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Date: (Filing No. H- )

**LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
126TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1043, L.D. 1458, Bill, “An Act To Enact the Maine Small Business Investment Protection Act”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**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;

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

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

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

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

10          **5. Franchisor.** "Franchisor" means a person that grants a franchise.

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

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

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

21          **§1299-B. Jurisdiction**

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

26          **§1299-C. Applicability of chapter**

27          This chapter does not apply to a franchisor or franchisee who is subject to chapter  
28          204, 204-B, 206-B, 208-B, 211-A or 214-A.

29          **§1299-D. Reasonableness and good faith**

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

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

36          **§1299-E. Cancellation, termination and nonrenewal**

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

1           A. Take part in promotional campaigns for the products or services of the franchise  
2           that are not reasonable and that are not in good faith expected to promote the  
3           profitability of the franchisee's business;

4           B. Meet sales quotas suggested or required by the franchisor that are not expressly  
5           set forth in the franchise agreement;

6           C. Sell any products or services at a price suggested or required by the franchisor, an  
7           affiliate of the franchisor or any supplier approved by the franchisor;

8           D. Keep the franchised premises open and operating during hours that are  
9           unprofitable to the franchisee, or preclude the franchisee from establishing its own  
10          hours of operation or nonoperation between the hours of 10 p.m. and 6 a.m.; or

11          E. Give the franchisor, or any supplier, financial records of the operation of the  
12          franchisee that are not related to or are unnecessary to the performance of the  
13          franchisee's express obligations under the franchise agreement.

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

19          **3. Notice of termination or cancellation and opportunity to cure.** A franchisor  
20          may not terminate or cancel a franchise agreement, except for good cause. A franchisor  
21          shall give a franchisee written notice at least 90 days prior to the effective date of the  
22          termination or cancellation. The notice must state all of the reasons constituting good  
23          cause for termination or cancellation and must provide the franchisee with not less than  
24          60 days to cure any claimed cause for the termination or cancellation.

25          **§1299-F. Transfer of business**

26          **1. Transfer.** A franchisor may not unreasonably withhold or delay consent to any  
27          transfer of the franchisee's business or transfer of the stock or other interest in the  
28          franchise to the franchisee's spouse, son or daughter or other transferee when the  
29          transferee meets the material and reasonable qualifications and standards required of the  
30          franchisor's franchisees. If a franchisor determines that a transferee does not meet the  
31          franchisor's qualifications and standards, the franchisor shall give the franchisee written  
32          notice of that determination, stating the specific reasons for withholding consent. A  
33          franchisor has 90 days from the date notice is served by the franchisee to consider a  
34          franchisee's request to make a transfer under this subsection.

35          **2. Assume obligations.** When a transfer of a franchisee's business occurs, the  
36          transferee assumes all the obligations imposed on and succeeds to all the rights held by  
37          the selling franchisee by virtue of any agreement, consistent with this chapter, entered  
38          into prior to the transfer between the selling franchisee and the franchisor.

39          **§1299-G. Survivorship**

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

