

MAINE STATE LEGISLATURE

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

Legislative Document

No. 482

S. P. 179

In Senate, February 5, 1959

Referred to the Committee on Business Legislation. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Fournier of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-NINE

AN ACT Creating an Unfair Sales Act.

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

Sec. 1. R. S., c. 184-A, additional. The Revised Statutes are amended by adding a new chapter 184-A, to read as follows:

'Chapter 184-A.

Unfair Sales Act.

Sec. 1. Definitions. When used in this chapter:

I. 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

A. Freight charges not otherwise included in the cost of the merchandise;

B. 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

C. 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;

II. 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

A. Freight charges not otherwise included in the cost of the merchandise; and

B. 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

C. 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;

III. 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 subsections I and II;

IV. The terms "cost to the retailer" and "cost to the wholesaler" as defined in subsections I and II 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;

V. 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 subsection, 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;

VI. The term "retailer" shall mean and include every person, copartnership, corporation or association engaged in the business of making sales at retail within this State. 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

VII. The term "wholesaler" shall mean and include every person, copartnership, corporation or association engaged in the business of making sales at wholesale within this State. 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;

VIII. Whenever any person, copartnership, corporation or association subject to this chapter, in the course of doing business, performs the functions of both wholesaler and retailer without actually being engaged in the business

of making sales at wholesale, the term "wholesaler" shall mean and include that function of the business of preparation for sale at the retail outlet, and the term "retailer" shall be applied only to the retail portion of such business.

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 together with any sales taxes or excises levied or imposed upon such merchandise by the State or the United States of America not already included in the invoice or replacement 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, together with any sales taxes or excises levied or imposed upon such merchandise by the State or the United States of America not already included in the invoice or replacement 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 one month nor more than one 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, together with any sales taxes or excises levied or imposed upon such merchandise by the State or the United States of America not already included in the invoice or replacement cost to him, shall be prima facie evidence of intent to injure competitors or destroy competition.

Sec. 3. Certain sales not included. This chapter 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

- I. In an isolated transaction and not in the usual course of business;
- II. 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;
- III. Where perishable merchandise must be sold promptly in order to forestall loss;
- IV. 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;
- V. Where merchandise is advertised or offered for sale or sold upon the final liquidation of any business;
- VI. Where merchandise is advertised or offered for sale or sold for charitable purposes or to relief agencies;
- VII. 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;
- VIII. Where the price of merchandise is made in good faith to meet competition; or

IX. 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. Superior court jurisdiction. Upon complaint of any person, the Superior Court shall have jurisdiction to restrain and enjoin any act forbidden or declared illegal by any provision of this chapter. It shall be the duty of the several county attorneys, in their respective counties, to enforce and restrain the violation of this chapter.

Sec. 5. Application in case of conflict. Whenever the application of any provision of any other law of this State conflicts with the application of any provision of this chapter, this chapter shall prevail.

Sec. 6. Invalidity. If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of said chapter, 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. This chapter shall be known, and may be cited, as the "Unfair Sales Act."

Sec. 2. R. S., c. 184, repealed. Chapter 184 of the Revised Statutes, as amended by sections 90 and 91 of chapter 429 of the public laws of 1957, is repealed.