

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 809

H.P. 566

House of Representatives, February 25, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

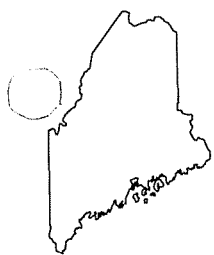
Presented by Representative STEVENS of Bangor.

Cosponsored by Senator GAUVREAU of Androscoggin, Representative PARADIS of Augusta and Representative OTT of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Amend Maine's Antitrust Laws.



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

2 Sec. 1. 10 MRSA §1103 is repealed.

4 Sec. 2. 10 MRSA §1104, sub-§2, ¶¶D and E are enacted to read:

6 D. If the court finds for the Attorney General, the
8 Attorney General recovers the costs of suit, including
10 necessary and reasonable investigative costs, reasonable
 experts' fees and reasonable attorney's fees.

12 E. Any person who violates the terms of an injunction
14 issued under this section must forfeit and pay to the State,
16 to be applied in the carrying out of this chapter, a civil
18 penalty of not more than \$50,000 for each violation and pay
 to the State the costs of suit, including necessary and
 reasonable investigative costs, reasonable experts' fees and
 reasonable attorney's fees.

20 Sec. 3. 10 MRSA §1104, sub-§3, as enacted by PL 1987, c. 60,
22 §1, is amended to read:

24 3. **Civil penalty.** Each course of conduct which that
26 constitutes a violation of sections 1101 and 1102 is a civil
28 violation for which a civil penalty of not more than \$50,000 for
 each defendant shall be adjudged each defendant must forfeit and
 pay to the State, to be applied to the carrying out of this
 chapter, a civil penalty of not more than \$100,000.

30 A. In any action initiated by the Attorney General pursuant
32 to this section to prevent and restrain violations of
34 sections 1101 and 1102, the Attorney General may include an
 action to recover civil penalties by each defendant for each
 course of conduct alleged.

36 B. An action to recover a civil penalty from a defendant
38 under this section shall ~~bar~~ bars a criminal prosecution
40 pursuant to section 1101 or 1102 against that defendant for
 the same course of conduct on which the action to recover
 the civil penalty is based.

42 C. A criminal prosecution against a defendant pursuant to
44 section 1101 or 1102 shall ~~bar~~ bars any action to recover a
46 civil penalty under this section from that defendant for the
 same course of conduct on which the criminal prosecution is
 based.

48 Sec. 4. 10 MRSA §1107, as amended by PL 1977, c. 175, §4, is
50 further amended to read:

52 **§1107. Investigation by Attorney General**

2 The Attorney General upon his the Attorney General's own
3 initiative or upon petition of 50 or more citizens of this State,
4 shall investigate all seeming violations of sections 1102-A and
5 1105 to 1107, all contracts, combinations or conspiracies in
6 restraint of trade or commerce, and all monopolies, and may
7 require, by summons, the attendance and testimony of witnesses
8 and the production of books and papers before him the Attorney
9 General relating to any such matter under investigation. Such The
10 summons shall must be served in the same manner as summons for
11 witnesses in criminal cases, and all provisions of law relating
12 thereto shall apply to summonses issued under this section so far
13 as they are applicable. All investigations or hearings thereunder
14 or connected therewith to which witnesses are summoned or called
15 upon to testify or to produce books, records or correspondence
16 shall ~~be~~ are public or private at the choice of the person
17 summoned and shall must be held in the county ~~wherein~~ where the
18 act to be investigated is alleged to have been committed, or if
19 the investigation is on petition it shall must be held in the
20 county ~~where~~ in which the petitioners reside. The expense of such
21 investigation shall must be paid from the appropriation provided
22 by Title 5, section 203.

23
24 If, upon investigation, it appears to the Attorney General
25 that the laws of this State, including sections 1102-A or 1105 to
26 1107, have been violated in any respect, ~~he~~ the Attorney General
27 shall ~~forthwith~~ prosecute the guilty parties and present all
28 available information bearing upon such apparent violation to the
proper prosecuting officer of the United States.

30 Any Justice of the Superior Court may by order, upon
31 application of the Attorney General, compel the attendance of
32 witnesses, the production of books and papers, including
33 correspondence, and the giving of testimony, before the Attorney
34 General in the same manner and to the same extent as before said
35 ~~courts~~ the Superior Court. Any failure to obey such order may be
36 punishable by such court as a contempt thereof.

38 STATEMENT OF FACT

40 This bill makes the following changes to the law governing
42 antitrust.

44 1. It repeals the Maine Revised Statutes, Title 10, section
45 1103, which confers immunity from prosecution to witnesses in
46 restraint of trade or commerce cases. Existing law already
47 permits the Attorney General to request the court to confer
48 immunity. Furthermore, by making immunity automatic, Title 10,
49 section 1103 may permit witnesses to immunize themselves from
50 serious criminal conduct.

2 2. The bill clarifies that costs of suit are recoverable by
the Attorney General in injunctive actions as they are also
recoverable in damage action.

4
6 3. The bill amends Title 10, section 1104 to add language
imposing civil penalties for contempt of a court order, similar
to the language that exists currently in the parallel provisions
8 of the Unfair Trade Practices Act, Title 5, section 209.

10 4. The bill increases the civil penalty to \$100,000 and
further conforms the civil penalty provision to the language
12 existing in the parallel provisions in the Unfair Trade Practices
Act, Title 5, section 209.

14
16 5. The bill applies the investigative provisions of Title
10, section 1107 to inquiries by the Attorney General concerning
mergers and acquisitions under Title 10, section 1102-A.