

MAINE STATE LEGISLATURE

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RES

L.D. 1916

DATE: 4/5/94

(Filing No. H-1047)

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

HOUSE AMENDMENT "C" 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 the 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

HOUSE AMENDMENT

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

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

Sec. 5. Information confidential. Resolved: That any person submitting records, correspondence or testimony to the panel that pertain to that person's financial or tax status, to private 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

Sec. 6. Conduct of hearing and receipt of information. Resolved: That, when requested by a person submitting records, correspondence or testimony to the panel as set forth in section 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

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

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

2. Pursuant to a subpoena, request for production of 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 and as long as any such order appears on its face or otherwise to have been issued or made upon lawful authority; or

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

Sec. 8. Discrimination against persons providing information prohibited. Resolved: That no person may discriminate by discharging, terminating, transferring, failing to renew an agreement, preventing succession to an agreement, threatening or coercing another person regarding that person's business relationships within a food franchise system solely because:

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

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
subdivision of this State or the United States;

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

3. The person is requested to participate in the
fact-finding of the panel or in a court action.

Enforcement of the terms and provisions of a franchise
agreement may not be deemed discrimination under this section;
and be it further

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

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

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

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

1994-95

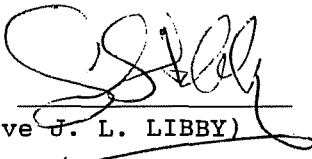
ECONOMIC AND COMMUNITY
DEVELOPMENT, DEPARTMENT OF

HOUSE AMENDMENT "C" to COMMITTEE AMENDMENT "A" to H.P. 1407,
L.D. 1916

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

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

SPONSORED BY:


(Representative J. L. LIBBY)

TOWN: Kennebunk