

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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Legislative Document

No. 2128

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H.P. 1506

House of Representatives, January 20, 1998

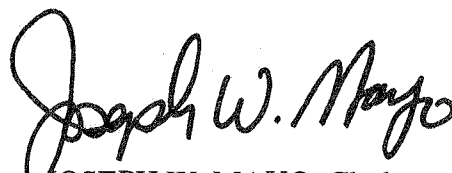
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**An Act Regulating the Practices of Feature Motion Picture Exhibitors  
and Distributors or Licensors and Providing Remedies for Violations.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative SAXL of Portland.

Cosponsored by Representatives: CHARTRAND of Rockland, KONTOS of Windham, PIEH of Bremen, SAXL of Bangor, Senator: RAND of Cumberland.

Be it enacted by the People of the State of Maine as follows:

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Sec. 1. 10 MRSA c. 212-B is enacted to read:

CHAPTER 212-B

FEATURE MOTION PICTURE  
FAIR BUSINESS PRACTICES ACT

§1391. Short title

This Act may be known and cited as the "Feature Motion Picture Fair Business Practices Act."

§1392. Legislative findings and purposes

The Legislature finds and declares that the licensing and distribution of feature motion pictures to theaters in this State, including the rights and obligations of distributors, vitally affects the general economy as well as the access of the public to works of artistic expression and opinion. It is necessary to adopt rules and standards pursuant to the exercise of the police power of this State governing the relationship between feature motion picture distributors or licensors and exhibitors serving the public by establishing fair business practices for the licensing and distribution of feature motion pictures within the State and to provide remedies for any violation of this chapter, including damages and attorney's fees, in order to promote the public interest and public welfare of this State to:

1. Access. Ensure unabridged access for the public to artistic expression and opinion in feature motion pictures at reasonable prices and at different locations;

2. Control. Avoid undue control of the exhibitors by the distributors;

3. Compensation. Foster vigorous and healthy competition in offering feature motion pictures for the benefit of the public by prohibiting practices through which fair and honest competition is restrained, destroyed or inhibited;

4. Reasonable prices. Promote the wide geographical dissemination at reasonable prices to the public of ideas, opinions and artistic expression in feature motion pictures;

5. Delay. Prevent, subsequent to the first-run showing, delay in the exhibition of feature motion pictures to the public in theaters;

2           6. Small independent business. Prevent theaters from going  
out of business, thereby resulting in reducing the number of  
4           small independent businesses and resulting in unemployment with  
loss of tax revenues and other undesirable consequences;

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7           7. Prevent unfair trade practices. Prevent unfair trade  
8           practices and unreasonable restraints of trade in the business of  
distribution and exhibition of feature motion pictures within the  
10          State;

12          8. Promote fairness. Promote fair and effective  
13          competition in the business of distribution and exhibition of  
14          feature motion pictures; and

16          9. Benefit public. Benefit the movie-going public by  
17          limiting extensive first runs so that additional theaters in a  
18          given area may exhibit the same feature motion picture, possibly  
19          at a lower admission price.

20          §1393. Definitions

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

26           1. Bid. "Bid" means a written or oral proposal by an  
27           exhibitor to a distributor that is in response to an invitation  
28           to bid or negotiate and states the terms under which the  
29           exhibitor will agree to exhibit a feature motion picture.

30           2. Distributor. "Distributor" means any person engaged in  
31           the business of renting, selling or licensing feature motion  
32           pictures to exhibitors.

34           3. Exhibit or exhibition. "Exhibit" or "exhibition" means  
35           the showing of feature motion pictures to the public for a charge.

38           4. Exhibitor. "Exhibitor" means any person engaged in the  
39           business of operating one or more theaters in this State.

40           5. Invitation to bid. "Invitation to bid" means a written  
41           or oral solicitation or invitation by a distributor to one or  
42           more exhibitors to bid or negotiate for the right to exhibit a  
43           feature motion picture.

46           6. License agreement. "License agreement" means any  
47           contract, agreement, understanding or condition between a  
48           distributor and an exhibitor for the exhibition of a feature  
49           motion picture by the exhibitor.

2           7. Person. "Person" means one or more individuals,  
partnerships, associations, societies, trusts or corporations.

4           8. Run. "Run" means the continuous exhibition of a feature  
6           motion picture in a defined geographical area for a specified  
period of time.

8           A. A "first run" means the first continuous exhibition of a  
feature motion picture in the designated area.

10          B. A "2nd run" means the 2nd continuous exhibition.

12          C. A "subsequent run" means subsequent continuous  
14          exhibitions after the 2nd run.

16          D. An "exclusive run" means any continuous exhibition  
18          limited to a single theater in a defined geographical area.

20          E. A "nonexclusive" or "multiple run" means any continuous  
22          exhibition in more than one theater in a defined  
geographical area.

24          9. Theater. "Theater" means any establishment in which  
feature motion pictures are exhibited regularly to the public for  
26          a charge.

28          10. Trade screening. "Trade screening" means the showing,  
open to any exhibitor, of a feature motion picture by a  
30          distributor.

32          **§1394. Minimum payment to distributor restricted**

34          A license agreement that provides for a fee or other payment  
to the distributor based in whole or in part on the attendance or  
36          the box office receipts at a theater within the State may contain  
or be conditioned upon a guarantee of a minimum payment to the  
38          distributor only if the minimum payment is reasonable in light of  
industry practice in the northeast.

40          **§1395. Advances restricted**

42          A license agreement for the exhibition of a feature motion  
picture at a theater within the State may contain or be  
44          conditioned upon a provision, agreement or understanding that the  
exhibitor will advance any funds prior to the exhibition of the  
46          picture as security for the performance of the license agreement  
or to be applied to payments under such a license agreement only  
48          if the advance is reasonable in light of industry practice in the  
northeast.

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2 **§1396. Length of run**

4 A distributor and an exhibitor may not enter into a license  
6 agreement to grant an exclusive first run or an exclusive  
8 multiple first run for more than 28 days without a provision to  
10 expand the run to 2nd-run or subsequent-run theaters within the  
12 geographical area. License agreements and prints of such a  
14 feature motion picture must be made available by the distributor  
16 to those 2nd-run and subsequent-run theaters.

18 **§1397. Bidding procedures**

20 **1. Invitation to bid; contents.** If bids are solicited from  
22 exhibitors for the licensing of a feature motion picture within  
24 the State, the invitation to bid must specify the following:

26 **A.** Whether the run for which the bid is being solicited is  
28 a first, 2nd or subsequent run; whether the run is an  
30 exclusive or nonexclusive run; and the geographical area for  
32 the run;

34 **B.** The names of all exhibitors who are being solicited;

36 **C.** The date and hour the invitation to bid expires; and

38 **D.** The time and date when and the name and address of the  
40 location where the bids will be opened.

42 **2. Trade screening.** If the motion picture that is the  
44 subject of a bid has not already been shown at a trade screening,  
46 the invitation to bid must include the date, time and location of  
48 the trade screening for that picture.

50 **3. Bid submission and opening.** All bids must be submitted  
in writing and opened at the same time and in the presence of  
those exhibitors, or their agents, who submitted bids and are  
present at that time.

**4. Examination of bids.** Any exhibitor, or the agent of an  
exhibitor, who submits a bid for a particular run of a feature  
motion picture may examine, at reasonable times within 60 days  
after the bids are opened, any bid that is made for the same run  
of the motion picture by another exhibitor. The exhibitor may  
examine the bids even if the distributor rejects all bids that  
are submitted. Within 7 business days after a bid for a  
particular run of a feature motion picture is accepted, the  
distributor shall notify in writing each exhibitor who submitted  
a bid for that run of the terms of the accepted bid and the  
identity of the successful bidder.

2 5. Rejection of all bids. If a distributor issues  
3 invitations to bid for a feature motion picture and rejects all  
4 bids received, the distributor may not enter into a license  
5 agreement for the exhibition of the picture except by means of  
6 the bidding process specified in this section. If the  
7 distributor rejects all bids submitted in response to the  
8 invitation to bid, the distributor shall notify all exhibitors  
9 who submitted bids that the distributor rejected all bids and  
10 issue a new invitation to bid.

11 **§1398. Application to prior agreements**

12 This Act does not apply to any license agreement entered  
13 into prior to the effective date of this chapter, except that  
14 this Act does apply to a renewal of such a license agreement.

15 **§1399. Actions against distributors and exhibitors**

16 Any exhibitor may bring an action against a distributor or  
17 exhibitor or both in the District Court to recover damages  
18 sustained by reason of a willful and intentional violation of a  
19 distributor or exhibitor and, when appropriate, is entitled to  
20 injunctive relief. Such an exhibitor, if successful, must also  
21 be awarded the costs of the action, including, but not limited  
22 to, reasonable attorney's fees.

23 **§1400. Liability of exhibitor for furnishing information**

24 There is no liability on the part of and no cause of action  
25 arises against any exhibitor, its officers, agents or employees  
26 furnishing information as to violations of this Act or for  
27 statements made or evidence submitted at any hearing or trial  
28 conducted in connection with a violation of this Act.

29 **SUMMARY**

30 This bill, which is based on a Pennsylvania law, regulates  
31 the practices of feature motion picture exhibitors and  
32 distributors in order to allow independently owned movie theaters  
33 to compete with larger theaters in the State.