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## **An Act To Enact the Maine Small Business Investment Protection Act**

**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. Affiliate.** "Affiliate" means an entity controlled by, controlling or under common control with another entity.

**2. Disclosure document.** "Disclosure document" means either the disclosure statement required by the Federal Trade Commission in 16 Code of Federal Regulations, Section 436 (2013) or any offering format allowed or required by state law.

**3. 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.

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

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

**6. Franchise seller.** "Franchise seller" means a person that offers for sale, sells or arranges for the sale of a franchise. It includes the franchisor and the franchisor's employees, representatives and agents and 3rd-party brokers who are involved in franchise sales activities. "Franchise seller" does not include existing franchisees that sell only their own outlet and who are otherwise not engaged in franchise sales on behalf of the franchisor.

**7. Franchise system.** "Franchise system" means the group of franchises granted by a franchisor.

**8. Franchisor.** "Franchisor" means a person that grants a franchise.

**9. 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.

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

**11. Material or material fact.** "Material" or "material fact" means:

A. Any fact, circumstance or set of conditions that a reasonable franchisee or a reasonable prospective franchisee would consider important in making a significant decision relating to, entering into, remaining in or abandoning a franchise relationship; and

B. Any fact, circumstance or set of conditions that has or may have any significant financial impact on a franchisor, franchisee or a prospective franchisee.

**12. Offer or offering.** "Offer" or "offering" means any effort to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

**13. Person.** "Person" means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust or an unincorporated organization.

**14. Required payment.** "Required payment" means all consideration that the franchisee pays to the franchisor or an affiliate, directly or indirectly, either by contract or by practical necessity, as a condition of obtaining or commencing operation, continuing operations of the franchise or reinstating or renewing the operation of a franchise. "Required payment" does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

**15. Skill or knowledge.** "Skill or knowledge" means:

A. The result of acquired learning and aptitude developed by special training and experience in the business to be licensed under the franchise agreement or the result of extensive use and experience with the goods or services or the operating system of such business; or

B. The experience in organizing a franchise system and in providing training, assistance and services to franchisees; and which a prospective franchisee would expect in reasonable reliance on the written and oral commitments and representations of the franchisor.

### **§ 1299-B. Applicability of chapter**

A person who engages directly or indirectly in purposeful contacts in this State in connection with the offering or advertising for sale of a franchise or has business dealings with respect to a franchise in this State is subject to this chapter and is subject to the jurisdiction of the courts of this State. This chapter does not apply to a franchisor or franchisee who is subject to chapter 204, 206-B or 211-A.

### **§ 1299-C. Franchise sales practices**

**1. Advertising, offering, sale or promotion of franchise.** In connection with the advertising, offering, sale or promotion of a franchise, a person, including, without limitation, a franchise seller, may not:

- A. Employ a device, scheme or artifice to defraud;
- B. Engage in an act, practice, course of business or pattern of conduct that operates or is intended to operate as a fraud upon any prospective franchisee; or
- C. Obtain property or assist others to obtain property by making an untrue statement of a material fact or any failure to state a material fact.

**2. Disclosure document, notice or report.** In connection with a disclosure document, notice or report required by law, a franchisor or franchise seller, either directly or through another person, may not:

- A. Make an untrue statement of material fact;
- B. Fail to state a material fact;
- C. Fail to state a fact that would render a required statement or disclosure either untrue or misleading;
- D. Fail to furnish a prospective franchisee with:
  - (1) All information required to be disclosed by law and at the time and in the manner required; and
  - (2) A written statement specifying, prominently and in not less than 14-point type, whether the franchise agreement involved contains a right to renew such agreement; or
- E. Make a claim or representation to a prospective franchisee whether orally or in writing that is inconsistent with or contradicts a disclosure document.

## **§ 1299-D. Unfair acts and practices**

**1. Unfair methods of competition prohibited.** Unfair methods of competition and unfair or deceptive acts or practices are prohibited.

**2. Guidance in interpretation.** In construing subsection 1, the courts may be guided by but are not bound to the interpretations of the Federal Trade Commission Act, 15 United States Code, Section 45.

**3. Attorney General may adopt rules.** The Attorney General may adopt rules interpreting subsection 1. These rules may not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the federal courts interpreting the Federal Trade Commission Act, 15 United States Code, Section 45. Rules adopted by the Attorney General pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

**4. Unfair or deceptive act or practice.** It is an unfair or deceptive act or practice to violate any of the provisions of this chapter.

**5. Franchisor may not terminate, cancel or fail to renew franchise.** 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 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.

**6. Prohibited acts of franchisor.** A franchisor, directly or through any officer, agent, affiliate or employee, may not:

- A. Restrict a franchisee from associating with other franchisees or from joining, leading or otherwise participating in a trade or other association or retaliate against a franchisee for engaging in these activities;

B. Require or prohibit any change in management of any franchise unless the requirement or prohibition of the change is for good cause, which must be stated in writing by the franchisor and be based on violations of material, reasonable and reasonably required express provisions of the franchise agreement. Good cause includes, but is not limited to, requiring that management of the franchise be conducted by personnel who have been trained in the manner required of all franchise managers in the system or are legally eligible for employment in the United States of America;

C. Impose on a franchise by contract, rule or regulation, whether written or oral, a standard of conduct or performance unless the franchisor, its agents or representatives sustain the burden of proving the standard to be reasonable and necessary and uniformly enforced and applied throughout its system of franchisees, franchisor-owned units and licensees in the same manner;

D. Fail to deal fairly and in good faith or fail to exercise due care with a franchisee or any association or other aggregation or incorporation of franchisees in all matters, including, without limitation, transfer of the franchise, administration of advertising funds, rewards programs and marketing funds and the interpretation, administration and performance of franchise and area development or territory agreements;

E. Sell, rent or offer to sell to a franchisee any product or service for more than a fair and reasonable price or without the reasonable expectation that the sale or rental of the same will promote the profitability of the franchisee's business;

F. Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals or advertising services or in any other business dealing, unless:

(1) That discrimination between franchisees is necessary to allow a particular franchisee to fairly meet competition in the open market;

(2) That discrimination does not adversely affect the business of any existing franchisee; and

(3) To the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable, that discrimination is based on franchises granted at materially different times and that discrimination is reasonably related to the difference in time or on other proper and justifiable distinctions and is not arbitrary or intended to be for the benefit of the franchisor at the expense of any franchisee.

Nothing in this paragraph may be construed as granting to a franchisor any right that may be limited by any other state or federal law;

G. Notify the franchisee of a claimed breach of the franchise agreement for good cause later than 180 days from the date good cause arises or 180 days after the franchisor knew or in the exercise of reasonable care should have known of the claimed good cause;

H. Require a franchisee to sell any product or service for a price not reasonably acceptable to the franchisee;

I. Fail to make readily available to franchisees, without charge, true, accurate and complete copies of all records of marketing, rewards programs, advertising funds and fees that have been paid by franchisees, vendors, suppliers and licensees;

J. Coerce a franchisee to assent to a release, assignment, novation, waiver or estoppel that would prospectively relieve a person from liability imposed by this chapter;

K. Require or demand that a franchisee pay liquidated or other post-termination damages in excess of the average monthly royalty fees paid by the franchisee during the prior 12 full calendar months or the shorter time that the franchised location has been in the franchise system multiplied by the lesser of 6 months and the number of months remaining in the term of the franchise agreement; or

L. Act to accomplish, either directly or through any parent company, subsidiary or agent, what would otherwise be prohibited under this chapter on the part of the franchisor.

## **§ 1299-E. Limited fiduciary duty**

**1. Financial services.** Without regard to whether a fiduciary duty is imposed generally on the franchisor by virtue of a franchise agreement, the franchisor owes a fiduciary duty to its franchisees and is obligated to exercise the highest standard of care for franchisee interests when the franchisor:

A. Undertakes to perform bookkeeping, collection, payroll or accounting services on behalf of the franchisee; or

B. Administers, controls or supervises, either directly or through any subsidiary or affiliate, any advertising, marketing or promotional fund or program to which franchisees are required to, or routinely, contribute.

**2. Administration of fund or program.** A franchisor that administers or supervises the administration of any fund or program described in subsection 1, paragraph B shall:

A. Keep all money contributed to such fund or program in a separate account;

B. Provide an independent certified audit of such fund or program within 60 days following the close of the franchisor's fiscal year that must include full disclosure of all fees, expenses or other payments from the account to the franchisor or to any subsidiary, affiliate or other entity controlled in whole or in part by the franchisor; and

C. Disclose the source and amount of and deliver to such fund or program any discount, rebate, compensation or payment of any kind from a person or entity with whom such fund or program transacts.

**3. Fiduciary duty not created or extended by implication.** While not limiting the ability of any court to identify other circumstances for which a fiduciary duty may also exist, this section does not create or extend a fiduciary duty by implication to other aspects of a franchise.

### **§ 1299-F. Good faith and fair dealing; duty of due care**

**1. Franchisor owes duty.** For all purposes of this chapter, a franchisor owes a duty of good faith and fair dealing to each of its franchisees. For the purposes of this subsection, a duty of good faith and fair dealing:

- A. Obligates the franchisor to do nothing that will have the effect of destroying or injuring the right of the franchisee to obtain and receive the expected fruits of the contract and to do everything required under the contract to accomplish such purpose; and
- B. Requires honesty of fact and observance of reasonable standards of fair dealing in the trade.

**2. Duty of due care.** A franchise agreement imposes on the franchisor a duty of due care. Unless a franchisor represents that it has great skill or knowledge in the undertaking with the franchisees or conspicuously disclaims that it has skill or knowledge, the franchisor is required to exercise the skill and knowledge normally possessed by franchisors in good standing in the same or similar types of business.

### **§ 1299-G. Encroachment**

**1. Development of new location.** A franchisor that develops a new outlet, location or any other form of distribution of goods or services that is substantially similar to that offered by existing franchisees when that development has a material adverse impact on the gross sales or net profits of an existing franchisee's outlet or location is liable to the affected franchisee for monetary damages, unless:

- A. The franchisor first offers the new outlet or location to the existing franchisee in good faith with the rational expectation that the offered location will not materially and adversely affect the profitability of the franchisee's existing locations or its planned new locations that have been disclosed to the franchisor in writing; or
- B. At the time the new outlet or location is developed, the existing franchisee is not in compliance with the franchisor's current material, reasonable and reasonably necessary express obligations under the existing franchisee's franchise agreement for the affected location, and the franchisee has been given written notice and an opportunity to cure such noncompliance and the franchisee has failed to cure the same.

**2. Material adverse impact.** For there to be determined a material adverse impact on the existing franchisee's annual gross sales, such adverse impact, based on a comparison to the annual gross sales from the existing outlet or location during the 12-month period immediately preceding the opening of the new outlet or location, must be determined to have been no less than 10% during the first 12 months of operation of the new outlet or location.

### **§ 1299-H. Transfer of a franchise**

**1. Assignment of interest.** A franchisee may assign an interest in a franchised business or in a franchise to a transferee as long as the transferee satisfies the reasonable qualifications then generally applied by the franchisor in the offer and sale of franchises. For the purpose of this subsection, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, as long as the refusal of the franchisor to consent to the transfer is not arbitrary or capricious and the franchisor states the grounds for its refusal in writing to the franchisee.

**2. Notice of proposed transfer.** A franchisee shall give a franchisor not less than 30 days' written notice of a proposed transfer of a transferable interest and on request shall provide in writing the ownership interests of all persons holding or claiming an equitable or beneficial interest in the franchise subsequent to the transfer of the franchisee, as appropriate.

**3. Time for approval of transfer.** A transfer by a franchisee is deemed to have been approved 30 days after the franchisee submits the request for permission to transfer the franchise involved, unless within that time the franchisor refuses to consent to the transfer as evidenced in writing in accordance with subsection 1. A statement of the grounds for refusal to consent to the transfer is privileged against a claim of defamation.

**4. Permitted conditions of transfer.** A franchisor may require as a condition of a transfer that:

- A. The transferee successfully complete a reasonable training program;
- B. A reasonable transfer fee be paid to reimburse the franchisor for the franchisor's reasonable and actual expenses directly attributable to the transfer;
- C. The franchisee pay or make reasonable provision to pay any amount due the franchisor or the franchisor's affiliate; and
- D. The financial terms of the transfer at the time of the transfer comply with the franchisor's current financial requirements for franchisees.

**5. Prohibited condition of transfer.** A franchisor may not condition its consent to a transfer described in subsection 1 on any of the following:

- A. The franchisee's forgoing existing rights other than those contained in the franchise agreement;
- B. The franchisee's entering into a release of claims broader in scope than a counterpart release of claims offered by the franchisor to the franchisee; or
- C. Requiring the franchisee or transferee to make, or agree to make, capital improvements, reinvestments or purchases in an amount greater than the franchisor could have reasonably required under the terms of the franchisee's existing franchise agreement.

**6. Assignment for unexpired term of franchise agreement.** A franchisee may assign the franchisee's interest in the franchise for the unexpired term of the franchise agreement, and a franchisor may not require the franchisee or the transferee to enter into a franchise agreement that has different material terms or financial requirements as a condition of the transfer.

**7. Consent to public offering of securities.** A franchisor may not withhold its consent to a franchisee's making a public offering of its securities without good cause if the franchisee, or the owner of the franchisee's interest in the franchise, retains control over more than 25% of the voting power as the franchisee.

**8. Consent to pooling of interests.** A franchisor may not withhold its consent to a pooling of interests, to a sale or exchange of assets or securities or to any other business consolidation among its existing franchisees, as long as the constituents are each in material compliance with their respective obligations to the franchisor.

**9. Occurrences that are not transfers.** The following occurrences may not be considered transfers requiring the consent of the franchisor under a franchise agreement, and a franchisor may not impose any fees, payments or charges in excess of a franchisor's cost to review the relevant matter:

A. The succession of ownership or management of a franchise upon the death or disability of a franchisee or of an owner of a franchise to the surviving spouse, heir or partner active in the management of the franchise unless the successor objectively fails to meet within one year the reasonable qualifications of the franchisor for franchisees;

B. Incorporation of a proprietorship franchisee, except that the franchisor may require a personal guarantee by the franchisee of obligations related to the franchise;

C. A transfer within an existing ownership group of a franchise as long as more than 50% of the franchise is held by persons who meet the franchisor's reasonable qualifications for franchisees. If less than 50% of the franchise will be owned by persons who meet the franchisor's reasonable qualifications, the franchisor may refuse to authorize the transfer;

D. A transfer of less than a controlling interest in the franchise to the franchisee's spouse or children, as long as more than 50% of the entire franchise is held by persons who meet the franchisor's reasonable qualifications. If less than 50% of the franchise would be owned by persons who meet the franchisor's reasonable qualifications, the franchisor may refuse to authorize the transfer; and

E. A grant or retention of a security interest in the franchised business or its assets or in an ownership interest in the franchisee if the security agreement establishes an obligation on the part of the secured party, enforceable by the franchisor, to give the franchisor simultaneously with notice to the franchisee notice of the secured party's intent to foreclose on the collateral and a reasonable opportunity to redeem the interest of the secured party and recover the secured party's interest in the franchise, the franchised business or the franchisee by satisfying the secured obligation.

A franchisor may not exercise any purported right of first refusal or right to purchase with regard to any franchise or interest or assets of a franchisee upon the happening of any event described in paragraphs A to E.

**10. Covenant prohibiting lawful occupation unenforceable.** After the transfer of a transferor's complete interest in a franchise, a franchisor may not enforce against the transferor any covenant of the franchise purporting to prohibit the transferor from engaging in any lawful occupation or enterprise. This subsection does not limit the franchisor from enforcing a contractual covenant against the transferor not to exploit the franchisor's trade secrets or intellectual property rights, including protection of trade dress, except by agreement with the franchisor.

### **§ 1299-I. Renewal of the franchise; notice**

**1. Failure to renew requires good cause.** A franchisor may not, directly or through an officer, agent or employee, fail to renew a franchise, except for good cause shown.

**2. Renewal not subject to unreasonable fees.** A renewal may not be subject to unreasonable fees. Fees are not considered unreasonable if they do not exceed 50% of the amount of the average initial franchise fee then being charged to all franchisees of the franchisor in the State.

**3. Basis of good cause.** Good cause may be based upon legitimate business reasons that include, but are not limited to, the 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 and advertising or marketing fees clearly required by the franchise agreement.

**4. Notice of nonrenewal.** Before nonrenewal of a franchise, a franchisor shall give a franchisee written notice at least 90 days in advance of the nonrenewal. The notice must state all of the reasons constituting good cause for the nonrenewal and must provide that the franchisee has 60 days in which to rectify any claimed discrepancy and reinstate its right to renew the franchise.

**5. New franchise agreement requirements.** If a franchisor requires that a franchisee sign a new franchise agreement as a condition of renewal, the franchise agreement must contain the same royalties, advertising fees and other fees as the expiring agreement and no new fees, and any protected territory in the expiring agreement must be the same in the renewal franchise.

**6. Prohibitions after expiration of franchise agreement.** A franchisor may not prohibit a franchisee from engaging in any business at any location after expiration of a franchise agreement or from using the customer list and telephone numbers associated with the franchise business or enforce such a prohibition. Nothing in this subsection may be interpreted to prohibit enforcement of any provision of a franchise contract obligating a franchisee after expiration or termination of a franchise to:

A. Cease or refrain from using a trademark, a trade secret or intellectual property owned by the franchisor or its affiliate;

B. Alter the appearance of the business premises so that it is not substantially similar to the standard design, decor criteria, trade dress or motif in use by other franchisees using the same name or trademarks within the proximate trade or market area of the business; or

C. Modify the manner or mode of business operations so as to avoid any substantial confusion with the manner or mode of operations that are unique to the franchisor and commonly in practice by other franchisees using the same name or trademarks within the proximate trade or market area of the business.

## **§ 1299-J. Termination; good cause; notice; opportunity to cure**

**1. Good cause required for termination or cancellation.** A franchisor may not, directly or through an officer, agent or employee, terminate or cancel a franchise or substantially change the competitive circumstances of a franchise agreement, except for good cause shown.

**2. Default under one agreement not default under another.** A default under one franchise agreement does not in and of itself constitute a default under another franchise agreement to which the franchisee or an affiliate of the franchisee is a party.

**3. Notice of termination or cancellation required.** Prior to termination or cancellation of a franchise, a franchisor shall give a franchisee written notice at least 90 days in advance of the termination. The notice must state all of the reasons constituting good cause for termination or cancellation and must provide that the franchisee has 60 days in which to rectify any claimed defaults.

**4. Notice of termination or cancellation not required.** The requirement for 90 days' advance written notice for termination or cancellaion does not apply if the reason for termination or cancellation is:

A. The alleged grounds are voluntary abandonment by a franchisee of a franchise relationship, in which event such notice may be given 15 days in advance of the termination or cancellation; or

B. The conviction of a franchisee in a court of competent jurisdiction of an offense:

(1) Punishable by a term of imprisonment in excess of one year;

(2) Directly related to the business conduct pursuant to the franchise;

(3) That materially impairs the goodwill value of the franchise or the franchised trademark; and

(4) That is no longer appealable.

In the event of such a conviction, notice may be given at any time following the date on which the conviction is no longer appealable and is effective upon delivery and written receipt of the notice. In no event may any franchisor collect any financial penalty or fee, however delineated, as a consequence of the conviction.

**5. Nonpayment of sums due under franchise agreement.** If the reason for termination or cancellation is nonpayment of sums due under a franchise agreement, a franchisee is entitled to written notice of the default and has 15 days in which to cure the default from the date of the notice. A franchisee has the right to cure 3 times in any 12-month period during the period of a franchise agreement.

**6. Violation of law, regulation or rule.** If the reason for termination or cancellation is a violation of any law, regulation or rule relating to an imminent danger to public health or safety, a franchisee is entitled to immediate written notice and has 24 hours following receipt of that notice to cure that violation.

**7. Changes to franchise system or competitive circumstances.** A franchisee may terminate a franchise agreement without penalty or fees in the event of changes to the franchise system or the competitive circumstances of the franchise business that would cause substantial negative impact or substantial financial hardship to the franchisee in the operation of its franchise.

## **§ 1299-K. Transfer of franchise system by franchisor**

**1. Limits on transfer of franchise system by franchisor.** A franchisor may not transfer by sale or otherwise its interest in a franchise system unless:

- A. The franchisor provides not less than 30 days before the effective date of transfer notice to every franchisee of the intent to transfer the franchisor's interest in the franchise system or of substantially all of the franchises held by the franchisor;
- B. The notice is accompanied by a complete description of the business and financial terms of the proposed transfer; and
- C. Upon the transfer, the entity assuming the franchisor's obligations has the business experience and financial means to perform all of the franchisor's obligations in the ordinary course of business.

## **§ 1299-L. Effect of termination**

**1. Compensation upon termination.** Upon termination of a franchise for whatever cause or reason, except voluntary relinquishment or abandonment of the franchise by the franchisee, the franchisor shall fairly compensate the franchisee or franchisee's estate for the fair market value at the time of termination of the franchise; for the franchisee's inventory, supplies, equipment and furnishings purchased by the franchisee from the franchisor or its approved sources; and for the fair market value of good will, if any, exclusive of personalized items that have no value to the franchisor and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchise business, subject to the following limitations:

A. Compensation need not be made to a franchisee for good will if the franchisor agrees in writing not to enforce a covenant that restrains the franchisee from competing with the franchisor in the same or substantially similar business in the same or substantially similar manner at the same location using the same property except the franchisor's registered trademark or trade name; and

B. A franchisor may offset against amounts owed to a franchisee under this subsection any amount mutually agreed upon and owed by the franchisee to the franchisor that is not the subject of a good faith dispute by the franchisee.

**2. Construction.** The provisions of this section may not be construed to permit the termination or nonrenewal of any franchise agreement except in accordance with the express terms of the franchise agreement and this chapter.

### **§ 1299-M. Warranties; indemnification**

**1. Franchisor to indemnify and hold harmless franchisee.** A franchisor shall indemnify and hold harmless its franchisee from financial loss and expense, including legal fees and costs, arising out of any claim, demand suit or judgment by reason of a defect in merchandise, products, equipment, supplies, methods or procedures prescribed by the franchisor and required to be performed or purchased by the franchisee, except for the negligent act or willful misconduct of the franchisee that causes the loss or expense.

**2. Franchisee not liable for negligence of others.** A franchisee, franchisee association or cooperative of franchisees is not liable for the negligence or misconduct of any supplier or distributor of products or services prescribed by the franchisor or for the failure of any product or service prescribed by the franchisor that is not fit for the particular purpose for which the product or service was prescribed or any purpose related to the product or service, and any contractual provisions to the contrary are void as against public policy.

**3. Reimbursement for warranty work.** A franchisor shall reimburse its franchisee at the prevailing retail price for any services rendered or parts supplied by the franchisee in satisfaction of any warranty issued by the franchisor or any warranty issued by the franchisee that is mandated by the franchisor, and a franchisor may not restrict a franchisee from rendering services or providing parts in accordance with standards of good workmanship in satisfaction of the warranty.

### **§ 1299-N. Enforcement**

**1. Legal action.** If a franchisor violates a provision of this chapter, a franchisee may bring an action against that franchisor in a court of competent jurisdiction of this State for damages sustained by the franchisee as a consequence of the franchisor's violation, together with the actual costs of the action, including reasonable attorney's fees, and the franchisee also may be granted injunctive relief against unlawful termination, cancellation or nonrenewal or any act or practice prohibited by this chapter. If the

court finds for the franchisee, recovery must be in the amount of actual damages or up to 3, but not less than 2, times such amount if the court finds that the unfair method of competition or the act or practice in violation of this chapter was a willful or knowing violation.

**2. Laws of this State govern; courts of this State have jurisdiction.** Notwithstanding any term or provision of a franchise agreement to the contrary:

A. The laws of this State govern the interpretation of the franchise agreement of a franchise located in the State and the performance of the parties under the agreement; and

B. The courts of this State and the federal courts with jurisdiction over cases filed in the State have exclusive jurisdiction with respect to an action brought under this chapter or an action brought by a franchisor concerning a franchise located in this State.

**3. Attorney General may enforce this chapter.** Upon the written request of a franchisor or a franchisee, the Attorney General may enforce compliance with this chapter.

**4. Remedies are in addition to other remedies.** The remedies reflected in this section are not exclusive but are in addition to all other existing common law and statutory remedies that may be available to a franchisee.

### **§ 1299-O. Void provisions; arbitration; mediation; class action**

**1. Arbitration; mediation.** A clause or provision in a franchise agreement requiring the parties to submit to arbitration is enforceable only if the parties have voluntarily entered into an agreement to submit to arbitration after the dispute has arisen and the proceeding is conducted at a location within this State reasonably convenient to the franchisee. The provisions of this subsection do not prohibit the enforceability of a clause or provision in a franchise agreement that requires the parties to submit to nonbinding mediation conducted at a location within this State reasonably convenient to the franchisee.

**2. Class action.** A provision in a franchise agreement may not deprive the franchisee from participating as a member of a class or in a consolidated action permitted under the Federal Rules of Civil Procedure or the Maine Rules of Civil Procedure.

### **§ 1299-P. Time limitations; cause of action**

**1. Time limitation.** An action arising out of this chapter must be commenced within 4 years after the cause of action becomes known or is knowable, whichever is later. A provision in a franchise agreement that requires a party to a franchise agreement to commence an action within a shorter period than as provided in this section is void as against public policy.

**2. Cause of action that accrues during pendency of proceeding.** If a cause of action accrues during the pendency of any 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 brought by this State or any of its political subdivisions under the laws of this State related to antitrust laws or to franchising, that cause of action may be commenced within one year after the final disposition of the civil, criminal or administrative proceeding.

**§ 1299-Q. Good faith; good cause**

**1. Good faith; good cause.** A duty of good faith under this chapter obligates a party to a franchise to do nothing that will have the effect of destroying or injuring the right of the other party to obtain and receive the expected fruits of the contract and to do everything required under the contract to accomplish such purpose. A duty of good faith requires honesty of fact and observance of reasonable standards of fair dealing in the trade.

**2. Good cause; burden of proof.** The burden of proving good cause is on the franchisor.

**§ 1299-R. Waiver by contract prohibited**

The effect of this chapter may not be varied, waived or disclaimed by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.

**SUMMARY**

This bill enacts the Maine Small Business Investment Protection Act to protect franchisees in the sale and operation of franchise businesses.