

**CHAPTER 481**  
**FAIR TRADE REGULATIONS**

Part I. Unfair Practices Act

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## **Cross References**

Cybersquatting, see §§481B-21 to 25.

### **"PART I. UNFAIR PRACTICES ACT**

**§481-1 Unlawful practices.** It shall be unlawful for any person, firm, or corporation, doing business in the State and engaged in the production, manufacture, distribution, or sale of any commodity, or product, or service, or output of a service trade, of general use or consumption, or the product or service of any public utility, with the intent to destroy the competition of any regular established dealer in the commodity, product, or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation, who or which in good faith, intends and attempts to become such dealer, to discriminate between different sections, communities, or cities or portions thereof, or between different locations in such sections, communities, cities, or portions thereof in this State, by selling or furnishing the commodity, product, or services at a lower rate in one section, community, or city, or any portion thereof, or in one location in such section, community, or city or any portion thereof, than in another after making allowance for difference, if any, in the grade or quality, quantity and in the actual cost of transportation from the point of production, if a raw product or a commodity, or from the point of manufacture if a manufactured product or commodity, and in the overhead cost.

Motion picture films when delivered under a lease to motion picture houses shall not be deemed to be a commodity or product of general use, or consumption, under this part. This part shall not be construed to prohibit the meeting in good faith of the rates of a competitor as herein defined, selling the same article or product, or service or output of a service trade in the same locality or trade area, or to prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

The inhibition hereof against locality discrimination embraces any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this part. [L 1937, c 223, §1; am L 1941, c 175, §1; RL 1945, §9321; RL 1955, §205-2; HRS §481-1]

## **Cross References**

Unfair trade practices in insurance business, see chapter 431, article 13.

### Case Notes

Relation of federal regulation and possible antitrust exemption to state laws construed. 460 F. Supp. 1359.

" **§481-2 Officers and agents.** Any person who, either as director, officer, or agent of any firm or corporation, or as agent of any person, violating this part, assists or aids, directly or indirectly, in such violation shall be responsible therefor equally with the person, firm, or corporation for whom or which the person acts. [L 1937, c 223, §2; RL 1945, §9322; RL 1955, §205-3; HRS §481-2; gen ch 1985]

" **§481-3 Sales at less than cost.** No person, partnership, firm, corporation, joint stock company, or other association engaged in business within the State shall sell, offer for sale, or advertise for sale any article, or product, or service or output of a service trade, at less than the cost thereof to such vendor, or give, offer to give, or advertise with the intent to give away any article or product, or service or output of a service trade, with the intent to destroy competition.

The term "cost" as applied to production includes the cost of raw materials, labor, and all overhead expenses of the producer; and as applied to distribution "cost" means and includes the invoice cost of the merchandise to a distributor or the replacement cost of the merchandise to a distributor, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added (1) freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and (2) cartage to the distributor outlet if done or paid for by the distributor, and (3) a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be six per cent of the cost to the distributor as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup; provided that in the case where a person, partnership, corporation, or association is engaged in the business or makes sales both at retail and wholesale, the "invoice cost" includes all elements recognized by good accounting practice as proper elements of the cost; provided further that taxes passed on to a purchaser as a separate item from the price of merchandise shall be included in the advertised price or offer of sale of the merchandise if such

taxes are used to compute the markup of six per cent as provided herein.

The "cost of doing business" or "overhead expense" means all costs of doing business incurred in the conduct of the business and includes without limitation the following items of expense: labor (including salaries of executive officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance, and advertising. [L 1937, c 223, §3; RL 1945, §9323; am L 1955, c 241, §1(a); RL 1955, §205-4; am L 1961, c 95, §1; HRS §481-3]

### Case Notes

Purpose is to protect competitors as well as competition. 63 H. 289, 627 P.2d 260.

" **§481-4 Purchase at forced or bankrupt sales.** In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout sale or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement costs as of date of the sale of the article or product replaced through the ordinary channels of trade, unless the article or product is kept separate from goods purchased in the ordinary channels of trade and unless the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and the advertising shall state the conditions under which the goods were so purchased, and the quantity of the merchandise to be sold or offered for sale. [L 1937, c 223, §4; RL 1945, §9324; RL 1955, §205-5; HRS §481-4]

" **§481-5 Proof of intent; cost surveys.** In any injunction proceeding against any person as officer, director, or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which the person acts. Where an injunction is sought for a violation of section 481-3 the proof of the unlawful act or acts and of the injurious effects thereof shall be prima facie evidence of the intent to destroy competition; provided that such a rule of evidence applies only to injunction proceedings brought under section 481-3. Where a particular trade or industry, of which the person, firm, or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the cost survey shall be deemed

competent evidence to be used in proving the costs of the person, firm, or corporation complained against within this part. [L 1937, c 223, §5; RL 1945, §9325; am L 1955, c 241, §1(b); RL 1955, §205-6; HRS §481-5; gen ch 1985]

" **§481-6 When sale at less than cost permitted.** Sections 481-3 to 481-5 shall not apply to any sale made:

- (1) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing the owner's trade in any such stock or commodity, and in the case of the sale of seasonal goods, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;
- (2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;
- (3) By an officer acting under the orders of any court;
- (4) In an endeavor made in good faith to meet the lawful prices of a competitor, as herein defined, selling the same article or product, or service or output of a service trade, in the same locality or trade area;
- (5) By the government or any agency thereof, of the United States, the State, or any county, or by post exchanges or ships' service stores operating under and in accordance with United States army or naval regulations.

In case of any sale at less than cost which does not fall within (1) to (5) of this section, the burden of proof shall be on the defendant to show that the sale was not made for the purpose of injuring competitors and destroying competition within the meaning of this part.

Any person, firm, or corporation who performs work upon, renovates, alters, or improves any personal property belonging to another person, firm, or corporation, shall be construed to be a vendor within the meaning of this part. [L 1937, c 223, §6; am L 1941, c 175, §2; RL 1945, §9326; am L 1955, c 241, §1(c); RL 1955, §205-7; HRS §481-6; gen ch 1985]

" **§481-7 Rebates, refunds, etc.** The payment or allowance of rebates, refunds, commissions, or unearned discounts whether in the form of money or otherwise or extending to certain purchasers, special services, or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where the payment or allowance tends to destroy competition, is an unfair practice and any person, firm, or corporation resorting to such trade practice shall be subject to injunction or suit for damages as provided in this

chapter; provided that this section shall not apply to dealings between a principal and agent under the terms of a bona fide agency contract, nor to sales by an employer to the employer's bona fide employees of any articles which are part of the stock. [L 1937, c 223, §7; am L 1941, c 175, §3; RL 1945, §9327; am L 1955, c 241, §1(d); RL 1955, §205-8; HRS §481-7; gen ch 1985]

" **§481-8 Duty of attorney general to prosecute.** Upon the third violation of any of the provisions of sections 481-1 to 481-7 by any corporation, each of such violations having been proved in a separate court action, the attorney general shall institute proper action in a court of competent jurisdiction to forfeit the charter, rights, franchises, or privileges and powers exercised by the corporation, and to permanently enjoin it from transacting business in the State. If in such action the court finds that the corporation is violating or has violated any of the provisions of sections 481-1 to 481-7, it shall enjoin the corporation from doing business in the State permanently or for such time as the court shall order, or annul the charter, or revoke the franchise of the corporation. [L 1937, c 223, §8; RL 1945, §9328; am L 1955, c 241, §1(e); RL 1955, §205-9; HRS §481-8]

" **§481-9 Illegal contracts.** Any contract, express or implied, made by any person, firm, or corporation in violation of any of the provisions of sections 481-1 to 481-7 is declared to be an illegal contract and no recovery thereon shall be had. [L 1937, c 223, §9; RL 1945, §9329; RL 1955, §205-10; HRS §481-9]

" **§481-9.5 Automatic renewal clauses and continuous service clauses.** (a) Any person who sells or offers to sell any products or services to a consumer pursuant to a consumer contract that has a specified term of more than one month and an automatic renewal clause under which the contract will automatically renew for a specified term of more than one month unless the consumer cancels the contract, shall disclose the automatic renewal clause and the procedure by which the consumer can cancel automatic renewal of the consumer contract clearly and conspicuously in the consumer contract.

(b) Any person who sells or offers to sell any products or services to a consumer pursuant to a consumer contract that has a specified contract term of twelve months or more, under which the contract will automatically renew for a specified term of more than one month unless the consumer cancels the consumer contract, shall notify the consumer clearly and conspicuously:

- (1) That the consumer contract will automatically renew unless the consumer cancels the contract;
- (2) How to cancel the contract; and
- (3) The deadline by which the consumer shall respond to cancel the consumer contract and prevent automatic renewal.

The notice provided to the consumer under this subsection shall be sent to the consumer no less than thirty days and no more than sixty days before the date upon which the consumer shall respond under paragraph (3).

(c) The notice to the consumer required by this section may be provided electronically if the:

- (1) Transaction for sale of products or services was conducted electronically at the election of the consumer and in compliance with the requirements of chapter 489E, the uniform electronic transactions act; or
- (2) Consumer elects to receive electronic communications and provides a valid electronic-mail address for the purpose of receiving the notice required by this section.

(d) Any person who sells or offers to sell any products or services to a consumer pursuant to a consumer contract that contains a continuous service clause shall clearly and conspicuously disclose the continuous service clause and the procedure by which the consumer can cancel the contract.

(e) No person shall charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or a continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

(f) Any person who sells or offers to sell products or services subject to this section shall provide the consumer with an acknowledgment that the consumer may retain the automatic renewal or continuous service offer terms, cancellation policy, and procedure by which the consumer may cancel the contract. If the offer includes a free trial, the acknowledgment shall also clearly and conspicuously disclose the right of the consumer to cancel before payment is made for the goods or services and the cancellation procedure.

(g) A person making automatic renewal or continuous service offers pursuant to a consumer contract shall include a toll-free telephone number, electronic-mail address, postal address if the seller directly bills the consumer, or a clearly and conspicuously described cost-effective, timely, and easy-to-use alternative means to communicate the cancellation.

(h) In the case of a material change in the terms of the automatic renewal or continuous service offer pursuant to a consumer contract that has been accepted by a consumer in Hawaii, the person shall clearly and conspicuously provide the consumer with a notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer prior to the implementation of the material change.

(i) Any person who knowingly violates this section or who knowingly fails to cancel an automatic renewal contract or a continuous service contract upon consumer request shall be deemed to have engaged in an unfair method of competition and unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2.

(j) This section shall not apply to any:

- (1) Financial institution subject to chapter 412 to the extent that the financial institution is engaged in activities regulated pursuant to chapter 412;
- (2) Insurer subject to chapter 431, 432, or 432D to the extent that the insurer is engaged in activities regulated pursuant to those chapters;
- (3) Telecommunications provider subject to chapter 269; and
- (4) Cable operator subject to chapter 440G or 440J to the extent that the provider is engaged in activities regulated pursuant to those chapters or the Federal Communications Commission.

(k) For purposes of this section:

"Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement with a term of more than one month is automatically renewed at the end of a definite term for a specified term of more than one month.

"Clearly and conspicuously" means in larger type than the surrounding text; in contrasting type, font, or color to the surrounding text of the same size; or set off from the surrounding text of the same size by symbols or other marks in a manner that clearly calls attention to the language. In the case of an audio disclosure, "clear and conspicuous" and "clearly and conspicuously" mean in a volume and cadence sufficient to be readily audible and understandable.

"Consumer" shall have the same meaning as in section 480-1.

"Continuous service" means a plan or arrangement in which a paid subscription or purchasing agreement continues until the consumer cancels the service. [L 2011, c 139, §1; am L 2015, c 200, §1]



" **§481-10 Actions to enjoin violation.** Any person, firm, private corporation, or municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of sections 481-1 to 481-7 and, if injured thereby, for the recovery of damages. If, in the action, the court finds that the defendant is violating or has violated any of the provisions of sections 481-1 to 481-7, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff shall be entitled to recover from the defendant three times the amount of any actual damages sustained.

Any defendant in an action brought under this section may be compelled to testify by deposition under chapter 624, or in person before the court in which the action is brought, and may be examined by the plaintiff, as if on cross-examination, and the plaintiff shall not be bound by the defendant's testimony; and in addition the books and records of any such defendant may be brought into court and introduced, by reference, into evidence.

The defendant may in like manner and subject to like conditions and with like privileges compel the plaintiff to testify by deposition or otherwise. [L 1937, c 223, §10; RL 1945, §9330; am L 1955, c 241, §1(f); RL 1955, §205-11; HRS §481-10; gen ch 1985]

### **Rules of Court**

Depositions, see Hawaii Rules of Civil Procedure, part V.

" **§481-11 Remedies cumulative.** The remedies prescribed in this part are cumulative and in addition to the remedies prescribed in chapter 269 for discriminations by public utilities. If any conflict arises between this part and chapter 269, the latter prevails. [L 1937, c 223, pt of §12; RL 1945, §9332; am L 1955, c 241, §1(g); RL 1955, §205-13; HRS §481-11]

### **"PART II. SALE OF UNITED STATES SURPLUS GOODS**

**§481-21 Findings and declaration of public policy.** The legislature of the State of Hawaii finds that the sale and distribution at retail of goods manufactured by or for or sold by the government of the United States, or any agency or department thereof, is peculiarly susceptible to fraud and misrepresentation. The public interest requires that goods offered for sale in connection with representations of any form in which the government of the United States or any agency or

department thereof is involved should be accurately identified and correctly described. The commingling of goods in such a way as might create a misapprehension on the part of any purchaser that the purchaser is buying goods sold by the government of the United States or any agency or department thereof, or that the goods were manufactured pursuant to government specifications, or that the goods in fact are at the time of sale in accordance with such specifications, or that the goods are new or in perfect condition, when not true in fact, is hereby declared inimical to public interest and an unfair trade practice. [L 1945, c 214, §1; RL 1955, §205-40; HRS §481-21; gen ch 1985]

" **§481-22 Unauthorized use of certain trade names**

**prohibited.** No person shall use any trade name which includes the word "Army", "Navy", "Marine", "Coast Guard", "Government", "G.I.", or any other term which denotes an agency or department of the government of the United States, without being lawfully authorized so to do by the government of the United States or an agency or agencies thereof. [L 1945, c 214, §2; RL 1955, §205-41; HRS §481-22]

" **§481-23 Fraudulent representation of origin of goods.** No person shall sell or offer for sale at retail any goods incorrectly purporting to be manufactured by or for or sold by the government of the United States. [L 1945, c 214, §3; RL 1955, §205-42; HRS §481-23]

" **§481-24 Advertising or display requirements.** Any person who represents by sign, window display, label, advertising, or any other means that the person sells goods sold by or manufactured for the government of the United States or any agency or department thereof, shall, with equal prominence and in the same manner, make known by appropriate descriptive term the merchandising class of such goods. Without prejudice to the generality of the foregoing, the person shall use the terms "Used", "Rejects", "Reclaimed", "Reconditioned", "Seconds", "Irregulars", "Damaged", or the like, where any such term may be applicable. [L 1945, c 214, §4; RL 1955, §205-43; HRS §481-24; gen ch 1985]

" **§481-25 Additional display requirements.** Any person who represents by sign, window display, label, advertising, or by any other means, that the person sells goods sold by or manufactured for the government of the United States or any agency or department thereof, and who also sells other goods, shall specifically distinguish the two classes of merchandise by individual label on item of goods displayed for sale or by

segregation into labeled bins, compartments, or areas. [L 1945, c 214, §5; RL 1955, §205-44; HRS §481-25; gen ch 1985]

" **§481-26 Penalty.** Any person who sells goods in violation of this part shall be fined not more than \$50, and each such sale shall constitute a separate offense. [L 1945, c 214, §6; RL 1955, §205-45; HRS §481-26]

" **§481-27 Injunctions.** Any person violating or neglecting or failing in any particular to conform to or comply with this part may be enjoined by the circuit court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of this part in a suit brought by the attorney general in the name of the State or by any private person in the person's own name. [L 1945, c 214, §7; RL 1955, §205-46; HRS §481-27; gen ch 1985]

#### **Rules of Court**

Injunctions, see HRCP rule 65.