

MAINE STATE LEGISLATURE

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L.D. 1916

DATE: 3/30 /94

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1407, L.D. 1916, Bill, "An Act to Create a Franchise Practices Act"

Amend the amendment by striking out the substitute title and replacing it with the following:

'Resolve, To Establish a Food Franchise Fact-finding Panel'

Further amend the amendment by striking out everything after the substitute title and before the statement of fact and inserting in its place the following:

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

'Sec. 1. Panel created and charged. Resolved: That the Food Franchise Fact-finding Panel, to be referred to in this resolve as the "panel," is created to examine, analyze and report on issues relating to franchising restaurants with objective of ascertaining the type and scope of franchise relations experienced by Maine food franchisees and their franchisors and to ensure the maximization of business-to-business resolution of identified problems; and be it further

Sec. 2. Composition of panel. Resolved: That the panel is composed of 9 members, 5 appointed by the Governor, 2 of whom must be franchisors, 2 of whom must be franchisees and one who must be a Retired Justice of the Supreme Judicial Court or the Superior Court; and 2 franchisors and 2 franchisees jointly appointed by the President of the Senate and the Speaker of the House of Representatives. Two of the franchisors must be Maine-based. In no event may a franchise system be permitted more than one franchisor representative and one franchisee

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representative. The Retired Justice shall act as chair of the
panel.

All appointments must be made not later than 90 days
following the adjournment sine die of the Second Regular Session
of the 116th Legislature. Upon appointment of the members, the
Commissioner of Economic and Community Development shall call the
first meeting not later than 100 days following the adjournment
sine die of the Second Regular Session of the 116th Legislature.
Thereafter, the panel shall meet at such times and in such
locations in the State as may be convenient. The panel shall
conclude its work by November 30, 1994; and be it further

Sec. 3. Report. Resolved: That the panel shall release by
September 16, 1994, a fact-finding report to the Joint Standing
Committee on Business Legislation and to the Commissioner of
Economic and Community Development detailing its review of
franchising in the State. Not later than November 11, 1994, the
panel shall release its recommendations to the Joint Standing
Committee on Business Legislation and to the Commissioner of
Economic and Community Development detailing what, if any, action
should be taken to ensure continued growth and vitality of food
franchising in Maine; and be it further

Sec. 4. Scope of review of the panel. Resolved: That the panel is
charged with the responsibility to make findings of fact and
recommendations based on its collection and study of the
following data:

1. The size and scope of food franchising in the State,
including job creation, annual revenues, sales taxes and other
economic consequences of franchised restaurant growth and
development;

2. The existing protections, statutory and injunctive
relief, in Maine and federal laws, currently available to Maine
food franchisees;

3. The nature and scope of the relationships between
franchisors and franchisees, including evidence of the failure by
either party to a franchise agreement to comply with the terms of
the franchise agreement and disputes regarding jurisdiction,
termination, transfer, encroachment, nonrenewal, right of
association and survivorship;

4. The nature and scope of dispute resolution mechanisms
available to franchisors and franchisees, including ombudsman
programs, mediation and arbitration and how these mechanisms have
been utilized by Maine franchisors and franchisees; and

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2 5. The possible consequences, intended and unintended, of
4 enacting legislation that would impact or alter the relationship
between franchisors and franchisees operating in the State; and
be it further

6 **Sec. 5. Information confidential. Resolved:** That any person
8 submitting records, correspondence or testimony to the panel that
10 pertain to that person's financial or tax status, to private
12 contracts entered into by that person, to trade secrets or to any
other matter customarily regarded as confidential business
information may request that these records be kept confidential
and not be open for public inspection; and be it further

14 **Sec. 6. Conduct of hearing and receipt of information. Resolved:**
16 That, when requested by a person submitting records,
18 correspondence or testimony to the panel as set forth in section
20 5 of this resolve, the meeting must be conducted in a manner so
as to preserve the confidentiality of the records, correspondence
and testimony. If required to assure confidentiality, the
Retired Justice is authorized to proceed in camera and without
other panel members; and be it further

22 **Sec. 7. Disclosure permitted. Resolved:** That, notwithstanding
24 sections 5 and 6 of this resolve, information otherwise
26 confidential under those sections may be disclosed:

28 1. To authorized officers and employees of State Government
for authorized use;

30 2. Pursuant to a subpoena, request for production of
32 documents, warrant or other order by competent authority, as long
as any such order appears to have first been served on the person
to whom the confidential information sought pertains or belongs
34 and as long as any such order appears on its face or otherwise to
have been issued or made upon lawful authority; or

36 3. Upon written authorization of release of the
38 confidential information by the person or persons to whom such
information pertains; and be it further

40 **Sec. 8. Discrimination against persons providing information
42 prohibited. Resolved:** That no person may discharge, terminate,
44 transfer, fail to renew an agreement, prevent succession to an
agreement, threaten or coerce another person regarding that
46 person's business relationships within a food franchise system
solely because:

48 1. The person, acting in good faith, or a person acting on
behalf of the person, reports orally or in writing to the panel

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2 what the person has reasonable cause to believe is a violation of
a law or rule adopted under the laws of this State, a political
4 subdivision of this State or the United States;

6 2. The person acting in good faith, or a person acting on
behalf of the person, reports to the panel, orally or in writing,
8 what the person has reasonable cause to believe is a condition,
practice or breach of an agreement that would put at risk the
10 food franchise business relationship about which that person is
reporting; or

12 3. The person is requested to participate in the
14 fact-finding of the panel or in a court action; and be it further

16 **Sec. 9. Staff assistance. Resolved:** That the panel shall request
staffing and clerical assistance from the Department of Economic
18 and Community Development; and be it further

20 **Sec. 10. Compensation. Resolved:** That except for the Retired
Justice, all members of the panel serve without compensation.
22 The Retired Justice is entitled to receive compensation at the
rate paid to Active Retired Justices of the Maine Supreme
24 Judicial Court and reimbursement for travel and other necessary
expenses upon application to the Department of Economic and
26 Community Development; and be it further

28 **Sec. 11. Funding. Resolved:** That the Department of Economic
and Community Development may accept on behalf of the panel
30 grants and other sources of outside funding to pay to carry out
the panel's activities. Before acceptance of the funds, the
32 department shall examine whether accepting funds from a source
will risk undue influence on the panel's work and report. If the
34 department determines that accepting funds from the source will
cause this risk, the department may not approve the funding
36 source. The department shall administer any outside funds
acquired for the conduct of the panel's activities; and be it
38 further

40 **Sec. 12. Allocation. Resolved:** That the following funds are
allocated from Other Special Revenue to carry out the purposes of
42 this resolve.

1994-95

44 **ECONOMIC AND COMMUNITY**
46 **DEVELOPMENT, DEPARTMENT OF**

48 **Office of Business Development**

50	Personal Services	\$900
	All Other	700

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Provides funds for the Food Franchise Fact-finding Panel for the per diem and expenses of the Retired Justice member and miscellaneous panel expenses.

**DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
TOTAL**

\$1,600'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

1994-95

APPROPRIATIONS/ALLOCATIONS

Other Funds \$1,600

This bill includes an Other Special Revenue funds allocation of \$1,600 in fiscal year 1994-95 to the Department of Economic and Community Development for the Food Franchise Fact-finding Panel for the per diem and expenses of the Retired Justice member of the panel and miscellaneous panel expenses. If the department is unable to identify any outside sources of funding for the panel, the department can absorb these costs and the cost of providing staff assistance utilizing existing budgeted resources.'

STATEMENT OF FACT

This amendment replaces the committee amendment and the text of the bill. This amendment establishes a fact-finding panel to review and ascertain the nature of food franchising in Maine. The panel will consist of 9 members: 4 franchisors, 4 franchisees and a Retired Justice of the Supreme Judicial Court or Superior Court. The panel is authorized to receive information about franchise relationships, their importance to the State's economy and specifically to gather facts about jurisdiction, termination, transfer, encroachment, nonrenewal, right of association and survivorship issues and any disputes between franchisors and franchisees involving these issues.

This amendment further provides for confidentiality by allowing any persons providing information to request that the information be kept confidential; that they be allowed to present their information only to the Retired Justice; and that their

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2 providing information to the panel can not be used against them
3 by other persons. The panel is to report its findings to the
4 Joint Standing Committee on Business Legislation and to the
5 Department of Economic and Community Development. The department
6 is to staff the panel and may receive funds from outside sources
7 to cover expenses.

8 This amendment also adds an allocation section and strikes
9 and replaces the fiscal note to the bill.

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SPONSORED BY:

(Representative J. L. LIBBY)

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TOWN: Kennebunk

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