

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 931

H. P. 725

House of Representatives, February 15, 1973

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Wood of Brooks.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Private Consumer Remedies.

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

R. S., T. 5, § 213, additional. Title 5 of the Revised Statutes is amended by adding a new section 213 to read as follows:

§ 213. Private remedies

1. Court action. Any person who purchases or leases goods, services or property, real or personal, primarily for personal, family or household purposes and thereby suffers any loss of money, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 207 or by any rule or regulation issued under section 207, subsection 2 may bring an action in the Superior Court for restitution and for such other equitable relief, including an injunction, as the court may deem to be necessary and proper.

2. Class action. Any persons entitled to bring such an action may, if the use or employment of the unfair or deceptive method, act or practice has caused similar injury to numerous other persons similarly situated, and if they adequately represent such similarly situated persons, bring the action on behalf of themselves and such other similarly injured and situated persons; the court shall require that notice of such action be given to unnamed petitioners in the most effective practicable manner. Such action shall not be dismissed, settled or compromised without the approval of the court and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of petitioners in such manner as the court directs.

3. Fees and costs. If the court finds, in any action commenced under this section that there has been a violation of section 207, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorney's fees and costs incurred in connection with said action.

4. Notices to Attorney General. Upon commencement of any action brought under subsection 1, the clerk of courts shall mail a copy of the complaint or other initial pleading to the Attorney General and upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

5. Injunction as evidence. Any permanent injunction or order of the court issued under section 209 shall be prima facie evidence in an action brought under subsection 1 that the respondent used or employed an unfair or deceptive method, act or practice declared unlawful under section 207.

STATEMENT OF FACT

In order to fulfill the legislative commitment made to the citizens of Maine when deceptive trade practices were declared unlawful under the Unfair Trade Practices Act, and to afford Maine consumers an adequate measure of protection in today's market place, the present legal remedies administered by the Attorney General's Consumer Fraud Division should be augmented.

Under the provisions of the Unfair Trade Practices Act, only the Attorney General may initiate actions to redress injuries to consumers. With a staff of only 2 attorneys and one investigator, the Consumer Fraud Division has become the most effective consumer protection agency in New England. The success of this division has resulted in a rapidly increasing volume of consumer complaint petitions and inquiries relating to deceptive sales practices.

A number of these complaints deal with disputes between the consumer and the merchant where investigation by the Attorney General fails to disclose that the deceptive practice was utilized in more than one case and therefore is not a case properly litigated by the Attorney General. While many of these so-called private disputes have a good deal of merit, they often involve claims of damage involving less than \$500 and thus it is often impossible for the average consumer to bring suit. These small claims very rarely generate litigation and fraudulent business firms bent on cheating the consumer fully appreciate this fact.

Under the Private Remedies Amendment, this situation would be abolished and the consumer will receive the protection necessary to achieve an equitable position in the market place.

Of the New England States, only Maine and Connecticut presently do not afford their consumers the protection of a private remedy where the court may grant reasonable attorney's fees to the consumer if he prevails. Without

this grant of reasonable legal costs, the only consumer protection litigation in the State of Maine will continue to be those cases brought by the Attorney General and subsidized by the taxpayer.

Under the Private Remedies Amendment the costs of deceiving the public will be borne at last by the party who has profited by his illegal acts, the dishonest merchant. In effect, the costs of litigation will at last be placed upon the fraudulent operation which has been found to have committed the unlawful practice instead of on the taxpayers. Reasonable attorney's fees and costs appear to be the fairest and most workable means of shifting this inequitable burden.