

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

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H.P. 1643

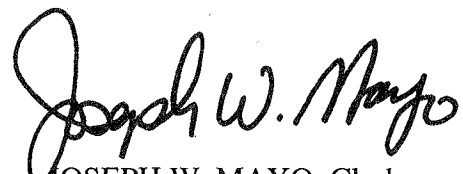
House of Representatives, March 13, 1998

An Act to Modify the Law Pertaining to Personal Sports Mobile Franchises.

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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


JOSEPH W. MAYO, Clerk

Presented by Representative SHANNON of Lewiston.
Cosponsored by Senator MacKINNON of York and
Representatives: BODWELL of Brunswick, CAMERON of Rumford, MacDOUGALL of
North Berwick, MACK of Standish, MURPHY of Kennebunk, VIGUE of Winslow,
WRIGHT of Berwick, Senator: RAND of Cumberland.

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

2 **Sec. 1. 10 MRSA §1243, sub-§3, ¶B**, as enacted by PL 1997, c.
4 473, §3, is amended to read:

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

20 **Sec. 2. 10 MRSA §1243, sub-§3, ¶O**, as enacted by PL 1997, c.
22 473, §3, is amended to read:

22 O. To cancel, terminate, fail to renew or refuse to continue
24 any franchise relationship with a licensed new personal
26 sports mobile dealer, notwithstanding the terms, provisions
28 or conditions of any agreement or franchise or the terms or
provisions of any waiver, unless good cause exists. Good
cause exists for the purposes of a termination,
cancellation, nonrenewal or noncontinuance:

30 (1) When there is a failure by the new personal sports
32 mobile dealer to comply with a provision of the
34 franchise that is both reasonable and of material
36 significance to the franchise relationship so long as
38 compliance on the part of the new personal sports
mobile dealer is reasonably possible and the
manufacturer first acquired actual or constructive
knowledge of the failure not more than 180 days prior
to the date on which notification is given pursuant to
paragraph Q;

40 (2) If the failure by the new personal sports mobile
42 dealer, as described in subparagraph (1), relates to
44 the performance of the new personal sports mobile or
46 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:

48 (a) The new personal sports mobile dealer was
50 apprised by the manufacturer in writing of that
52 failure; the notification stated that notice was
provided of failure of performance pursuant to

2 this subsection; and the new personal sports
mobile dealer was afforded a reasonable
4 opportunity for a period of not less than 6 4
months to exert good faith efforts to carry out
the performance provisions;

6
8 (b) The failure continued within the period that
began not more than 180 120 days before the date
10 notification of termination, cancellation or
nonrenewal was given pursuant to paragraph Q; and

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

16
18 (3) When the dealer and the manufacturer agree not to
renew the franchise; or

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

26 **Sec. 3. 10 MRSA §1243, sub-§3, ¶R, as enacted by PL 1997, c.**
473, §3, is amended to read:

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

34 (1) All unsold new model personal sports mobile
inventory of the current and previous 2 model years
36 purchased from the manufacturer;

38 (2) Unused supplies and parts purchased from the
40 manufacturer or its approved sources, however, if the
termination, cancellation, nonrenewal or noncontinuance
42 was for good cause, the following conditions apply:

44 (a) The rate of reimbursement is the dealer net
price at the time of reimbursement, less a 15%
restocking fee;

46 (b) Each part to be repurchased must be new,
48 undamaged, in its original packaging, if
applicable, currently listed in the distributor's
50 parts list and directly purchased by the dealer
seeking repurchase from the distributor;

52

2 (c) The dealer must comply with reasonable
3 procedures established by the distributor for
4 parts repurchased, as long as these procedures do
5 not reduce the price and are necessary for the
6 orderly return of parts; and

7 (d) The dealer must possess, and transfer to the
8 distributor, right title to the parts;

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

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

13 (5) Facilities, if the involuntary termination,
14 cancellation, noncontinuance or nonrenewal is due to a
15 failure of performance of the new personal sports
16 mobile dealer in sales or service and. The amount of
17 compensation due to the dealer from the manufacturer
18 must be determined as follows:

19 (a) The If the new personal sports mobile dealer
20 is leasing the facilities from a lessor other than
21 the manufacturer, in-which-case the manufacturer
22 shall pay the new personal sports mobile dealer a
23 sum equivalent to the pro rata portion of the rent
24 for the unexpired term of-the-lease or one year's
25 rent, whichever is less, that represents the
26 aggregate percentage of the sales dollar volume
27 and service dollar volume derived from the sale
28 and service of that manufacturer's products for
29 the 12 months immediately preceding termination,
30 cancellation, noncontinuance or nonrenewal; or

31 (b) The If the new personal sports mobile dealer
32 owns the facilities, in-which-case the
33 manufacturer shall pay the new personal sports
34 mobile dealer a sum equivalent to the reasonable
35 rental value of the facilities for one year that
36 represents the aggregate percentage of the sales
37 dollar volume and service dollar volume derived
38 from the sale and service of that manufacturer's
39 products for the 12 months immediately preceding
40 the termination, cancellation, noncontinuance or
41 nonrenewal.

42 Such fair and reasonable compensation for the items listed
43 in subparagraphs (1) ~~to (5)~~, (3) and (4) may not be less
44 than the acquisition price and. Compensation for the items
45 listed in subparagraphs (1), (3), (4) and (5) must be paid
46 by the manufacturer, when possible, within 90 days of the

2 effective date of the termination, cancellation,
3 noncontinuance or nonrenewal. Compensation for the items
4 listed in subparagraph (2) must be paid by the manufacturer,
5 when possible, within 90 days of the date on which the parts
6 are received by the manufacturer from the dealer.

7 In lieu of any injunctive relief or any other damages, if
8 the manufacturer fails to prove there was good cause for the
9 termination, cancellation, noncontinuance or nonrenewal, or
10 if the manufacturer fails to prove that it acted in good
11 faith, then the manufacturer may pay the new personal sports
12 mobile dealer fair and reasonable compensation for the value
13 of the dealership as an ongoing business; and

14 **Sec. 4. 10 MRSA §1248, sub-§1, ¶A,** as enacted by PL 1997, c.
15 473, §3, is amended to read:

16 A. Reimburse the franchisee for any parts provided at the
17 ~~retail rate customarily charged by that franchisee for the~~
18 ~~same parts when not provided in satisfaction of a warranty~~
19 ~~published manufacturer's suggested retail price at the time~~
20 ~~of retail sale; and~~
21 of retail sale; and

22 **Sec. 5. 10 MRSA §1250-F,** as enacted by PL 1997, c. 473, §3,
23 is amended to read:

24 **§1250-F. Civil remedies**

25 **1. Civil remedies.** Any personal sports mobile dealer or
26 franchisee who has been damaged by reason of a violation of a
27 provision of this chapter may bring an action to enjoin that
28 violation and to recover any damages arising from that
29 violation. A final judgment, order or decree rendered against a
30 person in any civil, ~~criminal~~ or administrative proceeding under
31 this chapter or in any civil, criminal or administrative
32 proceeding under the federal antitrust laws, the Federal Trade
33 Commission Act, this--chapter or any other part of the Maine
34 Revised Statutes is prima facie evidence against that person
35 subject to the conditions set forth in the federal antitrust
36 laws, 15 United States Code, Section 16.
37

38 **Sec. 6. 10 MRSA §1250-J,** as enacted by PL 1997, c. 473, §3,
39 is repealed.
40

41 **SUMMARY**

42 This bill makes certain modifications to the personal sports
43 mobile franchise law, the purpose of which is to help avoid
44 placing Maine's sports mobile industry at a competitive
45 disadvantage with neighboring states.
46

2 The bill clarifies that the term "coercion" does not include
good faith attempts by the manufacturer to enforce the terms of
the franchise or contractual agreement.

4
6 The bill changes the notice of violation and cure periods
from 180 days to 120 days.

8 The bill clarifies that, in the event of termination,
cancellation, nonrenewal or noncontinuance of a franchise by the
10 manufacturer, the manufacturer must provide reasonable and fair
compensation to the dealer for the inventory of the current and
12 previous 2 model years purchased from the manufacturer.

14 The bill specifies the conditions and procedures for the
repurchase of unused supplies and parts by the manufacturer in
16 the event of termination, cancellation, nonrenewal or
noncontinuance of the franchise.

18 The bill provides that, in the event that the manufacturer
20 is requested to reimburse the dealer for facility rental costs,
the reimbursement is limited to the pro rata portion of the rent
22 that is attributable to the aggregate percentage of sales and
service dollar volume derived from the sale and service of
24 products that are manufactured by the manufacturer that is
providing the reimbursement.

26 The bill makes a technical correction to the law and
28 provides that reimbursement for parts remaining in inventory upon
the termination, cancellation, nonrenewal or noncontinuance of a
30 franchise is to be made within 90 days of the return of those
parts to the manufacturer.

32 The bill changes the reimbursement rate at which a
34 manufacturer must compensate the dealer in warranted parts to the
published manufacturer's suggested retail price at the time of
36 retail sale.

38 The bill removes the state criminal penalties associated
with violations of the franchise law. Civil remedies are
40 available under the franchise law and civil and criminal remedies
are available under other legal authorities.