

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2012 to July 10, 2013

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 9, 2013

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

Augusta, Maine
2013

Sec. K-4. 32 MRSA §12232, sub-§3, ¶D, as enacted by PL 2009, c. 242, §13, is repealed.

Sec. K-5. 32 MRSA §12263, as amended by PL 2009, c. 242, §22, is repealed.

Sec. K-6. 32 MRSA §13173, sub-§4, ¶B, as enacted by PL 1987, c. 395, Pt. A, §212, is repealed.

Sec. K-7. 32 MRSA §13193, as enacted by PL 1987, c. 395, Pt. A, §212, is amended to read:

§13193. Nonresidents

~~All nonresident license applicants shall be required to file a properly completed irrevocable consent to service, as described for agencies in section 13173, subsection 4, paragraph B.~~ In lieu of education and experience requirements, nonresident original license applicants must hold a similar active license in good standing in their place of legal residence and shall appear at such time and place as the director may designate for the purpose of written examination pertaining to Maine real estate laws.

Sec. K-8. 32 MRSA §13857, sub-§2, ¶D, as enacted by PL 2003, c. 542, §1 and amended by PL 2011, c. 286, Pt. B, §5, is repealed.

Sec. K-9. 32 MRSA §14024, sub-§1, as enacted by PL 1999, c. 185, §5, is repealed.

Sec. K-10. 32 MRSA §14034, sub-§2, ¶A, as enacted by PL 1999, c. 185, §5, is amended to read:

A. Submit evidence that the applicant is licensed; in good standing under the laws of the applicant's state of domicile; and

Sec. K-11. 32 MRSA §14034, sub-§2, ¶B, as enacted by PL 1999, c. 185, §5, is repealed.

Sec. K-12. 32 MRSA §14510, as enacted by PL 1993, c. 444, §1, is repealed.

Sec. K-13. 32 MRSA §14714, as enacted by PL 2001, c. 324, §12, is repealed.

PART L

Sec. L-1. 32 MRSA §3656, last ¶, as enacted by PL 2007, c. 402, Pt. P, §14, is repealed.

See title page for effective date.

CHAPTER 218

S.P. 474 - L.D. 1355

An Act To Increase the Monetary Limit for Card Games

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

Sec. 1. 17 MRSA §1834, sub-§4, as enacted by PL 2009, c. 487, Pt. A, §2, is amended to read:

4. Games of cards. The fee for a license issued to an organization to operate a game of cards, when the organization charges no more than a ~~\$\$~~ \$10 daily entry fee for participation in the games of cards and when no money or valuable thing other than the ~~\$\$~~ \$10 daily entry fee is gambled by any person in connection with the game of cards, is \$30 for each calendar year or portion of a calendar year. For card games that are played by placing the maximum bet of \$1 per hand or deal, the license fee is the same as provided in subsection 2.

Sec. 2. 17 MRSA §1835, sub-§1, ¶B, as amended by PL 2009, c. 652, Pt. C, §3 and affected by §4, is further amended to read:

B. Licensed card games that award part or all of the entry fees paid to participate in the game as prize money and in which no money or thing of value is wagered except for the entry fee are limited to a ~~\$\$~~ \$10 daily entry fee and no more than ~~50~~ 60 players at any one time at any one location.

See title page for effective date.

CHAPTER 219

S.P. 479 - L.D. 1360

An Act To Amend the Motor Fuel Distribution and Sales Act

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

Sec. 1. 10 MRSA §1453, sub-§1-C is enacted to read:

1-C. Consignment. "Consignment" means a written or oral agreement between a franchisor and a franchisee whereby the franchisor maintains ownership of motor fuel provided to the franchisee and the franchisee sells the motor fuel on behalf of the franchisor at a price determined by the franchisor.

Sec. 2. 10 MRSA §1453, sub-§4, as enacted by PL 1975, c. 549, is amended to read:

4. Franchise agreement. "Franchise agreement" ~~shall mean any~~ means a written or oral agreement, for a definite or indefinite period, between a refiner and a retail dealer or between a distributor and a retail dealer or between a refiner and a distributor under which:

A. A retail dealer or a distributor promises to sell or distribute ~~the~~ any petroleum product or products of ~~the a~~ a refiner; ~~or~~

B. A retail dealer or a distributor is granted the right to use a trademark, trade name, service mark

or other identifying symbol or name owned by a refiner; or

C. A retail dealer or a distributor is granted the right to occupy premises owned, leased or controlled by a refiner or distributor; and:

(1) Promises to sell or distribute any petroleum products of the refiner or the distributor;
or

(2) Is granted the right to use a trademark, trade name, service mark or other identifying symbol or name owned by the refiner or the distributor.

Sec. 3. 10 MRSA §1453, sub-§8, as enacted by PL 1975, c. 549, is amended to read:

8. Person. "Person" ~~shall mean any~~ means a natural person, corporation, partnership, trust or other entity; and, in the case of any entity, ~~the term shall also include~~ includes any other entity ~~which that~~ has a majority interest in ~~such the~~ the entity or effectively controls ~~such the~~ the entity as well as the officers, directors and ~~other persons in active control of each such entity.~~

Sec. 4. 10 MRSA §1454, sub-§1, as enacted by PL 1975, c. 549, is amended to read:

1. Franchise agreements. When a franchise agreement between a refiner and a retail dealer or a distributor or between a distributor and a retail dealer covers the sale of petroleum products and those sales constitute more than 35% of the retail dealer's gross sales and such those gross sales are more than \$30,000 annually, every such the franchise agreement shall be is subject to the nonwaivable provisions set forth in this subsection, whether or not they are expressly set forth in the agreement.

A. ~~Each A~~ A retail dealer ~~and each or~~ distributor as franchisee ~~shall have~~ has the right to cancel a franchise agreement until midnight of the 7th business day after the day on which the agreement was signed, by giving the franchisor written notice of the cancellation. Upon the franchisee's giving the franchisor such a notice, all money, equipment and merchandise loaned, sold or delivered to the franchisee under the agreement ~~shall~~ must be returned to the franchisor for full credit, or the cash equivalent. If the franchisor is the owner of the real estate upon which the franchisee conducted ~~his~~ business, the franchisee shall deliver full possession of the real estate to the franchisor immediately upon such cancellation.

B. ~~No An~~ An agreement ~~shall may not~~ shall contain ~~any a~~ any provision ~~which that~~ in any way limits the right of either party to trial by jury, the interposition of counterclaims or crossclaims.

C. The price at which a franchisee sells products ~~shall may~~ shall not be fixed or maintained by a franchi-

sor, nor ~~shall may~~ shall any person seek to do so, nor ~~shall may~~ shall the price of products be subject to enforcement or coercion by any person in any manner. ~~Nothing herein shall,~~ but this paragraph may not be construed to prohibit a franchisor from suggesting prices ~~and to franchisees or~~ and to franchisees or counseling ~~with~~ franchisees concerning prices. Each agreement ~~shall~~ must have, in ~~ten-point~~ 10-point type, the legend: "PRICE FIXING OR MANDATORY PRICES FOR ANY PRODUCTS COVERED IN THIS AGREEMENT IS PROHIBITED. A SERVICE STATION DEALER OR WHOLESALE DISTRIBUTOR MAY SELL ANY PRODUCTS LISTED IN THIS AGREEMENT FOR A PRICE ~~WHICH HE~~ WHICH THE SERVICE STATION DEALER OR WHOLESALE DISTRIBUTOR ALONE MAY DECIDE." The provisions of this paragraph do not apply to any petroleum products included in a franchisor's consignment agreement with a franchisee or to any franchise agreement that provides for petroleum products to be sold on consignment by a franchisee on behalf of a franchisor.

D. ~~No A~~ A franchisor ~~shall may not~~ shall withhold ~~his~~ consent to any assignment, transfer or sale of the franchise agreement, ~~provided that as long as~~ provided that as long as the assignee, transferee or purchaser of the franchise agreement meets the qualifications required in the franchise agreement.

E. If the franchise agreement requires the franchisee to provide a cash deposit in advance for the use of the service station or delivery of fuel, except as advance payment in whole or in part for product ordered, ~~such the cash~~ such the cash deposit ~~shall~~ must be held by the franchisor; ~~and~~ and may be used by the franchisor in ~~his~~ the franchisor's business; ~~and shall be retained for the term of the agreement unless it is sooner terminated.~~ Interest at a rate of at least ~~6%~~ shall the one-year United States Treasury bill rate, or the rate of a comparable instrument if the one-year United States Treasury bill rate is not offered, as of the first business day of the year in which the interest is paid must be paid to the franchisee at least annually on the use of the cash deposit to the extent not otherwise applied by the franchisor to obligations of the franchisee as provided in the franchise agreement. Within 90 days after the termination of the agreement, any portion of the cash deposit shall that has not otherwise been applied by the franchisor to obligations of the franchisee as provided in the franchise agreement must be returned, together with any unpaid interest on such any unused cash deposit at the rate of at least 6% per year the one-year United States Treasury bill rate, or the rate of a comparable instrument if the one-year United States Treasury bill is not offered, as

of the first business day of the year in which the interest is paid.

For purposes of this paragraph, "one-year United States Treasury bill rate" means the weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last full week of the calendar year immediately prior to the year in which interest is paid.

F. ~~No~~ An agreement ~~shall~~ may not provide for the use of any promotion, premium, coupon, give-away or rebate in the operation of the business, except that a dealer may participate in a promotion, premium, coupon, give-away or rebate sponsored by the franchisor, if the dealer so desires.

Sec. 5. 10 MRSA §1454, sub-§2, as amended by PL 1975, c. 623, §§6-C and 6-D, is further amended to read:

2. Termination of franchise agreements. ~~No refiner or distributor, as A franchisor, shall~~ may not, directly or through any officer, agent or employee, terminate, cancel or fail to renew a franchise agreement, except for good cause. For purposes of this section, "good cause ~~shall include~~ " includes, but ~~is~~ not be limited to:

A. With respect to franchise agreements ~~wherein in which~~ the franchisor leases real property and improvements to the franchisee;

(1) The sale or lease of ~~such the~~ real property and improvements by the franchisor to other than a subsidiary or affiliate of the franchisor for any use;

(2) The sale or lease of ~~such the~~ real property and improvements to a subsidiary or affiliate of the franchisor; for a purpose other than the wholesale distribution or the retail sale of motor fuels;

(3) The conversion of ~~such the~~ real property and improvements to a use other than the wholesale distribution or the retail sale of motor fuels; or

(4) The lawful termination of lease, license or other nonownership under which the franchisor is entitled to possession or control of ~~such the~~ real property and improvements;

B. Mutual agreement of the franchisor and franchisee to terminate, cancel or not renew the franchise agreement;

C. Criminal misconduct or a violation of law relating to the business or premises of the ~~dealer franchisee~~;

D. Fraud, which ~~shall include~~, includes but ~~is~~ not be limited to the following:

- (1) Adulteration of the franchisor's products;
- (2) Commingling of funds;
- (3) Misleading consumers or misbranding of gasoline;
- (4) Trademark violations;
- (5) Intentionally overcharging or deceiving customers as to repairs ~~which that~~ are not needed; and
- (6) Intentionally deceiving the franchisor regarding a term of the term of the lease;

E. Failure of the ~~dealer franchisee~~ to open for business for 5 consecutive days, exclusive of holidays, and reasonable vacation and sick days;

F. Bankruptcy or insolvency of the ~~dealer franchisee~~;

G. Nonpayment of rent; or loss by the franchisor of its legal right to grant possession of leased premises to the ~~dealer franchisee~~; ~~or~~

H. Public condemnation or other public taking; and

I. Substantial noncompliance with the obligations of the franchise agreement.

Sec. 6. 10 MRSA §1454, sub-§3, as enacted by PL 1975, c. 549, is amended to read:

3. Notice of termination. ~~The Except when a franchise agreement is terminated, cancelled or not renewed by mutual agreement of the franchisor and the franchisee, the~~ franchisor shall give the franchisee advance written notice of termination, cancellation or intent not to renew. Notwithstanding any statute to the contrary, advance notice required by this subsection ~~shall must~~ precede the effective date of such termination, cancellation or nonrenewal by at least:

A. ~~45 Forty-five days where when~~ the asserted cause is ~~substantial noncompliance with the obligations of the franchise agreement specified in subsection 2, paragraph H or I;~~

B. ~~120 One hundred twenty days where when~~ the asserted cause is ~~among those~~ specified in subsection 2, paragraph A; or

C. ~~7 Seven days where when~~ the asserted cause is ~~among those~~ specified in subsection 2, ~~paragraphs paragraph C, D and, E, F or G.~~

Sec. 7. 10 MRSA §1454, sub-§4, as enacted by PL 1975, c. 549, is amended to read:

4. Compensation on termination of franchise. Upon the termination of any franchise, the franchisee ~~shall be is~~ entitled to fair and reasonable compensation by the franchisor for the franchisee's remaining inventory, supplies, equipment and furnishings purchased by the franchisee from the franchisor or its approved

sources and costs and expenses paid to the franchisor under the terms of the franchise or any ancillary or collateral agreement, provided no except that compensation shall be is not allowed for personalized items which that have no value to the franchisor.

Sec. 8. 10 MRSA §1456, sub-§2, as enacted by PL 1975, c. 549, is amended to read:

2. Court action. The court shall grant such equitable relief as is necessary to remedy the effects of conduct prohibited under this chapter, ~~which it that the court~~ finds to exist, including declaratory judgment and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief, and actual and punitive damages ~~where when~~ indicated, in suits under this chapter and may, ~~unless such suit is frivolous,~~ direct that costs, reasonable ~~attorney attorney's~~ and expert witness fees incurred by the franchisee in those portions of the action in which the franchisee is the prevailing party be paid by the franchisor.

See title page for effective date.

CHAPTER 220

H.P. 1049 - L.D. 1464

An Act To Streamline the Laws Related to Transportation

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

Sec. 1. 23 MRSA §704, sub-§6, as amended by PL 2003, c. 571, §2, is further amended to read:

6. Access denied. ~~The Notwithstanding any other provision of this Title, the Department of Transportation and the municipalities shall deny ingress to and egress from property abutting the a controlled access highway when access rights have been acquired established by the department pursuant to chapter 7, except that the Commissioner of Transportation may allow access for the development of state and state aid highways and may allow access upon a determination by the commissioner that such access will not adversely affect public safety and will not have a significant negative impact on the mobility of through-travelers. The commissioner may approve or deny a relocation of an existing break in a control of access consistent with the rules adopted pursuant to subsection 2.~~

Sec. 2. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 23, in the title headnote, the word "highways" is amended to read "transportation" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 3. Maine Revised Statutes, Title 23.

The Department of Transportation shall work with the Office of Policy and Legal Analysis and the Revisor of Statutes to examine the organization and structure of, and the language contained in, the Maine Revised Statutes, Title 23 and develop recommendations regarding reorganizing or updating that Title or a portion or portions of that Title. The Department of Transportation shall submit those recommendations to the Joint Standing Committee on Transportation no later than December 4, 2013.

See title page for effective date.

CHAPTER 221

S.P. 478 - L.D. 1359

An Act To Update and Simplify Maine Gasoline Requirements

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

Whereas, in order to meet federal Clean Air Act requirements, from May 1st to September 15th, retailers who sell gasoline in 7 southern counties in the State may sell only gasoline that has a Reid vapor pressure no greater than 7.8 psi; and

Whereas, before the State can require the 7 counties to sell only reformulated gasoline during the summer months, the Department of Environmental Protection must submit a request to the United States Environmental Protection Agency; and

Whereas, sufficient lead time is necessary for submittal of the State's request by the Department of Environmental Protection and review of the State's request by the United States Environmental Protection Agency prior to the 2014 summer season; 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. 38 MRSA §582, sub-§10-B is enacted to read:

10-B. Reformulated gasoline. "Reformulated gasoline" has the same meaning as in 40 Code of Federal Regulations, Section 80.2(ee) (2012).

Sec. 2. 38 MRSA §585-N is enacted to read: