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Legislative Document

No. 1026

S.P. 314

In Senate, March 10, 2011

An Act To Regulate the Distribution of Feature Motion Pictures in the State

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator FARNHAM of Penobscot.
Cosponsored by Representative DAMON of Bangor and
Representatives: HINCK of Portland, WILLETTE of Mapleton.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 215-A** is enacted to read:

3 **CHAPTER 215-A**

4 **FEATURE MOTION PICTURE FAIR BUSINESS PRACTICES ACT**

5 **§1459. Short title**

6 This Act may be known and cited as "the Feature Motion Picture Fair Business
7 Practices Act."

8 **§1459-A. Definitions**

9 As used in this chapter, unless the context otherwise indicates, the following terms
10 have the following meanings.

11 **1. Bid.** "Bid" means a written or oral proposal by an exhibitor or an exhibitor's
12 authorized agent to a distributor that is in response to a distributor's or a distributor's
13 agent's invitation to bid or negotiate terms for the license of a feature motion picture that
14 states the terms under which the exhibitor will agree to exhibit a feature motion picture.

15 **2. Blind bidding.** "Blind bidding" means the solicitation of a bid, negotiation or
16 offer for, or agreeing to terms for, the licensing or exhibition of a motion picture if the
17 motion picture has not undergone trade screening.

18 **3. Clearance.** "Clearance" means the amount of time contracted for between the
19 first run of a motion picture and subsequent runs.

20 **4. Distributor.** "Distributor" means any person engaged in the business of
21 distributing or supplying feature motion pictures to exhibitors by rental, sale or licensing.

22 **5. Exhibit or exhibition.** "Exhibit" or "exhibition" means the showing of a feature
23 motion picture to the public for a charge.

24 **6. Exhibitor.** "Exhibitor" means any person engaged in the business of operating
25 one or more licensed theaters for the purpose of projecting motion pictures to the public
26 in this State. "Exhibitor" does not include a person projecting feature motion pictures to
27 the public at unlicensed places of exhibition, private homes or municipal buildings and
28 charitable or nonprofit parties such as private individuals, schools, libraries, museums or
29 similar agencies that may infrequently exhibit feature motion pictures to the public,
30 whether for free or for a charge.

31 **7. Invitation to bid.** "Invitation to bid" means a written or oral solicitation or
32 invitation by a distributor to one or more exhibitors, whether directly or through their
33 agents, to bid or negotiate for the right to exhibit a feature motion picture.

34 **8. License agreement.** "License agreement" means a contract, agreement,
35 understanding or condition binding between a distributor and an exhibitor relating to the

1 licensing of, or governing the terms and conditions for, exhibition of a feature motion
2 picture by the exhibitor.

3 **9. Person.** "Person" means an individual, partnership, association, society, trust,
4 union, company, municipality or corporation.

5 **10. Release date.** "Release date" means the date of the first licensing of a feature
6 motion picture for public exhibition. "National release date" means the date of first
7 public exhibition in the United States. "Market release date" means the date of first
8 public exhibition offered for licensing in a designated market area.

9 **11. Run and runs.** "Run" means the continuous exhibition of a feature motion
10 picture in a designated market area for a specified period of time. "Runs" are successive
11 exhibitions of a feature in a given designated market area. "Runs" includes successive
12 exhibitions in different theaters even though such theaters may be under common
13 ownership or management. "Run" or "runs" may consist of the following:

14 A. "First-run engagement" means the first continuous exhibition of a feature motion
15 picture in the designated market area beginning on its release date, which commences
16 from its first licensed exhibition date in the designated market area.

17 B. "Second-run engagement" means the continuous exhibition of a feature motion
18 picture in the designated market area following at any date after the release date of a
19 first-run engagement.

20 C. "Move-over engagement" means a type of 2nd-run engagement operating within a
21 designated market area wherein the 2nd-run engagement is licensed for exhibition to
22 start only after the conclusion of play in the designated market area's first-run theater.
23 In a "move-over engagement" market, the first-run theater is defined by the
24 distributor as having clearance over its 2nd-run theater competitor.

25 D. "Sub-run engagement" means subsequent continuous exhibitions after a first-run
26 engagement. Sub-run engagement release dates and print availabilities are established
27 by distributors on a regional or national basis. Sub-run engagements may run
28 simultaneously with first-run engagements or 2nd-run engagements in the same
29 designated market area.

30 E. "Exclusive run" means a run limited to a single theater in a designated market
31 area. "Nonexclusive run" means a run in more than one theater in a designated market
32 area.

33 **12. Theater.** "Theater" means an establishment in which feature motion pictures are
34 exhibited regularly to the public for a charge. A theater may be classified as any one or
35 more of the following types:

36 A. "First-run theater" means a theater that regularly exhibits motion pictures in a
37 designated market area as first-run engagements.

38 B. "Second-run theater" means a theater that regularly exhibits motion pictures in a
39 designated market area as 2nd-run engagements.

1 C. "Move-over theater" means a 2nd-run theater that regularly exhibits motion
2 pictures in a designated market area as move-over engagements in relation to one or
3 more specified first-run theaters.

4 D. "Sub-run theater" means a theater that regularly exhibits motion pictures in a
5 designated market area as defined regional or national sub-run engagements.

6 E. "Art house theater" means a theater that regularly exhibits motion pictures of a
7 type generally regarded as expressing a higher cultural standard than the more
8 broadly commercial motion pictures that are typically more widely distributed. Art
9 house theaters operate with less regard to the designated market areas assigned to the
10 other types of theaters except when art house theaters license motion pictures for
11 first-run engagements, 2nd-run engagements or move-over engagements that are
12 competitive or capable of sustaining an audience in other types of venue, in which
13 case they may be confined to operate according to the established practices applied to
14 other types of theaters as applicable to their designated market area.

15 **13. Trade screening.** "Trade screening" means the showing, open to any exhibitor
16 or the authorized agent thereof, of a feature motion picture by a distributor. Trade
17 screenings may, at the discretion of the distributor, be provided via digital video disc to a
18 prospective exhibitor or the exhibitor's agent in lieu of or as an alternative to a theatrical
19 trade screening.

20 **§1459-B. Minimum payment to distributor restricted**

21 A license agreement that provides for a fee or other payment to the distributor based
22 in whole or in part on the attendance or the box office receipts at a theater may contain or
23 be conditioned upon a guarantee of a minimum payment to the distributor only if the
24 minimum payment is reasonable in light of industry practice and within the scope of state
25 requirements protecting competition and fair business practices.

26 **§1459-C. Advances restricted**

27 A license agreement for the exhibition of a feature motion picture at a theater may
28 contain or be conditioned upon a provision, agreement or understanding that the exhibitor
29 will advance any funds prior to the exhibition of the feature motion picture as security for
30 the performance of the license agreement or to be applied to payments under such a
31 license agreement only if the advance is reasonable in light of industry practice in the
32 northeast region of the United States and requires payment of an amount that is within the
33 scope of the specified theater's demonstrable range of performance for the feature motion
34 picture and license period under consideration.

35 **§1459-D. Length of run**

36 A distributor and an exhibitor may not enter into a license agreement to grant an
37 exclusive first-run engagement or exclusive multiple first-run engagements for more than
38 14 days without a provision to expand the run to 2nd-run theaters, including move-over
39 theaters and art house theaters, within the designated market area. License agreements
40 and prints of such a feature motion picture must be made available by the distributor to

1 those 2nd-run theaters, move-over theaters or art house theaters not less than 14 days
2 after the opening or release date at the designated market area's first-run theaters.

3 **§1459-E. Terms of 2nd-run engagements and move-over engagements**

4 **1. Equality of terms.** A 2nd-run theater or move-over theater may obtain a license
5 to exhibit concurrently with, or as an alternative to, the designated market area's first-run
6 theaters during the first-run engagement's 3rd week of play under the same percentage
7 rental terms as those being paid by the first-run theaters, and the terms must adjust
8 weekly through the balance of play at the 2nd-run theater exactly as they adjust, or would
9 have adjusted, at the first-run theaters so that the respective weekly rental terms paid are
10 the same as contracted for at the first-run theaters.

11 **2. No price adjustment.** A 2nd-run theater must be granted the unobstructed right
12 to play move-over motion pictures at the same price as it has established either by
13 practice or agreement without application of any impediment or attempt to alter the
14 ticketing price at the 2nd-run theater, including, but not limited to, the application of per
15 capita charges.

16 **§1459-F. Print allocation or assignment procedures**

17 If a distributor elects to allocate or otherwise assign a license agreement for a
18 first-run engagement to any one or more theaters operating in a designated market area of
19 the State instead of inviting exhibitors to competitively bid for its license agreement, the
20 terms of the agreement under which the feature motion picture is licensed as a first-run
21 engagement must be disclosed to the owners or agents of all theaters operating in the
22 designated market area of the allocation or assignment not less than 7 days prior to the
23 opening of the motion picture at the first-run theater.

24 **§1459-G. Bidding procedures**

25 **1. Prohibition.** Blind bidding is prohibited within the State. Before trade screening,
26 bids may not be returnable, negotiations for the exhibition or licensing of a feature
27 motion picture may not take place and a license agreement or any of its terms may not be
28 agreed to for the exhibition of any feature motion picture within the State.

29 **2. Information to be included in bid.** A distributor shall include in each invitation
30 to bid for a feature motion picture for exhibition within the State, if that feature motion
31 picture has not already been presented at a trade screening, the date, time and place of the
32 trade screening of the feature motion picture.

33 **3. Notice to exhibitors.** A distributor shall provide reasonable and uniform notice to
34 exhibitors within the State of all trade screenings of feature motion pictures being
35 distributed.

36 **4. Waiver void.** A purported waiver of the requirements of this section is void and
37 unenforceable.

1 **5. Invitation to bid; contents.** If bids are solicited from exhibitors for the licensing
2 of a feature motion picture within the State, the invitation to bid must specify the
3 following:

4 A. Whether the run for which the bid is being solicited is a first-run engagement,
5 2nd-run engagement, move-over engagement or sub-run engagement;

6 B. Whether the run is an exclusive run or a nonexclusive run;

7 C. The designated market area for the run, which must identify all towns, cities, and
8 other municipalities, or parts thereof, included in the run;

9 D. The names of all exhibitors who are being solicited;

10 E. The date and hour the invitation to bid expires; and

11 F. The time and date when and the name and address of the location where the bids
12 will be opened, which must be a location of the distributor's choosing no further from
13 the State than Boston, Massachusetts.

14 **6. Trade screening.** If the feature motion picture that is the subject of a bid has not
15 already been shown at a trade screening, the invitation to bid must include the date, time
16 and location of the trade screening for that feature motion picture, which location may not
17 be more than 100 miles from the theaters being invited to bid, or the offices of their
18 agents, unless otherwise agreeable to all parties concerned.

19 **7. Bid submission and opening.** All bids must be submitted in writing and opened
20 at the same time and in the presence of those exhibitors, or their agents, who submitted
21 bids and are present at that time. Invitations to a bid opening must be mailed to each party
22 who has submitted a bid not less than 10 days prior to the scheduled opening date, or an
23 invitation via telephone may be made not less than 7 days prior to the scheduled opening
24 date.

25 **8. Examination of bids.** Any exhibitor, or the agent of an exhibitor, who submits a
26 bid for a run of a feature motion picture may examine, at reasonable times within 60 days
27 after the bids are opened, any bid that is made for the same run of the feature motion
28 picture by another exhibitor. The exhibitor may examine the bids even if the distributor
29 rejects all bids that are submitted. Within 7 business days after a bid for a run of a feature
30 motion picture is accepted, the distributor shall notify in writing each exhibitor who
31 submitted a bid for that run of the terms of the accepted bid and the identity of the
32 successful bidder.

33 **9. Rejection of all bids.** A distributor may not enter into a license agreement for the
34 exhibition of a feature motion picture except by means of the bidding process specified in
35 this section. If the distributor rejects all bids submitted in response to the invitation to bid,
36 the distributor shall notify all exhibitors who submitted bids that the distributor rejected
37 all bids and issue a new invitation to bid.

