

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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

statewide; the cost should be reasonable; there should be a single point of access for the public; funding must be provided by the Department of Human Services and the State Bureau of Identification within the Department of Public Safety; and the Department of Human Services shall adopt rules regarding the system and the registry.

See title page for effective date.

CHAPTER 717

H.P. 1643 - L.D. 2275

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

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

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

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, or any good faith attempt by the manufacturer to enforce the terms or provisions of the franchise or contractual agreement, does not constitute a violation of this chapter;

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

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 dealer in sales 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~~ 4 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~~ 120 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;

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

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 previous 2 model years purchased from the manufacturer;

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

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

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

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

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

(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~~. The amount of compensation due to the dealer from the manufacturer must be determined as follows:

(a) ~~The~~ If 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 pro rata portion of the rent for the unexpired term of the lease or one year's rent, whichever is less, that represents the aggregate percentage of the sales dollar volume and service dollar volume derived from the sale and service of that manufacturer's products for the 12 months immediately preceding termi-

nation, cancellation, noncontinuance or nonrenewal; or

(b) ~~The~~ If 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 pro rata portion of the reasonable rental value of the facilities for one year that represents the aggregate percentage of the sales dollar volume and service dollar volume derived from the sale and service of that manufacturer's products for the 12 months immediately preceding the termination, cancellation, noncontinuance or nonrenewal.

Such fair and reasonable compensation for the items listed in subparagraphs (1) ~~to (5)~~, (3) and (4) may not be less than the acquisition price ~~and~~. Compensation for the items listed in subparagraphs (1), (3), (4) and (5) must be paid by the manufacturer, when possible, within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal. Compensation for the items listed in subparagraph (2) must be paid by the manufacturer, when possible, within 90 days of the date on which the parts are received by the manufacturer from the dealer.

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

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

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 published~~ manufacturer's suggested retail price at the time of retail sale; and

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

§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 this chapter or 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.

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

See title page for effective date.
