

MAINE STATE LEGISLATURE

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L.D. 1916

DATE: 4/8/94

(Filing No. S-596)

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STATE OF MAINE
SENATE
116TH LEGISLATURE
SECOND REGULAR SESSION

SENATE 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:

'An Act Relating to Jurisdiction and Franchise Litigation'

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

'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'Sec. 1. 10 MRSA c. 211-A, as enacted by PL 1993, c. 195, §1, is repealed.

Sec. 2. 10 MRSA c. 212-B is enacted to read:

CHAPTER 212-B

JURISDICTION FOR FRANCHISE LITIGATION

§1391. Short title

This chapter may be known and cited as the "Franchise Jurisdiction Act."

§1392. Definitions

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

SENATE AMENDMENT

1 1. Franchise. "Franchise" means a contract or agreement,
2 express or implied, between 2 or more persons by which:

4 A. A franchisee is granted the right to engage in a
5 business, the primary purpose of which is the preparation
6 and sale of prepared food to the general public under a
7 marketing plan prescribed in substantial part by a
8 franchisor;

10 B. The operation of the franchisee's business pursuant to
11 such a plan or system is substantially associated with the
12 franchisor's trademark, service mark, trade name, logotype,
13 advertising or other commercial symbol designating the
14 franchisor or its affiliate; and

16 C. The franchisee is required to pay, directly or
17 indirectly, a franchise fee.

18 "Franchise" does not include any franchise or contract regulated
19 under chapter 204, 215 or 308 or Title 28-A, chapter 57.
20 "Franchise" does not include lease departments, licenses or
21 concessions at or with a general merchandise retail establishment
22 when that lease department, license or concession is incidental
23 and ancillary to the general commercial operation of that retail
24 establishment. Sales of a leased department, license or
25 concession are incidental and ancillary to the general commercial
26 operation of a retail establishment if they amount to less than
27 10% of that establishment's sales.

30 2. Franchisee. "Franchisee" means a person to whom a
31 franchise is offered or granted. "Franchisee" includes:

32 A. A subfranchisor with regard to its relationship with a
33 franchisor; and

34 B. A subfranchisee with regard to its relationship with a
35 subfranchisor.

38 3. Franchise fee. "Franchise fee" means a direct or
39 indirect payment to purchase or operate a franchise. "Franchise
40 fee" does not include any of the following:

41 A. Payment of a reasonable service charge to the issuer of
42 a credit card by an establishment accepting the credit card;

43 B. Payment to a trading stamp company by a person issuing
44 trading stamps in connection with a retail sale;

45 C. An agreement to purchase at a bona fide wholesale price
46 a reasonable quantity of tangible goods for resale;

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D. The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements, real property, supplies or other materials reasonably necessary to enter into or continue a business;

E. Payments by a purchaser pursuant to a bona fide loan from a seller to the purchaser;

F. Payment of rent that reflects payment for the economic value of leased, real or personal property; or

G. The purchase or agreement to purchase promotional or demonstration supplies, materials or equipment furnished at fair market value and not intended for resale.

4. Franchisor. "Franchisor" means a person who grants a franchise or a master franchise, or an affiliate of such a person. "Franchisor" includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in the chapter.

5. Subfranchisee. "Subfranchisee" means a person who is granted a franchise from a subfranchisor.

6. Subfranchisor. "Subfranchisor" means a person who is granted the right to sell or negotiate the sale of franchises pursuant to an agreement with a franchisor.

§1393. Jurisdiction and nonjudicial resolution of disputes

A franchisee whose franchise business operates in this State may sue a franchisor in any court of competent jurisdiction in this State. A provision in a franchise agreement restricting jurisdiction over court actions to a forum outside this State or excluding or limiting either party's access to the courts of this State for the resolution of court actions is void with respect to a claim otherwise enforceable under this chapter or the laws of this State. This section does not apply to agreements between the parties to a franchise agreement for arbitration, mediation or other nonjudicial resolution of disputes.'

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

FISCAL NOTE

This bill may increase the number of jury trials. The Judicial Department may require additional General Fund appropriations to cover the additional costs associated with

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SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1407,
L.D. 1916

these trials. Additional filing fees may increase General Fund
revenue by minor amounts.' '

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STATEMENT OF FACT

This amendment replaces the committee amendment and the
bill. The amendment provides that a franchisee operating in this
State may sue a franchisor in any court of competent jurisdiction
in this State and that any provision attempting to limit
jurisdiction to a foreign forum is void.

SPONSORED BY: CLS
(Senator SUMMERS)

COUNTY: Cumberland