

MAINE STATE LEGISLATURE

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

Legislative Document

No. 577

S. P. 324

In Senate, February 9, 1939.

Referred to Committee on Judiciary. Sent down for concurrence and 1500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Senator Beckett of Washington.

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

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT Defining and Prohibiting Unfair Sales Practices.

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

Sec. 1. Definitions. (a) The term "cost to the retailer" shall mean the invoice cost of the merchandise to the retailer within 30 days prior to the date of sale, or the replacement cost of the merchandise to the retailer within 30 days prior to the date of sale, in the quantity last purchased, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added (1) freight charges not otherwise included in the cost of the merchandise, (2) cartage to the retail outlet if performed or paid for by the retailer, which cartage cost shall be deemed to be $\frac{3}{4}$ of 1% of the cost of the merchandise to the retailer, unless said retailer claims and proves a lower cartage cost, and (3) a mark-up to cover in part the cost of doing business, which mark-up in the absence of proof of a lesser cost, shall be 6% of the total cost at the retail outlet;

(b) The term "cost to the wholesaler" shall mean the invoice cost of the merchandise to the wholesaler within 30 days prior to the date of sale, or the replacement cost of the merchandise to the wholesaler within 30 days prior to the date of sale, in the quantity last purchased, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added (1) freight charges not otherwise included in the

cost of the merchandise, and (2) cartage to the retail outlet if performed or paid for by the wholesaler, which cartage cost shall be deemed to be $\frac{3}{4}$ of 1% of the cost of the merchandise to the wholesaler, unless said wholesaler claims and proves a lower cartage cost, and (3) a mark-up to cover in part the cost of doing business, which mark-up in the absence of proof of a lesser cost, shall be 2% of the total cost at the wholesale establishment;

(c) Where 2 or more items are advertised, offered for sale or sold at a combined price, the price of each such item shall be determined in the manner set forth in paragraphs (a) and (b);

(d) The terms "cost to the retailer" and "cost to the wholesaler" as defined in said paragraphs (a) and (b) shall mean bona fide costs; and sales to consumers, 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 replacement costs with respect to sales by retailers and wholesalers;

(e) The terms "sell at retail," "sales at retail" and "retail sale" shall mean and include any transfer of title to tangible personal property for a valuable consideration made, in the ordinary course of trade or in the usual prosecution of the seller's business, to the purchaser for consumption or use other than resale or further processing or manufacturing. The terms "sell at wholesale," "sales at wholesale" and "wholesale sale" shall mean and include any such transfer of title to tangible personal property for the purpose of resale or further processing or manufacturing. In this and in the preceding paragraph the above terms shall include any such transfer of property where title is retained by the seller as security for the payment of the purchase price;

(f) The term "retailer" shall mean and include every person, co-partnership, corporation or association engaged in the business of making sales at retail within this state; provided, that in the case of a retailer engaged in the business of making sales both at retail and at wholesale, such term shall be applied only to the retail portion of such business; and

(g) The term "wholesaler" shall mean and include every person, co-partnership, corporation or association engaged in the business of making sales at wholesale within this state; provided, that in the case of a wholesaler engaged in the business of making sales both at wholesale and at retail, such term shall be applied only to the wholesale portion of such business;

(h) Where a retailer sells at retail any merchandise which is the product of his or its own manufacture or which has been purchased by him or

it at the purchase price or prices available to wholesalers, in the absence of proof of a lesser cost, both the wholesale mark-up of 2% and the retail mark-up of 6% to cover in part the cost of doing business, as provided in paragraphs (a) and (b), shall be added in determining the "cost to the retailer" of such merchandise.

Sec. 2. Penalty. Any retailer who, with intent to injure competitors or destroy competition, advertises, offers to sell or sells at retail any item of merchandise at less than cost to the retailer, or any wholesaler who, with intent as aforesaid, advertises, offers to sell or sells at wholesale any item of merchandise at less than cost to the wholesaler, shall, if the offender is an individual, be punished by a fine of not more than \$500 or by imprisonment for not less than 1 month or more than 1 year, or both; or, if the offender is a corporation, by a fine as aforesaid. Evidence of any advertisement, offer to sell or sale of any item of merchandise by any retailer or wholesaler at less than cost to him as herein defined shall be prima facie evidence of intent to injure competitors or destroy competition.

Sec. 3. Exceptions. Sections 1 and 2 and sections 4 to 7, inclusive, shall not apply with respect to advertising or offering to sell, or selling, at retail or at wholesale, as the case may be, if done (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 or offered for sale as such or marked and sold as such, or where merchandise is marked down in an effort to sell the same after bona fide efforts to sell the same prior to such markdown; (c) where perishable merchandise must be sold promptly in order to forestall loss; (d) where merchandise is imperfect or damaged or its sale is being discontinued, if advertised or offered for sale as such or marked and sold as such; (e) where merchandise is advertised or offered for sale or sold upon the final liquidation of any business; (f) where merchandise is advertised or offered for sale or sold for charitable purposes or to relief agencies; (g) where merchandise is sold on contract to any department, board or commission, of the state or of any political subdivision thereof, or to any institution maintained thereby; (h) where the price of merchandise is made in good faith to meet legal competition; or (i) where merchandise is advertised or offered for sale or sold by any fiduciary or other officer acting under the order or direction of any court.

Sec. 4. Person injured may bring bill in equity. (a) Any person injured by any violation or who shall suffer injury because of any threatened violation of this act, may bring a bill in equity in the supreme judicial court or the superior court, in term time or vacation, in the county where

he resides, to prevent, restrain or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation or threatened violation. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant 3 times the amount of actual damages by him sustained and the costs of suit including reasonable attorneys' fees.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages alone in the superior court in the county where he resides and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section.

Sec. 5. Application. Whenever the application of any provision of any other law of this state conflicts with the application of any provision of sections 1 to 7, inclusive, said sections shall prevail.

Sec. 6. Validity. If any provision of said sections 1 to 7, inclusive, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of said sections, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 7. Title of act. Sections 1 to 7, inclusive, shall be known, and may be cited, as the "Unfair Sales Act."