

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1963 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 4

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**Discard Previous Supplement**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1963

**Sec. 4. Person injured may bring bill in equity.—**

**I. Injunctive relief; damages and costs.** Any person damaged or who is threatened with loss or injury by reason of a violation or threatened violation of this chapter may bring a civil action in the superior court 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 chapter 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 the action including reasonable attorneys' fees.

**III.** In all proceedings under this section, proof of consistent and repeated advertisements, offers to sell or sales of any items of merchandise by any retailer or wholesaler at less than cost to them as defined in this chapter, said advertisements, offers to sell and sales thereby forming a pattern of sales below cost, shall be prima facie evidence of intent to injure competitors and destroy competition. (R. S. c. 170, § 4. 1957, c. 429, § 91. 1959, c. 275, § 2. 1961, c. 317, § 627.)

**Cross reference.**—See note to § 1.

**Effect of amendments.**—The 1957 amendment repealed former subsection III.

The 1959 amendment added the present subsection III to this section.

The 1961 amendment, which amended subsection I, substituted "a civil action in the superior court" for "a bill in equity in the supreme judicial court or the superior court in term time or vacation", substituted "the action" for "suit" in the last sentence thereof and deleted "the provisions of" preceding "this chapter" in two places.

As the rest of the section was not affected by the amendments, it is not set out.

**Effective date.**—The 1957 act repealing former subdivision III became effective on its approval, October 31, 1957.

**Part of this section unconstitutional.**—While the Unfair Sales Act is constitutional insofar as it seeks to prevent unfair competition and to that extent comes

within the police powers of the state, the provisions of this section with regard to injunctive relief and subsection III of this section with regard to prima facie evidence, in civil actions, of intent to injure competitors and destroy competition are unconstitutional. The prima facie rule established by this section lifts from the shoulders of the state the burden of proving the crime, and has, in fact, the practical effect of removing the presumption of innocence and creating a presumption of guilt which the defendant must rebut or disprove in order to escape conviction. *Wiley v. Sampson-Ripley Co.*, 151 Me 400, 120 A. (2d) 289, decided prior to the 1957 and 1959 amendments.

The proceedings for injunctive relief or for recovery of damages create a presumption of violation of the statute by merely showing the evidence of a conduct, the sale below cost, which is legal, proper and common practice. *Wiley v. Sampson-Ripley Co.*, 151 Me. 400, 120 A. (2d) 289.

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**Chapter 185.****Uniform Sales Act.**

**Cross reference.**—For provisions of Uniform Commercial Code re sales, see c. 190, §§ 2-101 to 2-725.

**Secs. 1-3.** Repealed by Public Laws 1963, c. 362, § 34.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

**Sec. 4.** Repealed by Public Laws 1963, c. 362, § 34.

## I. GENERAL CONSIDERATION.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

frauds under all oral contract for sale of ten carloads of potatoes and contract was properly treated as single and entire. *Maine Potato Growers, Inc. v. H. Sacks & Sons*, 152 Me. 204, 126 A (2d) 919.

## IV. THE ACCEPTANCE.

**Delivery of and payment for four carloads of potatoes satisfied the statute of**

**Secs. 5-14.** Repealed by Public Laws 1963, c. 362, § 34.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

**Sec. 15.** Repealed by Public Laws 1963, c. 362, § 34.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

**Section ends "sealed container" rule.**—The Uniform Sales Act, in establishing implied warranties under this section, ended the "sealed container" rule at common law, and the rule of *Bigelow v. Maine Central R. Co.*, 110 Me. 105, 85 A. 396, is not sound under the act. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**"Reasonably fit for such purpose" and "merchantable quality."** — "Reasonably fit for such purpose," under subsection I and "merchantable quality," under subsection II, are equivalent with respect to food for human consumption. The test is whether the food is fit to eat. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**The difference between the warranties of subsection I and subsection II** lies in the factor of reliance, present in subsection I and not in subsection II, and in the factor of description, present in subsec-

tion II, and not in subsection I. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**The test under subsection II** is not that buyer and seller treated the goods as merchantable, but whether they were so in fact. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**Frankfurts sold by description.**—Frankfurts, sealed in a plain plastic bag and advertised as "Jordan's Hot Dogs," were sold by description within the meaning of subsection II. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**Benefit of warranty through chain of distribution.**—The purchaser-consumer has the benefit of a warranty of merchantability under subsection II against the retailer. In turn the retailer may reach his seller, and so through the chain of distribution to the manufacturer. *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**Cited in *McNally v. Ray***, 151 Me. 277, 117 A. (2d) 342.

**Secs. 16-73.** Repealed by Public Laws 1963, c. 362, § 34.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

**Sec. 74.** Repealed by Public Laws 1963, c. 362, § 34.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

**The Uniform Sales Act codified, extended and liberalized the common law.**

*Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**And rules inconsistent with the act are thereby abolished.** — *Sams v. Ezy-Way Foodliner Co.*, 157 Me. 10, 170 A. (2d) 160.

**Secs. 75-78.** Repealed by Public Laws 1963, c. 362, § 34.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.