

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1003

H. P. 770

House of Representatives, February 25, 1969

Referred to Committee on Judiciary. Sent up for concurrence and 1,000 ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mrs. Payson of Falmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT to Provide Protection for the Consumer Against Unfair Trade Practices.

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

Sec. 1. R. S., T. 5, c. 10, additional. Title 5 of the Revised Statutes is amended by adding a new chapter 10, to read as follows:

CHAPTER 10

UNFAIR TRADE PRACTICES

§ 206. Definitions

The following words, as used in this chapter, unless the context otherwise requires or a different meaning is specifically required, shall mean:

1. Documentary material. "Documentary material" shall include the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording wherever situate.

2. Person. "Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity.

3. Trade and commerce. "Trade" and "commerce" shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.

§ 207. Unlawful acts and conduct

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.

1. Intent. It is the intent of the Legislature that in construing this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5 (a) (1) of the Federal Trade Commission Act (15 U. S. C. 45 (a) (1)), as from time to time amended.

2. Rules and regulations. The Attorney General may make rules and regulations interpreting this section. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of 15 U. S. C. 45 (a) (1) (The Federal Trade Commission Act) as from time to time amended.

§ 208. Exceptions

Nothing in this chapter shall apply to:

1. Regulatory boards. Transactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the State or of the United States; or

2. Interstate commerce. Trade or commerce of any person of whose gross revenue at least 20% is derived from transactions in interstate commerce, excepting however transactions and actions which occur primarily and substantially within the State, and as to which the Federal Trade Commission or its designated representative has failed to assert in writing within 14 days of notice to it and to said person by the Attorney General its objection to action proposed by him and set forth in said notice; or

3. Complaints. Transactions or actions of any person who shows that he has had served upon him by the Federal Trade Commission a complaint pursuant to 15 U. S. C. 45 (b) relating to said transactions or actions until the Federal Trade Commission has either dismissed said complaint, secured an assurance of voluntary compliance, or issued a cease and desist order relating to said complaint pursuant to 15 U. S. C. 45 (b).

A. For purposes of subsection 2 and 3 the burden of proving exemptions from this chapter shall be upon the person claiming the exemptions.

§ 209. Injunction; procedures

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice. At least 10 days prior to commencement of any action under this section, the Attorney General shall notify the person of his intended action, and give the

person an opportunity to confer with the Attorney General in person or by counsel or other representative as to the proposed action. Notice shall be given the person by mail, postage prepaid, sent to his usual place of business, or if he has no usual place of business, to his last known address. The action may be brought in the Superior Court of the county in which such person resides or has his principal place of business, or may be brought in the Superior Court of Kennebec County. The said courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter, provided that no restraining order or injunction shall be issued except upon notice and an opportunity to be heard. Any county attorney or law enforcement officer, receiving notice of any alleged violation of this chapter, shall immediately forward written notice of the same with any other information that he may have to the office of the Attorney General. Any person who violates the terms of an injunction issued under this section shall forfeit and pay to the State, to be applied in the carrying out of this chapter, a civil penalty of not more than \$10,000 for each violation. For the purposes of this section, the court issuing such injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the State may petition for recovery of such civil penalty.

§ 210. Discontinuance; costs

In any case where the Attorney General has authority to institute an action or proceeding under section 209, in lieu thereof he may accept an assurance of discontinuance of any method, act or practice in violation of this chapter from any person alleged to be engaged or to have been engaged in such method, act or practice. Such assurance may include a stipulation for the voluntary payment by such person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved buyers, or both. Any such assurance of discontinuance shall be in writing and be filed with the Superior Court of Kennebec County. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest.

§ 211. Examination; notice requirements

The Attorney General, whenever he believes any person to be or to have been in violation of this chapter, may examine or cause to be examined for that purpose, any books, records, papers and memoranda of whatever nature relevant to such alleged violation. The Attorney General may require the attendance of such person or of any other person having knowledge in the premises at any place in the county where such person resides or has a place of business or in Kennebec County if such person is a nonresident or has no place of business within the State, and may take testimony and require proof material for his information, and may administer oaths or take acknowledgment in respect of any book, record, paper or memorandum. The Attorney General shall serve notice of the time, place and cause of such examination or attendance at least 10 days prior to the date of such examination.

1. Service. Service of any such notice may be made by:

A. Delivering a duly executed copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by

law to receive service of process on behalf of such person;

B. Delivering a duly executed copy thereof to the principal place of business in this State of the person to be served; or

C. Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principle place of business in this State or, if said person has no place or business in this State, to his principal office or place of business.

2. Contents. Each such notice shall:

A. State the time and place for taking the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs;

B. State the statute and section thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

C. Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demand;

D. Prescribe a return date within which the documentary material is to be produced; and

E. Identify the members of the Attorney General's staff to whom such documentary material is to be made available for inspection and copying:

3. Exceptions. No such notice shall:

A. Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or

B. Require the disclosure of any documentary material which would be privileged, or which contains trade secret information, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this State.

Documentary material demanded pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the Attorney General. Any book, record, paper, memorandum or other information produced by any person pursuant to this section shall not unless otherwise ordered by a court of this State for good cause shown, be disclosed to any person other than the authorized agent or representative of the Attorney General, unless with the consent of the person producing the same. This section shall not be applicable to any criminal prosecution brought under the laws of this State.

At any time prior to the date specified in the notice, or within 21 days after the notice has been served whichever period is shorter, the court may, upon motion for good cause shown, extended such reporting date or modify or set aside such demand. The motion may be filed in the Superior Court of

the county in which the person served resides or has his equal place of business, or in Kennebec County. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially indetical transactions.

§ 212. Penalties

A person upon whom a notice is served pursuant to section 211 shall comply with the terms thereof unless otherwise provided by the order of a court of this State. Any person who fails to appear, or with intent to avoid, evade or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds or destroys, mutilates, alters or by any other means falsifies any documentary material in the possession, custody or control of any person subject of any such notice, or knowingly conceals any relevant information, shall be fined not more than \$5,000.

Whenever any person fails to comply with any notice served upon him under section 211, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the Superior Court of the county in which such person resides or has his principal place of business or of Kennebec County, if such person is a nonresident or has no principal place of business in this State, and serve upon such person or in the same manner as provided in section 211 a petition for an order of such court for the enforcement of this section. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

§ 213. Consumers' Council

There shall be a Consumers' Council, hereinafter called the "council", consisting of 8 members to be appointed by the Governor, with the advice and consent of the Executive Council, for terms concurrent with that of the Governor, not more than 5 of whom shall be members of the same major political party, and ex officii, the Chairman of the Public Utilities Commission, the Bank Commissioner, the Insurance Commissioner and the Commissioner of Labor and Industry. The chairman of the council shall be designated by the Governor from time to time. Said members shall serve without compensation, but shall receive their expenses necessarily incurred in the performance of their duties. The council shall meet monthly and at other times at the call of the chairman.

The council shall conduct studies, investigations and research and advise the executive and legislative branches in matters affecting consumer interest, coordinate consumers' services carried on by departments and agencies, further consumer education, inform the public, through appearances before federal and state committee, commission or department hearings, or otherwise, of such policies, decisions or legislation as are beneficial or detrimental to consumers, inform the Governor and Attorney General and other law enforcement agencies of such violations of laws or regulations affecting consumers as its investigations or studies may refer and study and report all matters

referred to it by the Legislature or the Governor. It may call upon any department, board, commission or officer of the State or any political subdivision of the State for such information as it may desire in the course of its duties.

The council may hold public hearings and shall establish rules of procedure governing the conduct of its hearings which shall be made available in printed form to each witness prior to his testimony. Witnesses shall have the right to be represented by counsel and shall before testifying be sworn. The Governor may request of the Attorney General such legal assistance as may be necessary in carrying out the duties and functions of the Council.

Sec. 2. Appropriation. There is appropriated from the General Fund the sum of \$63,422 to the Department of the Attorney General to be expended in the promotion and carrying out the objectives of this Act. The breakdown shall be as follows:

| ATTORNEY GENERAL, DEPARTMENT OF | 1969-70 | 1970-71 |
|---------------------------------|----------------|----------------|
| Personal Services | (4) \$22,000 | (4) \$30,123 |
| All Other | 3,000 | 4,000 |
| Capital Expenditures | 4,299 | — |
| | <hr/> \$29,299 | <hr/> \$34,123 |