

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 840

S.P. 276

In Senate, March 9, 1993

**An Act to Protect Maine Businesses and Consumers from Unfair and Deceptive Trade Practices.**

---

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator HARRIMAN of Cumberland.  
Cosponsored by Representative GWADOSKY of Fairfield and  
Senator: CIANCHETTE of Somerset.

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

2  
4       Sec. 1. 4 MRSA §152, sub-§5, ¶F, as amended by PL 1989, c. 392,  
§1, is further amended to read:

6           F. Actions for restitution under Title 5, section 213 229;

8       Sec. 2. 5 MRSA c. 10, as amended, is repealed.

10       Sec. 3. 5 MRSA c. 10-A is enacted to read:

12                                   CHAPTER 10-A

14                           THE MAINE UNFAIR TRADE PRACTICES ACT

16       §220. Short title

18           This chapter may be known and cited as the "The Maine Unfair  
Trade Practices Act."

20       §221. Definitions

22           As used in this chapter, unless the context otherwise  
24 indicates, the following terms have the following meanings.

26           1. Documentary material. "Documentary material" includes  
28 the original or a copy of any book, record, report, memorandum,  
paper, communication, tabulation, map, chart, photograph,  
30 mechanical transcription or other tangible document or recording.

32           2. Examination of documentary material. "Examination of  
34 documentary material" includes the inspection, study, or copying  
of any documentary material and the taking of testimony under  
oath or acknowledgment with respect to any documentary material.

36           3. Person. "Person" includes, where applicable, natural  
38 persons, corporations, trusts, partnerships, incorporated or  
unincorporated associations and any other legal entity.

40           4. Trade and commerce. "Trade" and "commerce" include the  
42 advertising, the offering for sale, rent or lease, the sale,  
rent, lease or distribution of any services and any property,  
44 tangible or intangible, real, personal or mixed, any security and  
any contract of sale of a commodity for future delivery, and any  
46 other article, commodity, or thing of value, and includes any  
trade or commerce directly or indirectly affecting the people of  
48 this State.

50       §222. Unfair methods of competition; legislative intent; duties  
of Attorney General

2 1. Declared unlawful. Unfair methods of competition and  
3 unfair or deceptive acts or practices in the conduct of any trade  
4 or commerce are unlawful.

6 2. Interpretation of this chapter. It is the intent of the  
7 Legislature that in construing subsection 1 in actions brought  
8 under sections 224, 229 and 231, the courts be guided by the  
9 interpretations given by the Federal Trade Commission and the  
10 federal courts to section 5(a)(1) of the Federal Trade Commission  
11 Act, 15 United States Code 45(a)(1), as from time to time  
12 amended. Nothing contained in this chapter limits any rights or  
13 remedies already established in this State.

14 3. Rules. The Attorney General may make rules interpreting  
15 the provisions of subsection 1. The rules may not be  
16 inconsistent with the rules, regulations and decisions of the  
17 Federal Trade Commission and the federal courts interpreting the  
18 provisions of the Federal Trade Commission Act, 15 United States  
19 Code 45(a)(1), as from time to time amended.

20 **§223. Exempt transactions**

22 Nothing in this chapter applies to transactions or actions  
23 otherwise permitted under laws administered by any regulatory  
24 board or officer acting under statutory authority of the State or  
25 of the United States.

28 For the purpose of this section, the burden of proving an  
29 exemption from the provisions of this chapter is on the person  
30 claiming the exemption.

32 **§224. Attorney General may enjoin unfair trade practices;**  
33 **notices required; jurisdiction and authority of Superior**  
34 **Court; District Attorney's duties; penalties**

36 Whenever the Attorney General has reason to believe that any  
37 person is using or is about to use any method, act or practice  
38 declared by section 222 to be unlawful and that proceedings would  
39 be in the public interest, the Attorney General may bring an  
40 action in the name of the State against that person to restrain  
41 by temporary restraining order or preliminary or permanent  
42 injunction the use of the method, act or practice. The action  
43 may be brought in the Superior Court of the county in which the  
44 person resides or has a principal place of business or the action  
45 may be brought in the Superior Court of Kennebec County with the  
46 consent of the parties or if the person has no place of business  
47 within the State. If more than one person is joined as a  
48 defendant, the action may be brought in the Superior Court of the  
49 county where any one defendant resides or has a principal place  
50 of business, or in Cumberland County. The court may issue  
51 temporary restraining orders or preliminary or permanent  
52 injunctions and make any other orders or judgments necessary to

2 restore to any person who has suffered any ascertainable loss by  
4 reason of the use of an unlawful method, act or practice any  
6 money or real or personal property that may have been acquired by  
8 means of an unlawful method, act or practice. If the court finds  
10 that a person has employed any method, act or practice that the  
12 person knew or should have known to be in violation of section  
14 222, the court may require the person to pay to the State a civil  
16 penalty of not more than \$5,000 for each violation and also may  
18 require the person to pay the reasonable costs of investigation  
20 and litigation of the violation, including reasonable attorney's  
22 fees. If the court finds any method, act or practice unlawful  
with regard to any security or any contract of sale of a  
commodity for future delivery as set forth in section 222, the  
court may issue any orders or judgments necessary to restore to  
any person who has suffered any ascertainable loss of any money  
or real or personal property up to 3 but not less than 2 times  
the amount lost if the court finds that the use of the method,  
act or practice was a willful violation of section 222; may  
impose a civil penalty to be paid to the State of not more than  
\$5,000 for each violation; and also may require the person to pay  
the reasonable costs of investigation and litigation of the  
violation, including reasonable attorney's fees.

24 At least 5 days before the commencement of any action  
26 brought under this section, except when a temporary restraining  
28 order is sought, the Attorney General shall notify the person of  
30 the intended action and give the person an opportunity to confer  
32 with the Attorney General in person or by counsel or other  
representative as to the intended action. The notice must be  
given the person by mail, postage prepaid, to the person's usual  
place of business, or, if the person has no usual place of  
business, to the person's last known address.

34 Any district attorney or law enforcement officer receiving  
36 notice of an alleged violation of this chapter or of any  
38 violation of an injunction or order issued in an action brought  
under this section shall immediately forward written notice of  
the violation together with any supporting information to the  
Attorney General.

40 A person who violates the terms of an injunction or other  
42 order issued under this section shall forfeit and pay to the  
44 state a civil penalty of not more than \$10,000 for each  
46 violation. For the purposes of this section, the court issuing  
such an injunction or order shall retain jurisdiction, and the  
cause must be continued, and the Attorney General, acting in the  
name of the State, may petition for recovery of the civil penalty.

48 **§225. Attorney General may accept assurance of discontinuance of**  
50 **unfair trade practice in lieu of judicial proceedings**

2 When the Attorney General has authority to institute an  
4 action or proceeding under section 224, the Attorney General may  
6 instead accept an assurance of discontinuance of any method, act  
8 or practice in violation of this chapter from any person alleged  
10 to be engaged or to have been engaged in the method, act or  
12 practice. The assurance may, among other terms, include a  
14 stipulation for the voluntary payment by the person of the costs  
16 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 assurance of discontinuance must be in writing and be  
filed with the Superior Court of Kennebec County. Matters closed  
in this manner may at any time be reopened by the Attorney  
General for further proceedings in the public interest. Evidence  
of a violation of an assurance is prima facie evidence of a  
violation of section 222 in any subsequent proceeding brought by  
the Attorney General.

18 **§226. Production of books, records; examination of persons**  
20 **suspected of violation; contents and methods of**  
**service of notices**

22 1. Investigation. If the Attorney General believes a  
24 person has engaged in or is engaging in any method, act or  
26 practice declared to be unlawful by this chapter, the Attorney  
28 General may conduct an investigation to ascertain whether in fact  
the person has engaged in or is engaging in an unlawful method,  
act or practice. In conducting the investigation the Attorney  
General may:

30 A. Take testimony under oath concerning the alleged  
32 unlawful method, act or practice;

34 B. Examine or cause to be examined any documentary material  
relevant to the alleged unlawful method, act or practice; and

36 C. Require attendance during the examination of documentary  
38 material of any person having knowledge of the documentary  
material and take testimony under oath or acknowledgment  
40 regarding the documentary material.

42 The testimony and examination must take place in the county where  
44 the person resides or has a place of business or, if the parties  
consent or the person is a nonresident or has no place of  
business within the State, in Cumberland County or Penobscot  
46 County.

48 2. Notice. Notice of the time, place and cause of the  
taking of testimony, examination or attendance must be given by  
50 the Attorney General at least 10 days before taking the testimony  
or examination.

2 3. Service of notice. Service of the notice required by  
subsubsection 2 may be made by:

4 A. Delivering a duly executed copy of the notice to the  
5 person to be served or to a partner or to any officer or  
6 agent authorized by appointment or by law to receive service  
7 of process on behalf of the person;

8 B. Delivering a duly executed copy of the notice to the  
9 principal place of business in the State of the person to be  
10 served; or

11 C. Mailing by registered or certified mail a duly executed  
12 copy of the notice addressed to the person to be served at  
13 the person's principal place of business in the State or, if  
14 the person has no place of business in the State, to the  
15 person's principal office or place of business.

16 4. Contents of notice. Each notice must:

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

22 B. State the section of statute alleged to be violated and  
23 the general subject matter of the investigation;

24 C. Describe the class or classes of documentary material to  
25 be produced for investigation with reasonable specificity,  
26 so as fairly to indicate the material demanded;

27 D. Prescribe a return date within which the documentary  
28 material must be produced; and

29 E. Identify the members of the Attorney General's staff to  
30 whom the documentary material must be made available for  
31 inspection and copying.

32 5. Exception. The Attorney General may not make any  
33 requirement to produce documentary material that would be  
34 unreasonable or improper if contained in a subpoena duces tecum  
35 issued by a court of the State or require the disclosure of any  
36 documentary material that would be privileged or that for any  
37 other reason would not be required by a subpoena duces tecum  
38 issued by a court of the State.

39 6. Limitation on disclosure. Any documentary material or  
40 other information produced by a person pursuant to this section  
41 may not be disclosed to any person other than the authorized  
42 agent or representative of the Attorney General, unless otherwise  
43 provided.

2 ordered by a court of the State for good cause shown or unless  
3 with the consent of the person producing the documentary  
4 material; except that the documentary material or information may  
5 be disclosed by the Attorney General in court pleadings or other  
6 papers filed in court.

7 **7. Modification by court.** At any time before the date  
8 specified in the notice, or within 21 days after the notice has  
9 been served, whichever period is shorter, the court may, upon  
10 motion for good cause shown, extend the reporting date or modify  
11 or set aside the demand or grant a protective order in accordance  
12 with the standards set forth in Rule 26(c) of the Maine Rules of  
13 Civil Procedure. The motion may be filed in the Superior Court  
14 of the county in which the person served resides or has a usual  
15 place of business, or in Cumberland County. This section does  
16 not apply to any criminal proceeding nor may information obtained  
17 under the authority of this section be admissible in evidence in  
18 any criminal prosecution for substantially identical transactions.

19 **§227. Penalty for noncompliance with notice; court proceedings**  
20 **for enforcement**

21  
22  
23 A person upon whom a notice is served pursuant to the  
24 provisions of section 226 shall comply with the terms of the  
25 notice unless otherwise provided by the order of a court of the  
26 State. Any person who fails to appear, or who, with intent to  
27 avoid, evade or prevent compliance in whole or in part with any  
28 civil investigation under this chapter, removes from any place,  
29 conceals, withholds, destroys, mutilates, alters or by any other  
30 means falsifies any documentary material in the possession,  
31 custody or control of any person subject to any notice or who  
32 knowingly conceals any relevant information commits a civil  
33 violation for which a penalty not to exceed \$5000 may be imposed.  
34

35 The Attorney General may file in the Superior Court of the  
36 county in which a person resides or has a principal place of  
37 business or of Cumberland County, if the person is a nonresident  
38 or has no principal place of business in the State, and may serve  
39 upon the person, in the same manner as provided in section 226, a  
40 petition for an order of the court for the enforcement of this  
41 section and section 226. Any disobedience of a final order  
42 entered under this section by any court must be punished as  
43 contempt.  
44

45 **§228. Habitual violation of injunctions; effect on corporation's**  
46 **franchise or right to do business**

47 For habitual violation of injunctions issued pursuant to  
48 section 224, upon petition by the Attorney General, the court may  
49 order the dissolution of any corporation or suspension or  
50 forfeiture of the franchise of any corporation or of the right of  
51 any individual or foreign corporation to do business in the State.  
52



2 §229. Civil remedies of consumers; class actions; notices  
4 required

6 1. Action. Any person, other than a person entitled to  
8 bring action under section 231, who has been injured by another  
10 person's use of any method, act or practice declared to be  
12 unlawful by section 222 or any rule issued thereunder may bring  
14 an action by original complaint, counterclaim, cross-claim or  
16 3rd-party action for damages and any equitable relief, including  
18 an injunction, that the court finds to be necessary and proper.

20 2. Class action. If the use of an unfair or deceptive  
22 method, act or practice has caused similar injury to numerous  
24 other persons similarly situated and if the court finds in a  
26 preliminary hearing that the person bringing the action  
adequately and fairly represents the other persons, any person  
entitled to bring an action pursuant to this section may bring  
the action on that person's own behalf and on behalf of the other  
similarly injured and situated persons. The court shall require  
that notice of the action be given to unnamed petitioners in the  
most effective practicable manner. The action may not be  
dismissed, settled or compromised without the approval of the  
court, and notice of any proposed dismissal, settlement or  
compromise must be given to all members of the class of  
petitioners in the manner the court directs.

28 3. Recovery of damages. At least 30 days before the filing  
30 of an action, a written demand for relief identifying the  
32 claimant and reasonably describing the unfair or deceptive  
34 method, act or practice relied upon and the injury suffered must  
36 be mailed or delivered to any prospective respondent. Any person  
38 receiving a demand for relief who, within 30 days of the mailing  
40 or delivery of the demand for relief, makes a written tender of  
42 settlement that is rejected by the claimant, in any subsequent  
44 action may file the written tender and an affidavit concerning  
46 its rejection and thereby limit any recovery to the relief  
48 tendered, if the court finds that the relief tendered was  
50 reasonable in relation to the injury actually suffered by the  
52 petitioner. In all other cases, if the court finds for the  
petitioner, recovery must be in the amount of actual damages or  
\$100, whichever is greater, plus up to 3 but not less than 2  
times that amount if the court finds that the use of the method,  
act or practice was a willful, knowing or reckless violation of  
section 222 or that the refusal to grant relief upon demand was  
made in bad faith with knowledge or reason to know that the act  
or practice complained of violated section 222. For the purposes  
of this chapter, the amount of actual damages to be multiplied by  
the court must be the amount of the judgment of all claims  
arising out of the same and underlying transaction or occurrence,  
regardless of the existence or nonexistence of insurance coverage  
available in payment of the claim. In addition, the court shall

2 award other equitable relief, including an injunction, that it  
4 finds to be necessary and proper. The demand requirements of  
6 this subsection do not apply if the claim is asserted by way of  
8 counterclaim or cross-claim, or if the prospective respondent  
10 does not maintain a place of business or does not keep assets  
12 within the State, but a respondent may otherwise employ the  
14 provisions of this section by making a written offer of relief  
16 and paying the amount of the rejected offer into court as soon as  
18 practicable after receiving notice of an action commenced under  
20 this section.

22 **4. District Court.** A person may assert a claim under this  
24 section in a District Court, by original complaint, counterclaim,  
26 cross-claim or 3rd-party action, for money damages only. Damages  
28 may include double or treble damages, attorney's fees and costs,  
30 as provided in this section. The demand requirements and  
32 provision for tender of offer of settlement provided in  
34 subsection 3 are also applicable under this subsection, except  
36 that no rights to equitable relief are created under this  
38 subsection, nor may a person asserting a claim under this  
40 subsection be able to assert any claim on behalf of other  
42 similarly injured and situated persons as provided in subsection  
44 2.

46 **5. Attorney's fees.** If the court finds in any action  
48 commenced under this section that there has been a violation of  
50 section 222, in addition to other relief provided for by this  
section and irrespective of the amount in controversy the  
petitioner must be awarded reasonable attorney's fees and costs  
incurred in connection with the action; except that the court  
shall deny recovery of attorney's fees and costs that are  
incurred after the rejection of a reasonable written offer of  
settlement made within 30 days of the mailing or delivery of the  
written demand for relief required by this section.

**6. Exhaustion of administrative remedies.** A person  
entitled to bring an action under this section is not required to  
initiate, pursue or exhaust any remedy established by any rule,  
regulation, administrative procedure, local, state or federal law  
or statute or the common law in order to bring an action under  
this section or to obtain injunctive relief or recover damages or  
attorney's fees or costs or other relief as provided in this  
section. Failure to exhaust administrative remedies is not a  
defense to any proceeding under this section, except as provided  
in subsection 7.

**7. Suspension of proceeding for regulatory action.** The  
court may, upon motion by the respondent before the time for  
answering and after a hearing, suspend proceedings brought under  
this section to permit the respondent to initiate action in which  
the petitioner must be named a party before any appropriate

2 regulatory board or officer providing adjudicatory hearings to  
3 complainants if the respondent's evidence indicates that:

4 A. There is a substantial likelihood that final action by  
5 the court favorable to the petitioner would require of the  
6 respondent conduct or practices that would disrupt or be  
7 inconsistent with a regulatory scheme that regulates or  
8 covers the actions or transactions complained of by the  
9 petitioner established and administered under law by any  
10 state or federal regulatory board or officer acting under  
11 statutory authority of the State or of the United States; or

12  
13 B. The regulatory board or officer has a substantial  
14 interest in reviewing the transactions or actions before  
15 judicial action under this chapter and that the regulatory  
16 board or officer has the power to provide substantially the  
17 relief sought by the petitioner and the class, if any, that  
18 the petitioner represents, under this section.

19  
20 Upon suspending proceedings under this subsection, the court may  
21 enter any interlocutory or temporary orders it finds necessary  
22 and proper pending final action by the regulatory board or  
23 officer and trial, if any, including issuance of injunctions,  
24 certification of a class and orders concerning the presentation  
25 of the matter to the regulatory board or officer. The court may  
26 issue appropriate interlocutory orders, decrees and injunctions  
27 to preserve the status quo between the parties pending final  
28 action by the regulatory board or officer and trial and shall  
29 stay all proceedings in any court or before any regulatory board  
30 or officer in which petitioner and respondent are necessarily  
31 involved. The court may issue further orders, injunctions or  
32 other relief while the matter is before the regulatory board or  
33 officer and shall terminate the suspension and bring the matter  
34 forward for trial if it finds that proceedings before the  
35 regulatory board or officer are unreasonably delayed or otherwise  
36 unreasonably prejudicial to the interests of a party before the  
37 court, or that the regulatory board or officer has not taken  
38 final action within 6 months of the beginning of the order  
39 suspending proceedings under this chapter.

40  
41 8. Effect of other proceedings. Except as provided in  
42 section 230, recovering or failing to recover an award of damages  
43 or other relief in any administrative or judicial proceeding,  
44 except proceedings authorized by this section, by any person  
45 entitled to bring an action under this section, does not  
46 constitute a bar to or limitation upon relief authorized by this  
47 section.

48  
49 **§230. Copies of complaints, judgments or decrees to be mailed**  
50 **to Attorney General; permanent injunction or order as**  
51 **prima facie evidence of unfair practices**  
52

2           Upon commencement of any action brought under section 229 or  
4           231, the clerk of the court shall mail a copy of the complaint to  
6           the Attorney General and, upon entry of any judgment or decree in  
8           the action, the clerk of the court shall mail a copy of the  
10           judgment or decree to the Attorney General.

12           Any permanent injunction or order of the court made under  
14           section 224 is prima facie evidence in an action brought under  
16           section 229 or 231 that the respondent used an unfair or  
18           deceptive method, act or practice declared unlawful by section  
20           222.

22           **§231. Action for damages; injunction; class action; settlement;**  
24           **attorney's fees and costs**

26           **1. Action.** Any person who engages in trade or commerce and  
28           who suffers any loss of money or real or personal property as a  
30           result of the use by another person who engages in trade or  
32           commerce of an unfair method of competition or an unfair or  
34           deceptive act or practice declared unlawful by section 222 or by  
36           any rule issued under section 222, subsection 3 may, as provided  
38           in this section, bring an action in the Superior Court, by  
40           original complaint, counterclaim, cross-claim or 3rd-party action  
42           for damages and equitable relief, including an injunction, that  
44           the court finds to be necessary and proper.

46           A person who brings an action under this section who has not  
48           suffered any loss of money or property may obtain an injunction  
50           if it can be shown that the unfair method of competition, act or  
52           practice may have the effect of causing loss of money or property.

**2. Class action.** If the use of an unfair method of  
          competition or the unfair or deceptive act or practice has caused  
          similar injury to numerous other persons similarly situated and  
          if the court finds in a preliminary hearing that the person  
          adequately and fairly represents the other persons, any person  
          entitled to bring an action under this section may bring the  
          action on that person's own behalf and on behalf of other  
          similarly injured and situated persons; the court shall require  
          that notice of the action be given to unnamed petitioners in the  
          most effective, practicable manner. The action may not be  
          dismissed, settled or compromised without the approval of the  
          court, and notice of any proposed dismissal, settlement or  
          compromise must be given to all members of the class of  
          petitioners in the manner the court directs.

**3. District Court.** A person may assert a claim under this  
          section in a District Court, by original complaint, counterclaim,  
          cross-claim or 3rd-party action, for money damages only. Damages  
          may include double or treble damages, attorney's fees and costs,  
          as provided in this section, with provision for tendering by the  
          person against whom the claim is asserted of a written offer of

2 settlement for single damages, as provided in this section. No  
3 rights to equitable relief are created under this subsection.

4 4. Recovery of damages. If the court finds for the  
5 petitioner, recovery must be in the amount of actual damages,  
6 together with at least 3 but not less than 2 times the amount if  
7 the court finds that the use or employment of the method of  
8 competition or the act or practice was a willful, knowing or  
9 reckless violation of section 222. For the purposes of this  
10 chapter, the amount of actual damages to be multiplied by the  
11 court is the amount of the judgment on all claims arising out of  
12 the same and underlying transaction or occurrence regardless of  
13 the existence or nonexistence of insurance coverage available in  
14 payment of the claim. In addition, the court shall award the  
15 reasonable attorney's fees and other costs and expenses incurred  
16 by the petitioner in bringing the claims, plus other equitable  
17 relief, including an injunction, that it finds to be necessary  
18 and proper. The respondent may tender with the answer in any  
19 action under this section a written offer of settlement for  
20 single damages. If the tender or settlement is rejected by the  
21 petitioner and if the court finds that the relief tendered was  
22 reasonable in relation to the injury actually suffered by the  
23 petitioner, then the court may not award more than single damages  
24 and may award to the party making the reasonable written offer of  
25 settlement and against whom the claims were asserted an amount  
26 representing the reasonable attorney's fees and other costs and  
27 expenses incurred in defending against the claims.

28  
29 Sec. 4. 9 MRSA §5014, as enacted by PL 1977, c. 488, §1, is  
30 amended to read:

31 **§5014. Violation as unfair trade practice**

32  
33 Any violation of this chapter shall-constitute constitutes a  
34 violation of Title 5, chapter 10 10-A, the Maine Unfair Trade  
35 Practices Act.

36  
37 Any intentional violation of this chapter shall--be is a  
38 Class D crime.

39  
40 Sec. 5. 9-A MRSA §3-507, as enacted by PL 1973, c. 762, §1,  
41 is amended to read:

42 **§3-507. Violation as unfair trade practice**

43  
44 Any violation of this Part shall--constitute constitutes a  
45 violation of Title 5, chapter 10 10-A, the Maine Unfair Trade  
46 Practices Act.

47  
48 Sec. 6. 9-A MRSA §8-303, sub-§7, as amended by PL 1991, c.  
49 755, §1, is further amended to read:

2           7. With respect to an open-end credit plan involving a  
3 credit card offered in connection with a seller located in this  
4 State using cards displaying the name of the seller:

5           A. The terms of the credit card contract must comply with  
6 the laws that would apply if the seller were the creditor; or

7           B. The name and state of the financial institution  
8 underwriting the debt must appear in at least 10-point type  
9 on the face of the credit card.

10  
11 This subsection applies to any new credit card programs  
12 implemented after November 1, 1991 and takes effect on December  
13 31, 1992 for all other credit card accounts and programs. A  
14 violation of this section constitutes a violation of Title 5,  
15 chapter ~~10~~ 10-A, the Maine Unfair Trade Practices Act.

16  
17           Sec. 7. ~~9-B~~ MRSA §244, as enacted by PL 1975, c. 500, §1, is  
18 amended to read:

19           **§244. Exemption**

20  
21           Any financial institution subject to the provisions of this  
22 chapter ~~shall--be~~ is exempt from the provisions of Title 5,  
23 chapter ~~10~~ 10-A.

24  
25           Sec. 8. ~~10~~ MRSA §1166, as enacted by PL 1985, c. 220, §6, is  
26 amended to read:

27           **§1166. Unfair or deceptive trade practice**

28  
29           A violation of any of the provisions of this chapter shall  
30 be is considered prima facie evidence of an unfair or deceptive  
31 trade practice under Title 5, chapter ~~10~~ 10-A.

32  
33           Sec. 9. ~~10~~ MRSA §1169, sub-§10, as enacted by PL 1989, c. 570,  
34 §5, is amended to read:

35           **10. Penalties.** It ~~shall--be~~ is prima facie evidence of an  
36 unfair trade practice under Title 5, chapter ~~10~~ 10-A, for a  
37 manufacturer, within 21 days of receipt of any finding in favor  
38 of the consumer in state-certified arbitration, to fail to appeal  
39 the finding and not deliver a refund or replacement vehicle or  
40 not receive from the Department of the Attorney General an  
41 extension of time for delivery of the replacement vehicle.

42  
43           Sec. 10. ~~10~~ MRSA §1193, sub-§1, as enacted by PL 1989, c. 51,  
44 is amended to read:

45           **1. Unfair trade practice.** Any violation of this chapter  
46 ~~shall--constitute~~ constitutes prima facie evidence of a violation  
47 of Title 5, chapter ~~10~~ 10-A, the Maine Unfair Trade Practices Act.  
48

2           **Sec. 11. 10 MRSA §1233, sub-§2**, as enacted by PL 1987, c. 204,  
is amended to read:

4           **2. Unfair trade practice.** A violation of this chapter  
6 constitutes a violation of Title 5, chapter 10 10-A.

8           **Sec. 12. 10 MRSA §1406**, as enacted by PL 1973, c. 435, is  
amended to read:

10           **§1406. Violation as unfair trade practice**

12           Any violation of this chapter ~~shall constitute~~ constitutes a  
14 violation of Title 5, chapter 10 10-A, the Maine Unfair Trade  
Practices Act.

16           **Sec. 13. 10 MRSA §1477, sub-§1**, as enacted by PL 1975, c. 770,  
18 §57, is amended to read:

20           **1. Violations of this chapter to be violations of the Maine**  
**Unfair Trade Practices Act.** Any violation of this chapter ~~shall~~  
22 ~~constitute~~ constitutes a violation of Title 5, chapter 10 10-A,  
the Maine Unfair Trade Practices Act.

24           **Sec. 14. 10 MRSA §1483**, as enacted by PL 1977, c. 660, is  
26 amended to read:

28           **§1483. Civil forfeiture; Maine Unfair Trade Practices Act**  
**violation**

30           Any person who fails to provide the owner or tenant with an  
32 insulation contract, containing at least the minimum information  
34 required by section 1482, prior to this installation of  
insulation into an existing residence ~~shall-be~~ is deemed to have  
36 committed a civil violation for which a forfeiture of not less  
than \$200 for the first offense and not less than \$500 for each  
38 subsequent offense ~~shall~~ must be adjudged. In addition to the  
civil penalty provided in this section, any violation of this  
chapter ~~shall constitute~~ constitutes a violation of the Maine  
40 Unfair Trade Practices Act in Title 5, chapter 10 10-A.

42           **Sec. 15. 10 MRSA §1490, sub-§1**, as enacted by PL 1987, c. 574,  
is amended to read:

44           **1. Violation.** Any violation of this chapter ~~shall~~  
46 ~~constitute~~ constitutes prima facie evidence of a violation of the  
Maine Unfair Trade Practices Act, Title 5, chapter 10 10-A.

48           **Sec. 16. 10 MRSA §1494**, as enacted by PL 1979, c. 299, is  
50 amended to read:

52           **§1494. Civil forfeiture; statutory provisions governing unfair**

**trade practices violation**

2  
4 Any person who fails to provide the purchaser of solar  
6 energy equipment, as defined in this chapter, with a minimum  
8 warranty, as established by law, shall--be is deemed to have  
10 committed a civil violation for which a forfeiture of not less  
12 than \$200 nor more than \$500 for the first offense and not less  
14 than \$500 nor more than \$1,000 for each subsequent offense shall  
16 must be adjudged. In addition to the civil penalty provided in  
18 this section, any violation of this chapter shall--constitute  
20 constitutes a violation of Title 5, chapter 10 10-A.

22 **Sec. 17. 10 MRSA §1496, sub-§4**, as enacted by PL 1989, c. 758,  
24 is amended to read:

26 **4. Penalty.** Violation of this chapter is an unfair trade  
28 practice as prohibited by Title 5, section 207 222. Each  
30 complete telefacsimile transmission constitutes a separate  
32 violation.

34 **Sec. 18. 10 MRSA §1498, sub-§8**, as enacted by PL 1989, c. 775,  
36 is amended to read:

38 **8. Penalty.** Violation of this section, including the  
40 provision of false registration information, is an unfair trade  
42 practice as prohibited by Title 5, section 207 222.

44 **Sec. 19. 10 MRSA §1499**, as enacted by PL 1991, c. 252, §1, is  
46 amended to read:

48 **§1499. Consumer notification**

50 Notwithstanding section 1498, a person may not use an  
52 automated telephone calling device to dial the telephone number  
of any telephone utility customer in this State who has notified  
the telephone utility pursuant to Title 35-A, section 7112 of the  
customer's request not to receive automated telephone calls.  
Violation of this section is an unfair trade practice under Title  
5, section 207 222.

54 **Sec. 20. 10 MRSA §1680**, as enacted by PL 1991, c. 836, §3, is  
56 amended to read:

58 **§1680. Private right of action**

60 A retailer, wholesaler or refiner who is injured as a result  
62 of a violation of Title 5, section 207 222 or section 1676 may  
maintain a civil action in Superior Court against the violator  
for damages and equitable relief. In any action, the Superior  
Court shall enter a temporary, preliminary or permanent  
injunction to restrain further violations or threatened  
violations of section 1676, regardless of whether the complaining



2 party has an adequate remedy in damages. If the complaining  
party prevails in any action, the party is entitled to an award  
4 of reasonable attorneys' fees and court costs, including expert  
witness fees.

6 **Sec. 21. 10 MRSA §9097-A, sub-§§1 and 2,** as enacted by PL 1991,  
c. 361, §1 and affected by §3, are amended to read:

8  
10 **1. Illegal waiver of rights.** It is an unfair and deceptive  
trade practice in violation of Title 5, section 207 222 for a  
12 park owner or operator to use a rental agreement or rule that has  
the effect of waiving a tenant right established in chapter 953  
14 and, if applicable to mobile home park tenants, Title 14,  
chapters 709, 710 and 710-A. This subsection does not apply when  
16 the law specifically allows the tenant to waive a statutory right  
during negotiations with the park owner or operator.

18 **2. Unenforceable provisions.** The following rental  
agreement or rule provisions are specifically declared to be  
20 unenforceable and in violation of Title 5, section 207 222:

22 A. Any provision that absolves the park owner or operator  
from liability for the negligence of the park owner or  
24 operator or the agent of the park owner or operator;

26 B. Any provision that requires the tenant to pay the legal  
fees of the park owner or operator in enforcing the rental  
28 agreement;

30 C. Any provision that requires the tenant to give a lien  
upon the tenant's property, including a tenant's mobile  
32 home, for the amount of any rent or other sums due the park  
owner or operator; and

34 D. Any provision that requires the tenant to acknowledge  
36 that the provisions of the rental agreement, including  
tenant rules, are fair and reasonable.

38 **Sec. 22. 10 MRSA §9100,** as amended by PL 1989, c. 104, Pt. B,  
40 §11 and Pt. C, §§8 and 10, is further amended to read:

42 **§9100. Violations**

44 A violation of this chapter is a violation of Title 5,  
chapter 10 10-A, the unfair trade practices laws.

46 **Sec. 23. 11 MRSA §2-316, sub-§(5), ¶(a),** as enacted by PL 1973,  
48 c. 444, is amended to read:

50 (a) A violation of sections section 2-314, 2-315 or 2-316,  
arising from the retail sale of consumer goods and services,

2 shall-constitute constitutes a violation of Title 5, chapter  
10 10-A, the Maine Unfair Trade Practices Act.

4 **Sec. 24. 11 MRSA §2-1104, sub-§(1), ¶(c),** as enacted by PL 1991,  
c. 805, §4, is amended to read:

6  
8 (c) Consumer protection statute of this State, or final  
consumer protection decision of a court of this State  
10 existing on the effective date of this article. Consumer  
protection statutes include, but are not limited to, the  
12 Maine Unfair Trade Practices Act, Title 5, chapter 10 10-A;  
the Maine Consumer Credit Code, Title 9-A; consumer loan and  
14 lease agreements laws, Title 10, chapter 202; used car  
information laws, Title 10, chapter 217; and warranties on  
16 new motor vehicles, Title 10, chapter 203-A.

18 **Sec. 25. 14 MRSA §1522, sub-§1, ¶A,** as enacted by PL 1991, c.  
9, Pt. G, §2, are amended to read:

20 A. Title 5, section 209 224;

22 **Sec. 26. 14 MRSA §§1523 and 1524** are enacted to read:

24 **§1523. Award of costs and attorney's fees in frivolous actions**

26 **1. Motion and finding.** Upon motion or claim of any party  
28 to a civil action in which a finding, verdict, decision, award,  
order or judgment has been made by a judge or justice or by a  
30 jury or other finder of fact, the court may determine, after a  
hearing, as a separate and distinct finding, that all or  
32 substantially all of the claims, defenses, setoffs or  
counterclaims, whether of a factual, legal or mixed nature, made  
34 by any party who was represented by counsel during most or all of  
the proceeding, were wholly insubstantial, frivolous and not  
36 advanced in good faith or well-grounded in law or fact. The  
court shall include in the finding the specific facts and reasons  
38 on which the finding is based.

40 **2. Award.** If a finding under subsection 1 is made with  
respect to a party's claims, the court shall award to each party  
42 against whom the claims were asserted an amount representing the  
reasonable attorney's fees and other costs and expenses incurred  
44 in defending against the claims. If the party against whom the  
claims were asserted was not represented by counsel, the court  
46 shall award to that party an amount representing the party's  
reasonable costs, expenses and effort in defending against the  
48 claims. If a finding is made with respect to a party's defenses,  
setoffs or counterclaims, the court shall award to each party  
50 against whom the defenses, setoffs or counterclaims were asserted  
the following:

2 A. Interest on the unpaid portion of the monetary claim at  
4 issue in the defense, setoff or counterclaim at 150% of the  
6 statutory rate set for post-judgment interest under section  
8 1602-A from the date, which must be stated in the award,  
10 when the claim was due to the claimant pursuant to the  
12 substantive rules of law pertaining thereto, until the claim  
14 is paid in full; and

16 B. An amount representing the reasonable attorney's fees,  
18 costs and expenses of the claimant in prosecuting the claims  
20 or in defending against those setoffs or counterclaims found  
22 to have been wholly insubstantial, frivolous and not  
24 advanced in good faith or well-grounded in law or fact.

26 3. Portion of claim. Apart from any award made pursuant to  
28 subsections 1 and 2, if the court finds that all or substantially  
30 all of the defenses, setoffs or counterclaims to any portion of a  
32 monetary claim made by any party who was represented by counsel  
34 during most or all of the proceeding were wholly insubstantial,  
36 frivolous and not advanced in good faith or well-grounded in law  
38 or fact, the court shall award interest to the claimant on that  
40 portion of the claim according to the provisions of subsection 2.

42 4. Calculation of award. In any award made pursuant to  
44 subsection 2 or 3, the court shall specify in reasonable detail  
46 the method by which the amount of the award was computed.

48 5. Exception. No finding may be made that any claim,  
50 defense, setoff or counterclaim was wholly insubstantial,  
52 frivolous and not advanced in good faith or well-grounded in law  
54 or fact solely because a novel or unusual argument or principle  
56 of law was advanced in support of the claim. No such finding may  
58 be made in any action in which judgment was entered by default  
60 without an appearance having been entered by the defendant. The  
62 authority granted to a court by this section is in addition to,  
64 and not in limitation of, that already established by law.

66 6. Settlement. If parties to a civil action settle the  
68 dispute that was the subject of the action and file in the  
70 appropriate court documents setting forth the settlement, the  
72 court may not make any finding or award pursuant to this section  
74 with respect to the parties. If an award had previously been  
76 made pursuant to this section, the award must be vacated unless  
78 the parties agree otherwise.

80 **§1524. Appeal of decision on motion for costs and counsel fees**

82 Any party aggrieved by a decision on a motion or claim  
84 pursuant to section 1523 may appeal as provided in this section.  
86 The appeal must be to a Justice of the Superior Court if the  
88 matter arises in the District Court, or to a single Justice of  
90 the Supreme Judicial Court if the matter arises in the Superior

2 Court. If the matter arises in the Supreme Judicial Court or  
3 before a single Justice of the Supreme Judicial Court, the appeal  
4 must be to the full bench of the Supreme Judicial Court. The  
5 court hearing the appeal shall review the finding and award, if  
6 any, appealed from as if it were initially deciding the matter,  
7 and may withdraw or amend any finding or reduce or rescind any  
8 award when in its judgment the facts so warrant.

9  
10 Any party may file a notice of appeal with the clerk of the  
11 court hearing the motion or claim within 10 days after receiving  
12 notice of the decision. The clerk shall forward the motion or  
13 claim, the court's findings and award and any other documents  
14 relevant to the appeal to the clerk of the court hearing the  
15 appeal who, upon receipt, shall schedule a speedy hearing and  
16 send notice to the parties. Any appeal to the Supreme Judicial  
17 Court or to a Justice of the Supreme Judicial Court must proceed  
18 according to the Maine Rules of Appellate Procedure. Any other  
19 appeal filed pursuant to this section must be heard upon  
20 statements of counsel and memoranda submitted by the parties  
21 without the taking of further testimony, unless the court hearing  
22 the appeal finds that the taking of further testimony would aid  
23 the disposition of the appeal. The payment of any award made  
24 pursuant to the 1523 must be stayed until the completion of all  
25 appeals related to the civil action in which the award was made.

26 **Sec. 27. 14 MRSA §6030**, as amended by PL 1991, c. 704, is  
27 further amended to read:

28 **§6030. Unfair rental contracts**

29  
30 **1. Illegal waiver of rights.** It is an unfair and deceptive  
31 trade practice in violation of Title 5, section 207 222 for a  
32 landlord to require a tenant to enter into a rental agreement for  
33 a dwelling unit, as defined in section 6021, in which the tenant  
34 agrees to a lease or rule provision that has the effect of  
35 waiving a tenant right established in chapter 709, this chapter  
36 and chapter 710-A. This subsection does not apply when the law  
37 specifically allows the tenant to waive a statutory right during  
38 negotiations with the landlord.

39  
40 **2. Unenforceable provisions.** The following rental  
41 agreement or rule provisions for a dwelling unit, as defined in  
42 section 6021, are specifically declared to be unenforceable and  
43 in violation of Title 5, section 207 222:

44  
45 **A.** Any provision that absolves the landlord from liability  
46 for the negligence of the landlord or the landlord's agent;

47  
48 **B.** Any provision that requires the tenant to pay the  
49 landlord's legal fees in enforcing the rental agreement;  
50

2 C. Any provision that requires the tenant to give a lien  
upon the tenant's property for the amount of any rent or  
4 other sums due the landlord; and

6 D. Any provision that requires the tenant to acknowledge  
that the provisions of the rental agreement, including  
8 tenant rules, are fair and reasonable.

10 **3. Exception.** Notwithstanding subsection 2, paragraph B, a  
rental agreement or rule provision that provides for the award of  
12 attorney's fees to the prevailing party after a contested hearing  
to enforce the rental agreement in cases of wanton disregard of  
14 the terms of the rental agreement is not in violation of Title 5,  
section 207 222 and is enforceable.

16 **Sec. 28. 17 MRSA §2305, 2nd ¶,** as enacted by PL 1971, c. 312,  
is amended to read:

18 A violation of this section shall-constitute constitutes a  
20 violation of Title 5, chapter 10 10-A, the Maine Unfair Trade  
Practices Act.

22 **Sec. 29. 22 MRSA §782,** as enacted by PL 1989, c. 657, §1, is  
24 amended to read:

26 **§782. Penalties**

28 Any person failing to register pursuant to section 774 or  
775, commits a civil violation for which a forfeiture not to  
30 exceed \$500 may be adjudged. Any person in violation of section  
777, 778 or 779 commits a civil violation for which a forfeiture  
32 not to exceed \$250 per violation may be adjudged. Any person who  
engages in radon testing, advertising or mitigation in violation  
34 of this chapter is also in violation of Title 5, chapter 10 10-A.

36 **Sec. 30. 22 MRSA §1322, sub-§3,** as enacted by PL 1991, c. 810,  
§30, is amended to read:

38 **3. Violations.** The commissioner may order by written  
40 notice that any person violating this section cease that  
violation. The department may impose a fine not to exceed \$1,000  
42 for each violation of this section. The department may seek  
enforcement of this section in ~~district-court~~ District Court.

44 Any person who conducts lead inspections or lead abatement  
46 without a license in violation of this section commits a civil  
violation for which a penalty of up to \$1,000 may be adjudged.  
48 Any person who engages in lead testing or abatement or who  
advertises those services in violation of this chapter also  
50 violates Title 5, chapter 10 10-A.

Nothing in this subsection limits the authority of the department  
or any other state agency under any law.

**Sec. 31. 24-A MRSA §6095, sub-§4**, as enacted by PL 1987, c. 481, §3, is amended to read:

**4. Deceptive, false or fraudulent practices.** To the extent not preempted by the Risk Retention Amendments of 1986, any risk retention group shall-be is subject to the provisions of chapter 23, and Title 5, chapter ~~10~~ 10-A.

**Sec. 32. 25 MRSA §2465, sub-§6**, as amended by PL 1991, c. 714, §8, is further amended to read:

**6. Penalty.** Any person who, for compensation, constructs or installs vents or solid fuel burning appliances in violation of the standards and permits such violation to remain uncorrected after 30 days' notice from any official empowered to enforce this section is guilty of a civil violation and is subject to a forfeiture of not more than \$500 for each violation. The court may waive any penalty or cost against any violator upon satisfactory proof that the violation was corrected within 30 days of the issuance of a complaint. Construction and installation of chimneys and fireplaces are governed by Title 32, chapter 33.

Any person who fails to provide a purchaser with an instruction manual or the authorized publication of the Department of Economic and Community Development, as described in subsection 5-A, commits a civil violation for which a forfeiture of not less than \$200 nor more than \$500 for the first offense and not less than \$500 nor more than \$800 for each subsequent offense may be adjudged. In addition to the civil penalty provided in this subsection, any violation of this chapter constitutes a violation of Title 5, chapter ~~10~~ 10-A.

**Sec. 33. 29 MRSA §350-A, sub-§1, ¶G**, as enacted by PL 1977, c. 694, §497, is amended to read:

G. Any violation of Title 5, ~~sections-206---212~~ chapter 10-A, Maine Unfair Trade Practices Act, or violation of Title 17, section 3203;

**Sec. 34. 29 MRSA §364-A, sub-§3**, as enacted by PL 1989, c. 481, Pt. A, §17, is amended to read:

**3. Violation.** Any person, corporation, organization or other legal entity that knowingly violates this section commits a Class D crime. A violation of this section is a violation of Title 5, chapter ~~10~~ 10-A.

2           **Sec. 35. 29 MRSA §365, sub-§3**, as enacted by PL 1981, c. 437,  
§14, is amended to read:

4           **3. Penalty.** A violation of any provision of this section  
shall-constitute constitutes a violation of Title 5, chapter 10  
6 10-A, unfair practices in trade.

8           **Sec. 36. 29 MRSA §2455, sub-§1, ¶G**, as amended by PL 1987, c.  
485, §22, is further amended to read:

10           G. Any violation of Title 5, ~~sections 206 to 212~~ chapter  
12 10-A, ~~unfair trade practices law~~ Maine Unfair Trade  
14 Practices Act, or violation of Title 17, section 3203 or a  
violation of Title 30, chapter 215, subchapter I;

16           **Sec. 37. 29 MRSA 2507-A, sub-§3**, as enacted by PL 1979, c.  
673, §14, is amended to read:

18           **3. Penalty.** Notwithstanding section 2521, a violation of  
20 this section shall-constitute constitutes a civil violation and  
shall-be is punished by a fine of not more than \$1,000 for each  
22 violation. In addition to the civil penalty provided in this  
section, any violation of this section shall--constitute  
24 constitutes a violation of statutory provisions governing unfair  
trade practices, Title 5, chapter 10 10-A.

26           **Sec. 38. 29 MRSA §2607**, as enacted by PL 1979, c. 698, §2, is  
28 amended to read:

30           **§2607. Unfair trade practice**

32           A repair facility's failure to comply with this chapter  
constitutes an unfair trade practice under Title 5, chapter 10  
34 10-A.

36           **Sec. 39. 30-A MRSA §3010, sub-§7**, as enacted by PL 1989, c.  
352, is amended to read:

38           **7. Penalty.** A violation of any provision of this section  
40 is a violation of the Maine Unfair Trades Practices Act, Title 5,  
chapter 10 10-A.

42           **Sec. 40. 32 MRSA §502, sub-§4**, as repealed and replaced by PL  
44 1977, c. 458, §2, is amended to read:

46           **4. Advertising.** Advertising in a false, misleading or  
deceptive manner. Any regulations promulgated pursuant to this  
48 section on advertising shall may not be inconsistent with any  
regulations promulgated pursuant to Title 5, section 207 222,  
50 subsection 2;

2           **Sec. 41. 32 MRSA §1073, sub-§3**, as repealed and replaced by PL  
1983, c. 378, §6, is amended to read:

4           **3. False advertising.** Establish rules relating to false,  
deceptive or misleading advertising, except that no rules may be  
6 inconsistent with any rule promulgated pursuant to Title 5,  
section 207 222, subsection 2 3 .

8  
10           **Sec. 42. 32 MRSA §1406**, as enacted by PL 1989, c. 391, is  
amended to read:

12           **§1406. Grave markers**

14           Any funeral establishment or person licensed under this  
chapter, when selling a grave marker to a consumer before the  
16 completion of the funeral of the person whose grave is to be  
marked, shall adhere to the sale requirements for funeral goods  
18 and services set forth in the Federal Trade Commission's Funeral  
Industry Practices Rule, 16 Code of Federal Regulations, Part  
20 453. Violation of this section is an unfair trade practice in  
violation of Title 5, section 207 222.

22  
24           **Sec. 43. 32 MRSA §1658-B, last ¶**, as repealed and replaced by  
PL 1975, c. 463, §3, is amended to read:

26           Any provision of a contract which that limits or conditions  
in any way the rights guaranteed to purchasers by this section  
28 ~~shall--be~~ is deemed to be against public policy and void. Any  
violation of the requirements of this section ~~shall~~, in addition  
30 to being deemed unethical conduct as defined by the regulations  
pursuant to section 1658-N, ~~constitute~~ constitutes a violation of  
32 Title 5, chapter ~~10~~ 10-A, the Maine Unfair Trade Practices Act.

34           **Sec. 44. 32 MRSA §1658-C, sub-§10**, as repealed and replaced by  
PL 1975, c. 463, §3, is amended to read:

36           **10. Limits or conditions.** Any provision of a contract which  
38 that limits or conditions in any way the right guaranteed to  
purchasers by this section ~~shall--be~~ is deemed to be against  
40 public policy and void. Any violation of the requirements of this  
section ~~shall~~, in addition to being deemed unethical conduct as  
42 defined by the regulations pursuant to section 1658-N, ~~constitute~~  
constitutes a violation of Title 5, chapter ~~10~~ 10-A, the Maine  
44 Unfair Trade Practices Act.

46           **Sec. 45. 32 MRSA §2417, sub-§5**, as amended by PL 1977, c. 694,  
§§594 and 595, are further amended to read:

48           **5. Rules and regulations.** The board shall, in accordance  
50 with the Maine Administrative Procedure Act, Title 5, section  
8051 et seq., make reasonable rules and regulations, not  
52 inconsistent with law, to govern the following:



- 2 A. The time, place and manner of conducting state board  
4 examinations in optometry and the manner and form in which  
6 applications for such examination shall must be filed;
- 8 B. The fees for registration and licensing under subchapter  
10 III;
- 12 C. The conduct of the lawful practice of optometry in  
14 accordance with the standards established by this section.

16 The board may make such other reasonable rules and regulations,  
18 in accordance with Title 5, section 8051 et seq., as shall-be are  
20 otherwise necessary for the proper performance of its duties  
under this section, including rules and regulations relating to  
false, deceptive and misleading advertising. Any rules or  
regulations promulgated relating to such advertising shall may  
not be inconsistent with any rules or regulations promulgated  
pursuant to Title 5, section 207 222, subsection 2 3.

22 **Sec. 46. 32 MRSA §4670**, as enacted by PL 1973, c. 249, is  
amended to read:

24 **§4670. Violation as unfair trade practice**

26 Any violation of this subchapter shall---constitute  
28 constitutes a violation of Title 5, chapter 10 10-A, the Maine  
Unfair Trade Practices Act.

30 **Sec. 47. 32 MRSA §4685-B, sub-§2**, as enacted by PL 1977, c.  
32 440, §2, is amended to read:

34 **2. Failure to defend action under Title 5, chapter 10-A.**  
The transient seller or employee fails to successfully defend any  
action brought against it under Title 5, ~~section 206 et seq.~~  
36 chapter 10-A; or

38 **Sec. 48. 32 MRSA §4695, 2nd ¶**, as enacted by PL 1979, c. 571,  
is amended to read:

40 Any person who is damaged by a violation of any provision of  
42 this chapter, by the seller's breach of the contract for the  
business opportunity or by the seller's violation of Title 5,  
44 section 207 222, relating to the sale, offer for sale or  
promotion of a business opportunity may, bring an action against  
46 the bond or escrow account to recover damages suffered. The  
Attorney General may bring an action against the bond or escrow  
48 account under Title 5, section 209 224, to recover damages  
relating to the sale or offer for sale of a business opportunity  
50 suffered by persons in this State. The aggregate liability of the  
surety or bank or savings institute shall may be only for actual

2 damages and shall may not exceed the amount of the bond or escrow  
account.

4 **Sec. 49. 32 MRSA §4700, sub-§3**, as amended by PL 1991, c. 210,  
§8, is further amended to read:

6  
8 **3. Temporary restraining order.** Upon application by the  
Attorney General, the Superior Court shall issue a temporary  
10 restraining order, under the Maine Unfair Trade Practices Act,  
Title 5, section 209 224, enjoining any business opportunity  
12 seller who has committed an act prohibited by section 4699,  
subsection 1, paragraph A, B or C, from engaging in any conduct  
14 relating to the sale, offering for sale or promotion of business  
opportunities in this State until such time as the seller  
16 satisfies the court that it has complied with the provisions of  
this chapter. The Superior Court shall grant such a temporary  
18 restraining order without requiring a showing of immediate and  
irreparable harm or injury.

20 **Sec. 50. 33 MRSA §589-C, sub-§1**, as enacted by PL 1985, c.  
390, is amended to read:

22  
24 **1.** Any violation of this chapter is a violation of Title  
5, chapter ~~10~~ 10-A.

26 **Sec. 51. 33 MRSA §592, sub-§6**, as enacted by PL 1983, c. 248,  
§3, is amended to read:

28  
30 **6. Violation.** Any violation of this section shall-be is a  
violation of Title 5, chapter ~~10~~ 10-A.

32 **Sec. 52. 38 MRSA §2141, sub-§3**, as enacted by PL 1991, c. 463,  
is amended to read:

34  
36 **3. Penalty.** A violation of this section is a violation of  
Title 5, chapter ~~10~~ 10-A, the Maine Unfair Trade Practices Act.

38  
40 **STATEMENT OF FACT**

42 This bill repeals and replaces the Maine Unfair Trade  
Practices Act. The bill is intended to protect Maine business  
44 and consumers from the unfair or deceptive acts or practices of  
persons in the conduct of any trade or commerce. It is the  
intent of this bill to implement a policy of ending improper  
46 business conduct by providing harsh penalties for engaging in  
unfair or deceptive practices and by encouraging businesses and  
48 consumers to bring claims when an injury has been suffered as a  
result of any unfair or deceptive act or practice.

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52 The procedures set forth by this bill encourage early  
settlement of disputes by allowing statutory damages, attorney's

2 fees and costs, when a person is in violation of the Maine Unfair  
Trade Practices Act and fails to make a reasonable offer of  
4 settlement. The claimant also has a corresponding incentive to  
settle, as the claimant who does not accept a reasonable  
6 settlement offer is not entitled to statutory damages, costs or  
attorney's fees under the law.

8 This bill is also intended to alleviate the ever-increasing  
burden on Maine courts. Cases that normally are litigated until  
10 a settlement is reached should, under this bill, be settled  
before the commencement of an action. Consumers are aided by the  
12 demand provisions that will permit many such claims to be  
resolved without the need for retaining an attorney.

14 The bill is also intended to reduce litigation by providing  
16 a mechanism for penalizing persons with claims, defenses, setoffs  
or counterclaims that a court determines to be frivolous.