

LD1458 Maine Small Business Investment Protection Act

A Path Toward a More Balanced Franchise Relationship in Maine

In Maine we have regulations to protect people who buy insurance policies, buy a car, or buy a house. Maine has laws on the books protecting thriving industries such as Auto Dealers, Farm & Fishing Equipment Dealers and Motorized Sports Dealers. Maine franchise owners – who invest hundreds of thousands of dollars into a franchise and create jobs in Maine – are asking for similar protections.

Maine Franchise Owners are the people that invest in a franchise and bring that brand to Maine. They own multiple brands in multiple industries. They are the ones that raise the capital, build the business, employ the citizens, pay local and state taxes, and support their local communities.

Franchisors are the brand, they are for the most part from out of state. The franchise agreement is written to give them the power to enforce brand standards, which is important to all parties. Problems occur when franchisors abuse that power and take financial advantage of Maine Franchise Owners. The 4 Principles of LD1458 helps Maine franchise owners defend and protect their investment and equity from abusive franchisors.



Maine Franchise Owners own multiple brands in multiple industries

Franchising in Maine: There are over 3,200 franchised businesses in the State of Maine that employ over 36,000 Maine citizens with a payroll that exceeds \$1 Billion annually and a total GDP output approaching \$4 Billion annually. Maine franchise owners have over \$2 billion dollars invested in the Maine economy. Again, these Maine franchise owners live, work and raise their families in Maine. Out of state Franchisors – the opponents of LD 1458 do not.



FACT: The Total # of Franchise units in Maine have been declining since 2005 - 3,934 units, in 2007 – 3,674 units, to an estimated 3,205 units today.

Why LD1458?: The success of franchising in Maine is predicated on the investments made by franchise owners. LD1458 provides Maine franchise owners basic equity protections so they can grow, prosper and continue to contribute substantially to Maine's economy.



FACT: Over 20 States and 5 Canadian Provinces currently have franchise relationship statutes in place.

LD1458: The Maine Small Business Investment Protection Act was introduced at the beginning of the 126th Maine Legislature.



FACT: In 1994 the 116th Maine Legislature passed The Franchise Practices Act (LD1916), through the Maine House and the Maine Senate, it was vetoed by then Governor McKernan. That act had protections for franchise owners that were far more reaching than today's Maine Small Business Investment Protection Act (LD1458).

TOP FRANCHISE BRANDS IN MAINE BY # OF UNITS

Dunkin' Donuts	140
KFC/Taco Bell/Pizza Hut.....	125
Subway	107
McDonalds	62
Bimbo Foods	47
Southern Tsunami (Sushi Bars).....	37
Burger King.....	36
Chester's (Chicken Kiosks).....	34
H&R Block	34

TOP 10 MAINE CITIES & TOWNS WITH THE LARGEST NUMBER OF FRANCHISED UNITS

Bangor.....	98
Portland.....	95
South Portland	67
Augusta	63
Auburn	51
Scarborough	45
Waterville.....	43
Brunswick.....	42
Lewiston	41



The LD1458 that you are presently considering has been significantly edited down to 4 Basic Principles of Equity Protection.

Principle #1: Reasonableness and Good Faith

Issue: While many ethical franchisors will deal in good faith with Maine Franchise Owners, there are many others who do not.

LD1458 Solution: Expressly includes the duty to act in good faith and in accordance with reasonable standards. The duty of good faith has been interpreted to require that the franchisor enforce the franchise agreement and operations manual in a manner that takes into account the interests of the franchise owner without malice or ulterior purpose.



FACT: Franchise Business Review of Portsmouth, NH surveyed a sampling of franchisees in Maine and 26% said they did not trust their franchisor.

Principle #2: Cancellation, Termination and Nonrenewal Unless for Good Cause

Issue: Maine Franchise Owners have lost their life savings and have been forced into bankruptcy because of the franchisor inappropriately using contracted termination powers.

LD1458 Solution: A franchisor may terminate a franchisee prior to the expiration of the contract only for good cause, that is, if the Maine franchise owner fails to comply with any material lawful requirement of the franchise agreement. LD 1458 states that the franchisor shall give a Maine franchise owner written notice at least 90 days in advance. A cure period of 60 days is required prior to termination or renewal.



FACT: Many franchise agreements do provide Maine franchise owner renewal, however in many cases the option to offer renewal is strictly a decision of the franchisor. The franchisor may choose not to renew the contract and make the location a company owned store, with no regard for the investment or hard work of the franchisee and therefore no remuneration.

Principle #3: Transfer/Survivorship

Issue: When a Maine franchise owner wants to sell his or her business, the franchisor often requires, as a condition of completing the sale, changes to the franchise or franchise agreement that may reduce the value of the business to a new transferee.

LD1458 Solution: Maine franchise owners are allowed to transfer their business if they so desire, and allow the Maine franchise owner to obtain the value of the franchise while not forcing the franchisor to compromise its own standards. The transferee must satisfy the reasonable qualifications of the franchisor. The franchisor has 90 days to approve the transferee and may impose a transfer fee or exercise the right of first refusal. The law further outlines conditions such as training that the franchisor may require to permit the transfer.



FACT: America's business community is built upon family-owned businesses which includes franchises. More than 90% of all businesses in the United States are family-owned and employ 62% of the private sector workforce.

Principle #4: Jurisdiction

Issue: Small Maine family businesses cannot afford to mount a defense in a faraway state. Most Franchisors use this as a means to get the small business owner to capitulate to their whims.

LD1458 Solution: The right to request that a Maine judge require a case to be heard within the state of Maine. Small Maine family businesses cannot afford to mount a defense in a faraway state.



FACT: Maine franchise owners are your neighbors, their kids go to your kid's schools. The franchise owners often support local charities and community events. Local franchise owners provide the first job opportunity for many Maine citizens.

