

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. 49

H. P. 115

House of Representatives, January 20, 1937.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Philbrick of Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-SEVEN

**AN ACT to Protect Trade Mark Owners, Distributors and the Public
against Injurious and Uneconomic Practices in the Distribution of
Articles of Standard Quality under a Trade Mark, Brand or Name.**

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

Sec. 1. Certain contracts not invalid. A. No contract relating to the sale or resale of a commodity which bears, or the label or content of which bears, the trade mark, brand or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others shall be deemed in violation of any law of the state by reason of any of the following provisions which may be contained in such contract:

(1) That the buyer will not resell such commodity at less than the minimum price stipulated by the vendor.

(2) That the producer or vendee of a commodity require upon the sale of such commodity to another, that such purchaser agree that he will not, in turn, resell such commodity at less than the minimum price stipulated by such producer or vendee.

B. Such provisions in any contract shall be deemed to contain or imply conditions that such commodity may be resold without reference to such agreement in the following cases :

(1) In closing out the owner's stock for the purpose of discontinuing delivery of any such commodity; provided, however, that such stock is first offered to the manufacturer of such stock at the original invoice price, at least 10 days before such stock shall be offered for sale to the public.

(2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

(3) By any officer acting under the orders of any court.

Sec. 2. Unfair competition defined. Wilfully and knowingly advertising, offering for sale, selling or disposing of any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of section 1, whether the person so advertising, offering for sale, selling or disposing of is or is not a party to such contract, is unfair competition and is actionable at the suit of any person injured thereby.

Sec. 3. Limitation. This act shall not apply to any contract or agreement between producers or between wholesalers, or between retailers as to sale or resale prices.

Sec. 4. Injunction and recovery of damages provided for. Any person, firm, corporation or incorporated trade association may maintain an action in the supreme judicial or superior court to enjoin a continuance of any act or acts in violation of section 2 of this act and if injured thereby for the recovery of damages. If, in such action the court shall find that the defendant is violating or has violated any of the provisions of section 2 of this act, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the such plaintiff shall be entitled to recover from the defendant 3 times the amount of the actual damages, if any, sustained.

Sec. 5. Penalty. Any person, firm or corporation, whether as principal, agent, officer or director, for himself, or itself, or for another person, or for any firm or corporation, who or which shall violate any of the provisions of section 2 of this act, is guilty of a misdemeanor for each single violation, and upon conviction thereof, shall be punished by a fine of not

less than \$100, nor more than \$1000, or by imprisonment for not more than 6 months, or by both said fine and imprisonment, in the discretion of the court.

Sec. 6. Title. This act may be known and cited as the "Fair Trade Act."