

MAINE STATE LEGISLATURE

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BUSINESS AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 964, L.D. 1327, Bill, "An Act to Regulate Recreational Vehicle Franchises"

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

'An Act to Regulate Personal Sports Mobile Franchises'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 10 MRSA §1196, sub-§6, as enacted by PL 1991, c. 631, is amended to read:

6. Watercraft. "Watercraft" means any type of vessel, boat or craft used or capable of being used as a means of transportation on water. "Watercraft" does not include a seaplane or a personal sports mobile as defined in section 1242, subsection 15.

Sec. 2. 10 MRSA c. 206-B is enacted to read:

CHAPTER 206-B

**PERSONAL SPORTS MOBILE MANUFACTURERS,
DISTRIBUTORS AND DEALERS**

§1241. Short title

This chapter may be known and cited as the "Personal Sports Mobile Business Practices Act."

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2 §1242. Definitions

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

8 1. Designated family member. "Designated family member"
10 means the spouse, child, grandchild, parent or sibling of the
12 owner of a new personal sports mobile dealer who in the case of
14 the owner's death is entitled to inherit the ownership interest
16 in the new personal sports mobile dealership under the terms of
18 the owner's will or who in the case of an incapacitated owner of
20 a new personal sports mobile dealership has been appointed by a
22 court as the legal representative of the new personal sports
24 mobile dealer's property.

26 2. Distributor branch. "Distributor branch" means a branch
28 office maintained by a distributor or wholesaler that sells or
30 distributes new or used personal sports mobiles to personal
32 sports mobile dealers.

34 3. Distributor representative. "Distributor representative"
36 means a representative employed by a distributor branch,
38 distributor or wholesaler.

40 4. Distributor or wholesaler. "Distributor" or "wholesaler"
42 means any person that sells or distributes new or used personal
44 sports mobiles to personal sports mobile dealers or that
46 maintains distributor representatives within this State.

48 5. Factory branch. "Factory branch" means a branch
50 maintained by a manufacturer that manufactures or assembles
52 personal sports mobiles for sale to distributors or personal
54 sports mobile dealers or that is maintained for directing and
56 supervising the representatives of the manufacturer.

58 6. Factory representative. "Factory representative" means a
60 representative employed by a manufacturer or employed by a
62 factory branch for the purpose of making or promoting the sale of
64 personal sports mobiles or for contracting with, supervising,
66 servicing or instructing personal sports mobile dealers or
68 prospective personal sports mobile dealers.

70 7. Franchise. "Franchise" means an oral or written
72 arrangement in which there is a community of interest in the
74 marketing of personal sports mobiles or services related to
76 personal sports mobiles at wholesale, retail, leasing or
78 otherwise. The franchise may be for a definite or indefinite
80 time period in which a manufacturer, distributor or wholesaler

2 grants to a personal sports mobile dealer a license to use a
3 trade name, service mark or related characteristic.

4 8. Franchisee. "Franchisee" means a personal sports mobile
5 dealer to whom a franchise is offered or granted.

6 9. Franchisor. "Franchisor" means a manufacturer,
7 distributor or wholesaler who grants a franchise to a personal
8 sports mobile dealer.

10 10. Fraud. "Fraud" includes, in addition to its normal
11 legal connotation, a misrepresentation in any manner, whether
12 intentionally false or due to gross negligence of a material
13 fact, a promise or representation not made honestly and in good
14 faith and an intentional failure to disclose a material fact.

15 11. Good faith. "Good faith" means honesty in fact and the
16 observation of reasonable commercial standards of fair dealing in
17 the trade as defined in Title 11, section 2103, subsection (1),
18 paragraph (b).

19 12. Manufacturer. "Manufacturer" means any person, resident
20 or nonresident, that manufactures or assembles new personal
21 sports mobiles or imports for distribution through distributors
22 or any person, resident or nonresident, that is controlled by the
23 manufacturer. The term "manufacturer" includes the terms
24 "franchisor," "distributor," "distributor branch," "wholesaler,"
25 "factory branch" and "factory representative."

26 13. New personal sports mobile. "New personal sports
27 mobile" means a personal sports mobile that has not been sold
28 previously to any person except a distributor or wholesaler or
29 personal sports mobile dealer for resale.

30 14. Person. "Person" means a natural person, corporation,
31 partnership, trust or other entity. In case of an entity,
32 "person" includes any other entity in which the person has a
33 majority interest or effectively controls, as well as the
34 individual officers, directors and other persons in active
35 control of the activities of each such entity.

36 15. Personal sports mobile. "Personal sports mobile" means
37 any snowmobile as defined in Title 12, section 7821, subsection
38 5; any all-terrain vehicle as defined in Title 12, section 7851,
39 subsection 2; and any personal watercraft as defined in Title 12,
40 section 7791, subsection 11-A. "Personal sports mobile" does not
41 include a motor vehicle as defined in section 1171, subsection 11.

42 16. Personal sports mobile dealer. "Personal sports mobile
43 dealer" means any person who sells or solicits or advertises the
44 dealer.

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sale of new or used personal sports mobiles. "Personal sports mobile dealer" does not include receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court, or public officers while performing their duties as those officers.

17. Sale. "Sale" means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or otherwise, of any personal sports mobile or interest in a personal sports mobile or of any franchise related to a personal sports mobile; and any option, subscription or other contract or solicitation looking to a sale, or any offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any personal sports mobile or franchise with or as a bonus on account of the sale of anything is deemed a sale of that personal sports mobile or franchise.

§1243. Prohibited acts

The following acts are unfair methods of competition and unfair and deceptive practices. It is unlawful for any:

1. Damage to public. Manufacturer or personal sports mobile dealer to engage in any action that is arbitrary, in bad faith or unconscionable and that causes damage to any of the parties or to the public;

2. Coercion involving deliveries and orders. Manufacturer or an officer, agent or other representative of a manufacturer to coerce or attempt to coerce any personal sports mobile dealer:

A. To order or accept delivery of any personal sports mobile or appliances, equipment, parts or accessories for a personal sports mobile or any other commodity or commodities that the personal sports mobile dealer has not voluntarily ordered, or to order or accept delivery of any personal sports mobile with special features, appliances, accessories or equipment not included in the list price of the personal sports mobile as publicly advertised by the manufacturer; or

B. To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;

3. Certain interference in dealer's business. Manufacturer or an officer, agent or other representative of a manufacturer:

A. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of a dealer's order to any personal sports mobile dealer having a franchise or

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2 contractual arrangement for the retail sale of new personal
3 sports mobiles sold or distributed by a manufacturer any
4 personal sports mobiles that are covered by that franchise
5 or contract and specifically publicly advertised by that
6 manufacturer to be available for immediate delivery;
7 however, the failure to deliver any personal sports mobile
8 is not a violation of this chapter if that failure is due to
9 an act of God, or work stoppage or delay due to a strike or
10 labor difficulty, shortage of materials, freight embargo or
11 other cause over which the manufacturer or any of its agents
12 has no control;

13
14 B. To coerce or attempt to coerce any personal sports mobile
15 dealer to enter into any agreement with a manufacturer or an
16 officer, agent or other representative of a manufacturer, or
17 to do any other act prejudicial to that dealer by
18 threatening to cancel any franchise or any contractual
19 agreement existing between the manufacturer and that dealer;
20 however, notice in good faith to any personal sports mobile
21 dealer of that dealer's violation of any terms or provisions
22 of the franchise or contractual agreement does not
23 constitute a violation of this chapter;

24 C. To resort to or use any false or misleading advertisement
25 in connection with the manufacturer's business as a
26 manufacturer or an officer, agent or other representative of
27 the manufacturer; or to force any dealer to participate in
28 any advertising campaign or contest, or to purchase any
29 promotional materials, display devices or display
30 decorations or materials at the expense of the new personal
31 sports mobile dealer;

32
33 D. To offer to sell or to sell any new personal sports
34 mobile at a lower price than the price offered to any other
35 personal sports mobile dealer for the same model vehicle
36 similarly equipped, or to utilize any device, including, but
37 not limited to, sales promotion plans or programs that
38 result in that lower price. This paragraph does not apply
39 to the following:

40
41 (1) Sales to a personal sports mobile dealer for
42 resale to any unit of the Federal Government;

43
44 (2) Any manufacturer or any of its agents offering to
45 sell or selling new personal sports mobiles to all
46 personal sports mobile dealers at an equal price; and

47
48 (3) Sales by a manufacturer or any of its agents to
49 any unit of the Federal Government;
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2 E. To offer to sell or lease or to sell or lease any new
3 personal sports mobile to any person, except a manufacturer,
4 at a lower price than the price offered and charged to a
5 personal sports mobile dealer for the same model vehicle
6 similarly equipped or to utilize any device that results in
7 that lower price;

8 F. To offer to sell or to sell parts or accessories to any
9 new personal sports mobile dealer for use in that dealer's
10 own business for the purpose of replacing or repairing the
11 same or a comparable part or accessory at a lower price than
12 the price charged for that part or accessory to any other
13 new personal sports mobile dealer for similar parts or
14 accessories for use in the dealer's own business;

15 G. To prevent or attempt to prevent by contract or otherwise
16 any personal sports mobile dealer from changing the capital
17 structure of that dealer's dealership or the means by or
18 through which the dealer finances the operation of that
19 dealership, if the dealer at all times meets any reasonable
20 capital standards agreed to between the dealership and the
21 manufacturer and if that change by the dealer does not
22 result in a change in the executive management control of
23 the dealership;

24 H. To prevent or attempt to prevent by contract or otherwise
25 any personal sports mobile dealer or any officer, partner or
26 stockholder of any personal sports mobile dealer from
27 selling or transferring any part of the interest of any of
28 them to any other person or party. However, a dealer,
29 officer, partner or stockholder may not sell, transfer or
30 assign the franchise or power of management or control under
31 the franchise without the consent of the manufacturer. That
32 consent may not be unreasonably withheld;

33 I. To obtain money, goods, services, anything of value or
34 any other benefit from any other person with whom the
35 personal sports mobile dealer does business, on account of
36 or in relation to the transactions between the dealer and
37 the other person, unless that benefit is promptly accounted
38 for and transmitted to the personal sports mobile dealer;

39 J. To compete with a personal sports mobile dealer operating
40 under an agreement or franchise from a manufacturer in a
41 relevant market area that has been determined exclusively by
42 equitable principles. A manufacturer is not considered to
43 be competing when operating a dealership either temporarily
44 for a reasonable period not to exceed one year or in a bona
45 fide relationship in which an independent person has made a
46 significant investment subject to loss in the dealership and
47 the manufacturer is not a personal sports mobile dealer;

2 can reasonably expect to acquire full ownership of the
3 dealership on reasonable terms and conditions;

4 K. To require a personal sports mobile dealer to assent to a
5 release assignment, novation, waiver or estoppel that would
6 relieve any person from liability imposed by this chapter;

8 L. To require any new personal sports mobile dealer to
9 refrain from participation in the management or acquisition
10 of or investment in any other line of new personal sports
11 mobiles or related products;

12 M. To require any new personal sports mobile dealer to
13 change the location of the new personal sports mobile
14 dealership or during the course of the agreement or
15 franchise to make any substantial alterations to the
16 dealership premises when to do so would be unreasonable;

18 N. To cancel, terminate, fail to renew or refuse to continue
19 any franchise relationship with a licensed new personal
20 sports mobile dealer, notwithstanding the terms, provisions
21 or conditions of any agreement or franchise or the terms or
22 provisions of any waiver, unless a manufacturer has:

24 (1) Satisfied the notice requirement of paragraph O;

26 (2) Acted in good faith as defined in section 1242,
28 subsection 11; and

30 (3) Good cause for the cancellation, termination,
32 nonrenewal or noncontinuance;

34 O. To cancel, terminate, fail to renew or refuse to continue
35 any franchise relationship with a licensed new personal
36 sports mobile dealer, notwithstanding the terms, provisions
37 or conditions of any agreement or franchise or the terms or
38 provisions of any waiver, unless good cause exists. Good
39 cause exists for the purposes of a termination,
40 cancellation, nonrenewal or noncontinuance:

42 (1) When there is a failure by the new personal sports
43 mobile dealer to comply with a provision of the
44 franchise that is both reasonable and of material
45 significance to the franchise relationship so long as
46 compliance on the part of the new personal sports
47 mobile dealer is reasonably possible and the
48 manufacturer first acquired actual or constructive
49 knowledge of the failure not more than 180 days prior
50 to the date on which notification is given pursuant to
paragraph O;

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2 (2) If the failure by the new personal sports mobile
4 dealer, as described in subparagraph (1), relates to
6 the performance of the new personal sports mobile or
8 service. In this case, good cause is the failure of
 the new personal sports mobile dealer to effectively
 carry out the performance provisions of the franchise
 if:

10 (a) The new personal sports mobile dealer was
12 apprised by the manufacturer in writing of that
14 failure; the notification stated that notice was
16 provided of failure of performance pursuant to
18 this subsection; and the new personal sports
 mobile dealer was afforded a reasonable
 opportunity for a period of not less than 6 months
 to exert good faith efforts to carry out the
 performance provisions;

20 (b) The failure continued within the period that
22 began not more than 180 days before the date
24 notification of termination, cancellation or
 nonrenewal was given pursuant to paragraph Q; and

26 (c) The new personal sports mobile dealer has not
28 substantially complied with reasonable performance
 criteria established by the manufacturer and
 communicated to that dealer;

30 (3) When the dealer and the manufacturer agree not to
32 renew the franchise; or

34 (4) When the manufacturer discontinues production or
36 distribution of any parts, accessories, equipment,
 machinery, tools, appliances or any commodity
 whatsoever;

38 P. To cancel, terminate, fail to renew or refuse to continue
40 any franchise relationship with a licensed new personal
42 sports mobile dealer, notwithstanding the terms, provisions
44 or conditions of any agreement or franchise or the terms or
 provisions of any waiver, based on any of the following
 items, which do not constitute good cause:

46 (1) The change of ownership of the new personal sports
48 mobile dealer's dealership. This subparagraph does not
 authorize any change in ownership that would have the
 effect of the sale of the franchise without the
 manufacturer's written consent. This consent may not

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2 be unreasonably withheld. The burden of establishing
3 the reasonableness is on the manufacturer;

4 (2) The fact that the new personal sports mobile dealer
5 unreasonably refused to purchase or accept delivery of
6 any new personal sports mobile, parts, accessories or
7 any other commodity or services not ordered by the new
8 personal sports mobile dealer, except that the
9 manufacturer may require that the dealer stock a
10 reasonable supply of parts or accessories required to
11 perform campaign, recall or warranty work, and except
12 that this provision is not intended to modify or
13 supersede any requirement of the franchise that dealers
14 market a representative line of those personal sports
15 mobiles that the manufacturer is publicly advertising;

16 (3) The fact that the new personal sports mobile dealer
17 owns, has an investment in, participates in the
18 management of or holds a license for the sale of
19 another make or line of new personal sports mobiles or
20 that the new personal sports mobile dealer has another
21 make or line of new personal sports mobiles in the same
22 dealership facilities as those of the manufacturer, as
23 long as the new personal sports mobile dealer maintains
24 a reasonable line of credit for each make or line of
25 new personal sports mobiles and that the new personal
26 sports mobile dealer remains in substantial compliance
27 with reasonable facilities' requirements of the
28 manufacturer; or

29 (4) The fact that the new personal sports mobile dealer
30 sells or transfers ownership of the dealership or sells
31 or transfers capital stock in the dealership to the new
32 personal sports mobile dealer's designated family
33 member. The manufacturer shall give effect to such
34 change in the ownership in the franchise. This
35 subparagraph does not authorize any changes in
36 ownership that would have the effect of the sale of the
37 franchise without the manufacturer's written consent.
38 This consent may not be unreasonably withheld. The
39 burden of establishing the reasonableness is on the
40 manufacturer.

41 The manufacturer has the burden of proof under paragraph N
42 for showing that it has acted in good faith, that the notice
43 requirements have been complied with and that there was good
44 cause for the franchise termination, cancellation,
45 nonrenewal or noncontinuance;

2 O. To cancel, terminate, fail to renew or refuse to continue
3 any franchise relationship with a licensed new personal
4 sports mobile dealer, notwithstanding the terms, provisions
5 or conditions of any agreement or franchise or the terms or
6 provisions of any waiver, without first providing
7 notification of the termination, cancellation, nonrenewal or
8 noncontinuance to the new personal sports mobile dealer as
9 follows:

10 (1) Notification under this paragraph must be in
11 writing and must be delivered personally or by
12 certified mail to the new personal sports mobile dealer
13 and must contain:

14 (a) A statement of intention to terminate, cancel,
15 not continue or not renew the franchise;

16 (b) A statement of the reasons for the
17 termination, cancellation, noncontinuance or
18 nonrenewal; and

19 (c) The date on which the termination,
20 cancellation, noncontinuance or nonrenewal takes
21 effect;

22 (2) The notice required in this paragraph may not be
23 given less than 90 days prior to the effective date of
24 the termination, cancellation, noncontinuance or
25 nonrenewal, except as provided in subparagraph (3); or

26 (3) The notice required in this paragraph may not be
27 given less than 15 days prior to the effective date of
28 the termination, cancellation, noncontinuance or
29 nonrenewal with respect to any of the following:

30 (a) Insolvency of the new personal sports mobile
31 dealer or filing of any petition by or against the
32 new personal sports mobile dealer under any
33 bankruptcy or receivership law;

34 (b) The business operations of the personal sports
35 mobile dealer have been abandoned or closed for 14
36 consecutive business days unless the closing is
37 due to an act of God, strike or labor difficulty;
38 or

39 (c) Conviction of or plea of nolo contendere of a
40 personal sports mobile dealer or one of its
41 principal owners of any Class A, Class B or Class
42 C crime, as defined in Title 17-A, in which a
43

sentence of imprisonment of one year or more is imposed under Title 17-A, sections 1251 and 1252; or

R. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer without providing fair and reasonable compensation to the licensed new personal sports mobile dealer for:

(1) All unsold new model personal sports mobile inventory of the current and previous model years purchased from the manufacturer;

(2) Unused supplies and parts purchased from the manufacturer or its approved sources;

(3) Equipment and furnishings purchased from the manufacturer or its approved sources;

(4) Special tools purchased from the manufacturer or its approved sources; and

(5) Facilities, if the involuntary termination, cancellation, noncontinuance or nonrenewal is due to a failure of performance of the new personal sports mobile dealer in sales or service and:

(a) The new personal sports mobile dealer is leasing the facilities from a lessor other than the manufacturer, in which case the manufacturer shall pay the new personal sports mobile dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less; or

(b) The new personal sports mobile dealer owns the facilities, in which case the manufacturer shall pay the new personal sports mobile dealer a sum equivalent to the reasonable rental value of the facilities for one year.

Such fair and reasonable compensation for the items listed in subparagraphs (1) to (5) may not be less than the acquisition price and must be paid by the manufacturer, when possible, within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal.

In lieu of any injunctive relief or any other damages, if the manufacturer fails to prove there was good cause for the

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2 termination, cancellation, noncontinuance or nonrenewal, or
3 if the manufacturer fails to prove that it acted in good
4 faith, then the manufacturer may pay the new personal sports
5 mobile dealer fair and reasonable compensation for the value
6 of the dealership as an ongoing business; and

7 **4. Dealer violations. Personal sports mobile dealer:**

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9
10 A. To require a purchaser of a new personal sports mobile,
11 as a condition of sale and delivery of the new personal
12 sports mobile, to also purchase special features,
13 appliances, equipment, parts or accessories not desired or
14 requested by the purchaser. The substance of this paragraph
15 must be conveyed by the personal sports mobile dealer to the
16 purchaser prior to the consummation of the purchase;

17
18 B. To represent and sell as a new personal sports mobile any
19 personal sports mobile that has been used and operated for
20 demonstration purposes or is otherwise a used personal
21 sports mobile;

22 C. To resort to or use any false or misleading advertisement
23 in connection with that dealer's business as a personal
24 sports mobile dealer; or

25
26 D. To fail to disclose conspicuously in writing the personal
27 sports mobile dealer's policy in relation to the return of
28 deposits received from any person. A dealer shall require
29 that a person making a deposit sign the form on which the
30 disclosure appears.

31
32 **§1244. Limitations on establishing or relocating dealerships**

33
34 A new personal sports mobile dealership may not be
35 established nor may a personal sports mobile dealership be
36 relocated, except as follows.

37
38 **1. Notification.** If a manufacturer seeks to enter into a
39 franchise establishing an additional new personal sports mobile
40 dealership or relocating an existing new personal sports mobile
41 dealership, within or into a relevant market area where the same
42 line make is already represented, the manufacturer shall, in
43 writing, first notify each new personal sports mobile dealer in
44 the line make in the relevant market area of the intention to
45 establish an additional dealership or to relocate an existing
46 dealership within or into that market area. The relevant market
47 area is a radius of 15 miles around an existing dealership in the
48 following cities: Augusta, Auburn, Bangor, Biddeford, Brewer,
Falmouth, Lewiston, Portland, Saco, South Portland, Waterville

2 and Westbrook. The relevant market area is a radius of 30 miles
3 around all other existing dealerships.

4 Within 30 days of receiving the notice or within 30 days after
5 the end of any appeal procedure provided by the manufacturer, any
6 such new personal sports mobile dealership may file a complaint
7 in the Superior Court of the county in which the dealership is
8 located, protesting the establishment or relocation of the
9 proposed new personal sports mobile dealership. When such a
10 complaint is filed, the manufacturer may not establish or
11 relocate the proposed new personal sports mobile dealership until
12 a hearing has been held on the merits, nor thereafter if the
13 court determines that there is good cause for not permitting the
14 proposed new personal sports mobile dealership.

16 2. Good cause. In determining whether good cause has been
17 established for not entering into or relocating an additional
18 franchise for the same line make, the court shall take into
19 consideration the existing circumstances, including, but not
20 limited to:

22 A. The permanency of the investment of both the existing and
23 proposed new personal sports mobile dealers;

24 B. The effect on the retail new personal sports mobile
25 business and the consuming public in the relevant market
26 area;

28 C. Whether it is injurious or beneficial to the public
29 welfare for an additional new personal sports mobile
30 dealership to be established;

32 D. Whether the new personal sports mobile dealers of the
33 same line make in that relevant market area are providing
34 adequate competition and convenient consumer care for the
35 personal sports mobiles of the line make in the market area,
36 including the adequacy of personal sports mobile sales and
37 service facilities, equipment, supply of personal sports
38 mobile parts and qualified service personnel;

40 E. Whether the establishment of an additional new personal
41 sports mobile dealership would increase competition and
42 therefore be in the public interest; and

44 F. The effect on the establishing or relocating dealer as a
45 result of not being permitted to establish or relocate.

48 For the purposes of this section, the reopening in a
49 relevant market area of a new personal sports mobile dealership
50 that has not been in operation for one year or more is deemed the

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establishment of an additional new personal sports mobile dealership.

§1245. Transportation damages

1. Liability of new dealer after acceptance. Notwithstanding the terms, provisions or conditions of any agreement or franchise, the new personal sports mobile dealer is solely liable for damages to new personal sports mobiles after acceptance from the carrier and before delivery to the ultimate purchaser.

2. Liability of manufacturer. Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to personal sports mobiles before delivery to a carrier or transporter.

3. Additional liability of dealer. Notwithstanding the provisions of subsections 1 and 2, the new personal sports mobile dealer is liable for damages to new personal sports mobiles after delivery to the carrier if the dealer selects the mode of transportation and the carrier. In all other instances, the manufacturer is liable for carrier-related new personal sports mobile damage as long as the new personal sports mobile dealer annotates the bill of lading or other carrier document indicating damages observed at the time of delivery to the new personal sports mobile dealer and promptly notifies the manufacturer of any concealed damage discovered after delivery.

§1246. Survivorship

1. Right of family member. The right of a designated family member to succeed in dealer ownership is governed by the following provisions.

A. Any designated family member of a deceased or incapacitated new personal sports mobile dealer who has been designated as successor to that dealer in writing to the manufacturer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement, if the designated family member gives the manufacturer of new personal sports mobiles a written notice of the intention to succeed to the dealership within 120 days of the dealer's death or incapacity. The designated family member may not succeed the dealer if there exists good cause for refusal to honor the succession on the part of the manufacturer.

B. The manufacturer may request and the designated family member shall provide, upon the request, on forms provided

2 for that purpose, personal and financial data that is
3 reasonably necessary to determine whether the succession may
4 be honored.

5 **2. Refusal to honor; notice required.** The refusal to honor
6 the right of a designated family member to succeed in dealer
7 ownership is governed by the following provisions.

8
9
10 A. If a manufacturer believes that good cause exists for
11 refusing to honor the succession to the ownership and
12 operation of a dealership by a designated family member of a
13 deceased or incapacitated new personal sports mobile dealer
14 under the existing franchise agreement, the manufacturer
15 may, within 60 days of receipt of the information requested
16 in subsection 1, paragraph B, serve upon the designated
17 family member notice of its refusal to honor the succession
18 or its intent to discontinue the existing franchise
19 agreement with the dealership. Such discontinuance may not
20 take place sooner than 90 days from the date the notice is
21 served.

22 B. The notice must state the specific grounds for the
23 refusal to honor the succession and the intent to
24 discontinue the existing franchise agreement with the
25 dealership no sooner than 90 days from the date the notice
26 is served.

27 C. If notice of refusal and discontinuance is not timely
28 served upon the designated family member, the franchise
29 agreement continues in effect subject to termination only as
30 otherwise permitted by this section.

31
32 **3. Written designation of succession unaffected.** This
33 section does not preclude a new personal sports mobile dealer
34 from designating any person as that new personal sports mobile
35 dealer's successor by written instrument filed with the
36 manufacturer.

37
38 **§1247. Delivery and preparation obligations; product liability**
39 **and implied warranty complaints**

40
41 Every manufacturer shall specify to the dealer the delivery
42 and preparation obligations of its personal sports mobile dealers
43 prior to delivery of new personal sports mobiles to retail
44 buyers. The delivery and preparation obligations of its personal
45 sports mobile dealers and a schedule of the compensation to be
46 paid to its personal sports mobile dealers for the work and
47 services they are required to perform in connection with the
48 delivery and preparation are the dealer's only responsibility for

product liability between that dealer and that manufacturer. The compensation set forth on the schedule must be reasonable.

In any action or claim brought against the personal sports mobile dealer on a product liability complaint in which it is later determined that the manufacturer is liable, the dealer is entitled to receive from the manufacturer that dealer's reasonable costs and attorney's fees incurred in defending the claim or action.

In any action or claim brought against the personal sports mobile dealer on a breach of implied warranty complaint in which it is later determined that the manufacturer is liable, the dealer is entitled to receive from the manufacturer the dealer's reasonable costs and attorney's fees incurred in defending the claim or action. In any such implied warranty action, a dealer has the rights of a buyer under Title 11, section 2607, subsection 5.

The court shall consider the personal sports mobile dealer's share in the responsibility for the damages in awarding costs and attorney's fees.

§1248. Warranty

1. Parts or labor; satisfaction of warranty. If a personal sports mobile franchisor requires or permits a personal sports mobile franchisee to perform labor or provide parts in satisfaction of a warranty created by the franchisor, the franchisor shall properly and promptly fulfill its warranty obligations and shall:

A. Reimburse the franchisee for any parts provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty; and

B. Reimburse the franchisee for any labor performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty. The franchisee's rate for labor not performed in satisfaction of a warranty must be posted in a place conspicuous to its service customers.

2. Claim. Any claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty must be paid within 30 days of its approval from the franchisor. All the claims must be either approved or disapproved within 30 days of their receipt. When any such claim is disapproved, the franchisee that submitted it

2 must be notified in writing from the franchisor of its
3 disapproval within that period, together with the specific
4 reasons for its disapproval.

6 3. Restrictions prohibited. A franchisor may not restrict
7 by agreement, restriction upon reimbursement or otherwise the
8 nature or extent of labor performed or parts provided so that the
9 restriction impairs the franchisee's ability to satisfy a
10 warranty created by the franchisor by performing labor in a
11 professional manner or by providing parts required in accordance
12 with generally accepted standards.

14 4. Costs; fees. In any claim that is disapproved by the
15 manufacturer and in which the dealer brings legal action to
16 collect the disapproved claim and is successful in the action,
17 the court shall award the dealer the cost of the action together
18 with reasonable attorney's fees. Reasonable attorney's fees must
19 be determined by the value of the time reasonably expended by the
20 attorney and not by the amount of the recovery on behalf of the
21 dealer.

22 **§1249. Unreasonable restrictions**

24 It is unlawful directly or indirectly to impose unreasonable
25 restrictions on a personal sports mobile dealer or franchisee
26 relative to transfer; sale; right to renew; termination;
27 discipline; noncompetition covenants; site-contracts whether by
28 sublease, collateral pledge of lot purchase or option to
29 purchase; compliance with subjective standards; or assertion of
30 legal or equitable rights.

32 **§1250. Covered under written or oral agreements**

34 1. Agreements subject to this chapter. Written or oral
35 agreements between a manufacturer, wholesaler or distributor with
36 a personal sports mobile dealer, including, but not limited to,
37 the franchise offering, the franchise agreement, sales of goods,
38 services or advertising, leases or mortgages of real or personal
39 property, promises to pay, security interests, pledges, insurance
40 contracts, advertising contracts, construction or installation
41 contracts, servicing contracts and all other such agreements in
42 which the manufacturer, wholesaler or distributor has any direct
43 or indirect interest, are subject to this chapter.

44 2. Copy of agreement or amendments. Before any new selling
45 agreement or any amendment to that selling agreement between the
46 parties becomes effective, the manufacturer or an officer, agent
47 or other representative of that manufacturer shall, 90 days prior
48 to the effective date of the agreement or amendment, forward a
49 copy of the agreement or amendment to the dealer.

2 **§1250-A. Franchise interest; vested rights**

4 Notwithstanding any other provision of law, it is unlawful
6 for the manufacturer, wholesaler, distributor or franchisor
8 without due cause to fail to renew a franchise on terms then
10 equally available to all its personal sports mobile dealers, to
12 terminate a franchise or to restrict the transfer of a franchise
14 unless the franchisee receives fair and reasonable compensation
16 for the value of the business.

12 **§1250-B. Franchisee's right to associate**

14 Any franchisee has the right of free association with other
16 franchisees for any lawful purpose.

18 **§1250-C. Discounts and other inducements**

20 In connection with a sale of a personal sports mobile or
22 mobiles to the State or to any political subdivision of the
24 State, a manufacturer may not offer any discounts, refunds or any
26 other similar type of inducement to any dealer without making the
28 same offer or offers to all its dealers within the relevant
30 market area. If such inducements are made, the manufacturer,
32 distributor or wholesaler shall give simultaneous notice of those
34 inducements to all of its dealers within the relevant market area.

28 **§1250-D. Public policy**

30 Any contract or part of a contract or practice under a
32 contract in violation of any provision of this chapter is against
34 public policy and is void and unenforceable. Any existing
36 contract or part of a contract or practice under a contract in
38 violation of any provision of this chapter is against public
40 policy and is void and unenforceable to the extent that it is in
42 conflict with this chapter.

38 **§1250-E. Advertisements**

40 Any person who engages directly or indirectly in purposeful
42 contacts within this State in connection with the offering or
44 advertising for sale or has business dealings with respect to a
46 personal sports mobile within the State is subject to this
48 chapter.

46 **§1250-F. Civil remedies**

48 1. Civil remedies. Any personal sports mobile dealer or
50 franchisee who has been damaged by reason of a violation of a
provision of this chapter may bring an action to enjoin that

violation and to recover any damages arising from that violation. A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the federal antitrust laws, the Federal Trade Commission Act, this chapter or any other part of the Maine Revised Statutes is prima facie evidence against that person subject to the conditions set forth in the federal antitrust laws, 15 United States Code, Section 16.

§1250-G. 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 knowledge of the person entitled to bring it, the period prior to the discovery of the cause of action by the person so entitled is excluded in determining the time limited for commencement of the action. If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States or any of its agencies under the antitrust laws, the Federal Trade Commission Act or any other federal Act or the laws of Maine related to antitrust laws or to franchising, that action may be commenced within one year after the final disposition of that civil, criminal or administrative proceeding.

§1250-H. Construction

In construing this chapter the courts may be guided by the interpretations of the Federal Trade Commission Act, 15 United States Code, Section 45, as amended.

§1250-I. Jurisdiction

Any person who violates any provision of this chapter is subject to the jurisdiction of the courts of this State upon service of process in accordance with Title 14, chapter 203 and consistent with the maximum limits of due process as decided by the United States Supreme Court.

§1250-J. Penalty

Any person who violates this chapter is guilty of a Class E crime.'

Further amend the bill by inserting at the end before the summary the following:

R. O. S.

FISCAL NOTE

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This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.78 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

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The additional workload and administrative costs associated with the minimal number of new civil suits and criminal cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees and fines may also increase General Fund revenue by minor amounts.'

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SUMMARY

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The bill includes recreational vehicles in the provisions that regulate franchise practice for motor vehicles by amending the definition of motor vehicle to include recreational vehicles.

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This amendment replaces the bill and regulates the business practices between personal sports mobile manufacturers and dealers. A personal sports mobile is a snowmobile, ATV or personal watercraft. The intent of the amendment is to provide essentially the same protections for personal sports mobile dealers that Maine law extends to motor vehicle dealers. Some of these protections are that:

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1. Manufacturer warranty work and parts provided by a dealer must be reimbursed by the manufacturer at the retail rate charged to nonwarranty customers;

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2. A dealership can not be terminated without proper notice, as described under the Maine Revised Statutes, Title 10, chapter 206-B, good faith and good cause;

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3. A manufacturer may not coerce a dealer to accept personal sports mobiles, parts or accessories that the dealer has not ordered; and

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4. Affected dealers may appeal and stop with "good cause" a manufacturer's decision to establish a new dealership in another dealer's relevant market area.

This amendment also adds a fiscal note to the bill.