

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2008 to June 13, 2009**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 12, 2009**

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

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**Augusta, Maine**  
**2009**

with a population of less than 15,000 may choose to be governed by Title 21-A, sections 1001 to 1020-A by vote of its legislative body at least 90 days before an election for office. A candidate in a town or city with a population of less than 15,000 that has adopted those provisions must register and file campaign finance reports with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to those sections.

~~A. Notwithstanding Title 17-A, section 4-A, a candidate who fails to file a notice or report as required by this section is guilty of a Class E crime and may be punished by a fine of \$5 for every day the candidate is in default or by imprisonment for not more than 30 days, or both.~~

**2. Municipal referenda campaigns.** Municipal referenda campaigns in towns or cities with a population of 15,000 or more are governed by Title 21-A, chapter 13, subchapter ~~IV~~ 4. The registrations and reports of political action committees and ballot question committees must be filed with the municipal clerk Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, chapter 13, subchapter ~~IV~~ 4 by vote of its legislative body at least 90 days before a referendum election. The registrations and reports of political action committees and ballot question committees in a town or city that has adopted those provisions must be filed with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to that subchapter.

**3. Preservation and destruction of records.** A town or city with a population of less than 15,000 that has adopted the provisions of Title 21-A, chapter 13 pursuant to this section must keep the campaign reports for at least 8 years.

**Sec. 11. Appropriations and allocations.** The following appropriations and allocations are made.

**ETHICS AND ELECTION PRACTICES,  
COMMISSION ON GOVERNMENTAL  
Governmental Ethics and Election Practices -  
Commission on 0414**

Initiative: Provides one-time funding for programming changes to the electronic filing system.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
All Other	\$24,800	\$0

OTHER SPECIAL	\$24,800	\$0
REVENUE FUNDS TOTAL		

**Governmental Ethics and Election Practices -  
Commission on 0414**

Initiative: Increases the number of months worked for one Planning and Research Assistant position from 9 to 11 months.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
All Other	\$8,325	\$0

OTHER SPECIAL	\$8,325	\$0
REVENUE FUNDS TOTAL		

**ETHICS AND ELECTION  
PRACTICES,  
COMMISSION ON  
GOVERNMENTAL**

<b>DEPARTMENT TOTALS</b>	<b>2009-10</b>	<b>2010-11</b>
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<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$33,125</b>	<b>\$0</b>
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<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$33,125</b>	<b>\$0</b>
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**Sec. 12. Effective date.** This Act takes effect August 1, 2011.

Effective August 1, 2011.

**CHAPTER 367  
S.P. 483 - L.D. 1337**

**An Act To Protect Maine  
Citizens and Franchised New  
Motor Vehicle Dealers**

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

**Whereas,** Maine has regulated the terms of franchise agreements between franchised new motor vehicle dealers and their manufacturers for decades; and

**Whereas,** the manufacture, distribution and sale of motor vehicles in this State and the ability of franchised new motor vehicle dealers to provide for the distribution, sale and repair of vehicles vitally affect

the general economy of the State, the transportation system and the public interest and public welfare; and

**Whereas**, recent economic circumstances have created a crisis in the automobile industry, most particularly among domestic automobile manufacturers; and

**Whereas**, the solvency and economic vitality of Maine dealerships are jeopardized by current economic conditions; and

**Whereas**, Maine new motor vehicle dealerships provide thousands of high-paying jobs in Maine; and

**Whereas**, revenues crucial to the operation of state and local government, including property, excise and income taxes and in excess of 20% of all sales taxes, are collected as a result of the sale of motor vehicles; 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-§9-B** is enacted to read:

**9-B. Line make.** "Line make" means motor vehicles that are offered for sale, lease or distribution under a common name, trademark, service mark or brand name.

**Sec. 2. 10 MRSA §1174, sub-§3, ¶N**, as amended by PL 1981, c. 331, §6, is amended to read:

N. To require any new motor vehicle dealer to change the location of the new motor vehicle dealership or during the course of the agreement or as a condition of renewal of a franchise agreement to make any substantial alterations to the dealership premises when to do so would be unreasonable;

**Sec. 3. 10 MRSA §1174, sub-§3, ¶P**, as amended by PL 1997, c. 521, §16, is further amended to read:

P. To terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle 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 may not be shown or based solely on the desire of the manufacturer, distributor, distributor branch or division or officer, agent or other representative thereof for market penetration. Good cause exists

for the purposes of a termination, cancellation, nonrenewal or noncontinuance when:

(1) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, as long as compliance on the part of the new motor vehicle 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 R.

When the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, the failure of the new motor vehicle dealer to effectively carry out the performance provisions of the franchise is good cause if:

(a) The new motor vehicle 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 section; and the new motor vehicle dealer was afforded a reasonable opportunity for a period of not less than ~~6 months~~ 180 days to exert good faith efforts to carry out the performance provisions;

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

(c) The new motor vehicle dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to the dealer; or

(3) The dealer and the manufacturer or distributor agree not to renew the franchise, although the dealer is entitled to the protections set forth in paragraph S in any termination, cancellation, nonrenewal or noncontinuance, whether by the manufacturer or the dealer; however, a termination, cancellation, nonrenewal or noncontinuance resulting from a sale of the assets or stock of the dealer or when a franchisee of motor homes, as defined in Title 29-A, section 101, subsection 40, voluntarily terminates a motor home franchise is exempt from the requirements of paragraph S; ~~or~~

(4) ~~The manufacturer discontinues production or distribution of the franchise product;~~

**Sec. 4. 10 MRSA §1174, sub-§3, ¶S**, as amended by PL 1997, c. 521, §18, is further amended to read:

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

- (1) All unsold new model motor vehicle inventory of the current and previous model year purchased from the manufacturer;
- (2) Supplies and parts purchased from the manufacturer or its approved sources that are listed in the current parts catalog or identical to a part in the current parts catalog except for the number assigned to the part, and that can be used for repairs under the terms of a manufacturer's new motor vehicle warranty;
- (3) Equipment and furnishings purchased from the manufacturer or its approved sources less a reasonable allowance for normal wear and tear; and
- (4) Special tools and automotive service equipment owned by the dealer that were designated as special tools or equipment and required by and purchased from the manufacturer or its approved sources, if the tools and equipment are in useable and good condition, normal wear and tear excepted.

Except for a termination related to a conviction and imprisonment for a felony involving moral turpitude that is substantially related to the involuntary termination, cancellation or nonrenewal due to a failure of performance of the new motor vehicle dealer in sales or service and qualifications, functions or duties of a franchisee, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or, if the new motor vehicle dealer owns the facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the facilities when possible within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal. The manufacturer shall pay the new motor vehicle dealer the sum equivalent to the rent or the reasonable rental value of the facilities when possible within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal if the new motor vehicle dealer has notified the manufacturer of the

amount of rent or reasonable rental value to which the dealer is entitled.

The fair and reasonable compensation for the items listed in subparagraphs (1) to (4) may in no instance 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, provided that the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer. These items must be paid for by the manufacturer when possible within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal.

In order to be entitled to rental assistance from the manufacturer, the dealer is obligated to mitigate rental assistance by listing the dealership facilities for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with the real estate agent in the performance of the agent's duties and responsibilities. In the event that the dealer is able to lease or sublease the dealership facilities on terms that are consistent with local zoning requirements to preserve the right to sell motor vehicles from the dealership facilities and the terms of the dealer's lease, the dealer is required to pay the manufacturer the net revenue received from such mitigation, but only following receipt of rental assistance payments pursuant to this paragraph and only up to the total amount of rental assistance payments that the dealer has received. If the facility is used for the operations of more than one franchise, the dealer does not have a duty to list the dealership facilities, and the reasonable rental assistance must be paid based upon the portion of the facility used by the franchise being terminated, cancelled, noncontinued or nonrenewed for one year unless the space is filled with another product line, in which case no rental payments are required.

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 motor vehicle dealer fair and reasonable compensation for the value of the dealership as an ongoing business; ~~or~~

**Sec. 5. 10 MRSA §1174, sub-§3, ¶T**, as enacted by PL 1997, c. 521, §19, is amended to read:

T. To act as, offer to act as or purport to be a broker; or

**Sec. 6. 10 MRSA §1174, sub-§3, ¶U** is enacted to read:

U. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer not less than 180 days prior to the effective date of such termination, cancellation, noncontinuance or nonrenewal that occurs in whole or in part as a result of any change in ownership, operation or control of all or any part of the business of the manufacturer, whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension or cessation of a part or all of the business operations of the manufacturer; or discontinuance of the sale of the product line or a change in distribution system by the manufacturer, whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.

In addition to any other payments or requirements in this chapter, if a termination, cancellation, noncontinuance or nonrenewal was premised in whole or in part upon any of the occurrences set forth in this paragraph, the manufacturer is liable to the licensed new motor vehicle dealer in an amount at least equivalent to the fair market value of the franchise arising from the termination, cancellation, noncontinuance or nonrenewal of the franchise.

(1) If liability is based on the fair market value of the franchise, which must include diminution in value of the facilities leased or owned by the dealer as a result of the loss of the franchise to operate in the facilities, the fair market value must be computed on the date in divisions (a) to (c) that yields the highest fair market value:

(a) The date the manufacturer announces the action that results in termination, cancellation, noncontinuance or nonrenewal;

(b) The date the action that results in termination, cancellation, noncontinuance or nonrenewal first becomes general knowledge; or

(c) The date 12 months prior to the date on which the notice of termination, cancellation, noncontinuance or nonrenewal is issued.

If the termination, cancellation, noncontinuance or nonrenewal is due to the manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the licensed new motor vehicle dealer if the new distributor or the manufac-

turer offers the dealer a franchise agreement with terms acceptable to the dealer.

If an entity other than the original manufacturer of a line make becomes the manufacturer for the line make and intends to distribute motor vehicles of that line make in this State, that entity shall honor the franchise agreements of the original manufacturer and its licensed new motor vehicle dealers or offer those dealers of that line make, or of motor vehicles historically of that line make that are substantially similar in their design and specifications and are manufactured in the same facility or facilities, a new franchise agreement with substantially similar terms and conditions; and

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

Effective June 11, 2009.

**CHAPTER 368**

**H.P. 420 - L.D. 582**

**An Act To Amend the Statute of Limitations for Actions against the Estate of a Decedent**

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

**Sec. 1. 18-A MRSA §3-108, sub-§(a), ¶(2),** as enacted by PL 1983, c. 256, is amended to read:

(2). Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within 3 years after the conservator becomes able to establish the death of the protected person; ~~and~~

**Sec. 2. 18-A MRSA §3-108, sub-§(a), ¶(3),** as amended by PL 2005, c. 683, Pt. C, §5, is further amended to read:

(3). A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; ~~and~~

**Sec. 3. 18-A MRSA §3-108, sub-§(a), ¶(4)** is enacted to read:

(4). Appropriate probate, appointment or testacy proceedings may be commenced in relation to a claim for personal injury made against the decedent by a person without actual notice of the death