

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. 450

S. P. 265

In Senate, February 10, 1937.

Referred to Committee on Judiciary and 500 copies ordered printed. Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Owen of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-SEVEN

AN ACT to Protect Trade-mark Owners, Producers, Distributors and the General Public against Injurious and Uneconomic Practices in the Distribution of Competitive Commodities Bearing a Distinguishing Trade-mark, Brand or Name, through the Use of Voluntary Contracts, etc.

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

Sec. 1. Definitions. The following terms, as used in this act, are hereby defined as follows:

- (a) "Commodity" means any subject of commerce.
- (b) "Producer" means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.
- (c) "Wholesaler" means any person selling a commodity other than a producer or retailer.
- (d) "Retailer" means any person selling a commodity to consumers for use.
- (e) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization.

Sec. 2. Contract. No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-

mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others shall be deemed in violation of any law of the state of Maine by reason of any of the following provisions which may be contained in such contract :

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

(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(c) That the seller will not sell such commodity :

(1) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell ; or

(2) To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price.

Sec. 3. Evasion of resale price restriction, prevented. For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of this act (except to the extent authorized by the said contract) :

(a) The offering or giving of any article of value in connection with the sale of such commodity ;

(b) The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale ; or

(c) The sale or offering for sale of such commodity in combination with any other commodity, shall be deemed a violation of such resale price restriction, for which the remedies prescribed by section 6 of this act shall be available.

Sec. 4. Minimum resale price. No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this act, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or by a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name.

Sec. 5. Regulations. No contract containing any of the provisions enumerated in section 2 of this act shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases :

(a) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and plain notice of the fact is given to the public ; provided the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price ;

(b) When the trade-mark, brand or name is removed or wholly obliterated from the commodity and is not used or directly or indirectly referred to in the advertisement or sale thereof ;

(c) When the goods are altered, second-hand, damaged or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity ;

(d) By any officer acting under an order of court.

Sec. 6. Unfair competition. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

Sec. 7. Exceptions. This act shall not apply to any contract or agreement between or among producers or distributors or between or among wholesalers or between or among retailers as to sale or resale prices.

Sec. 8. Validating clause. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Sec. 9. Saving clause. All acts or parts of acts inconsistent herewith are hereby repealed to the extent of such inconsistency.

Sec. 10. Title. This act may be known and cited as the "Fair Trade Act."