

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

CHAPTER 473**H.P. 964 - L.D. 1327****An Act to Regulate Personal Sports
Mobile Franchises**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, personal sports mobile dealers in this State are currently being subjected to economic coercion by certain manufacturers; and

Whereas, this legislation protects those dealers from such coercion; and

Whereas, it is imperative to address this issue and ensure the ability of such dealers to conduct their business without such coercion; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 10 MRSA §1171, sub-§11, as amended by PL 1995, c. 65, Pt. A, §14 and affected by §153 and Pt. C, §15, is further amended to read:

11. Motor vehicle. "Motor vehicle" means any motor driven vehicle, except motorcycles, required to be registered under Title 29-A, chapter 5.

Sec. 2. 10 MRSA §1196, sub-§6, as enacted by PL 1991, c. 631, is amended to read:

6. Watercraft. "Watercraft" means any type of vessel, boat or craft used or capable of being used as a means of transportation on water. "Watercraft" does not include a seaplane or a personal sports mobile as defined in section 1242, subsection 15.

Sec. 3. 10 MRSA c. 206-B is enacted to read:

CHAPTER 206-B**PERSONAL SPORTS MOBILE
MANUFACTURERS, DISTRIBUTORS AND
DEALERS****§1241. Short title**

This chapter may be known and cited as the "Personal Sports Mobile Business Practices Act."

§1242. Definitions

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

1. Designated family member. "Designated family member" means the spouse, child, grandchild, parent or sibling of the owner of a new personal sports mobile dealership who in the case of the owner's death is entitled to inherit the ownership interest in the new personal sports mobile dealership under the terms of the owner's will or who in the case of an incapacitated owner of a new personal sports mobile dealership has been appointed by a court as the legal representative of the new personal sports mobile dealer's property.

2. Distributor branch. "Distributor branch" means a branch office maintained by a distributor or wholesaler that sells or distributes new or used personal sports mobiles to personal sports mobile dealers.

3. Distributor representative. "Distributor representative" means a representative employed by a distributor branch, distributor or wholesaler.

4. Distributor or wholesaler. "Distributor" or "wholesaler" means any person that sells or distributes new or used personal sports mobiles to personal sports mobile dealers or that maintains distributor representatives within this State.

5. Factory branch. "Factory branch" means a branch maintained by a manufacturer that manufactures or assembles personal sports mobiles for sale to distributors or personal sports mobile dealers or that is maintained for directing and supervising the representatives of the manufacturer.

6. Factory representative. "Factory representative" means a representative employed by a manufacturer or employed by a factory branch for the purpose of making or promoting the sale of personal sports mobiles or for contracting with, supervising, servicing or instructing personal sports mobile dealers or prospective personal sports mobile dealers.

7. Franchise. "Franchise" means an oral or written arrangement in which there is a community of interest in the marketing of personal sports mobiles or services related to personal sports mobiles at wholesale, retail, leasing or otherwise. The franchise may be for a definite or indefinite time period in which a manufacturer, distributor or wholesaler grants to a personal sports mobile dealer a license to use a trade name, service mark or related characteristic.

8. Franchisee. "Franchisee" means a personal sports mobile dealer to whom a franchise is offered or granted.

9. Franchisor. "Franchisor" means a manufacturer, distributor or wholesaler who grants a franchise to a personal sports mobile dealer.

10. Fraud. "Fraud" includes, in addition to its normal legal connotation, a misrepresentation in any manner, whether intentionally false or due to gross negligence of a material fact, a promise or representation not made honestly and in good faith and an intentional failure to disclose a material fact.

11. Good faith. "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined in Title 11, section 2103, subsection (1), paragraph (b).

12. Manufacturer. "Manufacturer" means any person, resident or nonresident, that manufactures or assembles new personal sports mobiles or imports for distribution through distributors or any person, resident or nonresident, that is controlled by the manufacturer. The term "manufacturer" includes the terms "franchisor," "distributor," "distributor branch," "wholesaler," "factory branch" and "factory representative."

13. New personal sports mobile. "New personal sports mobile" means a personal sports mobile that has not been sold previously to any person except a distributor or wholesaler or personal sports mobile dealer for resale.

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

15. Personal sports mobile. "Personal sports mobile" means any snowmobile as defined in Title 12, section 7821, subsection 5; any all-terrain vehicle as defined in Title 12, section 7851, subsection 2; any motorcycle as defined in Title 29-A, section 101, subsection 38; and any personal watercraft as defined in Title 12, section 7791, subsection 11-A. "Personal sports mobile" does not include a motor vehicle as defined in section 1171, subsection 11.

16. Personal sports mobile dealer. "Personal sports mobile dealer" means any person who sells or solicits or advertises the sale of new or used personal sports mobiles. "Personal sports mobile dealer" does not include receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court, or public officers while performing their duties as those officers.

17. Sale. "Sale" means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or otherwise, of any personal sports mobile or interest in a personal sports mobile or of any franchise related to a personal sports mobile; and any option, subscription or other contract or solicitation looking to a sale, or any offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any personal sports mobile or franchise with or as a bonus on account of the sale of anything is deemed a sale of that personal sports mobile or franchise.

§1243. Prohibited acts

The following acts are unfair methods of competition and unfair and deceptive practices. It is unlawful for any:

1. Damage to public. Manufacturer or personal sports mobile dealer to engage in any action that is arbitrary, in bad faith or unconscionable and that causes damage to any of the parties or to the public;

2. Coercion involving deliveries and orders. Manufacturer or an officer, agent or other representative of a manufacturer to coerce or attempt to coerce any personal sports mobile dealer:

A. To order or accept delivery of any personal sports mobile or appliances, equipment, parts or accessories for a personal sports mobile or any other commodity or commodities that the personal sports mobile dealer has not voluntarily ordered, or to order or accept delivery of any personal sports mobile with special features, appliances, accessories or equipment not included in the list price of the personal sports mobile as publicly advertised by the manufacturer; or

B. To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;

3. Certain interference in dealer's business. Manufacturer or an officer, agent or other representative of a manufacturer:

A. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of a dealer's order to any personal sports mobile dealer having a franchise or contractual arrangement for the retail sale of new personal sports mobiles sold or distributed by a manufacturer any personal sports mobiles that are covered by that franchise or contract and specifically publicly advertised by that manufacturer to be available for immediate delivery; however, the failure to deliver any personal sports mobile is not a violation of this chapter if that failure is

due to an act of God, or work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer or any of its agents has no control;

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

C. To resort to or use any false or misleading advertisement in connection with the manufacturer's business as a manufacturer or an officer, agent or other representative of the manufacturer; or to force any dealer to participate in any advertising campaign or contest, or to purchase any promotional materials, display devices or display decorations or materials at the expense of the new personal sports mobile dealer;

D. To offer to sell or to sell any new personal sports mobile at a lower price than the price offered to any other personal sports mobile dealer for the same model vehicle similarly equipped, or to utilize any device, including, but not limited to, sales promotion plans or programs that result in that lower price. This paragraph does not apply to the following:

(1) Sales to a personal sports mobile dealer for resale to any unit of the Federal Government;

(2) Any manufacturer or any of its agents offering to sell or selling new personal sports mobiles to all personal sports mobile dealers at an equal price; and

(3) Sales by a manufacturer or any of its agents to any unit of the Federal Government;

E. To offer to sell or lease or to sell or lease any new personal sports mobile to any person, except a manufacturer, at a lower price than the price offered and charged to a personal sports mobile dealer for the same model vehicle similarly equipped or to utilize any device that results in that lower price;

F. To offer to sell or to sell parts or accessories to any new personal sports mobile dealer for use in

that dealer's own business for the purpose of replacing or repairing the same or a comparable part or accessory at a lower price than the price charged for that part or accessory to any other new personal sports mobile dealer for similar parts or accessories for use in the dealer's own business;

G. To prevent or attempt to prevent by contract or otherwise any personal sports mobile dealer from changing the capital structure of that dealer's dealership or the means by or through which the dealer finances the operation of that dealership, if the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer and if that change by the dealer does not result in a change in the executive management control of the dealership;

H. To prevent or attempt to prevent by contract or otherwise any personal sports mobile dealer or any officer, partner or stockholder of any personal sports mobile dealer from selling or transferring any part of the interest of any of them to any other person or party. However, a dealer, officer, partner or stockholder may not sell, transfer or assign the franchise or power of management or control under the franchise without the consent of the manufacturer. That consent may not be unreasonably withheld;

I. To obtain money, goods, services, anything of value or any other benefit from any other person with whom the personal sports mobile dealer does business, on account of or in relation to the transactions between the dealer and the other person, unless that benefit is promptly accounted for and transmitted to the personal sports mobile dealer;

J. To compete with a personal sports mobile dealer operating under an agreement or franchise from a manufacturer in a relevant market area that has been determined exclusively by equitable principles. A manufacturer is not considered to be competing when operating a dealership either temporarily for a reasonable period not to exceed one year or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions;

K. To require a personal sports mobile dealer to assent to a release assignment, novation, waiver or estoppel that would relieve any person from liability imposed by this chapter;

L. To require any new personal sports mobile dealer to refrain from participation in the management or acquisition of or investment in any other line of new personal sports mobiles or related products;

M. To require any new personal sports mobile dealer to change the location of the new personal sports mobile dealership or during the course of the agreement or franchise to make any substantial alterations to the dealership premises when to do so would be unreasonable;

N. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, unless a manufacturer has:

- (1) Satisfied the notice requirement of paragraph Q;
- (2) Acted in good faith as defined in section 1242, subsection 11; and
- (3) Good cause for the cancellation, termination, nonrenewal or noncontinuance;

O. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions 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:

- (1) When there is a failure by the new personal sports mobile dealer to comply with a provision of the franchise that is both reasonable and of material significance to the franchise relationship so long as 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;
- (2) If the failure by the new personal sports mobile dealer, as described in subparagraph (1), relates to the performance of the new personal sports mobile or 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:

(a) The new personal sports mobile dealer was apprised by the manufacturer in writing of that failure; the notification stated that notice was provided of failure of performance pursuant to this subsection; and the new personal sports mobile dealer was afforded a reasonable opportunity for a period of not less than 6 months to exert good faith efforts to carry out the performance provisions;

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

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

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

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

P. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, based on any of the following items, which do not constitute good cause:

(1) The change of ownership of the new personal sports mobile dealer's dealership. This subparagraph does not authorize any change in ownership that would have the effect of the sale of the dealership without the manufacturer's written consent. This consent may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer;

(2) The fact that the new personal sports mobile dealer unreasonably refused to purchase or accept delivery of any new personal sports mobile, parts, accessories or any other commodity or services not ordered by the new personal sports mobile dealer, except that the manufacturer may require that the dealer stock a reasonable supply of parts or accessories required to

perform campaign, recall or warranty work, and except that this provision is not intended to modify or supersede any requirement of the franchise that dealers market a representative line of those personal sports mobiles that the manufacturer is publicly advertising;

(3) The fact that the new personal sports mobile dealer owns, has an investment in, participates in the management of or holds a license for the sale of another make or line of new personal sports mobiles or that the new personal sports mobile dealer has another make or line of new personal sports mobiles in the same dealership facilities as those of the manufacturer, as long as the new personal sports mobile dealer maintains a reasonable line of credit for each make or line of new personal sports mobiles and that the new personal sports mobile dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer; or

(4) The fact that the new personal sports mobile dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new personal sports mobile dealer's designated family member. The manufacturer shall give effect to such change in the ownership in the franchise. This subparagraph does not authorize any changes in ownership that would have the effect of the sale of the dealership without the manufacturer's written consent. This consent may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer.

The manufacturer has the burden of proof under paragraph N for showing that it has acted in good faith, that the notice requirements have been complied with and that there was good cause for the franchise termination, cancellation, nonrenewal or noncontinuance;

Q. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, without first providing notification of the termination, cancellation, nonrenewal or noncontinuance to the new personal sports mobile dealer as follows:

(1) Notification under this paragraph must be in writing and must be delivered per-

sonally or by certified mail to the new personal sports mobile dealer and must contain:

(a) A statement of intention to terminate, cancel, not continue or not renew the franchise;

(b) A statement of the reasons for the termination, cancellation, noncontinuance or nonrenewal; and

(c) The date on which the termination, cancellation, noncontinuance or nonrenewal takes effect;

(2) The notice required in this paragraph may not be given less than 90 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal, except as provided in subparagraph (3); or

(3) The notice required in this paragraph may not be given less than 15 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal with respect to any of the following:

(a) Insolvency of the new personal sports mobile dealer or filing of any petition by or against the new personal sports mobile dealer under any bankruptcy or receivership law;

(b) The business operations of the personal sports mobile dealer have been abandoned or closed for 14 consecutive business days unless the closing is due to an act of God, strike or labor difficulty; or

(c) Conviction of or plea of nolo contendere of a personal sports mobile dealer or one of its principal owners of any Class A, Class B or Class C crime, as defined in Title 17-A, in which a sentence of imprisonment of one year or more is imposed under Title 17-A, sections 1251 and 1252; or

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

(1) All unsold new model personal sports mobile inventory of the current and previ-

ous model years purchased from the manufacturer;

(2) Unused supplies and parts purchased from the manufacturer or its approved sources;

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

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

(5) Facilities, if the involuntary termination, cancellation, noncontinuance or nonrenewal is due to a failure of performance of the new personal sports mobile dealer in sales or service and:

(a) The new personal sports mobile dealer is leasing the facilities from a lessor other than the manufacturer, in which case the manufacturer shall pay the new personal sports mobile dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less; or

(b) The new personal sports mobile dealer owns the facilities, in which case the manufacturer shall pay the new personal sports mobile dealer a sum equivalent to the reasonable rental value of the facilities for one year.

Such fair and reasonable compensation for the items listed in subparagraphs (1) to (5) may not be less than the acquisition price and must be paid by the manufacturer, when possible, within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal.

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

4. Dealer violations. Personal sports mobile dealer:

A. To require a purchaser of a new personal sports mobile, as a condition of sale and delivery of the new personal sports mobile, to also purchase special features, appliances, equipment,

parts or accessories not desired or requested by the purchaser. The substance of this paragraph must be conveyed by the personal sports mobile dealer to the purchaser prior to the consummation of the purchase;

B. To represent and sell as a new personal sports mobile any personal sports mobile that has been used and operated for demonstration purposes or is otherwise a used personal sports mobile;

C. To resort to or use any false or misleading advertisement in connection with that dealer's business as a personal sports mobile dealer; or

D. To fail to disclose conspicuously in writing the personal sports mobile dealer's policy in relation to the return of deposits received from any person. A dealer shall require that a person making a deposit sign the form on which the disclosure appears.

§1244. Limitations on establishing or relocating dealerships

A new personal sports mobile dealership may not be established nor may a personal sports mobile dealership be relocated, except as follows.

1. Notification. If a manufacturer seeks to enter into a franchise establishing an additional new personal sports mobile dealership or relocating an existing new personal sports mobile dealership, within or into a relevant market area where the same line make is already represented, the manufacturer shall, in writing, first notify each new personal sports mobile dealer in the line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within or into that market area. The relevant market area is a radius of 15 miles around an existing dealership in the following cities: Augusta, Auburn, Bangor, Biddeford, Brewer, Falmouth, Lewiston, Portland, Saco, South Portland, Waterville and Westbrook. The relevant market area is a radius of 30 miles around all other existing dealerships.

Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any such new personal sports mobile dealership may file a complaint in the Superior Court of the county in which the dealership is located, protesting the establishment or relocation of the proposed new personal sports mobile dealership. When such a complaint is filed, the manufacturer may not establish or relocate the proposed new personal sports mobile dealership until a hearing has been held on the merits, nor thereafter if the court determines that there is good cause for not permitting the proposed new personal sports mobile dealership.

2. Good cause. In determining whether good cause has been established for not entering into or relocating an additional dealership for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to:

A. The permanency of the investment of both the existing and proposed new personal sports mobile dealers;

B. The effect on the retail new personal sports mobile business and the consuming public in the relevant market area;

C. Whether it is injurious or beneficial to the public welfare for an additional new personal sports mobile dealership to be established;

D. Whether the new personal sports mobile dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the personal sports mobiles of the line make in the market area, including the adequacy of personal sports mobile sales and service facilities, equipment, supply of personal sports mobile parts and qualified service personnel;

E. Whether the establishment of an additional new personal sports mobile dealership would increase competition and therefore be in the public interest; and

F. The effect on the establishing or relocating dealer as a result of not being permitted to establish or relocate.

For the purposes of this section, the reopening in a relevant market area of a new personal sports mobile dealership that has not been in operation for one year or more is deemed the establishment of an additional new personal sports mobile dealership.

§1245. Transportation damages

1. Liability of new dealer after acceptance. Notwithstanding the terms, provisions or conditions of any agreement or franchise, the new personal sports mobile dealer is solely liable for damages to new personal sports mobiles after acceptance from the carrier and before delivery to the ultimate purchaser.

2. Liability of manufacturer. Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to personal sports mobiles before delivery to a carrier or transporter.

3. Additional liability of dealer. Notwithstanding the provisions of subsections 1 and 2, the new personal sports mobile dealer is liable for damages to new personal sports mobiles after delivery to the

carrier if the dealer selects the mode of transportation and the carrier. In all other instances, the manufacturer is liable for carrier-related new personal sports mobile damage as long as the new personal sports mobile dealer annotates the bill of lading or other carrier document indicating damages observed at the time of delivery to the new personal sports mobile dealer and promptly notifies the manufacturer of any concealed damage discovered after delivery.

§1246. Survivorship

1. Right of family member. The right of a designated family member to succeed in dealer ownership is governed by the following provisions.

A. Any designated family member of a deceased or incapacitated new personal sports mobile dealer who has been designated as successor to that dealer in writing to the manufacturer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement, if the designated family member gives the manufacturer of new personal sports mobiles a written notice of the intention to succeed to the dealership within 120 days of the dealer's death or incapacity. The designated family member may not succeed the dealer if there exists good cause for refusal to honor the succession on the part of the manufacturer.

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

2. Refusal to honor; notice required. The refusal to honor the right of a designated family member to succeed in dealer ownership is governed by the following provisions.

A. If a manufacturer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member of a deceased or incapacitated new personal sports mobile dealer under the existing franchise agreement, the manufacturer may, within 60 days of receipt of the information requested in subsection 1, paragraph B, serve upon the designated family member notice of its refusal to honor the succession or its intent to discontinue the existing franchise agreement with the dealership. Such discontinuance may not take place sooner than 90 days from the date the notice is served.

B. The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement

with the dealership no sooner than 90 days from the date the notice is served.

C. If notice of refusal and discontinuance is not timely served upon the designated family member, the franchise agreement continues in effect subject to termination only as otherwise permitted by this section.

3. Written designation of succession unaffected. This section does not preclude a new personal sports mobile dealer from designating any person as that new personal sports mobile dealer's successor by written instrument filed with the manufacturer.

§1247. Delivery and preparation obligations; product liability and implied warranty complaints

Every manufacturer shall specify to the dealer the delivery and preparation obligations of its personal sports mobile dealers prior to delivery of new personal sports mobiles to retail buyers. The delivery and preparation obligations of its personal sports mobile dealers and a schedule of the compensation to be paid to its personal sports mobile dealers for the work and services they are required to perform in connection with the delivery and preparation are the dealer's only responsibility for product liability between that dealer and that manufacturer. The compensation set forth on the schedule must be reasonable.

In any action or claim brought against the personal sports mobile dealer on a product liability complaint in which it is later determined that the manufacturer is liable, the dealer is entitled to receive from the manufacturer that dealer's reasonable costs and attorney's fees incurred in defending the claim or action.

In any action or claim brought against the personal sports mobile dealer on a breach of implied warranty complaint in which it is later determined that the manufacturer is liable, the dealer is entitled to receive from the manufacturer the dealer's reasonable costs and attorney's fees incurred in defending the claim or action. In any such implied warranty action, a dealer has the rights of a buyer under Title 11, section 2607, subsection 5.

The court shall consider the personal sports mobile dealer's share in the responsibility for the damages in awarding costs and attorney's fees.

§1248. Warranty

1. Parts or labor; satisfaction of warranty. If a personal sports mobile franchisor requires or permits a personal sports mobile franchisee to perform labor or provide parts in satisfaction of a warranty created

by the franchisor, the franchisor shall properly and promptly fulfill its warranty obligations and shall:

A. Reimburse the franchisee for any parts provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty; and

B. Reimburse the franchisee for any labor performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty. The franchisee's rate for labor not performed in satisfaction of a warranty must be posted in a place conspicuous to its service customers.

2. Claim. Any claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty must be paid within 30 days of its approval from the franchisor. All the claims must be either approved or disapproved within 30 days of their receipt. When any such claim is disapproved, the franchisee that submitted it must be notified in writing from the franchisor of its disapproval within that period, together with the specific reasons for its disapproval.

3. Restrictions prohibited. A franchisor may not restrict by agreement, restriction upon reimbursement or otherwise the nature or extent of labor performed or parts provided so that the restriction impairs the franchisee's ability to satisfy a warranty created by the franchisor by performing labor in a professional manner or by providing parts required in accordance with generally accepted standards.

4. Costs; fees. In any claim that is disapproved by the manufacturer and in which the dealer brings legal action to collect the disapproved claim and is successful in the action, the court shall award the dealer the cost of the action together with reasonable attorney's fees. Reasonable attorney's fees must be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the dealer.

§1249. Unreasonable restrictions

It is unlawful directly or indirectly to impose unreasonable restrictions on a personal sports mobile dealer or franchisee relative to transfer; sale; right to renew; termination; discipline; noncompetition covenants; site-contracts whether by sublease, collateral pledge of lot purchase or option to purchase; compliance with subjective standards; or assertion of legal or equitable rights.

§1250. Covered under written or oral agreements

1. Agreements subject to this chapter. Written or oral agreements between a manufacturer, whole-

salers or distributors with a personal sports mobile dealer, including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts and all other such agreements in which the manufacturer, wholesaler or distributor has any direct or indirect interest, are subject to this chapter.

2. Copy of agreement or amendments. Before any new selling agreement or any amendment to that selling agreement between the parties becomes effective, the manufacturer or an officer, agent or other representative of that manufacturer shall, 90 days prior to the effective date of the agreement or amendment, forward a copy of the agreement or amendment to the dealer.

§1250-A. Franchise interest; vested rights

Notwithstanding any other provision of law, it is unlawful for the manufacturer, wholesaler, distributor or franchisor without due cause to fail to renew a franchise on terms then equally available to all its personal sports mobile dealers, to terminate a franchise or to restrict the transfer of a franchise unless the franchisee receives fair and reasonable compensation for the value of the business.

§1250-B. Franchisee's right to associate

Any franchisee has the right of free association with other franchisees for any lawful purpose.

§1250-C. Discounts and other inducements

In connection with a sale of a personal sports mobile or mobiles to the State or to any political subdivision of the State, a manufacturer may not offer any discounts, refunds or any other similar type of inducement to any dealer without making the same offer or offers to all its dealers within the relevant market area. If such inducements are made, the manufacturer, distributor or wholesaler shall give simultaneous notice of those inducements to all of its dealers within the relevant market area.

§1250-D. Public policy

Any contract or part of a contract or practice under a contract in violation of any provision of this chapter is against public policy and is void and unenforceable. Any existing contract or part of a contract or practice under a contract in violation of any provision of this chapter is against public policy and is void and unenforceable to the extent that it is in conflict with this chapter.

§1250-E. Advertisements

Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a personal sports mobile within the State is subject to this chapter.

§1250-F. Civil remedies

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

§1250-G. Statute of limitation

Actions arising out of any provision of this chapter must be commenced within 4 years after the cause of action accrues; however, if a person liable under this chapter conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of the cause of action by the person so entitled is excluded in determining the time limited for commencement of the action. If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States or any of its agencies under the antitrust laws, the Federal Trade Commission Act or any other federal Act or the laws of Maine related to antitrust laws or to franchising, that action may be commenced within one year after the final disposition of that civil, criminal or administrative proceeding.

§1250-H. Construction

In construing this chapter the courts may be guided by the interpretations of the Federal Trade Commission Act, 15 United States Code, Section 45, as amended.

§1250-I. Jurisdiction

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

§1250-J. Penalty

Any person who violates this chapter is guilty of a Class E crime.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 11, 1997.

CHAPTER 474

H.P. 1239 - L.D. 1756

An Act Regarding the Economic Security and Safety of Harness Horsepersons

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

Sec. 1. 8 MRSA §271, sub-§6 is enacted to read:

6. Term of license and race date assignment. Notwithstanding any provision of this chapter to the contrary, each license to conduct live racing or to engage in simulcast wagering, including by operating an off-track betting facility as defined in section 275-A and all awards of race dates issued or made by the commission, beginning with licenses issued and race dates awarded for 1998, may be for a 2-year period; except, that if a commercial track does not use during the first year of any such 2-year license a race date that it was entitled to receive for both years pursuant to section 275-N, then the commission may hold a hearing prior to the 2nd year or the term of that racing license to determine whether the award of that race date for the second year of the term should be revoked.

Sec. 2. 8 MRSA §272-A is enacted to read:

§272-A. Trust account

1. Establishment; deposits. Each licensee conducting live racing in the State shall establish a trust account for the benefit of the horsepersons who race at that licensee's facility. Except as provided in subsections 2, 3, 4 and 5 of this section, all funds that by statute must be used to pay purses must be deposited in that account and used exclusively to pay purses, including:

A. All funds distributed to or retained by the licensee to pay or supplement purses pursuant to sections 275-F, 275-H and 275-I, except that any funds may be used to reimburse a licensee for purse overpayment during its race meet. Reimbursement for purse overpayment to a licensee commences in 1998 for any overpayment in the previous calendar year and for any subsequent calendar year in which an overpayment occurs.

2. Bargaining agent funding. One and one-half percent of the amounts deposited in the trust account each month must be paid to the exclusive bargaining agent for horsepersons at that race track if that a representative has been elected pursuant to section 285.

3. Loan permitted. Each licensee may borrow for its operation and not deposit into the trust account established pursuant to subsection 1 money distributed to it pursuant to sections 275-F, 275-H and 275-I, even if the money is not a reimbursement, subject to the following conditions.

A. The amount of money borrowed pursuant to this subsection and not yet repaid at any point in time may not exceed the total amount the licensee paid into the trust account or paid in purses during the prior calendar year over and above the amounts it was required by statute to pay or deposit.

B. Any money borrowed pursuant to this subsection must be repaid to the licensee's trust account with interest calculated equal to the coupon issue yield equivalent, as determined by the United States Secretary of the Treasury, of the average accepted auction price for the last auction of 52-week United States Treasury bills settled immediately prior to the date from which the interest is calculated, plus 4%, in equal daily deposits over the balance of the calendar year beginning with the day after the money is borrowed, except that prepayment may be made without penalty and without consent being required. Repayment on a different schedule is permitted pursuant to the written authorization of the exclusive bargaining agent elected pursuant to section 285, but in any event any repayment must be paid no later than December 31st of the year the funds were borrowed.

4. Payment if licensee goes out of business. If a licensee fails to conduct a race meet during a calendar year, all remaining funds held in the trust account established under this section by that licensee must be returned to the commission, which shall return to the licensee any amount that represented a reimbursement that equaled an overpayment of purses. Any remaining balance of the trust account must be redistributed by the commission to the trust account of all racetracks that continue to conduct live racing in the State with each track receiving that portion of money determined by multiplying the amount of money available for redistribution by a fraction, the numerator of which is the number of race dates at that racing venue during the prior year, and the denominator of which is the total number of race dates throughout the State during that year.