

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 1317**

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H. P. 1937

House of Representatives, March 9, 1949.

Referred to Committee on Mercantile Affairs and Insurance. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. White of Auburn.

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**STATE OF MAINE**

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-NINE

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**AN ACT Relating to Unfair Methods of Competition and Practices in the  
Business of Insurance.**

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

**R. S., c. 56, §§ 130-136, repealed and replaced.** Sections 130 to 136, inclusive, of chapter 56 of the revised statutes, as amended by chapter 14 of the public laws of 1947, are hereby repealed and the following sections to be numbered 130 to 136-F, inclusive, are enacted in place thereof:

**'Unfair Methods of Competition and Trade Practices**

**Sec. 130. Declaration of purpose.** The purpose of sections 130 to 136-F, inclusive, is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in the act of congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

**Sec. 131. Definitions.** When used in sections 130 to 136-F, inclusive:

I. "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit

society and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters.

II. "Commissioner" shall mean the insurance commissioner of this state.

Sec. 132. Unfair methods of competition or unfair and deceptive acts or practices prohibited. No person shall engage in this state in any trade practice which is defined in sections 130 to 136-F, inclusive, as, or determined pursuant to sections 130 to 136-F, inclusive, to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Sec. 133. Unfair methods of competition and unfair or deceptive acts or practices defined. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

I. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit or surrender his insurance.

II. False information and advertising generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading..

III. Defamation. Making, publishing, disseminating or circulating, di-

rectly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

#### IV. Boycott, coercion and intimidation.

A. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

B. Entering into agreement to commit any act of boycott, coercion or intimidation, or in pursuance thereof, monopolizing or attempting to monopolize any part of the business of insurance.

V. False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

VI. Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, accompany stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

#### VII. Unfair discrimination.

A. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates

charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

B. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

#### VIII. Rebates.

A. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling or purchasing or offering to give, sell or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

B. To knowingly receive or accept, directly or indirectly, any rebate of premium or part thereof, or agent's solicitor's or broker's commission thereon payable on any policy of insurance, or any special favor or advantage in the dividend or other benefit to accrue thereon, or receive anything of value as inducement to such insurance or in connection therewith, which is not specified, promised or provided for in the policy of insurance.

C. Nothing in subsection VII or paragraph A of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

1. in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-

participating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

2. in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

3. readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

4. the right of any life insurance company doing business in this state from issuing policies of group insurance with or without annuities at rates less than the usual rate of premiums for individual policies as otherwise provided for by law, nor to prohibit an agent from receiving commissions from his company for insurance on himself.

**IX.** Any violation of sections 138, 249, 250, 251, 252, 253, 254, 256 and 257.

**Sec. 134. Power of commissioner.** The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 132.

**Sec. 135. Hearings, witnesses, appearances, production of books and service of process.** Whenever the commissioner shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in section 133, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 14 days after the date of the service thereof.

At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from

the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

Nothing contained in sections 130 to 136-F, inclusive, shall require the observance at any such hearing of formal rules of pleading or evidence.

The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence or other documents which he deems relevant to the inquiry. The commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the superior court of Kennebec county or the county where such party resides, or a justice thereof, in term time or vacation, on application of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

Statements of charges, notices, orders and other processes of the commissioner under sections 130 to 136-F, inclusive, may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

Sec. 136. Cease and desist orders and modifications thereof. If, after such hearing, the commissioner shall determine that the method of competition or the act or practice in question is defined in section 133 and that the person complained of has engaged in such method of competition, act or practice in violation of sections 130 to 136-F, inclusive, he shall reduce his findings to writing and shall issue and cause to be served upon the

person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice. The commissioner in addition to issuing a cease and desist order may revoke or suspend any license issued to any such company, association, society, agent or broker for a period not exceeding 1 year.

Until the expiration of the time allowed under the 1st paragraph of section 136-A for filing a petition for review if no such petition has been duly filed within such time or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the superior court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued or action taken by him under this section.

After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued or action taken by him under this section whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

Sec. 136-A. Judicial review of cease and desist orders. Any person required by an order of the commissioner under section 136 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 133 or whose license has been suspended or revoked may obtain a review of such order or act by filing in the superior court of Kennebec county, or justice thereof, in term time or vacation, within 30 days from the date of the service of such order, a written petition praying that the order of the commissioner be set aside. A copy of such petition shall be forthwith served upon the commissioner, and thereupon the commissioner forthwith shall certify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner. Upon such filing of the petition and transcript such court, or justice thereof, in term time or vacation, shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order or act of the commissioner, and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in such transcript a decree modifying, affirming or reversing the order or act of the commissioner, in whole or in part. The findings of the



commissioner as to the facts, if supported by substantial evidence, shall be conclusive.

To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order or act of the commissioner. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact, or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings which, if supported by substantial evidence shall be conclusive, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

A cease and desist order issued by the commissioner under section 136 shall become final

I. Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside his order to the extent provided in the 2nd paragraph of section 136; or

II. Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

No order of the commissioner under sections 130-136-F, inclusive, or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

Sec. 136-B. Procedure as to unfair methods of competition and unfair or deceptive acts or practices which are not defined. Whenever the commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in section 133, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hear-

ing thereon to be held at a time and place fixed in the notice, which shall not be less than 14 days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 135. The commissioner shall, after such hearing, make a report in writing in which he shall state his findings as to the fact, and he shall serve a copy thereof upon such person.

If such report charges a violation of sections 130 to 136-F, inclusive, and if such method of competition, act or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after 30 days after the service of such report cause a petition to be filed in the superior court of this state within the county wherein the person resides or has his principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public *pendente lite*.

A transcript of the proceedings before the commissioner including all evidence taken and the report and findings shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.

If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public and that the findings of the commissioner are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

Sec. 136-C. Judicial review by intervenor. If the report of the commissioner does not charge a violation of sections 130 to 136-F, inclusive, then any intervenor in the proceedings may within 30 days after the service of such report, cause a petition to be filed in the superior court of Kennebec

county in term time or vacation for a review of such report. Upon such review, the court or a justice thereof, in term time or vacation, shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such report of the commissioner, constitutes a violation of sections 130 to 136-F, inclusive.

Sec. 136-D. Penalty. Any person who violates a cease and desist order of the commissioner under section 136, after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Maine a sum not to exceed \$50, which may be recovered in a civil action, except that, if such violation is found to be wilful, the amount of such penalty shall be a sum not to exceed \$500.

Sec. 136-E. Provisions of act additional to existing law. The powers vested in the commissioner by sections 130 to 136-F, inclusive, shall be additional to any other powers to enforce any penalties, fines, revocations or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

Sec. 136-F. Immunity from prosecution. If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must none the less comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding, provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the insurance law of this state. Any such individual may execute, acknowledge and file in the office of the commissioner, a statement expressly waiving such immunity or privilege in re-

spect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.'