

MAINE STATE LEGISLATURE

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ONE - HUNDRETH LEGISLATURE

Legislative Document

No. 1392

S. P. 432

In Senate, February 8, 1961

Referred to Committee on Legal Affairs. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Farris of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

AN ACT Prohibiting Unfair Photographic Sales Practices.

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

R. S., c. 184-A, additional. The Revised Statutes are amended by adding a new chapter 184-A, to read as follows:

Chapter 184-A.

Unfair Photographic Sales Practices.

Sec. 1. Prohibited practices. As used in this section, "industry member" means any person, firm, corporation or organization engaged in the business of taking and selling photographs which are industry products and "industry products" means photographs of human beings, duplicates, enlargements and reductions of photographs and the frames and accessories which are sold in combination with the sale of such photographs, but does not include photographs used primarily in theater exhibitions, television broadcasting, publications, motion pictures or commercial advertising.

In connection with selling, offering for sale, soliciting orders for or distributing industry products, it shall be an unfair trade practice for an industry member to make any representation which is reasonably calculated to deceive purchasers or prospective purchasers concerning the size, quality, kind of finish, workmanship or price of an industry product, concerning the experience or competency of an industry member or his employee in the taking or processing of photographs which are industry products, concerning the equipment and facilities used by an industry member, concerning the nature, type, extent or volume of an industry member's business, concerning the inclusion of an industry product in an exhibit, concerning guarantees on industry products, by not stipulating the conditions and requirements governing the selection of contest winners and the exact nature and amount of the awards, by using a "free" offer

or coupons which refer to "limited dates" and "one per family" or other similar limitations which do not exist, and which do not show whether additional purchases must be made in order to receive the "free" offer or the offer made on the coupon, by exhibiting to prospective customers as samples of work any photographs or pictures which are not in fact representative of pictures produced and sold by the exhibitor of such samples, or by representing, directly or by implication, that a photograph to be made and delivered will be equal in type, quality and workmanship to the samples displayed to the customer, unless the picture delivered is, in fact, equal in quality and workmanship to the sample displayed to the customers, by representing or implying that an industry product may be purchased for a specified price when such is not the fact, or by representing or implying that an industry product is being offered for sale at a reduced price or special price saving when the claimed reduced price or saving is not based on the bona fide usual and customary selling price of the product in effect immediately prior in point of time to such representation, or by otherwise representing the prices or terms of sale of industry products in such manner as to mislead or deceive purchasers or prospective purchasers, by knowingly selling or offering for sale any industry product at a price less than the cost thereof to the seller as a "loss leader" used in inducing, and sold in combination with, the purchase of other merchandise on which the seller recoups such loss, when this practice has the tendency or effect of misleading or deceiving the purchasing public, by imitating or causing to be imitated, or by directly or indirectly promoting the imitation of, the trademarks, trade names or other exclusively owned symbols or marks of identification of other industry members in a manner having the tendency or effect of misleading or deceiving purchasers, prospective purchasers or the buying public, or by using any trade name, corporate name, trademark or other trade designation which has the tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the character, name, nature or origin of any product of the industry, or of any material used therein, or which is false or misleading in any material respect, or by offering or giving of prizes, premiums or gifts in connection with the sale or offering for sale of industry products, or as an inducement thereto, by means of a game of chance or lottery scheme.

It shall also be an unfair practice for an industry member to fail to disclose when an industry product photograph is so shaped and designed that it can be used only in a special frame not generally available but which is purchasable from the photographing industry member. Unfair trade practices shall not be utilized in any industry member's sales promotional presentations as a statement or mark on an industry product or the wrapping thereof or as an oral representation made by an industry member, his employee or agent.

Any industry member who engages willfully in or aids, coerces or induces another to engage willfully in an unfair trade practice, as defined in this section, shall be punished by a fine of not less than \$50 nor more than \$1,000 or by imprisonment for not more than 11 months, or by both. If a civil action is brought by any person, firm or corporation who is or is likely to be damaged by such acts, the court may grant an injunction to prevent further violations of this section and may assess damages not to exceed \$5,000 in lieu of actual damages against such violation, and such award shall not be regarded as a penalty.'