

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1458

H.P. 1043

House of Representatives, April 25, 2013

An Act To Enact the Maine Small Business Investment Protection Act

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HERBIG of Belfast.
Cosponsored by Senator PATRICK of Oxford and
Representatives: GILBERT of Jay, MASON of Topsham, MASTRACCIO of Sanford,
ROCHELO of Biddeford, VOLK of Scarborough, WINCHENBACH of Waldoboro, Senator:
CUSHING of Penobscot.

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

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

3 **CHAPTER 208-C**

4 **MAINE SMALL BUSINESS INVESTMENT PROTECTION ACT**

5 **§1299. Short title**

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

8 **§1299-A. Definitions**

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

11 **1. Affiliate.** "Affiliate" means an entity controlled by, controlling or under common
12 control with another entity.

13 **2. Disclosure document.** "Disclosure document" means either the disclosure
14 statement required by the Federal Trade Commission in 16 Code of Federal Regulations,
15 Section 436 (2013) or any offering format allowed or required by state law.

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

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

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

26 C. As a condition of obtaining or commencing operation of the franchise, the
27 franchisee makes a required payment or commits to make a required payment to the
28 franchisor or its affiliate.

29 **4. Franchise agreement.** "Franchise agreement" means a contract that governs the
30 rights and obligations of a franchisor and franchisee.

31 **5. Franchisee.** "Franchisee" means a person to whom a franchise is granted.

32 **6. Franchise seller.** "Franchise seller" means a person that offers for sale, sells or
33 arranges for the sale of a franchise. It includes the franchisor and the franchisor's
34 employees, representatives and agents and 3rd-party brokers who are involved in
35 franchise sales activities. "Franchise seller" does not include existing franchisees that sell

1 only their own outlet and who are otherwise not engaged in franchise sales on behalf of
2 the franchisor.

3 **7. Franchise system.** "Franchise system" means the group of franchises granted by
4 a franchisor.

5 **8. Franchisor.** "Franchisor" means a person that grants a franchise.

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

10 **10. Good faith.** "Good faith" means honesty in fact and the observance of
11 reasonable commercial standards of fair dealing in the trade.

12 **11. Material or material fact.** "Material" or "material fact" means:

13 A. Any fact, circumstance or set of conditions that a reasonable franchisee or a
14 reasonable prospective franchisee would consider important in making a significant
15 decision relating to, entering into, remaining in or abandoning a franchise
16 relationship; and

17 B. Any fact, circumstance or set of conditions that has or may have any significant
18 financial impact on a franchisor, franchisee or a prospective franchisee.

19 **12. Offer or offering.** "Offer" or "offering" means any effort to offer or to dispose
20 of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

21 **13. Person.** "Person" means an individual, a corporation, a partnership, a limited
22 liability company, a joint venture, an association, a joint stock company, a trust or an
23 unincorporated organization.

24 **14. Required payment.** "Required payment" means all consideration that the
25 franchisee pays to the franchisor or an affiliate, directly or indirectly, either by contract or
26 by practical necessity, as a condition of obtaining or commencing operation, continuing
27 operations of the franchise or reinstating or renewing the operation of a franchise.
28 "Required payment" does not include payments for the purchase of reasonable amounts
29 of inventory at bona fide wholesale prices for resale or lease.

30 **15. Skill or knowledge.** "Skill or knowledge" means:

31 A. The result of acquired learning and aptitude developed by special training and
32 experience in the business to be licensed under the franchise agreement or the result
33 of extensive use and experience with the goods or services or the operating system of
34 such business; or

35 B. The experience in organizing a franchise system and in providing training,
36 assistance and services to franchisees; and which a prospective franchisee would
37 expect in reasonable reliance on the written and oral commitments and
38 representations of the franchisor.

1 **§1299-B. Applicability of chapter**

2 A person who engages directly or indirectly in purposeful contacts in this State in
3 connection with the offering or advertising for sale of a franchise or has business dealings
4 with respect to a franchise in this State is subject to this chapter and is subject to the
5 jurisdiction of the courts of this State. This chapter does not apply to a franchisor or
6 franchisee who is subject to chapter 204, 206-B or 211-A.

7 **§1299-C. Franchise sales practices**

8 **1. Advertising, offering, sale or promotion of franchise.** In connection with the
9 advertising, offering, sale or promotion of a franchise, a person, including, without
10 limitation, a franchise seller, may not:

11 A. Employ a device, scheme or artifice to defraud;

12 B. Engage in an act, practice, course of business or pattern of conduct that operates
13 or is intended to operate as a fraud upon any prospective franchisee; or

14 C. Obtain property or assist others to obtain property by making an untrue statement
15 of a material fact or any failure to state a material fact.

16 **2. Disclosure document, notice or report.** In connection with a disclosure
17 document, notice or report required by law, a franchisor or franchise seller, either directly
18 or through another person, may not:

19 A. Make an untrue statement of material fact;

20 B. Fail to state a material fact;

21 C. Fail to state a fact that would render a required statement or disclosure either
22 untrue or misleading;

23 D. Fail to furnish a prospective franchisee with:

24 (1) All information required to be disclosed by law and at the time and in the
25 manner required; and

26 (2) A written statement specifying, prominently and in not less than 14-point
27 type, whether the franchise agreement involved contains a right to renew such
28 agreement; or

29 E. Make a claim or representation to a prospective franchisee whether orally or in
30 writing that is inconsistent with or contradicts a disclosure document.

31 **§1299-D. Unfair acts and practices**

32 **1. Unfair methods of competition prohibited.** Unfair methods of competition and
33 unfair or deceptive acts or practices are prohibited.

34 **2. Guidance in interpretation.** In construing subsection 1, the courts may be
35 guided by but are not bound to the interpretations of the Federal Trade Commission Act,
36 15 United States Code, Section 45.

1 **3. Attorney General may adopt rules.** The Attorney General may adopt rules
2 interpreting subsection 1. These rules may not be inconsistent with the rules, regulations
3 and decisions of the Federal Trade Commission and the federal courts interpreting the
4 Federal Trade Commission Act, 15 United States Code, Section 45. Rules adopted by the
5 Attorney General pursuant to this subsection are routine technical rules as described in
6 Title 5, chapter 375, subchapter 2-A.

7 **4. Unfair or deceptive act or practice.** It is an unfair or deceptive act or practice to
8 violate any of the provisions of this chapter.

9 **5. Franchisor may not terminate, cancel or fail to renew franchise.** A franchisor
10 may not terminate, cancel or fail to renew a franchise for the failure or refusal of the
11 franchisee to:

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

15 B. Meet sales quotas suggested or required by the franchisor not expressly set forth
16 in the franchise agreement;

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

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

22 E. Give the franchisor or any supplier financial records of the operation of the
23 franchise that are not related or are unnecessary to the performance of the franchisee's
24 express obligations under the franchise agreement.

25 **6. Prohibited acts of franchisor.** A franchisor, directly or through any officer,
26 agent, affiliate or employee, may not:

27 A. Restrict a franchisee from associating with other franchisees or from joining,
28 leading or otherwise participating in a trade or other association or retaliate against a
29 franchisee for engaging in these activities;

30 B. Require or prohibit any change in management of any franchise unless the
31 requirement or prohibition of the change is for good cause, which must be stated in
32 writing by the franchisor and be based on violations of material, reasonable and
33 reasonably required express provisions of the franchise agreement. Good cause
34 includes, but is not limited to, requiring that management of the franchise be
35 conducted by personnel who have been trained in the manner required of all franchise
36 managers in the system or are legally eligible for employment in the United States of
37 America;

38 C. Impose on a franchise by contract, rule or regulation, whether written or oral, a
39 standard of conduct or performance unless the franchisor, its agents or representatives
40 sustain the burden of proving the standard to be reasonable and necessary and

1 uniformly enforced and applied throughout its system of franchisees, franchisor-
2 owned units and licensees in the same manner;

3 D. Fail to deal fairly and in good faith or fail to exercise due care with a franchisee
4 or any association or other aggregation or incorporation of franchisees in all matters,
5 including, without limitation, transfer of the franchise, administration of advertising
6 funds, rewards programs and marketing funds and the interpretation, administration
7 and performance of franchise and area development or territory agreements;

8 E. Sell, rent or offer to sell to a franchisee any product or service for more than a fair
9 and reasonable price or without the reasonable expectation that the sale or rental of
10 the same will promote the profitability of the franchisee's business;

11 F. Discriminate between franchisees in the charges offered or made for royalties,
12 goods, services, equipment, rentals or advertising services or in any other business
13 dealing, unless:

14 (1) That discrimination between franchisees is necessary to allow a particular
15 franchisee to fairly meet competition in the open market;

16 (2) That discrimination does not adversely affect the business of any existing
17 franchisee; and

18 (3) To the extent that the franchisor satisfies the burden of proving that any
19 classification of or discrimination between franchisees is reasonable, that
20 discrimination is based on franchises granted at materially different times and
21 that discrimination is reasonably related to the difference in time or on other
22 proper and justifiable distinctions and is not arbitrary or intended to be for the
23 benefit of the franchisor at the expense of any franchisee.

24 Nothing in this paragraph may be construed as granting to a franchisor any right that
25 may be limited by any other state or federal law;

26 G. Notify the franchisee of a claimed breach of the franchise agreement for good
27 cause later than 180 days from the date good cause arises or 180 days after the
28 franchisor knew or in the exercise of reasonable care should have known of the
29 claimed good cause;

30 H. Require a franchisee to sell any product or service for a price not reasonably
31 acceptable to the franchisee;

32 I. Fail to make readily available to franchisees, without charge, true, accurate and
33 complete copies of all records of marketing, rewards programs, advertising funds and
34 fees that have been paid by franchisees, vendors, suppliers and licensees;

35 J. Coerce a franchisee to assent to a release, assignment, novation, waiver or estoppel
36 that would prospectively relieve a person from liability imposed by this chapter;

37 K. Require or demand that a franchisee pay liquidated or other post-termination
38 damages in excess of the average monthly royalty fees paid by the franchisee during
39 the prior 12 full calendar months or the shorter time that the franchised location has
40 been in the franchise system multiplied by the lesser of 6 months and the number of
41 months remaining in the term of the franchise agreement; or

1 L. Act to accomplish, either directly or through any parent company, subsidiary or
2 agent, what would otherwise be prohibited under this chapter on the part of the
3 franchisor.

4 **§1299-E. Limited fiduciary duty**

5 **1. Financial services.** Without regard to whether a fiduciary duty is imposed
6 generally on the franchisor by virtue of a franchise agreement, the franchisor owes a
7 fiduciary duty to its franchisees and is obligated to exercise the highest standard of care
8 for franchisee interests when the franchisor:

9 A. Undertakes to perform bookkeeping, collection, payroll or accounting services on
10 behalf of the franchisee; or

11 B. Administers, controls or supervises, either directly or through any subsidiary or
12 affiliate, any advertising, marketing or promotional fund or program to which
13 franchisees are required to, or routinely, contribute.

14 **2. Administration of fund or program.** A franchisor that administers or supervises
15 the administration of any fund or program described in subsection 1, paragraph B shall:

16 A. Keep all money contributed to such fund or program in a separate account;

17 B. Provide an independent certified audit of such fund or program within 60 days
18 following the close of the franchisor's fiscal year that must include full disclosure of
19 all fees, expenses or other payments from the account to the franchisor or to any
20 subsidiary, affiliate or other entity controlled in whole or in part by the franchisor;
21 and

22 C. Disclose the source and amount of and deliver to such fund or program any
23 discount, rebate, compensation or payment of any kind from a person or entity with
24 whom such fund or program transacts.

25 **3. Fiduciary duty not created or extended by implication.** While not limiting the
26 ability of any court to identify other circumstances for which a fiduciary duty may also
27 exist, this section does not create or extend a fiduciary duty by implication to other
28 aspects of a franchise.

29 **§1299-F. Good faith and fair dealing; duty of due care**

30 **1. Franchisor owes duty.** For all purposes of this chapter, a franchisor owes a duty
31 of good faith and fair dealing to each of its franchisees. For the purposes of this
32 subsection, a duty of good faith and fair dealing:

33 A. Obligates the franchisor to do nothing that will have the effect of destroying or
34 injuring the right of the franchisee to obtain and receive the expected fruits of the
35 contract and to do everything required under the contract to accomplish such purpose;
36 and

37 B. Requires honesty of fact and observance of reasonable standards of fair dealing in
38 the trade.

1 **2. Duty of due care.** A franchise agreement imposes on the franchisor a duty of due
2 care. Unless a franchisor represents that it has great skill or knowledge in the undertaking
3 with the franchisees or conspicuously disclaims that it has skill or knowledge, the
4 franchisor is required to exercise the skill and knowledge normally possessed by
5 franchisors in good standing in the same or similar types of business.

6 **§1299-G. Encroachment**

7 **1. Development of new location.** A franchisor that develops a new outlet, location
8 or any other form of distribution of goods or services that is substantially similar to that
9 offered by existing franchisees when that development has a material adverse impact on
10 the gross sales or net profits of an existing franchisee's outlet or location is liable to the
11 affected franchisee for monetary damages, unless:

12 A. The franchisor first offers the new outlet or location to the existing franchisee in
13 good faith with the rational expectation that the offered location will not materially
14 and adversely affect the profitability of the franchisee's existing locations or its
15 planned new locations that have been disclosed to the franchisor in writing; or

16 B. At the time the new outlet or location is developed, the existing franchisee is not
17 in compliance with the franchisor's current material, reasonable and reasonably
18 necessary express obligations under the existing franchisee's franchise agreement for
19 the affected location, and the franchisee has been given written notice and an
20 opportunity to cure such noncompliance and the franchisee has failed to cure the
21 same.

22 **2. Material adverse impact.** For there to be determined a material adverse impact
23 on the existing franchisee's annual gross sales, such adverse impact, based on a
24 comparison to the annual gross sales from the existing outlet or location during the
25 12-month period immediately preceding the opening of the new outlet or location, must
26 be determined to have been no less than 10% during the first 12 months of operation of
27 the new outlet or location.

28 **§1299-H. Transfer of a franchise**

29 **1. Assignment of interest.** A franchisee may assign an interest in a franchised
30 business or in a franchise to a transferee as long as the transferee satisfies the reasonable
31 qualifications then generally applied by the franchisor in the offer and sale of franchises.
32 For the purpose of this subsection, a reasonable current qualification for a new franchisee
33 is a qualification based upon a legitimate business reason. If the proposed transferee does
34 not meet the reasonable current qualifications of the franchisor, the franchisor may refuse
35 to permit the transfer, as long as the refusal of the franchisor to consent to the transfer is
36 not arbitrary or capricious and the franchisor states the grounds for its refusal in writing
37 to the franchisee.

38 **2. Notice of proposed transfer.** A franchisee shall give a franchisor not less than 30
39 days' written notice of a proposed transfer of a transferable interest and on request shall
40 provide in writing the ownership interests of all persons holding or claiming an equitable
41 or beneficial interest in the franchise subsequent to the transfer of the franchisee, as
42 appropriate.

1 **3. Time for approval of transfer.** A transfer by a franchisee is deemed to have
2 been approved 30 days after the franchisee submits the request for permission to transfer
3 the franchise involved, unless within that time the franchisor refuses to consent to the
4 transfer as evidenced in writing in accordance with subsection 1. A statement of the
5 grounds for refusal to consent to the transfer is privileged against a claim of defamation.

6 **4. Permitted conditions of transfer.** A franchisor may require as a condition of a
7 transfer that:

8 A. The transferee successfully complete a reasonable training program;

9 B. A reasonable transfer fee be paid to reimburse the franchisor for the franchisor's
10 reasonable and actual expenses directly attributable to the transfer;

11 C. The franchisee pay or make reasonable provision to pay any amount due the
12 franchisor or the franchisor's affiliate; and

13 D. The financial terms of the transfer at the time of the transfer comply with the
14 franchisor's current financial requirements for franchisees.

15 **5. Prohibited condition of transfer.** A franchisor may not condition its consent to a
16 transfer described in subsection 1 on any of the following:

17 A. The franchisee's forgoing existing rights other than those contained in the
18 franchise agreement;

19 B. The franchisee's entering into a release of claims broader in scope than a
20 counterpart release of claims offered by the franchisor to the franchisee; or

21 C. Requiring the franchisee or transferee to make, or agree to make, capital
22 improvements, reinvestments or purchases in an amount greater than the franchisor
23 could have reasonably required under the terms of the franchisee's existing franchise
24 agreement.

25 **6. Assignment for unexpired term of franchise agreement.** A franchisee may
26 assign the franchisee's interest in the franchise for the unexpired term of the franchise
27 agreement, and a franchisor may not require the franchisee or the transferee to enter into a
28 franchise agreement that has different material terms or financial requirements as a
29 condition of the transfer.

30 **7. Consent to public offering of securities.** A franchisor may not withhold its
31 consent to a franchisee's making a public offering of its securities without good cause if
32 the franchisee, or the owner of the franchisee's interest in the franchise, retains control
33 over more than 25% of the voting power as the franchisee.

34 **8. Consent to pooling of interests.** A franchisor may not withhold its consent to a
35 pooling of interests, to a sale or exchange of assets or securities or to any other business
36 consolidation among its existing franchisees, as long as the constituents are each in
37 material compliance with their respective obligations to the franchisor.

38 **9. Occurrences that are not transfers.** The following occurrences may not be
39 considered transfers requiring the consent of the franchisor under a franchise agreement.

1 and a franchisor may not impose any fees, payments or charges in excess of a franchisor's
2 cost to review the relevant matter:

3 A. The succession of ownership or management of a franchise upon the death or
4 disability of a franchisee or of an owner of a franchise to the surviving spouse, heir or
5 partner active in the management of the franchise unless the successor objectively
6 fails to meet within one year the reasonable qualifications of the franchisor for
7 franchisees;

8 B. Incorporation of a proprietorship franchisee, except that the franchisor may
9 require a personal guarantee by the franchisee of obligations related to the franchise;

10 C. A transfer within an existing ownership group of a franchise as long as more than
11 50% of the franchise is held by persons who meet the franchisor's reasonable
12 qualifications for franchisees. If less than 50% of the franchise will be owned by
13 persons who meet the franchisor's reasonable qualifications, the franchisor may
14 refuse to authorize the transfer;

15 D. A transfer of less than a controlling interest in the franchise to the franchisee's
16 spouse or children, as long as more than 50% of the entire franchise is held by
17 persons who meet the franchisor's reasonable qualifications. If less than 50% of the
18 franchise would be owned by persons who meet the franchisor's reasonable
19 qualifications, the franchisor may refuse to authorize the transfer; and

20 E. A grant or retention of a security interest in the franchised business or its assets or
21 in an ownership interest in the franchisee if the security agreement establishes an
22 obligation on the part of the secured party, enforceable by the franchisor, to give the
23 franchisor simultaneously with notice to the franchisee notice of the secured party's
24 intent to foreclose on the collateral and a reasonable opportunity to redeem the
25 interest of the secured party and recover the secured party's interest in the franchise,
26 the franchised business or the franchisee by satisfying the secured obligation.

27 A franchisor may not exercise any purported right of first refusal or right to purchase with
28 regard to any franchise or interest or assets of a franchisee upon the happening of any
29 event described in paragraphs A to E.

30 **10. Covenant prohibiting lawful occupation unenforceable.** After the transfer of
31 a transferor's complete interest in a franchise, a franchisor may not enforce against the
32 transferor any covenant of the franchise purporting to prohibit the transferor from
33 engaging in any lawful occupation or enterprise. This subsection does not limit the
34 franchisor from enforcing a contractual covenant against the transferor not to exploit the
35 franchisor's trade secrets or intellectual property rights, including protection of trade
36 dress, except by agreement with the franchisor.

37 **§1299-I. Renewal of the franchise; notice**

38 **1. Failure to renew requires good cause.** A franchisor may not, directly or through
39 an officer, agent or employee, fail to renew a franchise, except for good cause shown.

40 **2. Renewal not subject to unreasonable fees.** A renewal may not be subject to
41 unreasonable fees. Fees are not considered unreasonable if they do not exceed 50% of

1 the amount of the average initial franchise fee then being charged to all franchisees of the
2 franchisor in the State.

3 **3. Basis of good cause.** Good cause may be based upon legitimate business reasons
4 that include, but are not limited to, the franchisee's refusal or failure to comply
5 substantially with any material, reasonable and reasonably necessary express obligation
6 of the franchise agreement, including repeated and intentional nonpayment of royalties
7 and advertising or marketing fees clearly required by the franchise agreement.

8 **4. Notice of nonrenewal.** Before nonrenewal of a franchise, a franchisor shall give
9 a franchisee written notice at least 90 days in advance of the nonrenewal. The notice
10 must state all of the reasons constituting good cause for the nonrenewal and must provide
11 that the franchisee has 60 days in which to rectify any claimed discrepancy and reinstate
12 its right to renew the franchise.

13 **5. New franchise agreement requirements.** If a franchisor requires that a
14 franchisee sign a new franchise agreement as a condition of renewal, the franchise
15 agreement must contain the same royalties, advertising fees and other fees as the expiring
16 agreement and no new fees, and any protected territory in the expiring agreement must be
17 the same in the renewal franchise.

18 **6. Prohibitions after expiration of franchise agreement.** A franchisor may not
19 prohibit a franchisee from engaging in any business at any location after expiration of a
20 franchise agreement or from using the customer list and telephone numbers associated
21 with the franchise business or enforce such a prohibition. Nothing in this subsection may
22 be interpreted to prohibit enforcement of any provision of a franchise contract obligating
23 a franchisee after expiration or termination of a franchise to:

24 A. Cease or refrain from using a trademark, a trade secret or intellectual property
25 owned by the franchisor or its affiliate;

26 B. Alter the appearance of the business premises so that it is not substantially similar
27 to the standard design, decor criteria, trade dress or motif in use by other franchisees
28 using the same name or trademarks within the proximate trade or market area of the
29 business; or

30 C. Modify the manner or mode of business operations so as to avoid any substantial
31 confusion with the manner or mode of operations that are unique to the franchisor
32 and commonly in practice by other franchisees using the same name or trademarks
33 within the proximate trade or market area of the business.

34 **§1299-J. Termination; good cause; notice; opportunity to cure**

35 **1. Good cause required for termination or cancellation.** A franchisor may not,
36 directly or through an officer, agent or employee, terminate or cancel a franchise or
37 substantially change the competitive circumstances of a franchise agreement, except for
38 good cause shown.

39 **2. Default under one agreement not default under another.** A default under one
40 franchise agreement does not in and of itself constitute a default under another franchise
41 agreement to which the franchisee or an affiliate of the franchisee is a party.

1 **3. Notice of termination or cancellation required.** Prior to termination or
2 cancellation of a franchise, a franchisor shall give a franchisee written notice at least 90
3 days in advance of the termination. The notice must state all of the reasons constituting
4 good cause for termination or cancellation and must provide that the franchisee has 60
5 days in which to rectify any claimed defaults.

6 **4. Notice of termination or cancellation not required.** The requirement for 90
7 days' advance written notice for termination or cancellaion does not apply if the reason
8 for termination or cancellation is:

9 A. The alleged grounds are voluntary abandonment by a franchisee of a franchise
10 relationship, in which event such notice may be given 15 days in advance of the
11 termination or cancellation; or

12 B. The conviction of a franchisee in a court of competent jurisdiction of an offense:

13 (1) Punishable by a term of imprisonment in excess of one year;

14 (2) Directly related to the business conduct pursuant to the franchise;

15 (3) That materially impairs the goodwill value of the franchise or the franchised
16 trademark; and

17 (4) That is no longer appealable.

18 In the event of such a conviction, notice may be given at any time following the date
19 on which the conviction is no longer appealable and is effective upon delivery and
20 written receipt of the notice. In no event may any franchisor collect any financial
21 penalty or fee, however delineated, as a consequence of the conviction.

22 **5. Nonpayment of sums due under franchise agreement.** If the reason for
23 termination or cancellation is nonpayment of sums due under a franchise agreement, a
24 franchisee is entitled to written notice of the default and has 15 days in which to cure the
25 default from the date of the notice. A franchisee has the right to cure 3 times in any
26 12-month period during the period of a franchise agreement.

27 **6. Violation of law, regulation or rule.** If the reason for termination or cancellation
28 is a violation of any law, regulation or rule relating to an imminent danger to public
29 health or safety, a franchisee is entitled to immediate written notice and has 24 hours
30 following receipt of that notice to cure that violation.

31 **7. Changes to franchise system or competitive circumstances.** A franchisee may
32 terminate a franchise agreement without penalty or fees in the event of changes to the
33 franchise system or the competitive circumstances of the franchise business that would
34 cause substantial negative impact or substantial financial hardship to the franchisee in the
35 operation of its franchise.

36 **§1299-K. Transfer of franchise system by franchisor**

37 **1. Limits on transfer of franchise system by franchisor.** A franchisor may not
38 transfer by sale or otherwise its interest in a franchise system unless:

1 A. The franchisor provides not less than 30 days before the effective date of transfer
2 notice to every franchisee of the intent to transfer the franchisor's interest in the
3 franchise system or of substantially all of the franchises held by the franchisor;

4 B. The notice is accompanied by a complete description of the business and financial
5 terms of the proposed transfer; and

6 C. Upon the transfer, the entity assuming the franchisor's obligations has the business
7 experience and financial means to perform all of the franchisor's obligations in the
8 ordinary course of business.

9 **§1299-L. Effect of termination**

10 **1. Compensation upon termination.** Upon termination of a franchise for whatever
11 cause or reason, except voluntary relinquishment or abandonment of the franchise by the
12 franchisee, the franchisor shall fairly compensate the franchisee or franchisee's estate for
13 the fair market value at the time of termination of the franchise; for the franchisee's
14 inventory, supplies, equipment and furnishings purchased by the franchisee from the
15 franchisor or its approved sources; and for the fair market value of good will, if any,
16 exclusive of personalized items that have no value to the franchisor and inventory,
17 supplies, equipment and furnishings not reasonably required in the conduct of the
18 franchise business, subject to the following limitations:

19 A. Compensation need not be made to a franchisee for good will if the franchisor
20 agrees in writing not to enforce a covenant that restrains the franchisee from
21 competing with the franchisor in the same or substantially similar business in the
22 same or substantially similar manner at the same location using the same property
23 except the franchisor's registered trademark or trade name; and

24 B. A franchisor may offset against amounts owed to a franchisee under this
25 subsection any amount mutually agreed upon and owed by the franchisee to the
26 franchisor that is not the subject of a good faith dispute by the franchisee.

27 **2. Construction.** The provisions of this section may not be construed to permit the
28 termination or nonrenewal of any franchise agreement except in accordance with the
29 express terms of the franchise agreement and this chapter.

30 **§1299-M. Warranties; indemnification**

31 **1. Franchisor to indemnify and hold harmless franchisee.** A franchisor shall
32 indemnify and hold harmless its franchisee from financial loss and expense, including
33 legal fees and costs, arising out of any claim, demand suit or judgment by reason of a
34 defect in merchandise, products, equipment, supplies, methods or procedures prescribed
35 by the franchisor and required to be performed or purchased by the franchisee, except for
36 the negligent act or willful misconduct of the franchisee that causes the loss or expense.

37 **2. Franchisee not liable for negligence of others.** A franchisee, franchisee
38 association or cooperative of franchisees is not liable for the negligence or misconduct of
39 any supplier or distributor of products or services prescribed by the franchisor or for the
40 failure of any product or service prescribed by the franchisor that is not fit for the
41 particular purpose for which the product or service was prescribed or any purpose related

1 to the product or service, and any contractual provisions to the contrary are void as
2 against public policy.

3 **3. Reimbursement for warranty work.** A franchisor shall reimburse its franchisee
4 at the prevailing retail price for any services rendered or parts supplied by the franchisee
5 in satisfaction of any warranty issued by the franchisor or any warranty issued by the
6 franchisee that is mandated by the franchisor, and a franchisor may not restrict a
7 franchisee from rendering services or providing parts in accordance with standards of
8 good workmanship in satisfaction of the warranty.

9 **§1299-N. Enforcement**

10 **1. Legal action.** If a franchisor violates a provision of this chapter, a franchisee may
11 bring an action against that franchisor in a court of competent jurisdiction of this State for
12 damages sustained by the franchisee as a consequence of the franchisor's violation,
13 together with the actual costs of the action, including reasonable attorney's fees, and the
14 franchisee also may be granted injunctive relief against unlawful termination,
15 cancellation or nonrenewal or any act or practice prohibited by this chapter. If the court
16 finds for the franchisee, recovery must be in the amount of actual damages or up to 3, but
17 not less than 2, times such amount if the court finds that the unfair method of competition
18 or the act or practice in violation of this chapter was a willful or knowing violation.

19 **2. Laws of this State govern; courts of this State have jurisdiction.**
20 Notwithstanding any term or provision of a franchise agreement to the contrary:

21 A. The laws of this State govern the interpretation of the franchise agreement of a
22 franchise located in the State and the performance of the parties under the agreement;
23 and

24 B. The courts of this State and the federal courts with jurisdiction over cases filed in
25 the State have exclusive jurisdiction with respect to an action brought under this
26 chapter or an action brought by a franchisor concerning a franchise located in this
27 State.

28 **3. Attorney General may enforce this chapter.** Upon the written request of a
29 franchisor or a franchisee, the Attorney General may enforce compliance with this
30 chapter.

31 **4. Remedies are in addition to other remedies.** The remedies reflected in this
32 section are not exclusive but are in addition to all other existing common law and
33 statutory remedies that may be available to a franchisee.

34 **§1299-O. Void provisions; arbitration; mediation; class action**

35 **1. Arbitration; mediation.** A clause or provision in a franchise agreement requiring
36 the parties to submit to arbitration is enforceable only if the parties have voluntarily
37 entered into an agreement to submit to arbitration after the dispute has arisen and the
38 proceeding is conducted at a location within this State reasonably convenient to the
39 franchisee. The provisions of this subsection do not prohibit the enforceability of a
40 clause or provision in a franchise agreement that requires the parties to submit to

1 nonbinding mediation conducted at a location within this State reasonably convenient to
2 the franchisee.

3 2. Class action. A provision in a franchise agreement may not deprive the
4 franchisee from participating as a member of a class or in a consolidated action permitted
5 under the Federal Rules of Civil Procedure or the Maine Rules of Civil Procedure.

6 **§1299-P. Time limitations; cause of action**

7 1. Time limitation. An action arising out of this chapter must be commenced within
8 4 years after the cause of action becomes known or is knowable, whichever is later. A
9 provision in a franchise agreement that requires a party to a franchise agreement to
10 commence an action within a shorter period than as provided in this section is void as
11 against public policy.

12 2. Cause of action that accrues during pendency of proceeding. If a cause of
13 action accrues during the pendency of any civil, criminal or administrative proceeding
14 against a person brought by the Federal Government or any of its agencies under the
15 antitrust laws, the Federal Trade Commission Act or any other federal act, or brought by
16 this State or any of its political subdivisions under the laws of this State related to
17 antitrust laws or to franchising, that cause of action may be commenced within one year
18 after the final disposition of the civil, criminal or administrative proceeding.

19 **§1299-Q. Good faith; good cause**

20 1. Good faith; good cause. A duty of good faith under this chapter obligates a party
21 to a franchise to do nothing that will have the effect of destroying or injuring the right of
22 the other party to obtain and receive the expected fruits of the contract and to do
23 everything required under the contract to accomplish such purpose. A duty of good faith
24 requires honesty of fact and observance of reasonable standards of fair dealing in the
25 trade.

26 2. Good cause; burden of proof. The burden of proving good cause is on the
27 franchisor.

28 **§1299-R. Waiver by contract prohibited**

29 The effect of this chapter may not be varied, waived or disclaimed by contract or
30 agreement. Any contract or agreement purporting to do so is void and unenforceable to
31 that extent only.

32 **SUMMARY**

33 This bill enacts the Maine Small Business Investment Protection Act to protect
34 franchisees in the sale and operation of franchise businesses.