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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 936, L.D. 1381, Bill, “An Act To Correct Errors and Inconsistencies in the Laws of Maine”

Amend the bill by inserting after the enacting clause and before section 1 the following:

'PART A'

Amend the bill by striking out all of sections 1 and 2.

Amend the bill in section 10 in §2514-A in subsection 1 in paragraph C in the last line (page 3, line 2 in L.D.) by striking out the following: "; and" and inserting the following: '; ~~and~~ or'

Amend the bill in section 12 in §2517-C in subsection 3 by striking out all of the first 5 lines (page 6, lines 26 to 30 in L.D.) and inserting the following:

3. Mobile poultry processing unit operators. A mobile poultry processing unit operator may not sell poultry products that have not been inspected at a farmers' market, to a locally owned grocery store or to a locally owned restaurant unless the poultry products are labeled with:

Amend the bill in section 27 in the first line (page 11, line 25 in L.D.) by striking out the following: "Act" and inserting the following: 'Part'

Amend the bill by inserting after section 27 the following:

'PART B

Sec. B-1. 17-A MRSA §1057, sub-§3, as amended by PL 2011, c. 298, §2 and repealed by c. 394, §2, is repealed and the following enacted in its place:

3. It is not a defense to a prosecution under subsection 1 that the person holds a permit to carry a concealed handgun issued under Title 25, chapter 252.

COMMITTEE AMENDMENT

1 result of the loss of the franchise to operate in the facilities, the fair market value
2 must be computed on the date in divisions (a) to (c) that yields the highest fair
3 market value:

4 (a) The date the manufacturer announces the action that results in
5 termination, cancellation, noncontinuance or nonrenewal;

6 (b) The date the action that results in termination, cancellation,
7 noncontinuance or nonrenewal first becomes general knowledge; or

8 (c) The date 12 months prior to the date on which the notice of termination,
9 cancellation, noncontinuance or nonrenewal is issued.

10 If the termination, cancellation, noncontinuance or nonrenewal is due to the
11 manufacturer's change in distributors, the manufacturer may avoid paying fair market
12 value to the licensed new motor vehicle dealer if the new distributor or the
13 manufacturer offers the dealer a franchise agreement with terms acceptable to the
14 dealer.

15 If an entity other than the original manufacturer of a line make becomes the
16 manufacturer for the line make and intends to distribute motor vehicles of that line
17 make in this State, that entity shall honor the franchise agreements of the original
18 manufacturer and its licensed new motor vehicle dealers or offer those dealers of that
19 line make, or of motor vehicles historically of that line make that are substantially
20 similar in their design and specifications and are manufactured in the same facility or
21 facilities, a new franchise agreement with substantially similar terms and conditions;
22 or

23 **Sec. C-2. 10 MRSA §1174, sub-§3, ¶V**, as corrected by RR 2013, c. 2, §14, is
24 amended to read:

25 V. Except as expressly authorized in this paragraph, to require a motor vehicle dealer
26 to provide its customer lists, customer information, consumer contact information,
27 transaction data or service files.

28 (1) The following definitions apply to this paragraph.

29 (a) "Dealer management computer system" means a computer hardware and
30 software system that is owned or leased by the dealer, including a dealer's use
31 of web applications, software or hardware, whether located at the dealership
32 or provided at a remote location, and that provides access to customer records
33 and transactions by a motor vehicle dealer and that allows the motor vehicle
34 dealer timely information in order to sell vehicles, parts or services through
35 that motor vehicle dealership.

36 (b) "Dealer management computer system vendor" means a seller or reseller
37 of dealer management computer systems, a person that sells computer
38 software for use on dealer management computer systems or a person that
39 services or maintains dealer management computer systems, but only to the
40 extent the seller, reseller or other person listed is engaged in such activities.

1 (c) "Security breach" means an incident of unauthorized access to and
2 acquisition of records or data containing dealership or dealership customer
3 information through which unauthorized use of the dealership or dealership
4 customer information has occurred or is reasonably likely to occur or that
5 creates material risk of harm to a dealership or a dealership's customer. An
6 incident of unauthorized access to and acquisition of records or data
7 containing dealership or dealership customer information, or an incident of
8 disclosure of dealership customer information to one or more 3rd parties that
9 was not specifically authorized by the dealer or customer, constitutes a
10 security breach.

11 (2) Any requirement by a manufacturer, distributor, wholesaler, distributor
12 branch or division, factory branch or division, wholesale branch or division or
13 officer, agent or other representative thereof that a new motor vehicle dealer
14 provide its customer lists, customer information, consumer contact information,
15 transaction data or service files as a condition of the dealer's participation in any
16 incentive program or contest, for a customer or dealer to receive any incentive
17 payments otherwise earned under an incentive program or contest, for the dealer
18 to obtain customers or customer leads or for the dealer to receive any other
19 benefits, rights, merchandise or services that the dealer would otherwise be
20 entitled to obtain under the franchise or any other contract or agreement or that
21 are customarily provided to dealers is voidable at the option of the dealer, unless
22 all of the following conditions are satisfied:

23 (a) The customer information requested relates solely to the specific program
24 requirements or goals associated with such manufacturers' or distributors'
25 own new vehicle makes or specific vehicles of their own make that are
26 certified preowned vehicles and the dealer is not required to provide general
27 customer information or other information related to the dealer;

28 (b) The requirement is lawful and would not require the dealer to allow any
29 customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15
30 United States Code, Chapter 94, Subchapter I; and

31 (c) The dealer is not required to allow the manufacturer, distributor or a 3rd
32 party to have direct access to the dealer's dealer management computer
33 system, but the dealer is instead permitted to provide the same dealer,
34 consumer or customer data or information specified by the manufacturer or
35 distributor by timely obtaining and pushing or otherwise furnishing the
36 required data in a widely accepted file format in accordance with
37 subparagraph (11).

38 (3) Nothing contained in this section limits the ability of a manufacturer,
39 distributor, wholesaler, distributor branch or division, factory branch or division,
40 wholesale branch or division or officer, agent or other representative thereof to
41 require that the dealer provide, or use in accordance with law, customer
42 information related solely to that manufacturer's or distributor's own vehicle
43 makes to the extent necessary to:

44 (a) Satisfy any safety or recall notice obligations;

- 1 (b) Complete the sale and delivery of a new motor vehicle to a customer;
- 2 (c) Validate and pay customer or dealer incentives; or
- 3 (d) Submit to the manufacturer, distributor, wholesaler, distributor branch or
- 4 division, factory branch or division, wholesale branch or division or officer,
- 5 agent or other representative thereof claims under section 1176.
- 6 (4) At the request of a manufacturer, distributor, wholesaler, distributor branch
- 7 or division, factory branch or division, wholesale branch or division or officer,
- 8 agent or other representative thereof, a dealer may be required to provide
- 9 customer information related solely to that manufacturer's, distributor's,
- 10 wholesaler's, distributor branch's or division's, factory branch's or division's or
- 11 wholesale branch's or division's own vehicle makes for reasonable marketing
- 12 purposes, market research, consumer surveys, market analysis and dealership
- 13 performance analysis, except that the dealer is required to provide such customer
- 14 information only if the provision of the information is lawfully permissible, the
- 15 requested information relates solely to specific program requirements or goals
- 16 associated with the manufacturer's or distributor's own vehicle makes and does
- 17 not require the dealer to provide general customer information or other
- 18 information related to the dealer and the requested information can be provided
- 19 without requiring that the dealer allow any customer the right to opt out under the
- 20 federal Gramm-Leach-Bliley Act, 15 United States Code, Chapter 94, Subchapter
- 21 I.
- 22 (5) A manufacturer, distributor, wholesaler, distributor branch or division,
- 23 factory branch or division, wholesale branch or division or officer, agent, dealer
- 24 management computer system vendor or other representative thereof, or a 3rd
- 25 party acting on behalf of a manufacturer, distributor, wholesaler, distributor
- 26 branch or division, factory branch or division, wholesale branch or division or
- 27 officer, agency, dealer management computer system vendor or other
- 28 representative thereof, may not access or obtain dealer or customer data from or
- 29 write dealer or customer data to a dealer management computer system used by a
- 30 motor vehicle dealer or require or coerce a motor vehicle dealer to use a
- 31 particular dealer management computer system, unless the dealer management
- 32 computer system allows the dealer to reasonably maintain the security, integrity
- 33 and confidentiality of the data maintained in the system. A manufacturer,
- 34 distributor, wholesaler, distributor branch or division, factory branch or division,
- 35 wholesale branch or division or officer, agent, dealer management computer
- 36 system vendor or other representative thereof, or a 3rd party acting on behalf of a
- 37 manufacturer, distributor, wholesaler, distributor branch or division, factory
- 38 branch or division, wholesale branch or division or officer, agency, dealer
- 39 management computer system vendor or other representative thereof, may not
- 40 prohibit a dealer from providing a means to regularly and continually monitor the
- 41 specific data accessed from or written to the dealer's dealer management
- 42 computer system or from complying with applicable state and federal laws, rules
- 43 and regulations. Nothing in this subparagraph imposes an obligation on a
- 44 manufacturer, distributor, wholesaler, distributor branch or division, factory
- 45 branch or division, wholesale branch or division or officer, agent, dealer

1 management computer system vendor or other representative thereof, or a 3rd
2 party acting on behalf of a manufacturer, distributor, wholesaler, distributor
3 branch or division, factory branch or division, wholesale branch or division or
4 officer, agency, dealer management computer system vendor or other
5 representative thereof, to provide such capability.

6 (6) A manufacturer, distributor, wholesaler, distributor branch or division,
7 factory branch or division, wholesale branch or division or officer, agent or other
8 representative thereof or dealer management computer system vendor, or a 3rd
9 party acting on behalf of a manufacturer, distributor, wholesaler, distributor
10 branch or division, factory branch or division, wholesale branch or division or
11 officer, agent or other representative thereof or dealer management computer
12 system vendor may not access or use customer or prospect information
13 maintained in a dealer management computer system used by a motor vehicle
14 dealer for purposes of soliciting a customer or prospect on behalf of, or directing
15 a customer or prospect to, any other dealer. The limitations in this subsection do
16 not apply to:

17 (a) A customer that requests a reference to another dealership;

18 (b) A customer that moves more than 60 miles away from the dealer whose
19 data were accessed;

20 (c) Customer or prospect information that was provided to the dealer by the
21 manufacturer, distributor, wholesaler, distributor branch or division, factory
22 branch or division, wholesale branch or division or officer, agent or other
23 representative thereof; or

24 (d) Customer or prospect information obtained by the manufacturer,
25 distributor, wholesaler, distributor branch or division, factory branch or
26 division, wholesale branch or division or officer, agent or other
27 representative thereof in which the dealer agrees to allow the manufacturer,
28 distributor, wholesaler, distributor branch or division, factory branch or
29 division, wholesale branch or division or officer, agent or other
30 representative thereof or dealer management computer system vendor or a
31 3rd party acting on behalf of a manufacturer, distributor, wholesaler,
32 distributor branch or division, factory branch or division, wholesale branch or
33 division or officer, agent or other representative thereof or dealer
34 management computer system vendor the right to access and use the
35 customer or prospect information maintained in the dealer's dealer
36 management computer system for purposes of soliciting a customer or
37 prospect of the dealer on behalf of or directing a customer or prospect to any
38 other dealer in a separate, stand-alone written instrument dedicated solely to
39 such an authorization.

40 (7) A manufacturer, distributor, wholesaler, distributor branch or division,
41 factory branch or division, wholesale branch or division or officer, agent or other
42 representative thereof or dealer management computer system vendor or a 3rd
43 party acting on behalf of a manufacturer, distributor, wholesaler, distributor
44 branch or division, factory branch or division, wholesale branch or division or

1 officer, agent or other representative thereof or dealer management computer
2 system vendor may not provide access to customer or dealership information
3 maintained in a dealer management computer system used by a motor vehicle
4 dealer without first obtaining the dealer's prior express written consent, revocable
5 by the dealer upon 5 days' written notice, to provide such access. Prior to
6 obtaining such consent and prior to entering into an initial contract or renewal of
7 a contract with a dealer, the manufacturer, distributor, wholesaler, distributor
8 branch or division, factory branch or division, wholesale branch or division or
9 officer, agent or other representative thereof or dealer management computer
10 system vendor or a 3rd party acting on behalf of or through a manufacturer,
11 distributor, wholesaler, distributor branch or division, factory branch or division,
12 wholesale branch or division or officer, agent or other representative thereof or
13 dealer management computer system vendor shall provide to the dealer a written
14 list of all specific 3rd parties to whom any data obtained from the dealer have
15 actually been provided within the 12-month period ending November 1st of the
16 prior year. The list must describe the scope and specific fields of the data
17 provided. In addition to the initial list, a dealer management computer system
18 vendor or a 3rd party acting on behalf of or through a dealer management
19 computer system vendor must provide to the dealer an annual list of 3rd parties to
20 whom such data are actually being provided on November 1st of each year and to
21 whom the data have actually been provided in the preceding 12 months and
22 describe the scope and specific fields of the data provided. Lists required
23 pursuant to this subparagraph must be provided to the dealer by January 1st of
24 each year. A dealer management computer system vendor's contract that directly
25 relates to the transfer or accessing of dealer or dealer customer information must
26 conspicuously state: "NOTICE TO DEALER: THIS AGREEMENT RELATES
27 TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL
28 INFORMATION AND CONSUMER-RELATED DATA." Consent in
29 accordance with this subparagraph does not change any such person's obligations
30 to comply with the terms of this section and any additional state or federal laws,
31 rules and regulations. A dealer management computer system vendor may not
32 refuse to provide a dealer management computer system to a motor vehicle dealer
33 if the dealer refuses to provide consent under this subparagraph.

34 (8) A dealer management computer system vendor or 3rd party acting on behalf
35 of or through a dealer management computer system vendor may not access or
36 obtain data from or write data to a dealer management computer system used by a
37 motor vehicle dealer unless the dealer management computer system allows the
38 dealer to reasonably maintain the security, integrity and confidentiality of
39 customer and dealer information maintained in the system. A dealer management
40 computer system vendor or 3rd party acting on behalf of or through a dealer
41 management computer system vendor may not prohibit a dealer from providing a
42 means to regularly and continually monitor the specific data accessed from or
43 written to the dealer management computer system and from complying with
44 applicable state and federal laws, rules and regulations. This subparagraph does
45 not impose on a manufacturer, distributor, wholesaler, distributor branch or
46 division, factory branch or division, wholesale branch or division or officer, agent
47 or other representative thereof or dealer management computer system vendor or

1 a 3rd party acting on behalf of or through a manufacturer, distributor, wholesaler,
2 distributor branch or division, factory branch or division, wholesale branch or
3 division or officer, agent or other representative thereof or dealer management
4 computer system vendor an obligation to provide such capability.

5 (9) A manufacturer, distributor, wholesaler, distributor branch or division,
6 factory branch or division, wholesale branch or division or officer, agent or other
7 representative thereof or dealer management computer system vendor or a 3rd
8 party acting on behalf of or through a manufacturer, distributor, wholesaler,
9 distributor branch or division, factory branch or division, wholesale branch or
10 division or officer, agent or other representative thereof or dealer management
11 computer system vendor that has electronic access to customer or motor vehicle
12 dealership data in a dealer management computer system used by a motor vehicle
13 dealer shall provide notice to the dealer of any security breach of dealership or
14 customer data obtained through that access, which at the time of the security
15 breach was in the possession or custody of the manufacturer, distributor,
16 wholesaler, distributor branch or division, factory branch or division, wholesale
17 branch or division or officer, agent or other representative thereof or dealer
18 management computer system vendor or a 3rd party. The disclosure notification
19 must be made without unreasonable delay by the manufacturer, distributor,
20 wholesaler, distributor branch or division, factory branch or division, wholesale
21 branch or division or officer, agent or other representative thereof or dealer
22 management computer system vendor or a 3rd party following discovery by the
23 person, or notification to the person, of the security breach. The disclosure
24 notification must describe measures reasonably necessary to determine the scope
25 of the security breach and corrective actions that may be taken in an effort to
26 restore the integrity, security and confidentiality of the data; these measures and
27 corrective actions must be implemented as soon as practicable by all persons
28 responsible for the security breach.

29 (10) Nothing in this section precludes, prohibits or denies the right of the
30 manufacturer, distributor, wholesaler, distributor branch or division, factory
31 branch or division, wholesale branch or division or officer, agent or other
32 representative thereof to receive customer or dealership information from a motor
33 vehicle dealer for the purposes of complying with federal or state safety
34 requirements or implement any steps related to manufacturer recalls at such times
35 as necessary in order to comply with federal and state requirements or
36 manufacturer recalls as long as receiving this information from the dealer does
37 not impair, alter or reduce the security, integrity and confidentiality of the
38 customer and dealership information collected or generated by the dealer.

39 (11) Notwithstanding any of the terms or provisions contained in this
40 subparagraph or in any consent, authorization, release, novation, franchise or
41 other contract or agreement, whenever any manufacturer, distributor, wholesaler,
42 distributor branch or division, factory branch or division, wholesale branch or
43 division or officer, agent or other representative thereof or dealer management
44 computer system vendor or a 3rd party acting on behalf of or through a
45 manufacturer, distributor, wholesaler, distributor branch or division, factory
46 branch or division, wholesale branch or division or officer, agent or other

1 representative thereof or dealer management computer system vendor requires
2 that a new motor vehicle dealer provide any dealer, consumer or customer data or
3 information through direct access to a dealer's dealer management computer
4 system, the dealer is not required to provide, and may not be required to consent
5 to provide in a written agreement, that direct access to its dealer management
6 computer system. The dealer may instead provide the same dealer, consumer or
7 customer data or information specified by the requesting party by timely
8 obtaining and furnishing the requested data to the requesting party in a widely
9 accepted file format except that, when a dealer would otherwise be required to
10 provide direct access to its dealer management computer system under the terms
11 of a consent, authorization, release, novation, franchise or other contract or
12 agreement, a dealer that elects to provide data or information through other
13 means may be charged a reasonable initial setup fee and a reasonable processing
14 fee based on actual incremental costs incurred by the party requesting the data for
15 establishing and implementing the process for the dealer. A term or provision
16 contained in a consent, authorization, release, novation, franchise or other
17 contract or agreement that is inconsistent with this subsection is voidable at the
18 option of the dealer.

19 (12) Notwithstanding the terms or conditions of any consent, authorization,
20 release, novation, franchise or other contract or agreement, a manufacturer,
21 distributor, wholesaler, distributor branch or division, factory branch or division,
22 wholesale branch or division or officer, agent or other representative thereof or
23 dealer management computer system vendor or a 3rd party acting on behalf of or
24 through a manufacturer, distributor, wholesaler, distributor branch or division,
25 factory branch or division, wholesale branch or division or officer, agent or other
26 representative thereof or dealer management computer system vendor that has
27 electronic access to consumer or customer data or other information in a dealer
28 management computer system used by a new motor vehicle dealer, or who has
29 otherwise been provided consumer or customer data or other information by the
30 dealer, shall fully indemnify and hold harmless a dealer from whom it has
31 acquired that consumer or customer data or other information from all damages,
32 costs and expenses incurred by that dealer, including, but not limited to,
33 judgments, settlements, fines, penalties, litigation costs, defense costs, court costs
34 and attorney's fees arising out of complaints, claims, civil or administrative
35 actions and, to the fullest extent allowable under the law, governmental
36 investigations and prosecutions to the extent caused by the access, storage,
37 maintenance, use, sharing, disclosure or retention of that dealer's consumer or
38 customer data or other information by the manufacturer, distributor, wholesaler,
39 distributor branch or division, factory branch or division, wholesale branch or
40 division or officer, agent or other representative thereof or dealer management
41 computer system vendor or a 3rd party acting on behalf of or through a
42 manufacturer, distributor, wholesaler, distributor branch or division, factory
43 branch or division, wholesale branch or division or officer, agent or other
44 representative thereof or dealer management computer system vendor; ~~or~~.

45 **Sec. C-3. 10 MRSA §1174, sub-§3, ¶W**, as enacted by PL 2013, c. 534, §6, is
46 repealed.

1 efficiency with which gas brought into New England and Maine is transmitted,
2 distributed and used. If the commission concludes that those market or rule changes
3 will, within the same time frame, achieve substantially the same cost reduction
4 effects for Maine electricity and gas customers as the execution of an energy cost
5 reduction ~~contact~~ contract, the commission may not execute an energy cost reduction
6 contract;

7 B. Explore all reasonable opportunities for private participation in securing
8 additional gas pipeline capacity that would achieve the objectives in subsection 2. If
9 the commission concludes that private transactions, within the same time frame,
10 achieve substantially the same cost reduction effects for Maine electricity and gas
11 customers as the execution of an energy cost reduction ~~contact~~ contract, the
12 commission may not execute an energy cost reduction contract; and'

13 Amend the bill in the emergency clause in the 2nd line (page 11, line 28 in L.D.) by
14 inserting after the following: "approved" the following: ', except as otherwise indicated'

15 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
16 section number to read consecutively.

17 SUMMARY

18 This amendment amends the bill to designate the contents of the bill as Part A.

19 This amendment deletes from the bill sections 1 and 2 because the errors they correct
20 have been resolved by Public Law 2015, chapter 148.

21 The amendment revises a provision in the bill to correct the list of categories of meat
22 and poultry processors that may register with the Department of Agriculture,
23 Conservation and Forestry to engage in intrastate commerce to make it clear that the
24 categories are alternatives.

25 This amendment revises the labeling requirements included in the bill to carry out the
26 intent of Public Law 2013, chapter 304 to allow mobile poultry processing unit operators
27 to sell uninspected poultry products at a farmers' market, to a locally owned grocery store
28 or to a locally owned restaurant only if specific labeling requirements are met.

29 This amendment adds Part B to include corrections that may be considered
30 substantive changes. Part B:

31 1. Corrects a conflict created when Public Law 2011, chapter 298 amended the
32 Maine Revised Statutes, Title 17-A, section 1057, subsection 3 and Public Law 2011,
33 chapter 394 repealed Title 17-A, section 1057, subsection 3. This amendment corrects the
34 conflict by repealing the subsection and replacing it with the chapter 298 version. This
35 correction is supported by the Joint Standing Committee on Criminal Justice and Public
36 Safety;

37 2. Corrects a conflict created by Public Law 1981, chapters 150 and 175, which
38 enacted the same provision of law with a minor difference. Chapter 150 used the phrase
39 "evidence of individual insurability" where chapter 175 used the phrase "evidence of
40 insurability." This amendment corrects the conflict by repealing the provision and
41 replacing it with the chapter 150 version;

1 3. Corrects an error by adding a cross-reference that was inadvertently omitted. This
2 correction is supported by the Joint Standing Committee on Insurance and Financial
3 Services; and

4 4. Corrects a conflict created when Public Law 2013, chapter 451 amended Public
5 Law 2013, chapter 368, Part S, section 9 and Public Law 2013, chapter 595 repealed the
6 same provision by repealing Public Law 2013, chapter 368, Part S, section 9.

7 This amendment adds Part C to amend Title 10, section 1174, subsection 3 to correct
8 the erroneous inclusion of Title 10, section 1174, subsection 3, paragraph W in the
9 committee amendment to L.D. 1482 in the 126th Legislature. It provides that the changes
10 apply retroactively to the effective date of Public Law 2013, chapter 534, which enacted
11 Title 10, section 1174, subsection 3, paragraph W. These changes are substantive and
12 supported by the Joint Standing Committee on Labor, Commerce, Research and
13 Economic Development.

14 This amendment adds Part D to correct technical conflicts between 2 bills related to
15 alcoholic beverage tastings conducted by retailers and the role of sales representatives in
16 those events. Public Law 2015, chapters 129 and 184 amended the same sections of Title
17 28-A in different ways. Chapter 129 was enacted as an emergency, but chapter 184 was
18 not, therefore this amendment provides that Part D takes effect 90 days after the
19 adjournment of the First Regular Session of the 127th Legislature to be consistent with
20 chapter 184's effective date.

21 This amendment adds Part E to correct a clerical error in the Maine Energy Cost
22 Reduction Act concerning energy cost reduction contracts, enacted by Public Law 2013,
23 chapter 369, by twice replacing the word "contact" with "contract." This is a technical
24 correction.

25