgment, order or decree rendered against a person in a civil, criminal or administrative proceeding under the federal antitrust laws, the Federal Trade Commission Act, this chapter or any other state law is regarded as prima facie evidence against that person, subject to the conditions under the federal antitrust laws, 15 United States Code, Section 16.

§1363. Prohibited conduct

The following are unfair methods of competition and unfair and deceptive practices.

1. Damage to public. It is unlawful for a manufacturer, distributor or dealer to engage in an action that is arbitrary, in bad faith or unconscionable and that causes damage to another manufacturer, distributor or dealer or to the public.

2. Coercion involving deliveries and orders. It is unlawful for a manufacturer or an officer, agent or other representative of a manufacturer to coerce or attempt to coerce a dealer or distributor:

A. To order or accept delivery of goods or parts or accessories for goods or other commodities that the distributor or dealer has not voluntarily ordered; or

B. To order goods or a commodity for a person.

3. Certain interference in business. It is unlawful for a manufacturer or an officer, agent or other representative of a manufacturer:

A. To coerce or attempt to coerce a distributor or dealer to enter into an agreement with that manufacturer or officer, agent or other representative or to act in a manner that is prejudicial to a distributor or dealer by threatening to cancel a franchise or a contractual agreement between the manufacturer and the distributor or dealer. However, notice in good faith to a distributor or dealer of violation of any terms or provisions of a franchise or contractual agreement does not constitute a violation of this chapter;

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2 B. To cancel, terminate, fail to renew or refuse to
4 continue a franchise relationship with a distributor or
6 dealer, notwithstanding the terms, provisions or conditions
 of an agreement or franchise or the terms or provisions of a
 waiver, unless a manufacturer:

8 (1) Has satisfied the notice requirement of section
10 1366;

12 (2) Has acted in good faith as defined in this
14 chapter; and

16 (3) Has good cause for the cancellation, termination,
18 nonrenewal or noncontinuance; or

20 C. To terminate, fail to renew or refuse to continue any
22 franchise relationship with a distributor or dealer,
24 notwithstanding the terms, provisions or conditions of an
 agreement or franchise or the terms or provisions of a
 waiver, without good cause. The manufacturer has good cause
 for a termination, cancellation, nonrenewal or
 noncontinuance as follows.

26 (1) Failure by the distributor or dealer to comply
28 with a provision of the franchise agreement that is
30 reasonable and of material significance to the
32 franchise relationship when the manufacturer first
 acquired actual or constructive knowledge of the
 failure not more than 180 days before the date on which
 written notification is given pursuant to section 1366
 is good cause.

34 (2) If the failure by the distributor or dealer, as
36 set forth in subparagraph (1), relates to the
38 performance by the distributor or dealer in sales or
40 service, then good cause is the failure of the
 distributor or dealer to carry out effectively the
 performance provisions of the franchise when:

42 (a) The distributor or dealer was notified by the
44 manufacturer in writing of that failure, the
46 notification stated that notice was provided of
48 failure of performance pursuant to this section
 and the distributor or dealer was given a
 reasonable opportunity for a period of not less
 than 6 months to make good-faith efforts to carry
 out the performance provisions;

(b) The failure continued within the period that began not more than 180 days before the date on which notification of termination, cancellation or nonrenewal was given pursuant to section 1366; and

(c) The distributor or dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to the distributor or dealer.

(3) There is good cause when the manufacturer and the dealer or distributor agree not to renew the franchise.

(4) There is good cause when the manufacturer discontinues production or distribution of the franchise goods.

§1364. Agreements subject to this chapter

Written or oral agreements between a manufacturer and a distributor or dealer, including but not limited to franchise offerings, franchise agreements, agreements for sales of goods, advertising, leases or mortgages of goods, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts and all other agreements in which the manufacturer has a direct or indirect interest, are subject to this chapter.

§1365. Franchise interest; vested rights

Notwithstanding any other provision of law, it is unlawful for the manufacturer or franchisor, without due cause, to terminate a franchise or to fail to renew a franchise on terms then equally available to all its distributors or dealers.

§1366. Notice form, delivery and content

All notices of termination or nonrenewal required by this chapter must:

1. Delivery. Be sent by registered, certified or other receipted mail, delivered by telegram or personally delivered to the distributor or dealer; and

2. Statement of intent. Contain a statement of intent to terminate or not renew the franchise together with the reasons for termination or nonrenewal and the effective date of the termination, nonrenewal or expiration.

§1367. Manufacturer's warranty obligations

2 A manufacturer shall honor, in a timely fashion, an
4 obligation to dealers or distributors to replace goods, reimburse
6 or pay costs and expenses or provide services arising as a result
 of a warranty, franchise agreement or other agreement subject to
 this chapter.

8 **§1368. Public policy**

10 A contract or part of a contract or activity undertaken
12 pursuant to a contract in violation of this chapter is deemed
 against public policy and is void and unenforceable.

14 **§1369. Statute of limitation**

16 Actions arising out of any provision of this chapter must be
18 commenced within 2 years after the cause of action accrues;
20 however, if a person liable under this chapter conceals the cause
22 of action from the person entitled to bring that action, the
24 period prior to the discovery of that cause of action is excluded
26 in determining the time allowed for commencement of the action.
28 If a cause of action accrues during the pendency of a civil,
 criminal or administrative proceeding against a person brought by
 the Federal Government or any of its agencies under the antitrust
 laws, the Federal Trade Commission Act or any other federal act,
 or the laws of the State related to antitrust laws or to
 franchising, that action may be commenced within one year after
 the final disposition of the civil, criminal or administrative
 proceeding.

30 **§1370. Penalty**

32 Violation of this chapter constitutes an unfair trade
34 practice under the Maine Unfair Trade Practices Act, Title 5,
36 chapter 10.

38 **FISCAL NOTE**

40 The additional costs to handle complaints under the Maine
42 Unfair Trade Practices Act can be absorbed by the Department of
 the Attorney General utilizing existing budgeted resources.

44 The additional workload and administrative costs associated
46 with the minimal number of new cases filed in the court system
 can be absorbed within the budgeted resources of the Judicial
48 Department.'

STATEMENT OF FACT

2 The bill incorporated snowmobiles in the definition of
4 motor vehicle under the motor vehicle franchise law. This
6 amendment creates a franchise law for any electric or
gasoline-powered equipment, machinery or appliance except motor
vehicles.

8 The amendment does the following:

10 1. It prohibits a manufacturer from requiring that a
12 franchisee enter into agreements or order unwanted goods and
accessories;

14 2. It requires a manufacturer to provide prior notice and
16 to act in good faith and with good cause before it cancels,
terminates or fails to renew a franchise;

18 3. It requires a manufacturer to honor warranty obligations
20 in a timely fashion; and

22 4. It establishes a 2-year statute of limitations for any
provisions of the new franchise law.

Reported by Senator Cianchette for the Committee on Business
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