

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)



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1931

S.P. 681

In Senate, March 17, 1999

An Act to Amend the Franchise Law.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York.
Cosponsored by Senators: ABROMSON of Cumberland, KONTOS of Cumberland,
MacKINNON of York, PENDLETON of Cumberland, Representatives: CAMERON of
Rumford, SAXL of Bangor.

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

2
3 **Sec. 1. 10 MRSA §1173**, as amended by PL 1997, c. 521, §6, is
4 further amended to read:

6 **§1173. Attorney General and civil remedies**

8 **1. Civil remedies.** Any franchisee or motor vehicle dealer
9 who suffers financial loss of money or property, real or
10 personal, or who has been otherwise adversely affected as a
11 result of the use or employment by a franchisor of an unfair
12 method of competition or an unfair or deceptive act or any
13 practice declared unlawful by this chapter may bring an action
14 for damages and equitable relief, including injunctive relief.
15 When the franchisee or dealer prevails, the franchisee or dealer
16 may recover 3 times the amount of the damages sustained and, in
17 addition, the court shall award attorney's fees to the franchisee
18 or dealer, regardless of the amount in controversy, and assess
19 costs against the opposing party. For the purpose of the award
20 of attorney's fees and costs, whenever the franchisee or dealer
21 is seeking injunctive or other relief, the franchisee or dealer
22 may be considered to have prevailed when a judgment or other
23 final order providing equitable relief is entered in its favor. A
24 final judgment, order or decree rendered against a person in any
25 civil, criminal or administrative proceeding under the United
26 States antitrust laws, under the Federal Trade Commission Act,
27 under the Maine Revised Statutes or under this chapter is
28 regarded as prima facie evidence against the person subject to
29 the conditions set forth in the United States antitrust laws, 15
30 United States Code, Section 16.

32 **Sec. 2. 10 MRSA §1174, sub-§3, ¶F-1** is enacted to read:

34 F-1. To vary or change the cost or the markup in any
35 fashion or through any device to any dealer for any motor
36 vehicle of that line make based on:

38 (1) The sale by any dealer of extended warranties or
39 service contracts;

40 (2) The purchase by any dealer of furniture or other
41 fixtures from any particular source; or

42 (3) The purchase by any dealer of computers or other
43 technology from any particular source;

46 **Sec. 3. 10 MRSA §1174, sub-§3, ¶I**, as amended by PL 1997, c.
48 521, §12, is further amended to read:

2 I. To prevent or attempt to prevent by contract or
4 otherwise a motor vehicle dealer or an officer, partner or
6 stockholder of a motor vehicle dealer from selling or
8 transferring any part of the interest of any of them to any
10 other person or persons or party or parties, except that a
12 dealer, officer, partner or stockholder does not have the
14 right to sell, transfer or assign the franchise or power of
16 management or control under that franchise without the
18 consent of the manufacturer, distributor or wholesaler,
20 which may not be unreasonably withheld.

22 A franchisor may not exercise a right of first refusal or
24 other right to acquire a motor vehicle franchise from a
26 franchisee as a means to influence the consideration or
28 other terms offered by a person in connection with the
30 acquisition of the franchise or to influence a person to
32 refrain from entering into, or to withdraw from,
34 negotiations for the acquisition of the franchise.

36 A franchisor may exercise a right of first refusal or other
38 right to acquire a franchise from a franchisee if all of the
40 following requirements are met.

42 (1) At the election of the franchisee, the franchisor
44 assumes the lease for or acquires the real property on
46 which the franchise is conducted on the same terms as
48 those on which the real property or lease was to be
50 sold or transferred to the acquiring transferee in
connection with the sale of the franchise, unless
otherwise agreed to by the franchisee and the
franchisor.

(2) The franchisor assumes all of the obligations of
the underlying agreement or proposal that entitles the
franchisor to exercise the right of first refusal and.

(3) The franchisor reimburses the acquiring transferee
of the motor vehicle franchise for the reasonable
expenses paid or incurred by the transferee in
evaluating and investigating the franchise and
negotiating and pursuing the acquisition of the
franchise prior to the franchisor's exercise of the
right of first refusal or other right to acquire the
franchise. For purposes of this subsection, expenses
to evaluate and investigate the franchise include, in
addition to any other expenses associated with the
evaluation and investigation of the franchise, legal
and accounting expenses and expenses associated with
the evaluation and investigation of any real property

2 on which the franchise is conducted, including, but not
3 limited to, expenses associated with title
4 examinations, environmental assessments and other
5 expenses directly related to the acquisition or lease
6 of the real property by the acquiring transferee. Upon
7 reimbursement, any title reports or other reports or
8 studies received by the acquiring transferee as a
9 result of the evaluation or investigation of the
10 franchise or the real property on which the franchise
11 is conducted must be provided to the franchisor. The
12 acquiring transferee shall submit an itemized list of
13 the expenses to be reimbursed along with supporting
14 documents, if any, to the franchisor no later than 30
15 days after receipt of a written request for an itemized
16 list of the expenses from the franchisor. The
17 franchisor shall make payment within 30 days after the
18 exercise of the right of first refusal.

19 ~~For purposes of this paragraph, "acquiring transferee"~~
20 ~~means the person who made the offer that entitles the~~
21 ~~franchisor to exercise a right of first refusal;~~

22 For purposes of this paragraph, "acquiring transferee" means
23 the person who made the offer that entitles the franchisor
24 to exercise a right of first refusal.

25 The right of first refusal does not apply in any right of
26 succession established in section 1174-C unless the
27 franchisor, the franchisee, if the franchisee is not
28 deceased or incapacitated, and the designated family member
29 or other person authorized to succeed the franchisee
30 pursuant to section 1174-C, subsection 1, paragraphs A to C
31 agree to the exercise of a right of first refusal;

32 **Sec. 4. 10 MRSA §1174, sub-§3, ¶M,** as amended by PL 1997, c.
33 521, §14, is further amended to read:

34 M. To require, coerce or attempt to coerce a franchisee to
35 refrain from participation in the management of, investment
36 in or the acquisition of any other line of new motor vehicle
37 or related products as long as the franchisee maintains a
38 reasonable line of credit for each franchise and the
39 franchisee remains in substantial compliance with reasonable
40 facilities requirements of the franchisor. The reasonable
41 facilities requirements may not include any requirement that
42 a franchisee establish or maintain exclusive facilities,
43 personnel or display space ~~when--the--requirements--are~~
44 ~~unreasonable--considering--current--economic--conditions--and--are~~
45 ~~not---otherwise---justified---by---reasonable---business~~
46 ~~considerations.---The--burden--of--proving--that--current--economic~~

2 ~~conditions--or--reasonable--business--considerations--justify~~
3 ~~exclusive-facilities-is-on-the-franchisor;~~

4 **Sec. 5. 10 MRSA §1176**, as amended by PL 1997, c. 521, §25, is
5 further amended to read:

6 **§1176. Warranty**

7
8 If a motor vehicle franchisor requires or permits a motor
9 vehicle franchisee to perform labor or provide parts in
10 satisfaction of a warranty created by the franchisor, the
11 franchisor shall properly and promptly fulfill its warranty
12 obligations,~~--in-the-case-of-motor-vehicles-over-10,000-pounds~~
13 ~~gross--vehicle--weight--rating,--shall--adequately--and--fairly~~
14 ~~compensate-the-franchisee-for-any-parts-so-provided-and,--in-the~~
15 ~~case--of--all--other--motor--vehicles,~~ and shall reimburse the
16 franchisee for any parts so provided at the retail rate
17 customarily charged by that franchisee for the same parts when
18 not provided in satisfaction of a warranty. Further, the
19 franchisor shall reimburse the franchisee for any labor so
20 performed at the retail rate customarily charged by that
21 franchisee for the same labor when not performed in satisfaction
22 of a warranty,~~provided that,~~ as long as the franchisee's rate
23 for labor not performed in satisfaction of a warranty is
24 routinely posted in a place conspicuous to its service customer.
25 A franchisor is not required to pay the price charged by the
26 dealer to retail customers for parts of systems, appliances,
27 furnishings, accessories and fixtures of a motor home as defined
28 in Title 29-A, section 101, subsection 40 that are designed, used
29 and maintained primarily for nonvehicular residential purposes.
30 Any claim made by a franchisee for compensation for parts
31 provided or for reimbursement for labor performed in satisfaction
32 of a warranty must be paid within 30 days of its approval. All
33 the claims must be either approved or disapproved within 30 days
34 of their receipt. Any claim that is not disapproved is considered
35 to have been approved after 30 days. When any such claim is
36 disapproved, the franchisee that submitted it ~~must~~ the claim must
37 be notified in writing of its disapproval within that period,
38 together with the specific reasons for its disapproval. No A
39 franchisor may not, by agreement, by restriction upon
40 reimbursement, or otherwise, restrict the nature or extent of
41 labor performed or parts provided so that such restriction
42 impairs the franchisee's ability to satisfy a warranty created by
43 the franchisor by performing labor in a professional manner or by
44 providing parts required in accordance with generally accepted
45 standards. A franchisor may not recover its cost for reimbursing
46 any franchisee for parts or labor provided in satisfaction of a
47 warranty except that a franchisor may recover those costs by
48 increasing the cost of its parts to franchisees. A franchisor
49 may not offer to sell or sell to any franchisee any parts at a
50

2 lower actual price than the actual price offered to any other
3 franchisee or other person for the same parts.

4 In any claim that is disapproved by the manufacturer, and
5 the dealer brings legal action to collect the disapproved claim
6 and is successful in the action, the court shall award the dealer
7 the cost of the action together with reasonable attorney
8 attorney's fees. Reasonable attorney attorney's fees shall-be are
9 determined by the value of the time reasonably expended by the
10 attorney and not by the amount of the recovery on behalf of the
11 dealer.

12
13 A franchisor may periodically audit a franchisee in relation
14 to warranty claims submitted by the franchisee. Audits of
15 warranty claims may be only for the 3-month period immediately
16 preceding the date the audit is commenced. A franchisor may not
17 impose time limits for the submission of claims that limit a
18 franchisee's right to recover such claims within the time
19 authorized by section 1183.

20
21 A claim that has been approved and paid may not be charged
22 back by the franchisor to the franchisee unless the franchisor
23 can prove that the claim was false or fraudulent, that the
24 repairs were not properly made or were unnecessary to correct the
25 defective condition or that the franchisee failed to minimally
26 substantiate the claim. The franchisor has the burden of proving
27 by clear and convincing evidence that a warranty claim may be
28 charged back for one of the reasons authorized in this paragraph.

29
30 It is unlawful for a franchisor, manufacturer, factory
31 branch, distributor branch or subsidiary to own, operate or
32 control, either directly or indirectly, a motor vehicle warranty
33 or service facility located in the State except on an emergency
34 or interim basis or if no qualified applicant has applied for
35 appointment as a dealer in a market previously served by a new
36 motor vehicle dealer of that manufacturer, factory branch,
37 distributor branch or subsidiary's line make.

38
39 It is unlawful for a franchisor, manufacturer, factory
40 branch, distributor branch or subsidiary to authorize or to pay
41 for warranty repair services to be performed by any person other
42 than a franchised new motor vehicle dealer of that line make,
43 except that warranty repair services may be performed by the
44 Federal Government or any agency of the Federal Government on its
45 own fleet, by the State or any agency of the State on its own
46 fleet, or by the owner of a fleet of 15 or more vehicles as long
47 as such warranty repair services are limited to those vehicles in
48 any such fleet that are owned by and registered to the person
49 performing such warranty repair services.

2 **Sec. 6. 10 MRSA §1181**, as enacted by PL 1975, c. 573, is
amended to read:

4 **§1181. Discounts and other inducements**

6
8 In connection with a sale of a motor vehicle or vehicles to
the State or to any political subdivision ~~thereof~~ of the State,
ne a manufacturer, distributor or, wholesaler shall or corporate
10 affiliate may not offer any discounts, refunds or any other
similar type of inducement to any dealer without making the same
12 offer or offers to all other of its dealers within the relevant
market area, and if such inducements are made, the manufacturer,
14 distributor or wholesaler shall give simultaneous notice ~~thereof~~
of the inducements to all of its dealers within the relevant
16 market area.

18 **Sec. 7. 10 MRSA §1183**, as amended by PL 1997, c. 521, §29, is
further amended to read:

20 **§1183. Statute of limitation**

22 Actions arising out of any provision of this chapter shall
24 must be commenced within 4 years ~~next~~ after the cause of action
accrues; ~~--provided,--however,~~ except that if a person liable
26 ~~hereunder~~ under this section conceals the cause of action from
the knowledge of the person entitled to bring it, the period
28 prior to the discovery of ~~his~~ the cause of action by the person
so entitled shall must be excluded in determining the time
30 limited for commencement of the action. If a cause of action
accrues during the pendency of any civil, criminal or
32 administrative proceeding against a person brought by the United
States, or any of its agencies under the antitrust laws, the
34 Federal Trade Commission Act, or any other Federal Act, or the
laws of the State related to antitrust laws or to franchising,
36 such actions may be commenced within one year after the final
disposition of such civil, criminal or administrative proceeding.

38 Notwithstanding any provision in a franchise agreement, if a
40 dispute covered by this chapter or any other law is submitted to
mediation or arbitration, the time for the dealer to file a
42 complaint, action, petition or protest is tolled until the
mediation or arbitration proceeding is completed. The periods of
44 limitation set forth in this section may not be shortened.

46
48 **SUMMARY**

50 This bill amends certain provisions of the law pertaining to
manufacturers, franchisees and other dealers to ensure fair

2 treatment of all dealers by all franchisors. In addition, the
bill amends a provision of law that was recently addressed by the
court on questions certified to it by the Federal District Court
4 in the case of Darling's d/b/a Darling's Bangor Ford v. Ford
Motor Company, in its decision of October 27, 1998.