

MAINE STATE LEGISLATURE

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L.D. 1458

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Date: 3/11/14 Report B

(Filing No. H-670)

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LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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STATE OF MAINE

6

HOUSE OF REPRESENTATIVES

7

126TH LEGISLATURE

8

SECOND REGULAR SESSION

9

COMMITTEE AMENDMENT "B" to H.P. 1043, L.D. 1458, Bill, "An Act To Enact the Maine Small Business Investment Protection Act"

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Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

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'Sec. 1. 10 MRSA c. 208-C is enacted to read:

14

CHAPTER 208-C

15

MAINE SMALL BUSINESS INVESTMENT PROTECTION ACT

16

§1299. Short title

17

This chapter may be known and cited as "the Maine Small Business Investment Protection Act."

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§1299-A. Definitions

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

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1. Designated family member. "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a franchisee who, in the case of the owner's death, is entitled to inherit the ownership interest in the franchise under the terms of the franchisee's will, or who, in the case of an incapacitated owner of a franchise, has been appointed by a court as the legal representative of the franchisee's property.

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2. Franchise. "Franchise" means any continuing commercial relationship or arrangement in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, that:

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A. The franchisee obtains the right to operate a business that is identified or associated with the franchisor's trademark or to offer, sell or distribute goods, services or commodities that are identified or associated with the franchisor's trademark;

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1 B. The franchisor exerts or has the authority to exert a significant degree of control
2 over the franchisee's method of operation or provide significant assistance in the
3 franchisee's method of operation; and

4 C. As a condition of obtaining or commencing operation of the franchise, the
5 franchisee makes a required payment or commits to make a required payment to the
6 franchisor or its affiliate.

7 3. Franchise agreement. "Franchise agreement" means a contract that governs the
8 rights and obligations of a franchisor and franchisee.

9 4. Franchisee. "Franchisee" means a person to whom a franchise is granted.

10 5. Franchisor. "Franchisor" means a person that grants a franchise.

11 6. Good cause. "Good cause" means a franchisee's refusal or failure to comply
12 substantially with any material, reasonable and reasonably necessary express obligation
13 of the franchise agreement, including repeated and intentional nonpayment of royalties or
14 other payments clearly required by the franchise agreement.

15 7. Good faith. "Good faith" means honesty in fact and the observance of reasonable
16 commercial standards of fair dealing in the trade.

17 8. Person. "Person" means a natural person, corporation, partnership, trust or other
18 entity, and, in the case of an entity, "person" includes any other entity in which the person
19 has a majority interest or effectively controls as well as the individual officers, directors
20 and other persons in active control of the activities of each such entity.

21 **§1299-B. Jurisdiction**

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

26 **§1299-C. Applicability of chapter**

27 This chapter does not apply to a franchisor or franchisee who is subject to chapter
28 204, 204-B, 206-B, 208-B, 211-A or 214-A.

29 **§1299-D. Reasonableness and good faith**

30 1. Good faith. A franchise agreement entered into under this chapter imposes on the
31 parties the obligation to act in good faith.

32 2. Reasonableness. This chapter imposes on every term and provision of a franchise
33 agreement a requirement of reasonableness. Every term or provision of a franchise
34 agreement must be interpreted so that the requirements or obligations imposed are
35 reasonable.

36 **§1299-E. Cancellation, termination and nonrenewal**

37 1. Prohibitions on cancellation, termination and nonrenewal. A franchisor may
38 not terminate, cancel or fail to renew a franchise for the failure or refusal of the
39 franchisee to:

1 A. Take part in promotional campaigns for the products or services of the franchise
2 that are not reasonable and that are not in good faith expected to promote the
3 profitability of the franchisee's business;

4 B. Meet sales quotas suggested or required by the franchisor that are not expressly
5 set forth in the franchise agreement;

6 C. Sell any products or services at a price suggested or required by the franchisor, an
7 affiliate of the franchisor or any supplier approved by the franchisor;

8 D. Keep the franchised premises open and operating during hours that are
9 unprofitable to the franchisee, or preclude the franchisee from establishing its own
10 hours of operation or nonoperation between the hours of 10 p.m. and 6 a.m.; or

11 E. Give the franchisor, or any supplier, financial records of the operation of the
12 franchisee that are not related to or are unnecessary to the performance of the
13 franchisee's express obligations under the franchise agreement.

14 2. Notice of nonrenewal and opportunity to cure. Before nonrenewal of a
15 franchise, a franchisor shall give a franchisee written notice of not less than 90 days prior
16 to the effective date of the nonrenewal. The notice must state the reasons that constitute
17 good cause for the nonrenewal and must provide the franchisee with not less than 60 days
18 to cure any claimed discrepancy and reinstate its right to renew the franchise.

19 3. Notice of termination or cancellation and opportunity to cure. A franchisor
20 may not terminate or cancel a franchise agreement, except for good cause. A franchisor
21 shall give a franchisee written notice at least 90 days prior to the effective date of the
22 termination or cancellation. The notice must state all of the reasons constituting good
23 cause for termination or cancellation and must provide the franchisee with not less than
24 60 days to cure any claimed cause for the termination or cancellation.

25 §1299-F. Transfer of business

26 1. Transfer. A franchisor may not unreasonably withhold or delay consent to any
27 transfer of the franchisee's business or transfer of the stock or other interest in the
28 franchise to the franchisee's spouse, son or daughter or other transferee when the
29 transferee meets the material and reasonable qualifications and standards required of the
30 franchisor's franchisees. If a franchisor determines that a transferee does not meet the
31 franchisor's qualifications and standards, the franchisor shall give the franchisee written
32 notice of that determination, stating the specific reasons for withholding consent. A
33 franchisor has 90 days from the date notice is served by the franchisee to consider a
34 franchisee's request to make a transfer under this subsection.

35 2. Assume obligations. When a transfer of a franchisee's business occurs, the
36 transferee assumes all the obligations imposed on and succeeds to all the rights held by
37 the selling franchisee by virtue of any agreement, consistent with this chapter, entered
38 into prior to the transfer between the selling franchisee and the franchisor.

39 §1299-G. Survivorship

40 1. Right of designated family member. The right of a designated family member
41 to succeed in ownership or management of a franchise is governed by the following
42 provisions.

1 A. Any designated family member of a deceased or incapacitated franchisee who has
2 been designated as successor to that franchisee in writing to the franchisor may
3 succeed the franchisee in the ownership or operation of the franchise under the
4 existing franchise agreement if the designated family member gives the franchisor
5 written notice of the intention to succeed to the franchise within 120 days of the
6 franchisee's death or incapacity. The designated family member may not succeed the
7 franchisee if there exists good cause for refusal to honor the succession on the part of
8 the franchisor.

9 B. The franchisor may request and the designated family member shall provide, upon
10 the request, on forms provided for that purpose, personal and financial data that is
11 reasonably necessary to determine whether the succession may be honored.

12 **§1299-H. Public policy**

13 A contract or part of a contract or activity undertaken pursuant to a contract in
14 violation of this chapter is against public policy and is void and unenforceable, including
15 a contract or agreement purporting to vary, waive or disclaim the effects of this chapter
16 on any franchise agreement.

17 **Sec. 2. Application.** This Act applies to all contracts and agreements in effect on
18 the effective date of this Act that have no expiration and are continuing contracts and all
19 other contracts and agreements entered into, amended, renewed or extended after the
20 effective date of this Act.'

21 **SUMMARY**

22 This amendment is the minority report of the committee and it replaces the bill. It
23 does the following.

24 1. It enacts the Maine Small Business Investment Protection Acts, establishes that
25 violations of the Act are subject to the jurisdiction of the courts of this State and exempts
26 from the provisions of the Act franchisors and franchisees that are subject to other
27 statutory franchise relationship laws in the Maine Revised Statutes, Title 10, chapter 204,
28 204-B, 206-B, 208-B, 211-A or 214-A.

29 2. It establishes a standard of reasonableness and good faith for all agreements
30 entered into under the Maine Small Business Investment Protection Act.

31 3. It provides standards regarding cancellation, termination and nonrenewal of a
32 franchise to require good cause, prior notice and the opportunity to cure.

33 4. It includes protections for a franchisee's right to transfer or assign an interest in a
34 franchise.

35 5. It provides for survivorship rights for a designated family member of a deceased
36 or incapacitated franchisee.

37 6. It contains a public policy section that states that a contract or part of a contract or
38 activity undertaken pursuant to a contract in violation of the Maine Small Business
39 Investment Protection Act is against public policy and is void and unenforceable.

40 7. It adds an application section.

FISCAL NOTE REQUIRED
(See attached)



126th MAINE LEGISLATURE

LD 1458

LR 1591(03)

An Act To Enact the Maine Small Business Investment Protection Act

Fiscal Note for Bill as Amended by Committee Amendment **B(H-670)**
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil cases.

The collection of additional filing fees may also increase General Fund revenue by minor amounts.