

ACT 5

A Bill for an Act Relating to False Advertising and Amending Chapter 289, Revised Laws of Hawaii 1955.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 289-14 of the Revised Laws of Hawaii 1955, is hereby amended by deleting the word "penalty" from the title; by amending all of said section up to and including the semicolon which appears after the word "misdemeanor" which appears in line 21 to read as follows:

"Any person, firm, corporation, or association, or agent or employee thereof, who, with the intent to sell, purchase, or in any wise dispose of or to contract with reference to, merchandise, securities, real estate,

service, employment or anything offered by such person, firm, corporation, or association, or agent or employee thereof, directly or indirectly, to the public for sale, purchase or distribution, or the hire of personal services, or with intent to increase the consumption of or to contract with reference to, any merchandise, real estate, securities, service, or employment, or to induce the public in any manner to enter into any obligation relating thereto or to acquire title thereto, or an interest therein, or to make any loan, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this State, in a newspaper, magazine, or other publication, or in any form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, or in any other way, or over any radio or television station, or other medium of wireless communication, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement or statement, of any sort regarding merchandise, securities, service, employment, or anything so offered for use, purchase, or sale, or the interest, terms, or conditions upon which such loan will be made to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor;” ;

by deleting the last sentence beginning with the words, “Whoever is convicted”; and by adding the following paragraphs at the end of the section :

“In determining whether or not advertising is deceptive or misleading, there shall be taken into account, in addition to the above, the extent to which the advertising fails to reveal facts material in the light of representations made or suggested in a positive manner, or as part of a plan or scheme with intent not to sell as so advertised or at the price stated therein.”

“Any statement, however expressed, whether in words, phrases, price figures, symbols, fractions, percentages or otherwise, which represents or implies a reduction or saving from an established retail price, or from the advertiser’s former price, used in connection with the price at which an article is offered for sale, shall be deemed to be false, deceptive or misleading, unless,

“(a) the saving or reduction statement applies to the specific article offered for sale as distinguished from similar or comparable merchandise,

“(b) the saving or reduction is from the usual and customary retail price of the article in the trade area, or areas, where the statement is made, or the saving or reduction is from the advertiser’s usual and customary retail price of the article in the recent, regular course of business, and,

“(c) the statement clearly shows whether the saving or reduction is from the usual and customary retail price of the article in the trade area or from the advertiser’s usual and customary retail price of the article in the recent, regular course of business.

“The failure to sell any property or service advertised, or the refusal to sell at the price at which it was advertised, or in accordance with other terms and conditions of the advertisement shall create a rebuttable presumption of an intent to violate the provisions of this Act.”

SECTION 2. Section 289-15.3, Revised Laws of Hawaii, is hereby amended by renumbering said section to section 289-14.3.

SECTION 3. Section 289-16, Revised Laws of Hawaii 1955, is hereby amended by renumbering said section to section 289-14.5 and by deleting the last paragraph beginning with the words "Any person who violates".

SECTION 4. Section 289-15, Revised Laws of Hawaii 1955, is hereby amended by adding the words, "or the attorney general or any county attorney" after the words, "trade association" in the first paragraph and adding, "289-14.3 and 289-14.5" after, "289-14" wherever "289-14" appears in the section.

SECTION 5. Section 289-15.5, Revised Laws of Hawaii 1955, is hereby amended to read:

"Section 289-16. Penalty. Any person, including any responsible officer or employee of a firm or corporation, who violates or knowingly aids in the violation of any of the provisions of sections 289-14, 289-14.3, 289-14.5 and 289-15, including any order or injunction issued pursuant to such sections shall be fined not more than \$500 or imprisoned not more than three months, or both."

SECTION 6. Chapter 289, Revised Laws of Hawaii 1955, is hereby amended by adding the following:

"Section 289-16.3. Assurance of discontinuance. In the enforcement of sections 289-14, 289-14.3, 289-14.5, and 289-15 above, the attorney general or county attorney may accept an assurance of discontinuance of any act or practice alleged to be in violation of one or more of said sections, from any person engaging in, or who was engaged in, such acts or practices. Any such assurance shall be in writing and be filed with the clerk of the circuit court of the county in which the alleged violator resides or has his principal place of business. The assurance of discontinuance shall be signed by such person and shall contain a statement describing the acts or practices for which the assurance of discontinuance is being given and the specific sections of the law prohibiting such acts or practices. A violation of such assurance shall constitute a rebuttable presumption of a violation of the sections designated therein."

SECTION 7. This Act shall take effect upon its approval.

(Approved April 22, 1963.) **H.B. 8.**
