

MINORITY Report
OTP-A / OTP-A / ONTP

Committee: LCRED
LA: NLH
LR (item):159103
New Title?:No

File Name: G:\COMMITTEES\LCED\BRED\Amendments\126th 2nd\159103.docx

COMMITTEE AMENDMENT TO LD 1458, AN ACT TO ENACT THE MAINE SMALL BUSINESS INVESTMENT PROTECTION ACT

Amend the bill by striking everything after the title and before the summary and inserting in its place the following:

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

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

CHAPTER 208-C

MAINE SMALL BUSINESS INVESTMENT PROTECTION ACT

§ 1299. Short title

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

§ 1299-A. 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, brother or sister of the owner of a franchisee who, in the case of the owner's death, is entitled to inherit the ownership interest in the franchise under the terms of the franchisee's will, or who, in the case of an incapacitated owner of a franchise, has been appointed by a court as the legal representative of the franchisee's property.

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

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

are identified or associated with the franchisor's trademark:

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

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

3. Franchise agreement. "Franchise agreement" means a contract that governs the rights and obligations of a franchisor and franchisee.

4. Franchisee. "Franchisee" means a person to whom a franchise is granted .

5. Franchisor. "Franchisor" means a person that grants a franchise within this State.

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

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

8. Person. "Person" means a natural person, corporation, partnership, trust or other entity, and, in case of an entity, it shall include any other entity in which it 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.

§ 1299-B. JURISDICTION

Any person who shall violate any provisions of this chapter shall be 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.

§ 1299-C. APPLICABILITY OF CHAPTER

This chapter does not apply to a franchisor or franchisee who is subject to chapter 204, 204-B, 206-B, 208-B, 211-A, or 214-A.

§1299-D. REASONABLENESS AND GOOD FAITH

1. Good faith. Every franchise agreement entered into under this chapter imposes on the parties the obligation to act in good faith.

2. Reasonableness. This chapter imposes on every term and provision of any franchise agreement a requirement of reasonableness. Every term or provision of any franchise agreement must be interpreted so that the requirements or obligations imposed are reasonable.

§1299-E. Cancellation, Termination and Nonrenewal

1. Prohibitions on cancellation, termination and nonrenewal. A franchisor may not terminate, cancel or fail to renew a franchise for the failure or refusal of the franchisee to:

- A. Take part in promotional campaigns for the products or services of the franchise that are not reasonable and in good faith expected to promote the profitability of the franchisee's business;
- B. Meet sales quotas suggested or required by the franchisor that are not expressly set forth in the franchise agreement;
- C. Sell any products or services at a price suggested or required by the franchisor, an affiliate of the franchisor or any supplier approved by the franchisor;
- D. Keep the franchised premises open and operating during hours that are unprofitable to the franchisee, or preclude the franchisee from establishing its own hours of operation or nonoperation between the hours of 10 p.m. and 6 a.m.; and
- E. Give the franchisor, or any supplier, financial records of the operation of the franchise that are not related or are unnecessary to the performance of the franchisee's express obligations under the franchise agreement.

2. Notice of nonrenewal and opportunity to cure. Before nonrenewal of a franchise, a franchisor shall give a franchisee written notice of not less than 90 days prior to the effective date of the nonrenewal. The notice must state the reasons that constitute good cause for the nonrenewal and must provide the franchisee with not less than 60 days to cure any claimed discrepancy and reinstate its right to renew the franchise.

3. Notice of termination or cancellation and opportunity to cure. A franchisor may not terminate or cancel a franchise agreement, except for good cause. Prior to termination or cancellation of a franchise, a franchisor shall give a franchisee written notice at least 90 days prior to the effective date of the termination or cancellation. The notice must state all of the reasons constituting good cause for termination or cancellation and must provide the franchisee with not less than 60 days to cure any claimed cause for the termination or cancellation.

§1299-E. TRANSFER OF BUSINESS

1. Transfer. A franchisor may not unreasonably withhold or delay consent to any transfer of the franchisee's business or transfer of the stock or other interest in the franchise, to the franchisee's spouse, son or daughter or other transferee whenever the franchisee to be substituted meets the material and reasonable qualifications and standards required of its franchisees. If a franchisor determines that a proposed transferee does not meet its qualifications and standards, it shall give the franchisee written notice thereof, stating the specific reasons for withholding

consent. A franchisor has 90 days from the date notice is served by the franchisee to consider a franchisee's request to make a transfer under this subsection.

2. Assume obligations. Whenever a transfer of a franchisee's business occurs, the transferee shall assume all the obligations imposed on and succeed to all the rights held by the selling franchisee by virtue of any agreement, consistent with this chapter, entered into prior to the transfer between the selling franchisee and the franchisor.

§ 1299-F. SURVIVORSHIP

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

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

B. The franchisor 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.

§ 1299-G. PUBLIC POLICY

A contract or part of a contract or activity undertaken pursuant to a contract in violation of this chapter is deemed against public policy and is void and unenforceable; including a contract or agreement purporting to vary, waive or disclaim the effects of this chapter on any franchise agreement.

Sec. 2. Application. This Act applies to all contracts and agreements in effect on the effective date of this Act that have no expiration and are continuing contracts and all other contracts and agreements entered into, amended, renewed or extended after the effective date of the Act.

SUMMARY

This amendment is the minority report of the committee and it replaces the bill. It does the following:

1. It establishes that violations of this chapter are subject to the jurisdiction of the courts of this State and exempts franchisors and franchisees that are subject to other statutory franchise relationship laws in Title 10, chapter 204, 204-B, 206-B, 208-B, 211-A, or 214-A.
2. It establishes a standard of reasonableness and good faith for all agreements entered into under this chapter;

3. It provides limits on prohibitions on cancellation, termination and nonrenewal of a franchise without good cause, prior notice and the opportunity to cure;
4. It includes protections for a franchisee's right to transfer or assign an interest in a franchise, as well as vested rights in the franchise;
5. It provides for survivorship rights for a designated family member of a deceased or incapacitated franchisee;
6. It contains a public policy section that states that a contract or part of a contract or activity undertaken pursuant to a contract in violation of this chapter is deemed against public policy and is void and unenforceable; and
7. It adds an application clause.

