

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

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

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

CHAPTER 215-A

FEATURE MOTION PICTURE FAIR BUSINESS PRACTICES ACT

§ 1459. Short title

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

§ 1459-A. Definitions

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

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

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

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

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

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

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

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

8. License agreement. "License agreement" means a contract, agreement, understanding or condition binding between a distributor and an exhibitor relating to the licensing of, or governing the terms and conditions for, exhibition of a feature motion picture by the exhibitor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1459-B. Minimum payment to distributor restricted

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

§ 1459-C. Advances restricted

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

§ 1459-D. Length of run

A distributor and an exhibitor may not enter into a license agreement to grant an exclusive first-run engagement or exclusive multiple first-run engagements for more than 14 days without a provision to expand the run to 2ndrun theaters, including moveover theaters and art house theaters, within the designated market area. License agreements and prints of such a feature motion picture must be made available by the distributor to those 2ndrun theaters, move-over theaters or art house theaters not less than 14 days after the opening or release date at the designated market area's first-run theaters.

§ 1459-E. Terms of 2ndrun engagements and move-over engagements

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

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

§ 1459-F. Print allocation or assignment procedures

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

§ 1459-G. Bidding procedures

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

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

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

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

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

- A. Whether the run for which the bid is being solicited is a first-run engagement, 2ndrun engagement, move-over engagement or subrun engagement;
- B. Whether the run is an exclusive run or a nonexclusive run;
- C. The designated market area for the run, which must identify all towns, cities, and other municipalities, or parts thereof, included in the run;
- D. The names of all exhibitors who are being solicited;
- E. The date and hour the invitation to bid expires; and
- F. The time and date when and the name and address of the location where the bids will be opened, which must be a location of the distributor's choosing no further from the State than Boston, Massachusetts.

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

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

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

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

§ 1459-H. Application to prior agreements

This Act does not apply to any license agreement entered into prior to the effective date of this chapter, except that this Act does apply to a renewal of such a license agreement.

§ 1459-I. Actions against distributors and exhibitors

An exhibitor may bring an action against a distributor or exhibitor or both in the Superior Court to recover damages sustained by reason of a willful and intentional violation of a distributor or exhibitor and, when appropriate, is entitled to injunctive relief. Such an exhibitor, if successful, must also be awarded the costs of the action, including, but not limited to, reasonable court and attorney's fees.

§ 1459-J. Liability of exhibitor for furnishing information

There is no liability on the part of and no cause of action arises against any exhibitor, its officers, agents or employees furnishing information as to violations of this Act or for statements made or evidence submitted at any hearing or trial conducted in connection with a violation of this Act.

§ 1459-K. Remedies

A violation of the provisions of this chapter is a deceptive trade practice, as described in section 1212, and the remedies available to any aggrieved party are those contained within section 1213.

SUMMARY

This bill establishes fair business practices for the licensing and distribution of feature motion pictures in the State to ensure timely public access to artistic expression and opinion in feature motion pictures at reasonable prices and in reasonable locations, to regulate unfair practices and to promote competition in the licensing and distribution of feature motion pictures.

This bill provides requirements for motion picture exhibitors and distributors that are intended to allow independently owned movie theaters to compete with larger theaters and circuits in the State. It is intended to promote the expansion and new construction of motion picture theaters throughout the State, thereby encouraging employment and economic development.