

HOUSE No. 446

By Mr. Alfred M. Bessette of New Bedford, petition of Alfred M. Bessette for legislation to restrict certain trade practices and to encourage fair competition in the manufacture and sale of commodities. Judiciary (Joint).

The Commonwealth of Massachusetts

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

An Act regulating and restricting Certain Improper Trade Practices, providing Remedies Therefor and encouraging Fair Competition.

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 firm or corporation engaged in the production, manu-
3 facture, distribution or sale of any commodity or
4 product of general use or consumption, or the prod-
5 uct or service of any public utility, with the intent
6 to destroy the competition of any regular established
7 dealer in such commodity, product or service, or to
8 prevent the competition of any person, firm, private
9 corporation, or municipal or other public corpora-
10 tion, who or which, in good faith, intends and at-
11 tempts to become such dealer, to discriminate be-
12 tween different sections, communities or cities or

13 portion thereof or between different locations in such
14 sections, communities, cities or portions thereof in
15 this state, by selling or furnishing such commodity,
16 product or service at a lower rate in one section,
17 community or city, or any portion thereof, or in one
18 location in such section, community or city or any
19 portion thereof, than in another after making allow-
20 ance for difference, if any, in the grade or quality,
21 quantity and in the actual cost of transportation
22 from the point of production, if a raw product or
23 commodity, or from the point of manufacture, if a
24 manufactured product or commodity. Motion pic-
25 ture films when delivered under a lease to motion
26 picture houses shall not be deemed to be a commodity
27 or product of general use or consumption under this
28 act. This act shall not be construed to prohibit the
29 meeting in good faith of a competitive rate, or to
30 prevent a reasonable classification of service by pub-
31 lic utilities for the purpose of establishing rates.
32 The inhibition hereof against locality discrimination
33 shall embrace any scheme of special rebates, col-
34 lateral contracts or any device of any nature whereby
35 such discrimination is, in substance or fact, effected
36 in violation of the spirit and intent of this act.

37 Any person who, either as director, officer or agent
38 of any firm or corporation or as agent of any person,
39 violating the provisions hereof, assists or aids, di-
40 rectly or indirectly, in such violation shall be respon-
41 sible therefor equally with the person, firm or cor-
42 poration for whom or which he acts.

43 In the prosecution of any person as officer, director
44 or agent it shall be sufficient to allege and prove the
45 unlawful intent of the person, firm or corporation
46 for whom or which he acts.

1 SECTION 2. Upon the third violation of any of
2 the provisions of section one of this act by any cor-
3 poration, it shall be the duty of the attorney general
4 to institute proper suits or quo warranto proceedings
5 in any court of competent jurisdiction for the for-
6 feiture of its charter, rights, franchises or privileges
7 and powers exercised by such corporation, and to
8 permanently enjoin it from transacting business in
9 this state; and if in such action it shall appear that
10 such corporation is violating or has violated any of
11 the provisions of section one of this act, it may en-
12 join said corporation from doing business in this com-
13 monwealth permanently or for such time as the court
14 shall order, or may annul the charter, or revoke the
15 franchise of such corporations.

1 SECTION 3. Any contract, express or implied, made
2 by any person, firm or corporation in violation of
3 any of the provisions of section one of this act is
4 declared to be an illegal contract, and no recovery
5 thereon shall be had.

1 SECTION 4. Any person, firm, private corporation
2 or municipal or other public corporation, may main-
3 tain an action to enjoin a continuance of any act or
4 acts in violation of section one of this act and, if
5 injured thereby, for the recovery of damages. If,
6 in such action, it shall appear that the defendant is
7 violating or has violated any of the provisions of
8 section one of this act, it shall enjoin the defendant
9 from a continuance thereof; it shall not be neces-
10 sary that actual damage to the plaintiff be alleged
11 or proved. In addition to such injunctive relief, the
12 plaintiff in said action shall be entitled to recover

13 from the defendant three times the amount of the
14 actual damages, if any, sustained.

1 SECTION 5. Any person, whether as principal,
2 agent, officer or director, for himself or for another
3 person, or for any firm or corporation, or any cor-
4 poration, who or which shall violate any of the pro-
5 visions of section one of this act, shall be guilty of
6 a misdemeanor for each single violation and upon
7 conviction thereof, shall be punished by a fine of
8 not less than one hundred dollars nor more than one
9 thousand dollars.

1 SECTION 6. If any section, sentence, clause or
2 phrase of this act is for any reason held to be uncon-
3 stitutional, such decision shall not affect the validity
4 of the remaining portions of the act. If any conflict
5 shall arise between this act and the laws relating to
6 public utilities, the latter shall prevail.

1 SECTION 7. Except as herein provided, any pro-
2 visions of law inconsistent herewith are hereby re-
3 pealed.