

# MAINE STATE LEGISLATURE

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L.D. 1916

DATE: 3/31/94

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STATE OF MAINE  
SENATE  
116TH LEGISLATURE  
SECOND REGULAR SESSION

SENATE AMENDMENT "A" 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

**SENATE AMENDMENT**

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

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

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

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

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

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

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

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

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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

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1407,  
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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  
subdivision of this State or the United States;

4  
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.

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

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

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

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

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

1994-95

48 **ECONOMIC AND COMMUNITY**  
50 **DEVELOPMENT, DEPARTMENT OF**

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1407,  
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**Office of Business Development**

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Personal Services \$900  
All Other 700

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.

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2 This amendment further provides for confidentiality by  
3 allowing any persons providing information to request that the  
4 information be kept confidential; that they be allowed to present  
5 their information only to the Retired Justice; and that their  
6 providing information to the panel can not be used against them  
7 by other persons. The panel is to report its findings to the  
8 Joint Standing Committee on Business Legislation and to the  
9 Department of Economic and Community Development. The department  
10 is to staff the panel and may receive funds from outside sources  
11 to cover expenses.

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

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SPONSORED BY:

(Senator BUTLAND)

20

COUNTY: Cumberland

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