

# FIRST REGULAR SESSION

## ONE HUNDRED AND THIRTEENTH LEGISLATURE

# Legislative Document

NO. 266

H.P. 214 House of Representatives, February 5, 1987 Reference to the Committee on Judiciary suggested and ordered printed.

EDWIN H. PERT, Clerk

damages

sustained

Presented by Representative PARADIS of Augusta. Cosponsored by Representative WARREN of Scarborough and Senator BRANNIGAN of Cumberland.

## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-SEVEN

1 2	AN ACT to Amend the State Antitrust Laws.
3 4	Be it enacted by the People of the State of Maine as follows:
5 6	<b>10 MRSA §1104</b> , as amended by PL 1985, c. 349, is repealed and the following enacted in its place:
7	§1104. Right of action and damages
8 9	<u>1. Right of action and damages. Any person, in-</u> cluding the State or any political subdivision of the
10	State, injured in its business or property by any
11	other person or corporation by reason of anything
12	forbidden or declared to be unlawful by section 1101,
13	1102 or 1102-A, may sue for the injury in a civil ac-
14	tion. If the court finds for the plaintiff, he shall

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recover 3 times the amount of the

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1	and cost of suit, including necessary and reasonable
2	investigative costs, reasonable experts' fees and
3	reasonable attorneys fees.
4	2. Injunction. The Attorney General may insti-
5	tute proceedings in equity to prevent and restrain
6	violations of sections 1101, 1102 and 1102-A.
7	A. These proceedings may be by way of petitions
8	setting forth the case and praying that the vio-
9	lation shall be enjoined or otherwise prohibited.
10	B. When the parties complained of have been duly
11	notified of that petition, the court shall pro-
12	ceed as soon as possible to the hearing and de-
13	termination of the case.
14	C. Pending the petition and before final decree,
15	the court may at any time make such temporary re-
16	straining order or prohibition as considered just
17	under the circumstances.
18	3. Civil penalty. Each course of conduct which
19	constitutes a violation of sections 1101 and 1102 is
20	a civil violation for which a civil penalty of not
21	more than \$50,000 for each defendant shall be ad-
22 .	judged.
23	A. In any action initiated by the Attorney Gen-
24	eral pursuant to this section to prevent and re-
25	strain violations of sections 1101 and 1102, the
26	Attorney General may include an action to recover
27	civil penalties by each defendant for each course
28	of conduct alleged.
29	B. An action to recover a civil penalty from a
30	defendant under this section shall bar a criminal
31	prosecution pursuant to section 1101 or 1102
32	against that defendant for the same course of
33	conduct on which the action to recover the civil
34	penalty is based.
35	C. A criminal prosecution against a defendant
36	pursuant to section 1101 or 1102 shall bar any
37	action to recover a civil penalty under this sec-
38	tion from that defendant for the same course of
39	conduct on which the criminal prosecution is
40	based.

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4. Recovery of damages, costs and fees for antitrust violations from any political subdivision official or employee of a political subdivision acting in an official capacity. No damages, interest on damages, costs or attorneys fees may be recovered under this chapter from any political subdivision, as defined in Title 14, section 8102, subsection 3, or official or employee of a political subdivision acting in an official capacity.

5. Recovery of damages, costs and fees for antitrust violations on claim against person based on official action directed by political subdivision, or official or employee of a political subdivision acting in an official capacity. No damages, interest on damages, costs or attorneys fees may be recovered under this chapter in any claim against a person based on any official action directed by a political subdivision, as defined in Title 14, section 8102, subsection 3, or official or employee of a political subdivision acting in an official capacity.

#### STATEMENT OF FACT

22 This bill is intended to make the state antitrust 23 laws consistent with recent amendments to federal an-24 titrust laws.

25 Through enactment of the Local Government Anti-26 trust Act of 1984, Congress prohibited the recovery 27 of damages, costs and attorneys fees from local 28 ernments, from local government officials and employ-29 acting in an official capacity and from persons ees 30 in any claim based upon their official action di-31 rected by local governments or officials or employees 32 in an official capacity. The effect of this acting federal law is to insulate municipalities and munici-33 34 pal officials and employees from having to pay treble 35 damages, costs and attorneys fees for local govern-36 ment actions. Under the federal Act, municipalities 37 still may be enjoined from engaging in activities 38 that violate the federal antitrust laws.

The State's antitrust laws have not been revised since amendment of the federal law and municipalities

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1 still may be liable for treble damages, costs and attorneys fees under the State's laws. This bill adds 2 2 3 new subsections to the Maine Revised Statutes, Title 10, section 1104, that exempt political subdivisions, their officials and employees acting in an official 4 5 б capacity and those directed to act by a political 7 subdivision or its officials or employees acting in 8 an official capacity from liability for treble dam-9 ages, costs and attorneys fees under the Maine law. 10 This exemption is consistent with federal law and, 11 like federal law, still permits a party to seek injunctive relief under state antitrust law against a 12 13 subdivision or its officials, employees or political 14 agents.

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