

# Maine Introduces Groundbreaking Franchise Bill

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Maine State Capitol Dome, photo: wikipedia

AUGUSTA, Maine — Maine's legislature has joined a growing chorus of states that are pushing laws to protect franchised businesses. Last Thursday a group of powerful state senators endorsed LD 1458, the Maine Small Business Investment Protection Act. The bill aims to help small business owners defend themselves from abusive franchising practices.

For example, a franchisor must give a franchise owner-operator time to cure a violation of company standards before it can be terminated. An abusive franchisor cannot make up a rule on the spot that applies only to that franchisee with the unspoken intent of confiscating its store. If a franchisor encroaches into a franchisee's territory by setting up another store nearby, the franchisee would be entitled to compensation for its dip in sales or profits.

The scope of the bill's protection is unusual. (See green box.)

As some of the country's top franchisee legal experts not involved in the drafting of the bill now read the newly public document, they like what they see. A few point out that besides franchisees, established franchisors are also likely to benefit if the bill becomes law.

Attorney Andrew Selden, a recipient of multiple legal honors and a well-known legislative advocate for franchisees, states: "The bill should not be a problem for the great majority of franchisors, which already operate their systems fairly and non-opportunistically. For these franchisors a bill like this will actually be an advantage because it will foster a public impression of franchises as a prudent and predictable, if not a 'safe,' investment vehicle."

Selden thinks the Maine bill is a leap forward in protecting franchise owners from abuse. "[The bill is] an ambitious effort by owners of franchised businesses to build upon the 23-year-old Iowa and the 33-year-old California franchise relationship laws and extend them to reach issues today that were either not present in those earlier years or just emerging," he states. "This would be the first franchise law to address the real commercial problems in franchising in the 21st Century."

Howard Bundy, a Washington-based franchisee attorney of three decades, contends that the majority of franchisors treat their franchisees fairly and should be endorsing the Maine bill. "It would do more than any governmental action we have seen to clear out the bad franchisors so that good franchisors and franchise systems can thrive without being dragged into the gutter by the lowest common denominator," says Bundy.

But some franchisors and their organization, the International Franchise Association, are worried. "We believe [this bill] would severely hurt the ability of both franchisees and franchisors to find success in the franchise model," wrote the IFA's vice president of communications and marketing, Ailsa Harrison, to BlueMauMau.

## Franchisor, franchisee associations sound off

"If LD 1458 were enacted into law, it would set an absolutely horrible precedent," warned the International Franchise Association's CEO Steve Caldeira to board members and leaders on Tuesday. "The franchise industry needs to be unified in opposing this legislation."

Franchisee Keith Miller, chair of the Coalition of Franchisee Associations, which represents the interests of franchisees of Dunk'n Donuts, Subway, Burger King, 7-Eleven, Meineke and other major brands, thinks this bill will encourage more franchisees to invest in franchised brands in Maine. It was Maine franchisees that brought in the Coalition. In turn, Miller notes, the Coalition asked some of the area's and country's top franchise attorneys to write a bill that reflected the CFA's [Universal Franchisee Bill of Rights](#), protecting the state's owner-operators from predatory franchising practices. The owner of several sandwich shops, he adds that "Franchisees will feel secure in their investments with these additional rights, including transfer, renewal and termination requirements."

As store owner-operators and their own franchisee associations line up in support of the Maine bill, they are up against a formidable foe – the International Franchise Association, which has been lobbying on behalf of franchisors since 1960 and has developed powerful alliances.

But this time the IFA finds itself a little late to the New England game. The bill has already been endorsed by 8 of the 14 members of the committee, where it will likely be voted on before May 17. It would then go to the floor. Franchisees think it has a good chance of passing in the legislature.

What is surprising is how many states have franchise relations acts being drafted – Massachusetts, Rhode Island, California, Ohio and now Maine. That list is likely to become longer. Many of the bills in these states have been supported by the Coalition and other franchisee associations. Some have passed, such as those in Rhode Island and Ohio, while other bills are now making their way through the process, like California's SB 610, or are on tap for next year.

What is causing the rise in franchise relationship bills occurring throughout the states? The IFA's Alisa Harrison replies, "We believe the main cause is the ongoing frustration by a small but vocal group of franchisees that stems from the slow economic recovery."

That answer does not sit well with some franchisees.

"It's unfortunate that the IFA attempts to demean the franchisees involved by labeling them a small but vocal group," says franchisee Miller. The coalition represents associations that have roughly 50,000 franchisees within their ranks. "The CFA is run by a board of directors of franchisees, chosen by fellow franchisees in their own independent association," reminds Miller. "These are leaders from associations in some of the largest franchised brands. They want to protect franchising [by pushing for passage of the bill]."

Harrison points out that the International Franchise Association has assembled a task force of both franchisors and franchisees. "The task force has diligently worked to identify areas of agreement and potential solutions that may negate the perception that legislation is necessary."

Miller is complimentary of the members of the IFA's task force, but stresses that the IFA has no enforcement authority over its own members, let alone the world outside its membership.

### Government overreach?

"This legislation is an example of the type of government intrusion and overreach, which is simply detrimental for franchisees, franchisors and our industry," wrote IFA's Caldeira.

Critics contend this is an argument that the powerful make to keep the status quo.

Miami-based attorney Robert Zarco has heard that argument from the IFA for years, but he contends that franchise businesses are in need of protection. "The typical franchise agreement is overwhelmingly one-sided and clearly a product of unbalanced relative negotiating positions," he explains. "The franchisor has the main ingredients, the brand power, the already invented mousetrap, the industry know-how and the franchise system. When the franchisor couples that with the weight of its financial might, the franchisee enters the system with no real or practical ability to negotiate a fair agreement. Due to the lack of a level playing field that has overwhelmingly persisted in the franchise industry and the corresponding lack of equality in negotiating agreements, only state or federal laws can impose this missing fairness."

### Maine's protection act stipulates:

- ▶ A franchisee has the right to set its own price on products sold: e.g. a shop doesn't have to sell a sandwich at a loss for a dollar when a franchisor mandates it
- ▶ A franchisee can close its store between 10 p.m. and 6 a.m.
- ▶ A franchisee can renew its license without an increase in royalties or new fees
- ▶ A franchisee has the right to shutter its store because of a significant change in the competitive environment or franchise system without incurring a penalty from the franchisor
- ▶ A franchisee is to be compensated by the franchisor when a franchisor's encroachment on a territory harms the gross sales or net profits of the pre-existing franchise store
- ▶ A franchisee has the right to a uniform standard of conduct rather than an imposition of an ad-hoc rule made to penalize just that franchise store
- ▶ Franchisees have the right to join in a franchisee association without retaliation from the franchisor

The well-known litigator for franchisees explains that the trap for franchisees is that few courts are willing to interfere with signed contracts, no matter how one-sided. "With the meek statutory protections that currently exist, the franchisee stands no chance to defend itself against an unscrupulous or insensitive franchisor," says Zarco. "Because these franchise relationships are highly interdependent and because the franchisee is vulnerable to the might of the franchisor, only state and federal legislation can overcome the franchisor's lack of self-control of its own abusive and arbitrary decisions."

He thinks there are certain minimum protections for a franchised business that are necessary – like the right to set their own prices, time to cure or the right for a franchise to shutter its store when it is economically unfeasible to continue because of external interference, such as a street being shut down for construction work for six months.

Those issues are addressed in Maine's bill.

The International Franchise Association's CEO stresses that the bill is harmful. Franchisors would not be able to terminate a franchise for refusal to "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," he writes. "Franchisors would be prohibited from... treating franchisees differently, except in limited circumstances," he continues in a long list of how franchisors would be restricted.

Franchisee Miller has high hopes that Bill LD 1458 will significantly help Maine's franchise owners. "The CFA believes strongly that a balanced industry, with strong franchisees and franchisors, creates an environment for greater expansion," he says. "The CFA feels appropriate best practices need to be put into law to see actual changes."

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**BREAKING (May 3, 2013, 2:00 p.m. EST): Public hearing on Small Business Investment Protection Act LD 1458 will be Wed, May 8, 2013 at 1 p.m (for hearing details, [click here](#)).** The public is welcome.

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