

MAINE STATE LEGISLATURE

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E I G H T Y - E I G H T H L E G I S L A T U R E

Legislative Document

No. 19

H. P. 34

House of Representatives, January 14, 1937.

Referred to Committee on Judiciary. Sent up for concurrence and 1000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Wilkes of Portland.

S T A T E O F M A I N E

I N T H E Y E A R O F O U R L O R D N I N E T E E N H U N D R E D
T H I R T Y - S E V E N

AN ACT to Prevent Deceptive Merchandising Practices, to Restrain Unfair Competition in Trade and Industry, and to Protect Fair Trade Practices in Distribution.

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

Sec. 1. Definitions. The words and phrases used herein shall, unless the context otherwise indicates, have the following meanings :

(a) The term "cost to the retailer" shall mean whichever is lower of the following, (1) the purchase price of the merchandise to the retailer, at the retail outlet, or (2) the replacement cost of such merchandise to the retailer, in the quantity last purchased by the retailer, within 30 days prior to the sale of such merchandise by the retailer; less any trade discounts but exclusive of discounts for cash. In all retail sales involving more than one item or commodity, the retailer's selling price on individual items or commodities shall be computed on the "cost to the retailer" as herein defined.

(b) The term "cost to the wholesaler" shall mean and include whichever is lower of the following, (1) the purchase price of the merchandise to the wholesaler, or (2) the replacement cost of such merchandise to the

wholesaler in the quantity last purchased within 60 days prior to the sale of such merchandise by the wholesaler, less any trade discounts but exclusive of discounts for cash. In all wholesale sales involving more than one item or commodity the wholesaler's selling price on individual items or commodities shall be computed on the "cost to the wholesaler" as herein defined.

(c) The terms "cost to the retailer" and "cost to the wholesaler" must be bona fide costs, and sales to retailers and wholesalers at prices which cannot be justified by existing market conditions within this state shall not be used as a basis for computing costs with respect to sales by retailers and wholesalers.

(d) The terms "sell at retail," "sales at retail," and "retail sale" shall mean and include any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the seller's business, of title to tangible personal property to the purchaser for consumption or use other than resale of reprocessing or manufacturing. The above terms shall mean any transfer of such property where title is retained as security for the purchase price but is intended to be transferred later.

(e) The terms "sell at wholesale," "sales at wholesale" and "wholesales" shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual prosecution of the seller's business, of title to tangible personal property to the purchaser for resale. The above terms shall mean any transfer of such property where title is retained as security for the purchase price but is intended to be transferred later.

(f) The term "retailer" shall mean and include every person, partnership, firm, corporation or association engaged in the business of making sales at retail within this state.

(g) The term "wholesaler" shall mean and include every person, partnership, firm, corporation or association engaged in the business of making sales to wholesalers or to retailers within this state.

Sec. 2. Advertising. It is hereby declared that advertising, offers to sell or sales by retailers or wholesalers at less than cost as defined in this act, with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare, and are unfair competition and contrary to public policy, or where the result of such advertising, offers or sales is to deceive or mislead any purchaser or prospective purchaser or to substantially lessen competition or

unreasonably restrain trade. It is further declared that such advertising, offers or sales by any retailer or wholesaler with such intent or effect or result are in contravention of the policy of this act.

Sec. 3. Sales; penalty. Any retailer who shall, in contravention of the policy of this act, offer to sell or sell at retail any product or commodity at less than cost to the retailer as defined in this act, or any wholesaler who shall, in contravention of the policy of this act, advertise, offer to sell or sell at wholesale any article, product or commodity at less than cost to the wholesaler as defined in this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500. Proof of any such advertising, offer to sell or sale by any retailer or wholesaler in contravention of the policy of this act, shall be prima facie evidence of a violation of this act.

Sec. 4. Restraint of sales. In addition to the penalties provided in this act, the county attorney of the county in which the violation occurs, or any person damaged by reason of a violation of this act, shall have the right to apply for an injunction and any court of competent jurisdiction shall have power to restrain sales in violation of this act.

Sec. 5. Exceptions. The provisions of this act shall not apply to sales at retail or sales at wholesale made (a) in an isolated transaction and not in the usual course of business; (b) where merchandise is sold in bona fide clearance sales, if advertised, marked and sold as such; (c) where perishable merchandise must be promptly sold in order to forestall loss; (d) of imperfect or damaged merchandise or merchandise which is being discontinued, if advertised, marked and sold as such; (e) of merchandise sold upon the complete final liquidation of any business; (f) of merchandise sold for charitable purposes or to unemployment relief agencies; (g) of merchandise sold on contract to departments of government and governmental institutions; (h) in meeting prices in good faith of a competitor established in conformity with this act, on merchandise which is the same as to comparable competitive factors, such as weight, quantity, quality, pack or brand; provided, if below cost, written notice is given to the county attorney of the county or the attorney general of the state within 48 hours of such action; (i) by any officer acting under the order or direction of any court.

Sec. 6. Quantity discounts. It shall be unlawful for a seller to allow or offer, whether at wholesale or at retail, to a buyer or buyers, a quantity discount that is in excess of a reasonable relation to the benefit which the

seller derives, by reason of the quantity of such sale or sales, or that is discriminatory as compared with any discount that the seller is allowing or offering to other purchasers under like terms and conditions who are in competition with the buyer or buyers, where the effect may be to substantially lessen competition or unreasonably restrain trade, and it shall be unlawful for a buyer or buyers, knowingly, to accept or demand any such excessive or discriminatory quantity discounts; provided, however, that nothing herein contained shall prevent a seller from selecting his own customers in good faith and not in restraint of trade. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall, for the first offense, be punished by a fine of not less than \$250 nor more than \$500, for a second offense, shall be punished by a fine of not less than \$500 nor more than \$1,000, and for offenses thereafter, shall be punished by a fine of not less than \$1,000 nor more than \$2,500.

Sec. 7. Advertising compensation. It shall be unlawful for a seller of merchandise to allow or offer to a buyer or buyers, whether wholesalers or retailers, any payment for advertising or other distribution service by the buyer or buyers, except in pursuance of a written contract made in good faith, defining the service to be rendered and the payment for it, and unless such contract is separate and distinct from any sales price, and unless a copy of such contract is retained in the files of the seller for a period of not less than 1 year, and be shown and the payment therefor is not in excess of a reasonable relation to the benefit which the seller derives by reason of such service, and it shall be unlawful for a buyer or buyers of merchandise, knowingly, to accept or demand any such payment, except in pursuance of a contract as above provided, a copy of which contract must be retained in the files of the buyer or buyers for a period of not less than 1 year. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall, for the first offense, be punished by a fine of not less than \$250 nor more than \$500; for a second offense, shall be punished by a fine of not less than \$500 nor more than \$1,000, and for offenses thereafter, shall be punished by a fine of not less than \$1,000 nor more than \$2,500.

Sec. 8. Title. This act may be known and cited as the "Unfair Sales Act."

Sec. 9. Validity of act. If any section, sentence or clause of this act shall for any reason be held invalid or unconstitutional, such decision shall not affect the validity of the remaining parts hereof.