

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 768

By: Rabon

COMMITTEE SUBSTITUTE

An Act relating to contracts; amending 15 O.S. 2001, Sections 598.2, 598.7 and 598.8, which relate to the Unfair Sales Act; clarifying language; modifying definitions; providing certain exception to meeting certain prices; modifying certain time frame for determining certain cost of sales; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 15 O.S. 2001, Section 598.2, is amended to read as follows:

Section 598.2 ~~(a) When~~ As used in this act ~~the term "cost,;~~

1. "Cost to the retailer" ~~shall mean~~ means the invoice cost of the merchandise to the retailer or the replacement cost of the merchandise to the retailer, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added

~~(1)~~

a. freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, ~~and~~

~~(2)~~

b. cartage to the retail outlet if done or paid for the retailer, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths of one percent (3/4 of 1%) of the cost to the retailer

as herein defined after adding thereto freight charges but before adding thereto cartage~~,~~ and taxes,

~~(3)~~

c. all State and Federal taxes not heretofore added to the cost as such, and

~~(4)~~

d. 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 percent (6%) of the cost of the retailer as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup.

~~(b)~~ When used in this act, the term "cost" 2. "Cost to the wholesaler" ~~shall mean~~ means the invoice cost of the merchandise to the wholesaler, or the replacement cost of the merchandise to the wholesaler, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added~~,~~:

~~(1)~~

a. freight charges, not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, ~~and~~

~~(2)~~

b. cartage to the retail outlet if done or paid for by the wholesaler, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths of one percent ($3/4$ of 1%) of the cost to the wholesaler as herein set forth after adding thereto freight charges but before adding thereto cartage, and taxes, and

~~(3)~~

c. all State and Federal taxes not heretofore added to the cost as such.

~~(c) When used in this act the term "replacement~~ 3.

"Replacement costs" ~~shall mean~~ means the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time within ~~thirty (30) days~~ twenty-four (24) hours, or the last purchase, prior to the date of sale or the date upon which it is offered for sale by the seller if bought in the same quantity or quantities as the seller's last purchase of said merchandise.

~~(d)~~ 4. When one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more other items, each and all of said items shall for the purposes of this act be deemed to be advertised, offered for sale, or sold, and the price of each item named shall be governed by the provisions of paragraphs ~~(a)~~ 1 or ~~(b)~~ 2 of ~~Section 2~~ this section, respectively.

~~(e) The terms "sell~~ 5. "Sell at retail", "sales at retail", and "retail sale" ~~shall~~ mean and include any transfer for a valuable consideration made in the ordinary course of trade or in the usual prosecution of the seller's business of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

~~(f) The terms "sell~~ 6. "Sell at wholesale", "sales at wholesale", and "wholesale sales" ~~shall~~ mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

~~(g) The term "retailer" shall mean~~ 7. "Retailer" means and include every person, partnership, corporation or association engaged in the business of making sales at retail within this state; provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at retail and sales at wholesale, provided, such term shall be applied only to the retail portion of such business.

~~(h) The term "wholesaler" shall mean~~ 8. "Wholesaler" means and include every person, partnership, corporation, or association engaged in the business of making sales at wholesale within this state; provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at wholesale and sales at retail, provided, such term shall be applied only to the wholesale portion of such business.

SECTION 2. AMENDATORY 15 O.S. 2001, Section 598.7, is amended to read as follows:

Section 598.7 Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at cost to him or her as a wholesaler or retailer, unless there is reason to believe the competitor is offering below his or her cost. The price of merchandise advertised, offered for sale or sold under the exemptions specified in Section ~~6~~ 598.6 of this title, shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of the first sentence of this section.

SECTION 3. AMENDATORY 15 O.S. 2001, Section 598.8, is amended to read as follows:

Section 598.8 In establishing the cost of merchandise to the retailer or wholesaler, the invoice cost of such merchandise

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 cost of the merchandise to the retailer or wholesaler, within ~~thirty (30) days~~ twenty-four (24) hours prior to the date of sale, in the quantity last purchased through the ordinary channels of trade.

SECTION 4. This act shall become effective November 1, 2005.

50-1-1502

LKS

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