

## CHAPTER 10

### UNFAIR TRADE PRACTICES

#### §205-A. Short title

This chapter will be known as and may be cited as the Maine Unfair Trade Practices Act. [PL 1987, c. 307, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 307, §1 (NEW).

#### §206. Definitions

The following words, as used in this chapter, unless the context otherwise requires or a different meaning is specifically required, shall mean: [PL 1969, c. 577, §1 (NEW).]

**1. Documentary material.** "Documentary material" shall include the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording wherever situate. [PL 1969, c. 577, §1 (NEW).]

**2. Person.** "Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity. [PL 1969, c. 577, §1 (NEW).]

**3. Trade and commerce.** "Trade" and "commerce" shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State. [PL 1969, c. 577, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 577, §1 (NEW).

#### §207. Unlawful acts and conduct

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful. [PL 1969, c. 577, §1 (NEW).]

**1. Intent.** It is the intent of the Legislature that in construing this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 45(a)(1) of the Federal Trade Commission Act (15 United States Code 45(a)(1)), as from time to time amended. [PL 2007, c. 466, Pt. A, §4 (AMD).]

**2. Rules and regulations.** The Attorney General may make rules and regulations interpreting this section. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of 15 U.S.C. 45(a)(1) (The Federal Trade Commission Act) as from time to time amended. Evidence of a violation of a rule or regulation made by the Attorney General shall constitute prima facie evidence of an act or practice declared to be unlawful by this chapter in any action thereafter brought under this chapter. [PL 1973, c. 322 (AMD).]

#### SECTION HISTORY

PL 1969, c. 577, §1 (NEW). PL 1973, c. 322 (AMD). PL 2007, c. 466, Pt. A, §4 (AMD).

**§208. Exceptions**

Nothing in this chapter shall apply to: [PL 1969, c. 577, §1 (NEW).]

**1. Regulatory boards.** Transactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the State or of the United States. This exception applies only if the defendant shows that:

A. Its business activities are subject to regulation by a state or federal agency; and [PL 2007, c. 222, §1 (NEW).]

B. The specific activity that would otherwise constitute a violation of this chapter is authorized, permitted or required by a state or federal agency or by applicable law, rule or regulation or other regulatory approval. [PL 2007, c. 222, §1 (NEW).]

[PL 2007, c. 222, §1 (AMD).]

**2. Interstate commerce.**

[PL 1981, c. 569 (RP).]

**3. Complaints.**

[PL 1973, c. 323, §2 (RP).]

**SECTION HISTORY**

PL 1969, c. 577, §1 (NEW). PL 1973, c. 323, §§1,2 (AMD). PL 1981, c. 569 (AMD). PL 2007, c. 222, §1 (AMD).

**§209. Injunction; procedures**

Whenever the Attorney General has reason to believe that a person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public interest, the Attorney General may bring an action in the name of the State against the person to restrain by temporary or permanent injunction the use of the method, act or practice and the court may make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of the unlawful method, act or practice, any moneys or property, real or personal, that may have been acquired by means of the method, act or practice. At least 10 days prior to commencement of an action under this section, the Attorney General shall notify the person of the intended action, and give the person an opportunity to confer with the Attorney General in person or by counsel or other representative as to the proposed action. Notice must be given to the person by mail, postage prepaid, sent to the person's usual place of business, or if the person has no usual place of business, to the person's last known address. The Attorney General may proceed without notice as required by this section upon a showing of facts by affidavit of immediate irreparable harm to the consumers of the State. The action may be brought in the Superior Court of the county in which the person resides or has the person's principal place of business, or may be brought in the Superior Court of Kennebec County. Those courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter. A district attorney or law enforcement officer, receiving notice of any alleged violation of this chapter, shall immediately forward written notice of the alleged violation with any other information that the attorney or officer may have to the office of the Attorney General. A person who violates the terms of an injunction issued under this section shall forfeit and pay to the State, to be applied in the carrying out of this chapter, a civil penalty of not more than \$10,000 for each violation. For the purposes of this section, the court issuing the injunction retains jurisdiction, and the cause must be continued, and in such cases the Attorney General acting in the name of the State may petition for recovery of the civil penalty. In any action under this section where a permanent injunction is issued, the court may order the person against whom the permanent injunction has been issued to pay to the State the costs of the investigation of that person by

the Attorney General and the costs of the suit, and the funds must accrue to the General Fund. [RR 2023, c. 2, Pt. B, §32 (COR).]

In any action under this section where a permanent injunction is denied, the court may order the State to pay the costs of the defense of the prevailing party or parties and the costs of the suit upon a finding by the court that the action was frivolous. [PL 1981, c. 339 (NEW).]

In any action by the Attorney General brought against the defendant for violating the terms of an injunction issued under this section, the court may make such orders or judgments as may be necessary to restore to any persons who have suffered any ascertainable loss by reason of such conduct found to be in violation of an injunction, any money or property, real or personal, which may have been acquired by means of such conduct. Each intentional violation of section 207 in which the Attorney General establishes that the conduct giving rise to the violation is either unfair or deceptive is a violation for which a civil penalty of not more than \$10,000 shall be adjudged. The Attorney General may seek to recover civil penalties for violations of section 207 which are intentional and are unfair or deceptive. The Attorney General in seeking civil penalties has the burden of proving that the conduct was intentional and was unfair or deceptive notwithstanding any other statute which declares a violation of that statute an unfair trade practice. These penalties shall be applied in the carrying out of this chapter. [PL 1989, c. 239 (AMD).]

#### SECTION HISTORY

PL 1969, c. 577, §1 (NEW). PL 1971, c. 229 (AMD). PL 1971, c. 338, §§1,2 (AMD). PL 1971, c. 622, §8 (AMD). PL 1973, c. 419, §§1,2 (AMD). PL 1973, c. 567, §20 (AMD). PL 1975, c. 199 (AMD). PL 1981, c. 339 (AMD). PL 1987, c. 307, §2 (AMD). PL 1989, c. 239 (AMD). RR 2023, c. 2, Pt. B, §32 (COR).

#### **§210. Discontinuance; costs**

In any case where the Attorney General has authority to institute an action or proceeding under section 209, in lieu thereof the Attorney General may accept an assurance of discontinuance of any method, act or practice in violation of this chapter from any person alleged to be engaged or to have been engaged in the method, act or practice. The assurance may include a stipulation for the voluntary payment by that person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved buyers, or both. Any such assurance of discontinuance must be in writing and be filed with the Superior Court of Kennebec County. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest. Evidence of a violation of the assurance constitutes prima facie evidence of an act or practice declared to be unlawful by this chapter in any action thereafter brought under this chapter. [RR 2023, c. 2, Pt. B, §33 (COR).]

#### SECTION HISTORY

PL 1969, c. 577, §1 (NEW). PL 1973, c. 320 (AMD). RR 2023, c. 2, Pt. B, §33 (COR).

#### **§211. Examination; notice requirements**

Whenever the Attorney General believes a person to be or to have been in violation of this chapter, the Attorney General may examine or cause to be examined for that purpose any books, records, papers and memoranda of whatever nature relevant to the alleged violation. The Attorney General may require the attendance of the person or of any other person having knowledge in the premises at any place in the county where the person resides or has a place of business or in Kennebec County if the person is a nonresident or has no place of business within the State, and may take testimony and require proof material for that person's information, and may administer oaths or take acknowledgement in respect of any book, record, paper or memorandum. The Attorney General shall serve notice of the time, place and cause of the examination or attendance at least 10 days prior to the date of the examination. [RR 2023, c. 2, Pt. B, §34 (COR).]

**1. Service.** Service of any such notice may be made by:

A. Delivering a duly executed copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; [PL 1969, c. 577, §1 (NEW).]

B. Delivering a duly executed copy thereof to the principal place of business in this State of the person to be served; or [PL 1969, c. 577, §1 (NEW).]

C. Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this State or, if that person does not have a place of business in this State, to the person's principal office or place of business. [RR 2023, c. 2, Pt. B, §35 (COR).]

[RR 2023, c. 2, Pt. B, §35 (COR).]

**2. Contents.** Each such notice shall:

A. State the time and place for taking the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; [RR 2023, c. 2, Pt. B, §36 (COR).]

B. State the statute and section thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation; [PL 1969, c. 577, §1 (NEW).]

C. Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demand; [PL 1969, c. 577, §1 (NEW).]

D. Prescribe a return date within which the documentary material is to be produced; and [PL 1969, c. 577, §1 (NEW).]

E. Identify the members of the Attorney General's staff to whom such documentary material is to be made available for inspection and copying. [PL 1969, c. 577, §1 (NEW).]

[RR 2023, c. 2, Pt. B, §36 (COR).]

**3. Exceptions.** No such notice shall:

A. Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or [PL 1969, c. 577, §1 (NEW).]

B. Require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum issued by a court of this State. [PL 2001, c. 370, §1 (AMD).]

[PL 2001, c. 370, §1 (AMD).]

**4. Disclosure of documentary material.** Documentary material demanded pursuant to this section must be produced for inspection, reproduction and copying during normal business hours at the principal office or place of business of the person served, in the county where that person resides or has a place of business, in Kennebec County if the person served is a nonresident or has no place of business within the State or at such other times and places as may be agreed upon by the person served and the Attorney General. Any book, record, paper, memorandum or other information produced by any person pursuant to this section, unless otherwise ordered by a court of this State for good cause shown, may not be disclosed to any person other than the authorized agent or representative of the Attorney General unless with the consent of the person producing the same, except that such material or information may be disclosed by the Attorney General in court pleadings or other papers filed in court.

[PL 2001, c. 370, §2 (NEW).]

**5. Motion for additional time, to modify or set aside or grant protective order.** At any time prior to the date specified in the notice or within 21 days after the notice has been served, whichever

period is shorter, the court upon motion for good cause shown may extend that reporting date or modify or set aside that demand or grant a protective order in accordance with the standards set forth in the Maine Rules of Civil Procedure, Rule 26(c). The motion may be filed in the Superior Court of the county in which the person served resides or has a usual place of business or in Kennebec County. [PL 2001, c. 370, §2 (NEW).]

**6. Information not to be used in criminal proceeding.** A person is not excused from attending and testifying or from producing documentary material in compliance with this section on the ground or for the reason that the testimony or other information, documentary or otherwise, may tend to incriminate that person or subject that person to a penalty or forfeiture. Testimony and other information obtained under the authority of this section and information directly or indirectly derived from such testimony or other information may not be used against a natural person who has testified or produced information under oath in compliance with this section in any criminal case except a prosecution for perjury, giving a false statement or otherwise failing to comply with a notice served upon that person under this section. [PL 2001, c. 370, §2 (NEW).]

**7. Cost of court reporter.** At the request of the person under investigation or that person's attorney, any testimony taken pursuant to a demand or notice under this section must be recorded on a recording device or taken before a court reporter authorized to serve as such under the laws of the State. Upon request of either party, all such testimony taken or recorded must be transcribed by an authorized court reporter, and in that case the original transcript of that testimony must be preserved by the Attorney General. The cost of the taking or recording and transcription must be paid by the State. In the event the Attorney General or some other party obtains judgment against the party whose testimony is taken for a violation of section 207, the cost of the court reporter or recording and transcription may be recovered by the State in such a judgment. [PL 2001, c. 370, §2 (NEW).]

**8. Authority not applicable in criminal proceedings.** This section is not applicable to any criminal proceeding brought under the laws of this State. [PL 2001, c. 370, §2 (NEW).]

#### SECTION HISTORY

PL 1969, c. 577, §1 (NEW). PL 1973, c. 334 (AMD). PL 1973, c. 648 (AMD). PL 1975, c. 529 (AMD). PL 2001, c. 370, §§1-5 (AMD). RR 2023, c. 2, Pt. B, §§34-36 (COR).

#### §212. Penalties

A person upon whom a notice is served pursuant to section 211 shall comply with the terms thereof unless otherwise provided by the order of a court of this State. Any person who fails to appear, or with intent to avoid, evade or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds or destroys, mutilates, alters or by any other means falsifies any documentary material in the possession, custody or control of any person subject of any such notice, or knowingly conceals any relevant information, shall be subject to a civil penalty of not more than \$5,000 payable to the State to be recovered in a civil action. [PL 1977, c. 696, §35 (AMD).]

Whenever a person fails to comply with any notice served upon that person under section 211, or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender the material, the Attorney General may file, in the Superior Court of the county in which the person resides or has that person's principal place of business or of Kennebec County, if the person is a nonresident or does not have a principal place of business in this State, and serve upon the person or in the same manner as provided in section 211 a petition for an order of the court for the enforcement of this section. Any disobedience of any final order entered under this section by any court must be punished as a contempt thereof. [RR 2023, c. 2, Pt. B, §37 (COR).]

## SECTION HISTORY

PL 1969, c. 577, §1 (NEW). PL 1977, c. 696, §35 (AMD). RR 2023, c. 2, Pt. B, §37 (COR).

**§213. Private remedies**

**1. Court action.** Any person who purchases or leases goods, services or property, real or personal, primarily for personal, family or household purposes and thereby suffers any loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 207 or by any rule or regulation issued under section 207, subsection 2 may bring an action either in the Superior Court or District Court for actual damages, restitution and for such other equitable relief, including an injunction, as the court determines to be necessary and proper. There is a right to trial by jury in any action brought in Superior Court under this section. [PL 1991, c. 536, §1 (AMD).]

**1-A. Settlement offer.** At least 30 days prior to the filing of an action for damages, a written demand for relief, identifying the claimant and reasonably describing the unfair and deceptive act or practice relied upon and the injuries suffered, must be mailed or delivered to any prospective respondent at the respondent's last known address. A person receiving a demand for relief, or otherwise a party to any litigation arising from the claim that is the subject of the court action, may make a written tender of settlement or, if a court action has been filed, an offer of judgment. If the judgment obtained in court by a claimant is not more favorable than any rejected tender of settlement or offer of judgment, the claimant may not recover attorney's fees or costs incurred after the more favorable tender of settlement or offer of judgment.

The demand requirement of this subsection does not apply if the claim is asserted by way of counterclaim or cross claim.

[PL 1991, c. 536, §2 (NEW); PL 1991, c. 536, §3 (AFF).]

**2. Fees and costs.** If the court finds, in any action commenced under this section that there has been a violation of section 207, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorney's fees and costs incurred in connection with said action.

[PL 1973, c. 251 (NEW).]

**3. Notices to Attorney General.** Upon commencement of any action brought under subsection 1, the clerk of courts shall mail a copy of the complaint or other initial pleading to the Attorney General and upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

[PL 1973, c. 251 (NEW).]

**4. Injunction as evidence.** Any permanent injunction or order of the court issued under section 209 shall be prima facie evidence in an action brought under subsection 1 that the respondent used or employed an unfair or deceptive method, act or practice declared unlawful under section 207.

[PL 1973, c. 251 (NEW).]

## SECTION HISTORY

PL 1973, c. 251 (NEW). PL 1973, c. 788, §13 (AMD). PL 1979, c. 451 (AMD). PL 1983, c. 29, §2 (AMD). PL 1991, c. 536, §§1,2 (AMD). PL 1991, c. 536, §3 (AFF).

**§214. Waiver; public policy**

Any waiver by a consumer of the provisions of this chapter is contrary to public policy and shall be unenforceable and void. [PL 1973, c. 321 (NEW).]

## SECTION HISTORY

PL 1973, c. 321 (NEW).

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