

## CHAPTER 211-A

### FRANCHISE LAWS FOR POWER EQUIPMENT, MACHINERY AND APPLIANCES

#### §1361. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1993, c. 195, §1 (NEW).]

**1. Dealer.** "Dealer" means a person located within this State who sells goods or solicits or advertises the sale of goods to the public. "Dealer" does not include receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court nor does it include public officers performing their duties as officers.

[PL 2011, c. 75, §1 (AMD); PL 2011, c. 75, §3 (AFF).]

**2. Distributor.** "Distributor" means a person who sells or distributes goods to dealers of those goods.

[PL 1993, c. 195, §1 (NEW).]

**3. Franchise.** "Franchise" means an oral or written arrangement for a definite or indefinite period pursuant to which a manufacturer grants to a dealer or distributor of goods a license to use a trade name, trademark, service mark or related characteristic and in which there is a community of interest in the marketing of goods and related services at wholesale, retail, by leasing or otherwise.

[PL 1993, c. 195, §1 (NEW).]

**4. Franchisee.** "Franchisee" means a person, dealer or distributor of goods located within this State to whom a franchise is offered or granted.

[PL 2011, c. 75, §2 (AMD); PL 2011, c. 75, §3 (AFF).]

**5. Franchisor.** "Franchisor" means a manufacturer who grants a franchise to a distributor or dealer of goods.

[PL 1993, c. 195, §1 (NEW).]

**6. Fraud.** "Fraud" includes, in addition to its normal legal connotation, a misrepresentation, whether intentionally false or due to gross negligence, of a material fact, a promise or a representation not made honestly and in good faith and an intentional failure to disclose a material fact.

[PL 1993, c. 195, §1 (NEW).]

**7. Good faith.** "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade as defined and interpreted in the Uniform Commercial Code, Title 11, section 1-1201, subsection (20).

[RR 2013, c. 2, §15 (COR).]

**8. Goods.** "Goods" means residential, recreational, agricultural, farm, commercial or business equipment, machinery or appliances that use electricity, gas, wood, a petroleum product or a derivative of a petroleum product for operation. "Goods" does not include motor vehicles as defined in section 1171, subsection 11 and recreational vehicles as defined in section 1432, subsection 18-A.

[PL 2009, c. 562, §2 (AMD).]

**9. Manufacturer.** "Manufacturer" means a person, partnership, firm, association, corporation or trust, resident or nonresident, who manufactures, assembles or imports goods for distribution through distributors or a partnership, firm, association, joint venture, corporation or trust, resident or nonresident, that is controlled by such an entity.

[PL 1993, c. 195, §1 (NEW).]

**10. Person.** "Person" means a natural person, corporation, partnership, trust or other entity and, in the case of an entity, includes any other entity in which it has a majority interest or effective control as well as the individual officers, directors and other persons in active control of the activities of each entity.

[PL 1993, c. 195, §1 (NEW).]

**11. Sale.** "Sale" means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or otherwise, of goods or interest in goods or of any franchise related to those goods and any option, subscription or other contract, solicitation looking to a sale or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of goods or equipment or a franchise with respect to those goods or equipment, with or as a bonus on account of a sale, is deemed a sale of the goods, equipment or franchise.

[PL 1993, c. 195, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 195, §1 (NEW). PL 1997, c. 427, §1 (AMD). PL 2009, c. 562, §2 (AMD). PL 2011, c. 75, §§1, 2 (AMD). PL 2011, c. 75, §3 (AFF). RR 2013, c. 2, §15 (COR).

#### §1362. Civil remedies

A dealer, distributor or franchisee who has been damaged by violation of this chapter may bring an action to enjoin the violation and to recover damages arising from the violation. A final judgment, order or decree rendered against a person in a civil, criminal or administrative proceeding under the federal antitrust laws, the Federal Trade Commission Act, this chapter or any other state law is regarded as prima facie evidence against that person, subject to the conditions under the federal antitrust laws, 15 United States Code, Section 16. [PL 1993, c. 195, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 195, §1 (NEW).

#### §1363. Prohibited conduct

The following are unfair methods of competition and unfair and deceptive practices. [PL 1993, c. 195, §1 (NEW).]

**1. Damage to public.** It is unlawful for a manufacturer, distributor or dealer to engage in an action that is arbitrary, in bad faith or unconscionable and that causes damage to another manufacturer, distributor or dealer or to the public.

[PL 1993, c. 195, §1 (NEW).]

**2. Coercion involving deliveries and orders.** It is unlawful for a manufacturer or an officer, agent or other representative of a manufacturer to coerce or attempt to coerce a dealer or distributor:

A. To order or accept delivery of goods or parts or accessories for goods or other commodities that the distributor or dealer has not voluntarily ordered; or [PL 1993, c. 195, §1 (NEW).]

B. To order goods or a commodity for a person. [PL 1993, c. 195, §1 (NEW).]

[PL 1993, c. 195, §1 (NEW).]

**3. Certain interference in business.** It is unlawful for a manufacturer or an officer, agent or other representative of a manufacturer:

A. To coerce or attempt to coerce a distributor or dealer to enter into an agreement with that manufacturer or officer, agent or other representative or to act in a manner that is prejudicial to a distributor or dealer by threatening to cancel a franchise or a contractual agreement between the manufacturer and the distributor or dealer. However, notice in good faith to a distributor or dealer of violation of any terms or provisions of a franchise or contractual agreement does not constitute a violation of this chapter; [PL 1993, c. 195, §1 (NEW).]

B. To cancel, terminate, fail to renew or refuse to continue a franchise relationship with a distributor or dealer, notwithstanding the terms, provisions or conditions of an agreement or franchise or the terms or provisions of a waiver, unless a manufacturer:

- (1) Has satisfied the notice requirement of section 1366;
- (2) Has acted in good faith as defined in this chapter; and
- (3) Has good cause for the cancellation, termination, nonrenewal or noncontinuance; or [PL 1993, c. 195, §1 (NEW).]

C. To terminate, fail to renew or refuse to continue any franchise relationship with a distributor or dealer, notwithstanding the terms, provisions or conditions of an agreement or franchise or the terms or provisions of a waiver, without good cause. The manufacturer has good cause for a termination, cancellation, nonrenewal or noncontinuance as follows.

- (1) Failure by the distributor or dealer to comply with a provision of the franchise agreement that is reasonable and of material significance to the franchise relationship when the manufacturer first acquired actual or constructive knowledge of the failure not more than 180 days before the date on which written notification is given pursuant to section 1366 is good cause.
- (2) If the failure by the distributor or dealer, as set forth in subparagraph (1), relates to the performance by the distributor or dealer in sales or service, then good cause is the failure of the distributor or dealer to carry out effectively the performance provisions of the franchise when:
  - (a) The distributor or dealer was notified 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 distributor or dealer was given a reasonable opportunity for a period of not less than 6 months to make good-faith efforts to carry out the performance provisions;
  - (b) The failure continued within the period that began not more than 180 days before the date on which notification of termination, cancellation or nonrenewal was given pursuant to section 1366; and
  - (c) The distributor or dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to the distributor or dealer.
- (3) There is good cause when the manufacturer and the dealer or distributor agree not to renew the franchise.
- (4) There is good cause when the manufacturer discontinues production or distribution of the franchise goods. [PL 1993, c. 195, §1 (NEW).]

[PL 1993, c. 195, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 195, §1 (NEW).

#### **§1364. Agreements subject to this chapter**

Written or oral agreements between a manufacturer and a distributor or dealer, including but not limited to franchise offerings, franchise agreements, agreements for sales of goods, advertising, leases or mortgages of goods, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts and all other agreements in which the manufacturer has a direct or indirect interest, are subject to this chapter. [PL 1993, c. 195, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 195, §1 (NEW).

**§1365. Franchise interest; vested rights**

Notwithstanding any other provision of law, it is unlawful for the manufacturer or franchisor, without due cause, to terminate a franchise or to fail to renew a franchise on terms then equally available to all its distributors or dealers. [PL 1993, c. 195, §1 (NEW).]

## SECTION HISTORY

PL 1993, c. 195, §1 (NEW).

**§1366. Notice form, delivery and content**

All notices of termination or nonrenewal required by this chapter must: [PL 1993, c. 195, §1 (NEW).]

**1. Delivery.** Be sent by registered, certified or other receipted mail, delivered by telegram or personally delivered to the distributor or dealer; and [PL 1993, c. 195, §1 (NEW).]

**2. Statement of intent.** Contain a statement of intent to terminate or not renew the franchise together with the reasons for termination or nonrenewal and the effective date of the termination, nonrenewal or expiration. [PL 1993, c. 195, §1 (NEW).]

## SECTION HISTORY

PL 1993, c. 195, §1 (NEW).

**§1367. Manufacturer's warranty obligations**

A manufacturer shall honor, in a timely fashion, an obligation to dealers or distributors to replace goods, reimburse or pay costs and expenses or provide services arising as a result of a warranty, franchise agreement or other agreement subject to this chapter. [PL 1993, c. 195, §1 (NEW).]

## SECTION HISTORY

PL 1993, c. 195, §1 (NEW).

**§1368. 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. [PL 1993, c. 195, §1 (NEW).]

## SECTION HISTORY

PL 1993, c. 195, §1 (NEW).

**§1369. Statute of limitation**

Actions arising out of any provision of this chapter must be commenced within 2 years after the cause of action accrues; however, if a person liable under this chapter conceals the cause of action from the person entitled to bring that action, the period prior to the discovery of that cause of action is excluded in determining the time allowed for commencement of the action. If a cause of action accrues during the pendency of a civil, criminal or administrative proceeding against a person brought by the Federal Government or any of its agencies under the antitrust laws, the Federal Trade Commission Act or any other federal act, or the laws of the State related to antitrust laws or to franchising, that action may be commenced within one year after the final disposition of the civil, criminal or administrative proceeding. [PL 1993, c. 195, §1 (NEW).]

## SECTION HISTORY

PL 1993, c. 195, §1 (NEW).

**§1370. Penalty**

Violation of this chapter constitutes an unfair trade practice under the Maine Unfair Trade Practices Act, Title 5, chapter 10. [PL 1993, c. 195, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 195, §1 (NEW).

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