

Chap. 767. AN ACT RELATIVE TO CONSOLIDATION OF CASES TRANSFERRED FROM THE SUPERIOR COURT TO A DISTRICT COURT WITH CERTAIN CASES PENDING IN THE DISTRICT COURT.

Be it enacted, etc., as follows:

SECTION 1. Section 2A of chapter 223 of the General Laws, as amended by chapter 460 of the acts of 1952, is hereby further amended by inserting after the word "proceedings", in line 3, the words: — and actions transferred under section one hundred and two C of chapter two hundred and thirty-one.

SECTION 2. The third paragraph of section 102C of chapter 231 of the General Laws, as appearing in chapter 303 of the acts of 1960, is hereby amended by striking out the third, fourth and fifth sentences and inserting in place thereof the following four sentences:— Such action while pending in the district court may be consolidated for trial with cross actions as provided in section two A of chapter two hundred and twenty-three. The justice shall file a written decision or finding with the clerk who shall forthwith notify the parties or counsel of record. Any party to the transferred action aggrieved by the finding or decision may as of right have the case retransferred for determination by the superior court and any party to an action consolidated for trial with the transferred action aggrieved by the finding or decision may as of right have his case transferred for determination by the superior court. The request for retransfer or transfer, as the case may be, shall be filed with the clerk of said district court within ten days after notice of the finding or decision.

SECTION 3. The fourth paragraph of said section 102C, as so appearing, is hereby amended by inserting after the first sentence the following sentence: — If a request for transfer is filed in an action consolidated for trial with the action transferred from the superior court, the finding or decision shall be forthwith submitted, with all original papers filed in the district court, to the clerk of the superior court of the county from which the transferred case was referred.

SECTION 4. This act shall take effect on April first, nineteen hundred and sixty-eight.

Approved December 5, 1967.

Chap. 768. AN ACT TO CONTROL UNFAIR TRADE PRACTICES IN THE MILK INDUSTRY.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 94A of the General Laws is hereby amended by inserting after the definition of "Co-operative Association", as appearing in section 2 of chapter 691 of the acts of 1941, the following definition: —

"Costs", includes, but shall not be limited to, the Class I price, payable under either state or federal milk marketing order, for the raw milk product F.O.B. the market and all costs for the following: acquiring; assembling; transporting; receiving; cooling; pasteurizing; clarifying; separating or standardizing; packaging; refrigerating; storing; all other phases of handling and processing; advertising; selling; trading stamps; delivery; sanitation and inspection; equipment and supplies, including containers and ingredients; taxes, licenses; insurance; rent; de-

preciation; maintenance; power; light; administration and all other overhead; excises or assessments made by statute or by provisions of a federal milk marketing order; labor, including salaries, wages, commissions and all fringe benefits; and interest paid or accrued on indebtedness.

SECTION 2. Section 14 of said chapter 94A, as amended by section 3 of said chapter 604 of the acts of 1953, is hereby further amended by striking out subsection (d) and inserting in place thereof the following two subsections: —

(d) No person shall sell within the commonwealth any milk, or render any service in connection with the sale or distribution of milk, at a price less than the cost of such milk or service, including, in the case of milk sold, the original purchase price thereof, and in every instance all regular direct or indirect elements of cost as defined in section one; and no milk dealer shall evade this prohibition by the use of any method or device, whether by discount or rebate, by barter, by exchange, by free service, by distribution of free milk, by advertising allowance, by loan of equipment at less than the proper allocation of depreciation, by rental of equipment at less than fair rental value or sale of equipment at less than fair market value, nor by a combined price for such milk together with another commodity or service, as a result of which the total price for the milk and other commodity or service, is less than the aggregate of the prices for the same when sold or offered for sale or performed separately, or otherwise. In the case of any person effecting sales of milk which has not been purchased, there shall be included as a part of the cost of such milk, when sold or offered for sale, an amount equal to the purchase price which would have been payable under state or federal milk marketing order if such person had purchased such milk within the commonwealth. The provisions of this subsection and of subsection (e) shall not be construed or interpreted to prohibit the use of trading stamps or donations of milk exclusively for charitable purposes to any duly organized charitable corporation.

The profit derived from the sale of one product, whether the same be one of those included in the term milk or some other product, shall not be utilized in cost computations as a credit to or deduction from the cost allocable to any product embraced by the term milk so as to subsidize or lower the cost of doing business with respect to such milk.

With respect to a store in its capacity as a milk dealer, cost shall include the price paid by the store for milk plus that portion of the store's overhead or cost of doing business properly allocable to milk, which cost of doing business shall include, but shall not be limited to, applicable items as enumerated in the definition of cost contained in section one.

(e) In connection with the sale of milk or cream (1) No milk dealer shall discriminate in price, either directly or indirectly, between different purchasers of milk of like grade, quality and quantity where the effect of such discrimination may be to lessen competition or tend to create a monopoly, or to injure, destroy, or prevent competition of any milk dealer; provided, that nothing in this paragraph shall prevent differentials which make only due allowance for difference in the cost of delivery resulting from differing methods or quantities in which such milk is delivered to such purchasers; except that nothing in this paragraph shall prevent persons engaged in selling milk from selecting their own customers in bona fide transactions and not in restraint of trade.

(2) No milk dealer shall discriminate in prices in the sale of any milk between or within any of the cities or towns of the commonwealth with the intent or with the effect of unfairly diverting trade from a competitor or otherwise injuring a competitor or of destroying or lessening competition; provided, that no violation will result from different prices which reflect the actual transportation cost from the point of processing or purchase to the point of resale; and provided further, that prices made in good faith to meet competition in such city or town shall not be in violation of this paragraph. Proof of advertising, offering for sale, or selling any such milk in any one of such cities or towns at prices less than advertised, offered for sale or sold in any other such city or town by such person which cannot be accounted for as necessary to meet competition shall be prima facie evidence of violation of the provisions of this paragraph.

(3) No milk dealer shall discriminate between purchasers or between or within localities, as set forth in paragraphs (1) and (2) of this subsection by any scheme of rebates, refunds, commissions or discounts whether in the form of money or otherwise, or in the form of extending to certain purchasers special services or privileges not extended to all other purchasers in the same category.

(4) No milk dealer shall make or renew any money loan to a store.

(5) No milk dealer shall extend credit to any store in excess of thirty days payable fifteen days thereafter.

Whoever violates any provision of this subsection shall be punished by a fine of not less than fifty nor more than two hundred dollars.

It shall be a defense under any of the provisions of this subsection if prices are charged or other action taken for the purpose of meeting competition in good faith. It shall be a defense under any of the provisions of paragraphs (1), (2) or (3), if the price differentials involved make only due allowance for differences in the cost of manufacture, sale, or delivery, resulting from the differing methods or quantities in which such commodities are sold or delivered. The burden of proof with respect to the above two defenses shall be on the milk dealer.

The provisions of this subsection shall not apply to sales to federal, state or municipal governmental bodies or agencies, or to schools, colleges, universities, libraries, churches, hospitals and charitable institutions, not operated for profit. *Approved December 5, 1967.*

Chap. 769. AN ACT AUTHORIZING THE PURCHASE OF GROUP ANNUITIES FOR EMPLOYEES OF THE DEPARTMENT OF EDUCATION AND OF PUBLIC EDUCATIONAL INSTITUTIONS IN THE COMMONWEALTH.

Be it enacted, etc., as follows:

SECTION 1. Section 18A of chapter 15 of the General Laws, inserted by section 1 of chapter 466 of the acts of 1963, is hereby amended by inserting after the word "individual", in lines 14 and 15, the words: — or group.

SECTION 2. The last sentence of section 31 of chapter 29 of the General Laws, added by section 2 of said chapter 466, is hereby amended by inserting after the word "individual", in line 3, the words: — or group.