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Date: (Filing No. H-)

HOUSING AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
132ND LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1419, L.D. 2104, “An Act to Clarify Contractual Rights of Personal Sports Mobile Dealers”

Amend the bill in section 1 in paragraph A in the first blocked paragraph by striking out all of the first sentence (page 1, lines 14 to 16 in L.D.) and inserting the following: 'The allocation of new personal sports mobiles to a new personal sports mobile dealer that is established in accordance with section 1244 must be made on a fair and equitable basis for each model of new personal sports mobiles.'

Amend the bill by inserting after section 4 the following:

'Sec. 5. 10 MRSA §1243, sub-§3, ¶M, as enacted by PL 1997, c. 473, §3, is amended to read:

M. To require any new personal sports mobile dealer to change the location of the new personal sports mobile dealership or during the course of the agreement or franchise to make any substantial alterations or renovations to the dealership premises when to do so would be unreasonable. A manufacturer may not require any substantial alterations or renovations to the dealership's premises without written assurance of a sufficient supply of new personal sports mobiles so as to justify an expansion in light of the current market and economic conditions or require any new personal sports mobile dealer to use a specific product or service provider in relation to any dealership premises or facilities alterations or renovations unless the manufacturer reimburses the dealer for a substantial portion, which may not be less than 55%, of the cost of the product or service provider. However, a new personal sports mobile dealer may elect to use a vendor selected by the dealer if the product or service is substantially similar in quality and design to that required by the manufacturer, subject to the manufacturer's approval, which may not be unreasonably withheld. A manufacturer may not require any substantial alteration or renovation to dealership premises or facilities without providing, upon a dealer's request, a dealer-specific detailed economic analysis of the impact of the alteration or renovation on sales, service and dealer profitability that substantiates the need for the alteration or renovation or require a new personal sports mobile dealer to make any substantial alterations or renovations more than once every

COMMITTEE AMENDMENT

1 10 years. A dealer-specific detailed economic analysis provided by the manufacturer
2 may not be interpreted as a guaranty of a return on investment by the dealer. This
3 paragraph does not create an exemption from the requirements of state health and safety
4 laws or local zoning laws or restrict the requirement to comply with alterations or
5 renovations that are necessary to adequately sell or service a personal sports mobile
6 due to the technology of the personal sports mobile. This paragraph does not allow a
7 dealer or vendor to infringe upon or impair a manufacturer's intellectual property or
8 trademark and trade dress rights. A manufacturer is not required to reimburse a dealer
9 for the cost of signs or other materials bearing that manufacturer's own trademark;'

10 Amend the bill by inserting after section 7 the following:

11 '**Sec. 8. 10 MRSA §1248**, as amended by PL 1997, c. 717, §4, is repealed and the
12 following enacted in its place:

13 **§1248. Warranty**

14 **1. Parts or labor; satisfaction of warranty or recall.** If a franchisor requires or
15 permits a franchisee to perform labor or provide parts to satisfy a warranty created by the
16 franchisor, the franchisor shall properly and promptly fulfill its warranty obligations and:

17 A. Reimburse the franchisee at the retail rate customarily charged for all parts used by
18 the franchisee to satisfy the warranty or any recall. If the franchisor provides a part to
19 the franchisee for a specific warranty repair, the franchisor shall compensate the
20 franchisee for the difference between the cost of the part to the franchisee and the full
21 retail price of the part, which may not be less than the cost of any such part already in
22 the franchisee's parts inventory; and

23 B. Reimburse the franchisee for actual labor performed by the franchisee to satisfy the
24 warranty, including time to diagnose the problems. The diagnostic time must be
25 reasonable and supported by the franchisee's records. Reimbursement for labor must
26 be in accordance with the time manual used by the franchisee and may not be less than
27 the retail rate customarily charged by that franchisee for the same labor when not
28 performed to satisfy a warranty. To be entitled to reimbursement under this section, a
29 franchisee must post the rate for labor not performed to satisfy a warranty in a place
30 conspicuous to service customers.

31 **2. Claim.** A claim by a franchisee for compensation for parts provided or for
32 reimbursement for labor performed to satisfy a warranty must be approved or disapproved
33 within 30 days of receipt by the franchisor. A claim that is approved must be paid within
34 30 days of its approval. If a franchisor disapproves a claim, the franchisor shall notify the
35 franchisee that submitted the claim within 30 days of disapproval of the specific reasons
36 for disapproval.

37 **3. Restrictions prohibited.** A franchisor may not, by agreement, by restriction upon
38 reimbursement or otherwise, restrict the nature or extent of labor performed or parts
39 provided if such a restriction impairs the franchisee's ability to satisfy a warranty created
40 by the franchisor or any recall by performing labor competently or by providing parts in
41 accordance with generally accepted standards.

42 **4. Costs; fees.** If a franchisee brings a legal action to collect a disapproved claim and
43 is successful in that action, the court shall award the franchisee the cost of the action and
44 reasonable attorney's fees. Reasonable attorney's fees must be determined by the value of

1 the time reasonably expended by the attorney and not by the amount of the recovery on
2 behalf of the franchisee.'

3 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
4 number to read consecutively.

5 **SUMMARY**

6 This amendment clarifies that the allocation of new personal sports mobiles to a new
7 personal sports mobile dealer must be made on a fair and equitable basis for each model of
8 new personal sports mobiles.

9 The amendment prohibits a manufacturer from requiring any substantial alterations or
10 renovations to a personal sports mobile dealership's premises without written assurance of
11 a sufficient supply of new personal sports mobiles to justify an expansion or from requiring
12 a dealership to use a specific product or service provider unless the manufacturer
13 reimburses the dealer for a substantial portion of the cost.

14 The amendment also repeals and replaces the warranty section that governs certain
15 duties and reimbursement for the cost of parts and labor by a franchisor to a franchisee, as
16 it relates to a warranty or recall created by the franchisor.

17 **FISCAL NOTE REQUIRED**

18 **(See attached)**