

HOUSE No. 1107

By Mr. Murphy of Peabody, petition of John E. Murphy for legislation to regulate unlawful restraints and monopolies. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Seven.

An Act relative to Unlawful Restraints and Monopolies.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. It shall be unlawful for any person
2 engaged in commerce, in the course of such commerce,
3 either directly or indirectly, to discriminate in price
4 between different purchasers of commodities of like
5 grade and quality, where either or any of the pur-
6 chases involved in such discrimination are in com-
7 merce, where such commodities are sold for use, con-
8 sumption, or resale within this commonwealth and
9 where the effect of such discrimination may be sub-
10 stantially to lessen competition or tend to create a
11 monopoly in any line of commerce, or to injure, de-
12 stroy, or prevent competition with any person who
13 either grants or knowingly receives the benefit of such
14 discrimination, or with customers of either of them:
15 provided, that nothing herein contained shall present
16 differentials which make only due allowance for differ-
17 ences in the cost of manufacture, sale, or delivery

18 resulting from the differing methods or quantities in
19 which such commodities are to such purchasers sold or
20 delivered: provided, however, that the attorney general
21 may, after due investigation and hearing to all in-
22 terested parties, fix and establish quantity limits, and
23 revise the same as it finds necessary, as to particular
24 commodities or classes of commodities, where it finds
25 that available purchasers in greater quantities are so
26 few as to render differentials on account thereof un-
27 justly discriminatory or promotive of monopoly in any
28 line of commerce; and the foregoing shall then not be
29 construed to permit differentials based on differences
30 in quantities greater than those so fixed and estab-
31 lished: and provided further, that nothing herein con-
32 tained shall prevent persons engaged in selling goods,
33 wares, or merchandise in commerce from selecting
34 their own customers in bona fide transactions and not
35 in restraint of trade: and provided further, that
36 nothing herein contained shall prevent price changes
37 from time to time where in response to changing con-
38 ditions affecting the market for or the marketability
39 of the goods concerned, such as but not limited to
40 actual or imminent deterioration of perishable goods,
41 obsolescence of seasonal goods, distress sales under
42 court process, or sales in good faith in discontinuance
43 of business in the goods concerned.

44 (b) Upon proof being made, at any hearing on a
45 complaint under this section, that there has been dis-
46 crimination in price or services or facilities furnished,
47 the burden of rebutting the prima facie case thus made
48 by showing justification shall be upon the person
49 charged with a violation of this section, and unless
50 justification shall be affirmatively shown, the attorney
51 general is authorized to issue an order terminating the

52 discrimination: provided, however, that nothing herein
53 contained shall prevent a seller rebutting the prima
54 facie case thus made by showing that his lower price
55 or the furnishing of services or facilities to any pur-
56 chaser or purchasers was made in good faith to meet
57 an equally low price of a competitor, or the services or
58 facilities furnished by a competitor.

59 (c) It shall be unlawful for any person engaged in
60 commerce, in the course of such commerce, to pay or
61 grant, or to receive or accept, anything of value as a
62 commission, brokerage, or other compensation, or any
63 allowance or discount in lieu thereof, except for serv-
64 ices rendered in connection with the sale or purchase
65 of goods, wares, or merchandise, either to the other
66 party to such transaction or to an agent, represent-
67 ative, or other intermediary therein where such inter-
68 mediary is acting in fact for or in behalf, or is subject
69 to the direct or indirect control, of any party to such
70 transaction other than the person by whom such
71 compensation is so granted or paid.

72 (d) It shall be unlawful for any person engaged in
73 commerce to pay or contract for the payment of any-
74 thing of value to or for the benefit of a customer of
75 such person in the course of such commerce as com-
76 pensation or in consideration for any services or
77 facilities furnished by or through such customer in
78 connection with the processing, handling, sale, or
79 offering for sale of any products or commodities
80 manufactured, sold, or offered for sale by such person,
81 unless such payment or consideration is available on
82 proportionally equal terms to all other customers
83 competing in the distribution of such products or
84 commodities.

85 (e) It shall be unlawful for any person to discrim-

86 inate in favor of one purchaser against another pur-
87 chaser or purchasers of a commodity bought for resale,
88 with or without processing, by contracting to furnish
89 or furnishing, or by contributing to the furnishing of,
90 any services or facilities connected with the processing,
91 handling, sale, or offering for sale of such commodity so
92 purchased upon terms not accorded to all purchasers
93 on proportionally equal terms.

94 (f) It shall be unlawful for any person engaged in
95 commerce, in the course of such commerce, knowingly
96 to induce or receive a discrimination in price which is
97 prohibited by this section.

1 SECTION 2. It shall be unlawful for any person
2 engaged in commerce, in the course of such commerce,
3 to be a party to, or assist in, any transaction of sale,
4 or contract to sell, which discriminates to his knowledge
5 against competitors of the purchaser, in that, any dis-
6 count, rebate, allowance, or advertising service charge
7 is granted to the purchaser over and above any dis-
8 count, rebate, allowance, or advertising service charge
9 available at the time of such transaction to said com-
10 petitors in respect of a sale of goods of like grade,
11 quality, and quantity; to sell, or contract to sell,
12 goods in any part of this commonwealth at prices
13 lower than those exacted by said person elsewhere in
14 this commonwealth for the purpose of destroying
15 competition, or eliminating a competitor in such part
16 of this commonwealth; or, to sell, or contract to sell,
17 goods at unreasonably low prices for the purpose of
18 destroying competition or eliminating a competitor.

19 Any person violating any of the provisions of this
20 section shall, upon conviction thereof, be fined not

21 more than five thousand dollars or imprisoned not
22 more than one year, or both.

1 SECTION 3. Nothing in this act shall prevent a co-
2 operative association from returning to its members,
3 producers, or consumers the whole, or any part of, the
4 net earnings or surplus resulting from its trading
5 operations, in proportion to their purchases or sales
6 from, to, or through the association.

The first part of the year was spent in the
 study of the history of the country.
 I have been very much interested in
 the progress of the Republic since
 the establishment of the Constitution.
 It is a great pleasure to see the
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