

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

R. G. G.

L.D. 1916

DATE: 3/24/94

(Filing No. H- 912 )

M A J O R I T Y  
BUSINESS LEGISLATION

Reproduced and distributed under the direction of the Clerk of the House.

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

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

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

'An Act to Create a Law Governing Prepared Food Franchise Practices'

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. 212-B is enacted to read:

CHAPTER 212-B

PREPARED FOOD FRANCHISE PRACTICES

§1391. Purpose

1. Purpose. This Chapter promotes greater fairness and equity in franchise relationships, establishes minimum standards of conduct in franchise practices, strengthens private remedies against fraudulent or unlawful actions and provides consumers the greater benefits that flow from equitable franchise relationships.

**COMMITTEE AMENDMENT**

§1392. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 6. Good cause. "Good cause" means a failure by a  
36 franchisee to comply with a reasonable provision of the franchise  
agreement that is materially significant to the franchise  
38 relationship.

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

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

52 9. Sale, transfer or assignment. "Sale, transfer or  
assignment" means any disposition of a franchise or any interest

in a franchise, in trust or otherwise, with or without consideration, including, but not limited to, a bequest, an inheritance, a gift, an exchange, a lease or a license.

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

**11. 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. Application**

**1. Application to new or existing franchises operated in the State.** This chapter applies to any franchise agreement entered into after the effective date of this section. Sections 1394, 1397, 1398, 1399 and 1399-A also apply to existing franchise agreements in relation to conduct or transactions that occur after the effective date of this section. Any new or existing franchise must be operated in the State. For purposes of this chapter, the franchise is operated in this State only if the premises from which the franchise is operated is physically located in this State. A franchise, including marketing rights in or to the State, is considered to be operated in this State only if the franchisee has a place of business physically located in this State. This chapter does not apply to a franchise solely because an agreement relating to the franchise provides that the agreement is subject to or governed by the laws of this State. The provisions of this chapter do not apply to any existing or future contracts between state franchisors and out-of-state franchisees.

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

**2. Limitations on application.** This chapter does not apply to an agreement between a certificate of approval holder and a wholesaler licensee pursuant to Title 28-A, chapter 57; to an agreement between a motor vehicle dealer or franchisee and a manufacturer, distributor, wholesaler, distribution branch or division, factory branch or division, wholesale branch or division or franchisor, pursuant to chapter 204; or to an agreement pursuant to chapter 215 or 308 involving fuel distribution or sales.

**§1394. Jurisdiction**

A provision in a franchise agreement restricting jurisdiction of courts to a forum outside this State or excluding or limiting either party's access to the courts of this State is void with respect to a claim otherwise enforceable under this chapter or the laws of this State.

**§1395. Waiver of liability prohibited**

A condition, stipulation or provision requiring a franchisee to waive compliance with or relieve a person of a duty or liability imposed by or a right provided by this chapter or ordered under this chapter is void. This section does not affect the settlement of disputes, claims or civil lawsuits arising out of or brought pursuant to this chapter.

**§1396. Right to association**

A franchisor may not restrict a franchisee from associating with other franchisees or from participating in a trade association or retaliate against a franchisee for exercising its right to associate. Violations of this section and sections 1397, 1398, 1399 or 1399-A constitute unfair methods of competition and unfair and deceptive practices.

**§1397. Termination, cancellation and nonrenewal**

The following provisions govern the termination, cancellation and nonrenewal of franchises.

**1. Termination or cancellation; burden of proof; notice.**

It is unlawful for a franchisor to terminate or cancel a franchise prior to the expiration of its term except for good cause and in good faith. The franchisor has the burden of proof for showing that it has acted in good faith, that it has complied with the notice requirements and that there was good cause for terminating, cancelling or not renewing a franchise.

A. A franchisor must provide a franchisee with written notice at least 90 days prior to termination or cancellation of a franchise for good cause. After service or written notice, the franchisee has a reasonable period of time to cure, which may not be less than 60 days.

B. Notwithstanding paragraph A, a franchisor may immediately terminate or cancel a franchise if any of the following apply:

(1) The franchisee or the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent;

2           (2) The franchisee voluntarily abandons the franchise  
4           by failing to operate the business for 7 consecutive  
6           business days during which the franchisee is required  
8           to operate the business under the terms of the  
          franchise, unless that failure to operate is due to  
          circumstances beyond the control of the franchisee;

10           (3) The franchised business or business premises of  
12           the franchisee are lawfully seized, taken over or  
          foreclosed by a government authority or official;

14           (4) The franchised business or business premises of  
16           the franchise are seized, taken over or foreclosed by a  
          creditor, lienholder or a lessor, other than the  
          franchisor;

18           (5) The franchisee embezzles or otherwise  
20           misappropriates funds of the franchisor; or

22           (6) The franchisee is convicted of or pleads nolo  
24           contendere to any Class A, Class B or Class C crime, as  
26           defined in the Maine Criminal Code, Title 17-A, in  
          which a sentence of imprisonment of one year or more is  
          imposed under Title 17-A, sections 1251 and 1252.

28           2. Nonrenewal; notice. It is unlawful for a franchisor to  
30           refuse to renew a franchise unless the franchisee has been  
32           notified in writing of the franchisor's intent not to renew at  
          least 6 months prior to the expiration date or an extension of  
          the franchise agreement and one of the following circumstances  
          exists:

34           A. Good cause exists as that term is defined in section  
36           1392, subsection 6; or

38           B. The franchisor completely withdraws from directly or  
40           indirectly distributing its products or services in the  
          geographic market served by the franchisee.

42           3. Fair and reasonable compensation. Upon termination,  
44           cancellation or nonrenewal of a franchise agreement, the  
46           franchisee is entitled to fair and reasonable compensation by the  
48           franchisor for the franchisee's inventory, supplies, equipment  
50           and furnishings purchased by the franchisee from the franchisor  
52           or its designated source or approved supplier under the terms of  
          the franchise or an ancillary agreement, to be paid by the  
          franchisor within 90 days of the effective date of the  
          termination, cancellation or nonrenewal, as long as the  
          franchisee has clear title to the inventory and other items and  
          is in a position to convey that title to the franchisor.

§1398. Encroachment

2  
4  
6  
8  
10  
12  
1. Similar business. Notwithstanding the terms, provisions or conditions of an agreement or franchise, if a franchisor seeks to relocate or establish a new point of sale, outlet, kiosk, company-owned store, carry-out store, distribution source or any other business similar to that of the franchisee within an unreasonable proximity of an existing franchisee, the existing franchisee, at the option of the franchisee, has a right of first refusal with respect to the proposed new point of sale, outlet, kiosk, company-owned store, carry-out store or distribution source.

14 §1399. Transfer of franchise

16 1. Transfer of interest by franchisee. The following provisions govern the transfer of a franchise business and franchise by a franchisee.

20 A. A franchisor may not prohibit the transfer of the franchise business and franchise by a franchisee to another person if the transferee satisfies the reasonable current qualifications of the franchisor for new franchisees. For purposes of this section, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. The burden of establishing reasonableness is on the franchisor. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer.

32 B. A franchisor may not require a franchisee or transferee to execute a new or different agreement as a condition for transferring the franchisee's interest in the franchise for the unexpired term of a franchise agreement.

36 C. A franchisee shall give the franchisor written notice at least 30 days prior to a transfer that is subject to the provisions of this section. The notice must contain the prospective transferee's name, address, financial qualification and business experience.

42 D. A transfer by a franchisee is deemed to be approved 60 days after the franchisee submits the written notice, unless the franchisor objects to the transfer in writing, specifying a material reason or reasons for the objection. The written objection must be delivered to the franchisee prior to the expiration of the 60-day period. Any such notice is privileged and is not actionable based upon a claim of defamation.



2 E. A franchisor may not discriminate against a proposed  
3 transferee of a franchise on the basis of race, color,  
4 national origin, sex, religion or physical disability.

5 F. A franchisor, as a condition to a transfer of a  
6 franchise, may not obligate a franchisee to undertake  
7 obligations or relinquish any rights unrelated to the  
8 franchise proposed to be transferred, or to enter into a  
9 release of claims broader than a similar release of claims  
10 by the franchisor against the franchisee that is entered  
11 into by the franchisor.

12 2. Transfer of interest by franchisor. A franchisor may  
13 not transfer its interest in a franchise unless the franchisor  
14 makes reasonable provision for the performance of the  
15 franchisor's obligations under the franchise agreement by the  
16 transferee. A franchisor shall provide the franchisee with  
17 notice of a proposed transfer of the franchisor's interest in the  
18 franchise.

19 §1399-A. Survivorship

20 The right of a designated family member to succeed in  
21 ownership of the franchise is not a transfer under this chapter,  
22 and is governed by the following provisions.

23 1. Right of succession. A family member of a deceased or  
24 incapacitated franchisee, who has been designated in writing to  
25 the franchisor, may succeed the franchisee in the ownership or  
26 operation of the franchise if the family member gives the  
27 franchisor written notice of the intention to succeed to the  
28 franchise within 120 days of the franchisee's death or incapacity  
29 and unless there exists good cause for refusal to honor the  
30 succession on the part of the franchisor. The franchisor has the  
31 burden of establishing that good cause exists to refuse to honor  
32 the succession.

33 2. Data. The franchisor may request and the designated  
34 family member shall provide, upon the request on forms provided  
35 for that purpose, personal and financial data reasonably  
36 necessary to determine whether the succession is honored.

37 3. Refusal. The refusal to honor the succession to  
38 ownership is governed by the following provisions.

39 A. If a franchisor believes that good cause exists for  
40 refusing to honor the succession to the ownership and  
41 operation of a franchise by a family member of a deceased or  
42 incapacitated franchisee under the existing franchise  
43 agreement, the franchisor may, within 60 days of receipt of  
44 the information requested in subsection 2, serve upon the  
45 designated family member notice of its refusal to honor the  
46 succession.

succession or its intent to discontinue the existing franchise agreement no sooner than 90 days from the date the notice is served.

B. The notice must state the specific grounds for the refusal to honor the succession and the franchisor's intent to discontinue the existing franchise agreement no sooner than 90 days from the date the notice is served. Any such notice is privileged and is not actionable based upon a claim of defamation.

C. If notice of refusal and discontinuance is not timely served upon the family member, the franchise agreement continues in effect subject to termination, cancellation or nonrenewal only as otherwise permitted by this chapter.

4. Designation of successor. A franchisee may designate a family member as the franchisee's successor by written instrument filed with the franchisor.

**§1399-B. Duty of good faith**

A franchise imposes on the parties a duty of good faith in performance in enforcement of the franchise agreement.

**§1399-C. Remedy for civil action**

A franchisee who has been damaged by reason of a violation of a provision of this chapter may recover from the franchisor damages caused by the violation, including, but not limited to, costs and reasonable attorney's fees, regardless of the amount in controversy, and other appropriate relief, including declaratory, injunctive and other equitable relief.

**§1399-D. Notice form, delivery and content**

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

1. Required mail; delivery. Be sent by registered, certified or other receipted mail or personally delivered to the franchisee;

2. Statement of intent. Contain a statement of intent to terminate or fail to renew the franchise together with the reasons for termination or nonrenewal; and

3. Effective date. Include the effective date of the termination, cancellation or nonrenewal.

1098

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50  
52

**§1399-E. Choice of law**

A condition, stipulation or provision requiring the application of the law of another state in lieu of this chapter is void.

**§1399-F. Construction with other law**

This chapter does not limit any liability that may exist under any other law or at common law.

**§1399-G. Public policy**

Any contract or part of a contract or practice under a contract in violation of any provision of this chapter is against public policy and is void and unenforceable.

**§1399-H. Statute of limitation**

Actions arising out of any provision of this chapter must be commenced within 4 years after the cause of action accrues; however, if a person liable under this chapter conceals the cause of action from the person entitled to bring that action, the period prior to the discovery of that cause of action is excluded in determining the time allowed for commencement of the action. 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.'

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

**FISCAL NOTE**

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

**STATEMENT OF FACT**

It is the purpose of the original bill to promote greater fairness and equity in franchise relationships, to establish minimum standards of conduct in the practices of those franchises and to strengthen private remedies against fraudulent or unlawful actions. This amendment limits this purpose to franchises whose

primary purpose is the preparation and sale of food. The amendment accomplishes the following:

1. It provides that a franchise agreement can not restrict access of either party to courts outside Maine.

2. It prohibits franchisors from restricting franchisees from developing associations with other franchisees.

3. It prohibits the termination of a franchise agreement except for good cause and requires that the termination be in good faith.

4. It requires that a franchisor must renew an agreement unless there is good cause, which is defined as a failure of the franchisee to comply with the agreement.

5. It provides for a franchisee to have right of refusal if the franchisor plans to develop a similar business, no matter what the distribution system, within an unreasonable distance of the franchisee.

6. It states that a franchisor may not prohibit transfer of a franchise if the proposed new franchise satisfies the franchisor's reasonable current qualifications for a new franchisee.

7. It states that a franchisor may not prohibit transfer of a franchise to another family member in the event of death or incapacitation unless there is good cause for prohibiting that transfer.

All except items 1 and 3 preceding, in addition to applying to new contracts, also apply to future actions under existing contracts.

This amendment also adds a fiscal note to the bill.