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2nd SESSION, 62nd GENERAL ASSEMBLY  
Province of Prince Edward Island  
54 ELIZABETH II, 2005

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**BILL NO. 43**

**Franchises Act**

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Honourable Mildred A. Dover  
Attorney General

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GOVERNMENT BILL

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BERYL BUJOSEVICH  
Queen's Printer  
Charlottetown, Prince Edward Island



**Franchises Act**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. (1) In this Act

Definitions

(a) “disclosure document” means the disclosure document required by section 5;

disclosure document

(b) “franchise” means a right to engage in a business where the franchisee is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment to make such payment or payments, to the franchisor or the franchisor’s associate in the course of operating the business or as a condition of acquiring the franchise or commencing operations and,

franchise

(i) in which

(A) the franchisor grants the franchisee the right to sell, offer for sale or distribute goods or services that are substantially associated with the franchisor’s, or the franchisor’s associate’s, trade-mark, trade name, logo or advertising or other commercial symbol, and

(B) the franchisor or the franchisor’s associate exercises significant control over, or offers significant assistance in, the franchisee’s method of operation, including building design and furnishings, locations, business organization, marketing techniques or training, or

(ii) in which

(A) the franchisor or the franchisor’s associate grants the franchisee the representational or distribution rights, whether or not a trade-mark, trade name, logo or advertising or other commercial symbol is involved, to sell, offer for sale or distribute goods or services supplied by the franchisor or a supplier designated by the franchisor, and

(B) the franchisor or the franchisor’s associate or a third person designated by the franchisor, provides location assistance, including securing retail outlets or accounts for the goods or services to be sold, offered for sale or distributed or securing locations or sites for vending machines, display racks or other product sales displays used by the franchisee;

(c) “franchise agreement” means any agreement that relates to a franchise between,

franchise agreement

(i) a franchisor or franchisor’s associate, and

	(ii) a franchisee;
franchisee	(d) “franchisee” means a person to whom a franchise is granted and includes, <ul style="list-style-type: none"> <li>(i) a subfranchisor with regard to that subfranchisor’s relationship with a franchisor, and</li> <li>(ii) a subfranchisee with regard to that subfranchisee’s relationship with a subfranchisor;</li> </ul>
franchise system	(e) “franchise system” includes, <ul style="list-style-type: none"> <li>(i) the marketing, marketing plan or business plan of the franchise,</li> <li>(ii) the use of or association with a trade-mark, trade name, logo or advertising or other commercial symbol,</li> <li>(iii) the obligations of the franchisor and franchisee with regard to the operation of the business operated by the franchisee under the franchise agreement, and</li> <li>(iv) the goodwill associated with the franchise;</li> </ul>
franchisor	(f) “franchisor” means one or more persons who grant or offer to grant a franchise and includes a subfranchisor with regard to that subfranchisor’s relationship with a subfranchisee;
franchisor’s associate	(g) “franchisor’s associate” means a person <ul style="list-style-type: none"> <li>(i) who, directly or indirectly,             <ul style="list-style-type: none"> <li>(A) controls or is controlled by the franchisor, or</li> <li>(B) is controlled by another person who also controls, directly or indirectly, the franchisor, and</li> </ul> </li> <li>(ii) who,             <ul style="list-style-type: none"> <li>(A) is directly involved in the grant of the franchise,                 <ul style="list-style-type: none"> <li>(I) by being involved in reviewing or approving the grant of the franchise, or</li> <li>(II) by making representations to the prospective franchisee on behalf of the franchisor for the purpose of granting the franchise, marketing the franchise or otherwise offering to grant the franchise, or</li> </ul> </li> <li>(B) exercises significant operational control over the franchisee and to whom the franchisee has a continuing financial obligation in respect of the franchise;</li> </ul> </li> </ul>
franchisor’s broker	(h) “franchisor’s broker” means a person, other than the franchisor, franchisor’s associate or franchisee, who grants, markets or otherwise offers to grant a franchise, or who arranges for the grant of a franchise;
grant	(i) “grant”, in respect of a franchise, includes the sale or disposition of the franchise or of an interest in the franchise and, for such

purposes, an interest in the franchise includes the ownership of shares in the corporation that owns the franchise;

(j) “master franchise” means a franchise that is a right granted by a franchisor to a subfranchisor to grant or offer to grant franchises for the subfranchisor’s own account;

(k) “material change” means a change, in the business, operations, capital or control of the franchisor or franchisor’s associate or in the franchise or the franchise system, that would reasonably be expected to have a significant adverse effect on the value or price of the franchise to be granted or on the decision to acquire the franchise and includes a decision to implement such a change made by the board of directors of the franchisor or franchisor’s associate or by senior management of the franchisor or franchisor’s associate who believe that confirmation of the decision by the board of directors is probable;

(l) “material fact” means any information, about the business, operations, capital or control of the franchisor or franchisor’s associate or about the franchise or the franchise system, that would reasonably be expected to have a significant effect on the value or price of the franchise to be granted or the decision to acquire the franchise;

(m) “Minister” means the Attorney General;

(n) “misrepresentation” includes,  
 (i) an untrue statement of a material fact, or  
 (ii) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made;

(o) “prescribed” means prescribed by the regulations;

(p) “prospective franchisee” means a person who has indicated, directly or indirectly, to a franchisor or a franchisor’s associate or broker an interest in entering into a franchise agreement, and a person whom a franchisor or a franchisor’s associate or broker, directly or indirectly, invites to enter into a franchise agreement;

(q) “subfranchise” means a franchise granted by a subfranchisor to a subfranchisee.

(2) A franchise includes a master franchise and a subfranchise.

(3) A franchisee, franchisor or franchisor’s associate that is a corporation shall be deemed to be controlled by another person or persons if,

- (a) voting securities of the franchisee or franchisor or franchisor's associate carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or persons; and
- (b) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the franchisee or franchisor or franchisor's associate.

Application

2. (1) This Act applies with respect to,
- (a) a franchise agreement entered into on or after the coming into force of this section;
  - (b) a renewal or extension of a franchise agreement described in clause (a) entered into on or after the coming into force of this section; and
  - (c) a business operated under an agreement, renewal or extension described in clause (a) or (b), if the business operated by the franchisee under the franchise agreement or its renewal or extension is to be operated partly or wholly in Prince Edward Island.

*Idem*

- (2) Sections 3 and 4, clause 5(7)(d) and sections 8, 10, 11, 12 and 13 apply with respect to a franchise agreement entered into before the coming into force of this section and with respect to a business operated under such agreement, if the business operated by the franchisee under the franchise agreement is operated or is to be operated partly or wholly in Prince Edward Island.

Non-application

- (3) This Act does not apply to the following continuing commercial relationships or arrangements:
- (a) employer-employee relationship;
  - (b) partnership;
  - (c) membership in,
    - (i) an organization operated on a co-operative basis by and for independent retailers that,
      - (A) purchases or arranges the purchase of, on a non-exclusive basis, wholesale goods or services primarily for resale by its member retailers, and
      - (B) does not grant representational rights to or exercise significant operational control over its member retailers,
    - (ii) a "cooperative corporation" as defined under subsection 136(2) of the *Income Tax Act* (Canada) or as would be defined under that subsection, but for paragraph 136(2)(c),
    - (iii) an organization incorporated under the *Canada Cooperatives Act* (Canada), or
    - (iv) an organization incorporated under the *Co-operative Associations Act* R.S.P.E.I. 1988 Cap. C-23;

- (d) an arrangement arising from an agreement to use a trade-mark, trade name, logo or advertising or other commercial symbol designating a person who offers on a general basis, for consideration, a service for the evaluation, testing or certification of goods, commodities or services;
- (e) an arrangement arising from an agreement between a licensor and a single licensee to license a specific trade-mark, trade name, logo or advertising or other commercial symbol where such license is the only one of its general nature and type to be granted in Canada by the licensor with respect to that trade-mark, trade name, logo or advertising or other commercial symbol;
- (f) a relationship or arrangement arising out of an oral agreement where there is no writing that evidences any material term or aspect of the relationship or arrangement;
- (g) an arrangement arising out of an agreement,
  - (i) for the purchase and sale of a reasonable amount of goods at a reasonable wholesale price, or
  - (ii) for the purchase of a reasonable amount of services at a reasonable price;
- (h) a service contract or franchise-like arrangement with the Crown or an agent of the Crown.

(4) This Act does not bind the Crown.

Not binding on  
Crown

**3.** (1) Every franchise agreement imposes on each party a duty of fair dealing in the performance and enforcement of the agreement, including in the exercise of a right under the agreement.

Fair dealing

(2) A party to a franchise agreement has a right of action for damages against another party to the franchise agreement who breaches the duty of fair dealing.

Right of action

(3) For the purpose of this section, the duty of fair dealing includes the duty to act in good faith and in accordance with reasonable commercial standards.

Interpretation

**4.** (1) A franchisee may associate with other franchisees and may form or join an organization of franchisees.

Right to associate

(2) A franchisor and a franchisor's associate shall not interfere with, prohibit or restrict, by contract or otherwise, a franchisee from forming or joining an organization of franchisees or from associating with other franchisees.

Franchisor may not  
prohibit association

(3) A franchisor and a franchisor's associate shall not, directly or indirectly, penalize, attempt to penalize or threaten to penalize a franchisee for exercising any right under this section.

*Idem*

Provision void	(4) Any provision in a franchise agreement or other agreement relating to a franchise which purports to interfere with, prohibit or restrict a franchisee from exercising any right under this section is void.
Right of action	(5) If a franchisor or a franchisor's associate contravenes this section, the franchisee has a right of action for damages against the franchisor or franchisor's associate, as the case may be.
Franchisor's obligation to disclose	<p><b>5.</b> (1) A franchisor shall provide a prospective franchisee with a disclosure document and the prospective franchisee shall receive the disclosure document not less than 14 days before the earlier of,</p> <ul style="list-style-type: none"> <li>(a) the signing by the prospective franchisee of the franchise agreement or any other agreement relating to the franchise; and</li> <li>(b) the payment of any consideration by or on behalf of the prospective franchisee to the franchisor or franchisor's associate relating to the franchise.</li> </ul>
Methods of delivery	(2) A disclosure document may be delivered personally, by registered mail or by any other prescribed method.
<i>Idem</i>	(3) A disclosure document must be one document delivered as required under subsections (1) and (2) as one document at one time.
Content of disclosure document	<p>(4) The disclosure document shall contain,</p> <ul style="list-style-type: none"> <li>(a) all material facts, including material facts as prescribed;</li> <li>(b) financial statements as prescribed;</li> <li>(c) copies of all proposed franchise agreements and other agreements relating to the franchise to be signed by the prospective franchisee;</li> <li>(d) statements as prescribed for the purposes of assisting the prospective franchisee in making informed investment decisions; and</li> <li>(e) other information and copies of documents as prescribed.</li> </ul>
Material change	<p>(5) The franchisor shall provide the prospective franchisee with a written statement of any material change, and the franchisee shall receive such statement, as soon as practicable after the change has occurred and before the earlier of,</p> <ul style="list-style-type: none"> <li>(a) the signing by the prospective franchisee of the franchise agreement or any other agreement relating to the franchise; and</li> <li>(b) the payment of any consideration by or on behalf of the prospective franchisee to the franchisor or franchisor's associate relating to the franchise.</li> </ul>
Information to be accurate, clear, concise	(6) All information in a disclosure document and a statement of material change shall be accurately, clearly and concisely set out.

(7) This section does not apply to,

(a) the grant of a franchise by a franchisee if,

Section does not  
apply, where

(i) the franchisee is not the franchisor, the franchisor's associate or a director, officer or employee of the franchisor or of the franchisor's associate,

(ii) the grant of the franchise is for the franchisee's own account,

(iii) in the case of a master franchise, the entire franchise is granted, and

(iv) the grant of the franchise is not effected by or through the franchisor;

(b) the grant of a franchise to a person who has been an officer or director of the franchisor or of the franchisor's associate for at least six months immediately before the grant of the franchise, for that person's own account;

(c) the grant of an additional franchise to an existing franchisee if that additional franchise is substantially the same as the existing franchise that the franchisee is operating and if there has been no material change since the existing franchise agreement or latest renewal or extension of the existing franchise agreement was entered into;

(d) the grant of a franchise by an executor, administrator, sheriff, receiver, trustee, trustee in bankruptcy or guardian on behalf of a person other than the franchisor or the estate of the franchisor;

(e) the grant of a franchise to a person to sell goods or services within a business in which that person has an interest, if the sales arising from those goods or services, as anticipated by the parties or that should be anticipated by the parties at the time the franchise agreement is entered into, will not exceed 20 per cent of the total sales of the business during the first year of operation of the franchise;

(f) the renewal or extension of a franchise agreement where there has been no interruption in the operation of the business operated by the franchisee under the franchise agreement and there has been no material change since the franchise agreement or latest renewal or extension of the franchise agreement was entered into;

(g) the grant of a franchise if the prospective franchisee is required to make a total annual investment to acquire and operate the franchise in an amount that does not exceed the prescribed amount;

(h) the grant of a franchise if the franchise agreement is not valid for longer than one year and does not involve the payment of a non-refundable fee and if the franchisor or franchisor's associate provides location assistance to the franchisee, including securing retail outlets or accounts for the goods or services to be sold, offered for sale or distributed or securing locations or sites for vending

machines, display racks or other product sales displays used by the franchisee; or

(i) the grant of a franchise if the franchisor is governed by section 55 of the *Competition Act* (Canada).

Interpretation, grant effected by or through franchisor

(8) For the purpose of subclause (7)(a)(iv), a grant is not effected by or through a franchisor merely because,

(a) the franchisor has a right, exercisable on reasonable grounds, to approve or disapprove the grant; or

(b) a fee must be paid to the franchisor in an amount set out in the franchise agreement or in an amount that does not exceed the reasonable actual costs incurred by the franchisor to process the grant.

Interpretation, franchise agreement

(9) For the purposes of subsections (1) and (5), an agreement is not a franchise agreement or any other agreement relating to the franchise if the agreement only contains terms in respect of,

(a) keeping confidential or prohibiting the use of any information or material that may be provided to the prospective franchisee; or

(b) designating a location, site or territory for a prospective franchisee.

Exception re interpretation of franchise agreement

(10) Despite subsection (9), an agreement that only contains terms described in clause (9)(a) or (b) is a franchise agreement or any other agreement relating to the franchise for the purposes of subsections (1) and (5) if the agreement,

(a) requires keeping confidential or prohibits the use of information,  
(i) that is or comes into the public domain without breaching the agreement,

(ii) that is disclosed to any person without breaching the agreement, or

(iii) that is disclosed with the consent of all the parties to the agreement; or

(b) prohibits the disclosure of information to an organization of franchisees, to other franchisees of the same franchise system or to a franchisee's professional advisors.

Right of rescission

6. (1) A franchisee may rescind the franchise agreement, without penalty or obligation, no later than 60 days after receiving the disclosure document, if the franchisor failed to provide the disclosure document or a statement of material change within the time required by section 5 or if the contents of the disclosure document did not meet the requirements of section 5.

*Idem*

(2) A franchisee may rescind the franchise agreement, without penalty or obligation, no later than two years after entering into the franchise agreement if the franchisor never provided the disclosure document.

(3) Notice of rescission shall be in writing and shall be delivered to the franchisor, personally, by registered mail, by fax or by any other prescribed method, at the franchisor's address for service or to any other person designated for that purpose in the franchise agreement. Notice of rescission

(4) The notice of rescission is effective, Effective date of rescission

- (a) on the day it is delivered personally;
- (b) on the fifth day after it was mailed;
- (c) on the day it is sent by fax, if sent before 5 p.m.;
- (d) on the day after it was sent by fax, if sent at or after 5 p.m.; or
- (e) on the day determined in accordance with the regulations, if sent by a prescribed method of delivery.

(5) If the day described in clause (4)(b), (c) or (d) is a holiday, the notice of rescission is effective on the next day that is not a holiday. *Idem*

(6) The franchisor or franchisor's associate, as the case may be, shall, within 60 days of the effective date of the rescission, Franchisor's obligations on rescission

- (a) refund to the franchisee any money received from or on behalf of the franchisee, other than money for inventory, supplies or equipment;
- (b) purchase from the franchisee any inventory that the franchisee had purchased pursuant to the franchise agreement and remaining at the effective date of rescission, at a price equal to the purchase price paid by the franchisee;
- (c) purchase from the franchisee any supplies and equipment that the franchisee had purchased pursuant to the franchise agreement, at a price equal to the purchase price paid by the franchisee; and
- (d) compensate the franchisee for any losses that the franchisee incurred in acquiring, setting up and operating the franchise, less the amounts set out in clauses (a) to (c).

7. (1) If a franchisee suffers a loss because of a misrepresentation contained in the disclosure document or in a statement of material change or as a result of the franchisor's failure to comply in any way with section 5, the franchisee has a right of action for damages against, Damages for misrepresentation, failure to disclose

- (a) the franchisor;
- (b) the franchisor's broker;
- (c) the franchisor's associate; and
- (d) every person who signed the disclosure document or statement of material change.

(2) If a disclosure document or statement of material change contains a misrepresentation, a franchisee who acquired a franchise to which the disclosure document or statement of material change relates shall be deemed to have relied on the misrepresentation. Deemed reliance on misrepresentation

- Deemed reliance on disclosure document (3) If a franchisor failed to comply with section 5 with respect to a statement of material change, a franchisee who acquired a franchise to which the material change relates shall be deemed to have relied on the information set out in the disclosure document.
- Defence (4) A person is not liable in an action under this section for misrepresentation if the person proves that the franchisee acquired the franchise with knowledge of the misrepresentation or of the material change, as the case may be.
- Idem* (5) A person, other than a franchisor, is not liable in an action under this section for misrepresentation if the person proves,
- (a) that the disclosure document or statement of material change was given to the franchisee without the person's knowledge or consent and that, on becoming aware of its having been given, the person promptly gave written notice to the franchisee and the franchisor that it was given without that person's knowledge or consent;
  - (b) that, after the disclosure document or statement of material change was given to the franchisee and before the franchise was acquired by the franchisee, on becoming aware of any misrepresentation in the disclosure document or statement of material change, the person withdrew consent to it and gave written notice to the franchisee and the franchisor of the withdrawal and the reasons for it;
  - (c) that, with respect to any part of the disclosure document or statement of material change purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe that,
    - (i) there had been a misrepresentation,
    - (ii) the part of the disclosure document or statement of material change did not fairly represent the report, opinion or statement of the expert, or
    - (iii) the part of the disclosure document or statement of material change was not a fair copy of or extract from the report, opinion or statement of the expert;
  - (d) that, with respect to any part of the disclosure document or statement of material change purporting to be made on the authority of a statement in writing by a public official or purporting to be a copy of or an extract from a report, opinion or statement of a public official, the person had no reasonable grounds to believe and did not believe that,
    - (i) there had been a misrepresentation,
    - (ii) the part of the disclosure document or statement of material change did not fairly represent the report, opinion or statement of the public official, or

- (iii) the part of the disclosure document or statement of material change was not a fair copy of or extract from the report, opinion or statement of the public official; or
- (e) that, with respect to any part of the disclosure document or statement of material change not purporting to be made on the authority of an expert or of a statement in writing by a public official and not purporting to be a copy of or an extract from a report, opinion or statement of an expert or public official, the person,
- (i) conducted an investigation sufficient to provide reasonable grounds for believing that there was no misrepresentation, and
- (ii) believed there was no misrepresentation.
- 8.** (1) Upon application by a franchisor, and upon payment of the prescribed fee, the Minister may by order, if the Minister is satisfied that to do so would not be prejudicial to the public interest, exempt the franchisor from the requirement to include prescribed financial statements in a disclosure document, subject to the terms and conditions set out in the exempting order. Minister may order exemption
- (2) An order made under subsection (1) may come into force on a date prior to the date on which the order is made. Effective date of order
- 9.** (1) All or any one or more of the parties to a franchise agreement who are found to be liable in an action under subsection 3(2) or who accept liability with respect to an action brought under that subsection are jointly and severally liable. Joint and several liability
- (2) All or any one or more of a franchisor or franchisor's associates who are found to be liable in an action under subsection 4(5) or who accept liability with respect to an action brought under that subsection are jointly and severally liable. *Idem*
- (3) All or any one or more of the persons specified in subsection 7(1) who are found to be liable in an action under that subsection or who accept liability with respect to an action brought under that subsection are jointly and severally liable. *Idem*
- 10.** The rights conferred by or under this Act are in addition to and do not derogate from any other right or remedy any party to a franchise agreement may have at law. No derogation of other rights
- 11.** Any provision in a franchise agreement purporting to restrict the application of the law of Prince Edward Island or to restrict jurisdiction or venue to a forum outside Prince Edward Island is void with respect to a claim otherwise enforceable under this Act in Prince Edward Island. Attempt to affect jurisdiction void
- 12.** Any purported waiver or release by a franchisee or a prospective franchisee of a right conferred by or under this Act or of an obligation or Rights cannot be waived

requirement imposed on a franchisor or franchisor's associate by or under this Act is void.

Burden of proof

**13.** In any proceeding under this Act, the burden of proving an exemption or an exclusion from a requirement or provision is on the person claiming it.

Regulations

**14.** (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing material facts for the purpose of clause 5(4)(a);
- (b) prescribing the financial statements to be included in the disclosure document;
- (c) prescribing statements for the purpose of clause 5(4)(d);
- (d) prescribing other information and copies of documents to be included in the disclosure document;
- (e) prescribing an amount for the purpose of clause 5(7)(g);
- (f) prescribing methods of delivery for the purposes of subsections 5(2), 6(3) and 8(1) and (3), and prescribing rules surrounding the use of such methods, including the day on which a notice of rescission delivered by such methods is effective for the purpose of clause 6(4)(e);
- (g) providing for exemptions from the requirement to include prescribed financial statements in a disclosure document;
- (h) prescribing fees for the purpose of section 8;
- (i) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

General or specific

(2) A regulation made under subsection (1) may be general or specific in its application.

Proclamation

**15.** This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

## EXPLANATORY NOTES

**SECTION 1** is the definition section.

**SECTION 2** is the application section and also specifies the relationships or arrangements to which the Act does not apply.

**SECTION 3** deals with the duty of fair dealing and the right of action by parties to a franchise agreement.

**SECTION 4** deals with the right of franchisees to associate with other franchisees.

**SECTION 5** deals with disclosure by a franchisor, specifies the contents of a disclosure document and material changes to the disclosure document, lists exceptions from the application of the section.

**SECTION 6** deals with rights of rescission of a franchise agreement, including notice, effective date and obligations of the franchisor or franchisor's associate on rescission.

**SECTION 7** deals with misrepresentation and failure to disclose, including damages, reliance on a misrepresentation and liability.

**SECTION 8** gives the Minister the power to exempt a franchisor from certain requirements, but subject to terms and conditions.

**SECTION 9** deals with liability of various parties.

**SECTION 10** provides that the Act does not derogate from other legal rights and remedies.

**SECTION 11** renders void a provision in a franchise agreement that purports to restrict Prince Edward Island jurisdiction or the application of Prince Edward Island law.

**SECTION 12** disallows the waiver of rights under the Act.

**SECTION 13** deals with the burden of proof.

**SECTION 14** provides regulation-making powers.

**SECTION 15** is the proclamation section.

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**BILL NO. 43**

**Franchises Act**

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	May 12, 2005
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

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Honourable Mildred A. Dover  
Attorney General

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GOVERNMENT BILL