

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

Eighty-eighth and Eighty-ninth
Legislatures

OF THE

STATE OF MAINE

From April 24, 1937 to April 21, 1939

AND

MISCELLANEOUS STATE PAPERS

Published by the Secretary of State, in conjunction
with the Revisor of Statutes in accordance with the
Resolves of the Legislature approved June 28, 1820,
March 18, 1840, March 16, 1842 and Acts approved
August 6, 1930 and April 2, 1931.

KENNEBEC JOURNAL
AUGUSTA, MAINE
1939

PUBLIC LAWS

OF THE

STATE OF MAINE

As Passed by the Eighty-ninth Legislature

1939

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who shall knowingly operate or permit to be operated a motor vehicle in this state without securing a certificate of title as provided in this act, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both such fine and imprisonment, and any person who sells a motor vehicle without complying with the requirements of section 2 of Article II hereof, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

Sec. 4. Constitutionality. If any phrase, clause, sentence, paragraph or section of this act shall be held by any court to be unconstitutional, such judgment shall not affect any other part of this act.

Approved April 19, 1939.

Chapter 240

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, copartnership, 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, copartnership, 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

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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.

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 may 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."

Approved April 19, 1939.

Chapter 241

AN ACT Relating to Medical Examiners and Their Duties.

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

Sec. 1. R. S., c. 151, § 1, amended. Section 1 of chapter 151 of the revised statutes is hereby repealed and the following substituted in lieu thereof:

‘Sec. 1. Appointment of medical examiners; their number and duties. The governor, with the advice and consent of the council, shall appoint for a term of 4 years, or during the pleasure of the governor and council, medical examiners for each county in the state, who shall be able and discreet men, learned in the science of medicine and anatomy, and bona fide residents of the county for which they are appointed. The number of medical examiners so to be appointed shall be as follows: for the counties of Franklin, Hancock, Knox, Lincoln, Piscataquis, Sagadahoc, Somerset and Waldo, 2 each; for the counties of Oxford and Washington, 3 each; for the counties of Aroostook, Kennebec and York, 4 each; for the county of Androscoggin, 5; and for the counties of Cumberland and Penobscot, 6 each; and they shall be appointed with reference to territorial distribution. Each medical examiner before entering upon the duties of his office, shall be duly sworn to the faithful performance of his duty. They shall make examinations as hereinafter provided upon the view of the dead bodies