

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 550 By: Holt of the Senate  
3 and  
4 Newell of the House  
5  
6  
7 [ Unfair Sales Act - advertising and selling  
8 merchandise below cost and penalties - changing name  
9 of act - modifying language - limiting unfair sales  
provisions to gasoline, diesel fuel, and legend drug  
products - effective date ]  
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11  
12 AUTHORS: Add the following House Coauthors: Hall and Walker  
13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
14 entire bill and insert  
15  
16 "An Act relating to contracts; amending 15 O.S. 2011,  
17 Sections 598.1, 598.2, 598.3, 598.4, 598.5, 598.6,  
18 598.7 and 598.8, which relate to the Unfair Sales  
19 Act; modifying language; defining terms; limiting  
20 unfair sales provisions to covered merchandise;  
21 providing punishment and fine for violation;  
22 permitting civil relief for violation; exempting  
23 certain sales; permitting sale of covered  
24 merchandise at certain price; modifying term; and  
providing an effective date.

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

1       SECTION 1.       AMENDATORY       15 O.S. 2011, Section 598.1, is  
2 amended to read as follows:

3       Section 598.1 This act shall be known and ~~designated, and~~ may  
4 be cited as the "Unfair Sales Act".

5       SECTION 2.       AMENDATORY       15 O.S. 2011, Section 598.2, is  
6 amended to read as follows:

7       Section 598.2 For the purposes of the Unfair Sales Act:

8       (a) ~~When used in this act, the~~ The term "cost to the retailer"  
9 ~~shall mean~~ means the invoice cost of the merchandise to the retailer  
10 or the replacement cost of the merchandise to the retailer,  
11 whichever is the lower; less all trade discounts except customary  
12 discounts for cash; to which shall be added (1) freight charges not  
13 otherwise included in the invoice cost or the replacement cost of  
14 the merchandise as herein set forth, and (2) cartage to the retail  
15 outlet if done or paid for the retailer, which cartage cost, in the  
16 absence of proof of a lesser cost, shall be deemed to be three-  
17 fourths of one percent ( $\frac{3}{4}$  of 1%) of the cost to the retailer as  
18 herein defined after adding thereto freight charges but before  
19 adding thereto cartage, and taxes, (3) all state and federal taxes  
20 not heretofore added to the cost as such, and (4) a markup to cover  
21 a proportionate part of the cost of doing business, which markup, in  
22 the absence of proof of a lesser cost, shall be six percent (6%) of  
23 the cost of the retailer as herein set forth after adding thereto  
24 freight charges and cartage but before adding thereto a markup-;

1       (b) ~~When used in this act, the~~ The term "cost to the  
2 wholesaler" ~~shall mean~~ means the invoice cost of the merchandise to  
3 the wholesaler, or the replacement cost of the merchandise to the  
4 wholesaler, whichever is the lower; less all trade discounts except  
5 customary discounts for cash; to which shall be added, (1) freight  
6 charges, not otherwise included in the invoice cost or the  
7 replacement cost of the merchandise as herein set forth, and (2)  
8 cartage to the retail outlet if done or paid for by the wholesaler,  
9 which cartage cost, in the absence of proof of a lesser cost, shall  
10 be deemed to be three-fourths of one percent ( $3/4$  of 1%) of the cost  
11 to the wholesaler as herein set forth after adding thereto freight  
12 charges but before adding thereto cartage, and taxes, and (3) all  
13 state and federal taxes not heretofore added to the cost as such-;

14       (c) ~~When used in this act the~~ The term "replacement costs"  
15 ~~shall mean~~ means the cost per unit at which the merchandise sold or  
16 offered for sale could have been bought by the seller at any time  
17 within thirty (30) days prior to the date of sale or the date upon  
18 which it is offered for sale by the seller if bought in the same  
19 quantity or quantities as the seller's last purchase of said  
20 merchandise-;

21       (d) When one or more items ~~are~~ advertised, offered for sale, or  
22 sold with one or more other items at a combined price, or ~~are~~  
23 advertised, offered as a gift, or given with the sale of one or more  
24 other items, each and all of ~~said~~ the items shall ~~for the purposes~~

1 ~~of this act~~ be deemed to be advertised, offered for sale, or sold,  
2 and the price of each item named shall be governed by the provisions  
3 of paragraphs (a) or (b) of ~~Section 2~~ this section, respectively;  
4

5 (e) The terms "sell at retail", "sales at retail", and "retail  
6 sale" ~~shall mean~~ mean and ~~include~~ include any transfer for a  
7 valuable consideration made in the ordinary course of trade or in  
8 the usual prosecution of the seller's business of title to tangible  
9 personal property to the purchaser for consumption or use other than  
10 resale or further processing or manufacturing. The above terms  
11 shall include any transfer of such property where title is retained  
12 by the seller as security for the payment of the purchase price;  
13

14 (f) The terms "sell at wholesale", "sales at wholesale", and  
15 "wholesale sales" ~~shall mean~~ mean and ~~include~~ include any transfer  
16 for a valuable consideration made in the ordinary course of trade or  
17 the usual conduct of the seller's business, of title to tangible  
18 personal property to the purchaser for purposes of resale or further  
19 processing or manufacturing. The above terms shall include any  
20 transfer of such property where title is retained by the seller as  
21 security for the payment of the purchase price;  
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23 (g) The term "retailer" ~~shall mean~~ means and ~~include~~ includes  
24 every person, partnership, corporation or association engaged in the  
business of making sales at retail of covered merchandise within  
this state; provided that, in the case of a person, partnership,  
corporation or association engaged in the business of making both

1 sales at retail and sales at wholesale, such term shall be applied  
2 only to the retail portion of such business-;

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

10 (i) The term "covered merchandise" means any gasoline and  
11 diesel fuel; legend drug products; food and nonalcoholic beverages  
12 sold for off-premise use or consumption; household soaps and  
13 detergents; health and beauty aids; over-the-counter medicines,  
14 vitamins, and health products excluding exercise equipment and  
15 durable medical products; pet food and pet supplies; paper and  
16 plastic goods; household cleaning agents and cleaning supplies; baby  
17 supplies directly related to nutrition and food preservation,  
18 consumption and disposal, including disposable diapers; and low-  
19 point beer, as defined in paragraph 1 of Section 163.2 of Title 37  
20 of the Oklahoma Statutes, sold for off-premise use or consumption.

21 SECTION 3. AMENDATORY 15 O.S. 2011, Section 598.3, is  
22 amended to read as follows:

23 Section 598.3 It is hereby declared that any advertising,  
24 offer to sell, or sale of any covered merchandise, either by

1 retailers or wholesalers, at less than cost as defined in ~~this act~~  
2 the Unfair Sales Act with the intent and purpose of inducing the  
3 purchase of other covered merchandise or of unfairly diverting trade  
4 from a competitor or otherwise injuring a competitor, impair and  
5 prevent fair competition, injure public welfare, are unfair  
6 competition and contrary to public policy and the policy of ~~this act~~  
7 the Unfair Sales Act, where the result of such advertising, offer or  
8 sale is ~~to tend to deceive any purchaser or prospective purchaser,~~  
9 ~~or~~ to substantially lessen competition, or to unreasonably restrain  
10 trade, or to tend to create a monopoly in any line of commerce.

11 SECTION 4. AMENDATORY 15 O.S. 2011, Section 598.4, is  
12 amended to read as follows:

13 Section 598.4 Any retailer who shall, in contravention of the  
14 policy of ~~this act~~ the Unfair Sales Act, advertise, offer to sell or  
15 sell at retail any ~~item of~~ covered merchandise at less than cost to  
16 the retailer as defined in this act; or any wholesaler who shall in  
17 contravention of the policy of ~~this act~~ the Unfair Sales Act,  
18 advertise, offer to sell, or sell at wholesale any ~~item of~~ covered  
19 merchandise at less than cost to the wholesaler as defined in this  
20 act, shall be guilty of a misdemeanor and upon conviction ~~thereof,~~  
21 shall be punished by a fine of not more than Five Hundred Dollars  
22 (\$500.00).

23 SECTION 5. AMENDATORY 15 O.S. 2011, Section 598.5, is  
24 amended to read as follows:

1       Section 598.5 (a) In addition to the penalties provided in  
2 ~~this act~~ the Unfair Sales Act, any person injured by any violation,  
3 or who shall suffer injury from any threatened violation of ~~this act~~  
4 the Unfair Sales Act, may maintain an action in any court of  
5 equitable jurisdiction to prevent, restrain or enjoin such violation  
6 or threatened violation. If in such action a violation or  
7 threatened violation of ~~this act~~ the Unfair Sales Act shall be  
8 established, the court shall enjoin and restrain or otherwise  
9 prohibit, such violation or threatened violation and, in addition  
10 thereto, shall assess in favor of the plaintiff and against the  
11 defendant the cost of suit. In such action if damages are alleged  
12 and proved, the plaintiff in ~~said~~ the action, in addition to such  
13 injunctive relief and costs of suit, shall be entitled to recover  
14 from the defendant the actual damages sustained by him or her.

15       (b) In the event no injunctive relief is sought or required,  
16 any person injured by a violation of ~~this act~~ the Unfair Sales Act  
17 may maintain an action for damages alone in any court of general  
18 jurisdiction, and the measure of damages in such action shall be the  
19 same as prescribed in subsection (a) of this section. Provided ~~this~~  
20 ~~act~~ the Unfair Sales Act shall not authorize suits or actions  
21 against newspapers, radio broadcasters, or other advertising  
22 agencies through which such advertisements are published, broadcast  
23 or otherwise made.

24       (c) Evidence of advertisement, offering to sell, or sale of

1 covered merchandise by any retailer or wholesaler at less than cost  
2 to ~~him~~ such retailer or wholesaler, shall be prima facie evidence of  
3 intent to injure competitors and to destroy or substantially lessen  
4 competition.

5 SECTION 6. AMENDATORY 15 O.S. 2011, Section 598.6, is  
6 amended to read as follows:

7 Section 598.6 The provisions of ~~this act~~ the Unfair Sales Act  
8 shall not apply to the following sales at retail or sales at  
9 wholesale:

10 (a) where seasonable merchandise is sold in bona fide clearance  
11 sales, if advertised, marked, and sold as such;

12 (b) where perishable merchandise must be sold promptly in order  
13 to forestall loss;

14 (c) where merchandise is imperfect or damaged or is being  
15 discontinued and is advertised, marked and sold as such;

16 (d) where merchandise is sold upon the final liquidation of any  
17 business;

18 (e) where merchandise is sold for charitable purposes or to  
19 relief agencies;

20 (f) where merchandise is sold on contract to departments of the  
21 government or governmental institutions;

22 (g) where merchandise is sold by any officer acting under the  
23 order or direction of any court;

24 (h) where merchandise is sold at any bona fide auction sale;



1 and

2 (i) where a particular item of merchandise corresponding to a  
3 unique identifier is sold at below cost for fifteen (15) or fewer  
4 sequential days and where such sale does not occur more than ten  
5 times in any twelve-month period. This exemption shall not apply to  
6 the following types of merchandise: gasoline and diesel fuel; legend  
7 drug products; food and nonalcoholic beverages sold for off-premise  
8 use or consumption; household soaps and detergents; health and  
9 beauty aids; over-the-counter medicines, vitamins, and health  
10 products excluding exercise equipment and durable medical products;  
11 pet food and pet supplies; paper and plastic goods; household  
12 cleaning agents and cleaning supplies; baby supplies directly  
13 related to nutrition and food preservation, consumption and  
14 disposal, including disposable diapers; and low-point beer, as  
15 defined in paragraph 1 of Section 163.2 of Title 37 of the Oklahoma  
16 Statutes, sold for off-premise use or consumption.

17 SECTION 7. AMENDATORY 15 O.S. 2011, Section 598.7, is  
18 amended to read as follows:

19 Section 598.7 Any retailer or wholesaler may advertise, offer  
20 to sell, or sell covered merchandise at a price made in good faith  
21 to meet the price of a competitor who is selling the same ~~article~~  
22 products or such products of comparable quality at cost to ~~him as a~~  
23 such wholesaler or retailer. The price of covered merchandise  
24 advertised, offered for sale or sold under the exemptions specified

1 in Section ~~6~~ 598.6 of this title, shall not be considered the price  
2 of a competitor and shall not be used as a basis for establishing  
3 prices below cost, nor shall the price established at a bankrupt  
4 sale be considered the price of a competitor within the purview of  
5 the first sentence of this section.

6 SECTION 8. AMENDATORY 15 O.S. 2011, Section 598.8, is  
7 amended to read as follows:

8 Section 598.8 In establishing the cost of covered merchandise  
9 to the retailer or wholesaler, the invoice cost of such covered  
10 merchandise purchased at a forced, bankrupt, closeout sale, or other  
11 sale outside of the ordinary channels of trade, may not be used as a  
12 basis for justifying a price lower than one based upon the  
13 replacement cost of the merchandise to the retailer or wholesaler,  
14 within thirty (30) days prior to the date of sale, in the quantity  
15 last purchased through the ordinary channels of trade.

16 SECTION 9. This act shall become effective November 1, 2013."  
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1 Passed the House of Representatives the 17th day of April, 2013.

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4 Presiding Officer of the House of  
Representatives  
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6 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2013.

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9 Presiding Officer of the Senate  
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1 ENGROSSED SENATE  
2 BILL NO. 550

By: Holt of the Senate

3 and

4 Newell of the House

5  
6 [ Unfair Sales Act - advertising and selling  
7 merchandise below cost and penalties - changing name  
8 of act - modifying language - limiting unfair sales  
9 provisions to gasoline, diesel fuel, and legend drug  
10 products - effective date ]

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

12 SECTION 10. AMENDATORY 15 O.S. 2011, Section 598.1, is  
13 amended to read as follows:

14 Section 598.1. This act shall be known and ~~designated, and~~ may  
15 be cited as the "Unfair Fuel and Legend Drug Products Sales Act".

16 SECTION 11. AMENDATORY 15 O.S. 2011, Section 598.2, is  
17 amended to read as follows:

18 Section 598.2. For the purposes of the Unfair Fuel and Legend  
19 Drug Products Sales Act:

20 (a) ~~When used in this act,~~ the term "cost to the retailer" ~~shall~~  
21 ~~mean~~ means the invoice cost of the merchandise to the retailer or  
22 the replacement cost of the merchandise to the retailer, whichever  
23 is the lower; less all trade discounts except customary discounts  
24 for cash; to which shall be added (1) freight charges not otherwise  
included in the invoice cost or the replacement cost of the

1 merchandise as herein set forth, and (2) cartage to the retail  
2 outlet if done or paid for the retailer, which cartage cost, in the  
3 absence of proof of a lesser cost, shall be deemed to be three-  
4 fourths of one percent ( $3/4$  of 1%) of the cost to the retailer as  
5 herein defined after adding thereto freight charges but before  
6 adding thereto cartage, and taxes, (3) all state and federal taxes  
7 not heretofore added to the cost as such, and (4) a markup to cover  
8 a proportionate part of the cost of doing business, which markup, in  
9 the absence of proof of a lesser cost, shall be six percent (6%) of  
10 the cost of the retailer as herein set forth after adding thereto  
11 freight charges and cartage but before adding thereto a markup-;

12 (b) ~~When used in this act,~~ the term "cost to the wholesaler"  
13 ~~shall mean~~ means the invoice cost of the merchandise to the  
14 wholesaler, or the replacement cost of the merchandise to the  
15 wholesaler, whichever is the lower; less all trade discounts except  
16 customary discounts for cash; to which shall be added, (1) freight  
17 charges, not otherwise included in the invoice cost or the  
18 replacement cost of the merchandise as herein set forth, and (2)  
19 cartage to the retail outlet if done or paid for by the wholesaler,  
20 which cartage cost, in the absence of proof of a lesser cost, shall  
21 be deemed to be three-fourths of one percent ( $3/4$  of 1%) of the cost  
22 to the wholesaler as herein set forth after adding thereto freight  
23 charges but before adding thereto cartage, and taxes, and (3) all  
24 state and federal taxes not heretofore added to the cost as such-;

1 (c) ~~When used in this act~~ the term "replacement costs" ~~shall~~  
2 ~~mean~~ means the cost per unit at which the merchandise sold or  
3 offered for sale could have been bought by the seller at any time  
4 within thirty (30) days prior to the date of sale or the date upon  
5 which it is offered for sale by the seller if bought in the same  
6 quantity or quantities as the seller's last purchase of said  
7 merchandise-;

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

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

23 (f) The terms "sell at wholesale", "sales at wholesale", and  
24 "wholesale sales" ~~shall mean~~ means and ~~include~~ includes any transfer

1 for a valuable consideration made in the ordinary course of trade or  
2 the usual conduct of the seller's business, of title to tangible  
3 personal property to the purchaser for purposes of resale or further  
4 processing or manufacturing. The above terms shall include any  
5 transfer of such property where title is retained by the seller as  
6 security for the payment of the purchase price-;

7 (g) The term "retailer" ~~shall mean~~ means and ~~include~~ includes  
8 every person, partnership, corporation or association engaged in the  
9 business of making sales at retail of gasoline, diesel fuel or  
10 legend drug products within this state; provided that, in the case  
11 of a person, partnership, corporation or association engaged in the  
12 business of making both sales at retail and sales at wholesale, such  
13 term shall be applied only to the retail portion of such business-;  
14 and

15 (h) The term "wholesaler" ~~shall mean~~ means and ~~include~~ includes  
16 every person, partnership, corporation, or association engaged in  
17 the business of making sales at wholesale of gasoline, diesel fuel  
18 or legend drug products within this state; provided that, in the  
19 case of a person, partnership, corporation or association engaged in  
20 the business of making both sales at wholesale and sales at retail,  
21 such term shall be applied only to the wholesale portion of such  
22 business.

23 SECTION 12. AMENDATORY 15 O.S. 2011, Section 598.3, is  
24 amended to read as follows:

1       Section 598.3. It is hereby declared that any advertising,  
2 offer to sell, or sale of any ~~merchandise~~ gasoline, diesel fuel or  
3 legend drug products, either by retailers or wholesalers, at less  
4 than cost as defined in ~~this act~~ the Unfair Fuel and Legend Drug  
5 Products Sales Act with the intent and purpose of inducing the  
6 purchase of other ~~merchandise~~ gasoline, diesel fuel or legend drug  
7 products or of unfairly diverting trade from a competitor or  
8 otherwise injuring a competitor, impair and prevent fair  
9 competition, injure public welfare, are unfair competition and  
10 contrary to public policy and the policy of ~~this act~~ the Unfair Fuel  
11 and Legend Drug Products Sales Act, where the result of such  
12 advertising, offer or sale is ~~to tend to deceive any purchaser or~~  
13 ~~prospective purchaser, or~~ to substantially lessen competition, or to  
14 unreasonably restrain trade, or to tend to create a monopoly in any  
15 line of commerce.

16       SECTION 13.       AMENDATORY       15 O.S. 2011, Section 598.4, is  
17 amended to read as follows:

18       Section 598.4. Any retailer who shall, in contravention of the  
19 policy of ~~this act~~ the Unfair Fuel and Legend Drug Products Sales  
20 Act, advertise, offer to sell or sell at retail any ~~item of~~  
21 ~~merchandise~~ gasoline, diesel fuel or legend drug products at less  
22 than cost to the retailer as defined in this act; or any wholesaler  
23 who shall in contravention of the policy of ~~this act~~ the Unfair Fuel  
24 and Legend Drug Products Sales Act, advertise, offer to sell, or



1 sell at wholesale any ~~item of merchandise~~ gasoline, diesel fuel or  
2 legend drug products at less than cost to the wholesaler as defined  
3 in this act, shall be guilty of a misdemeanor ~~and~~, upon conviction,  
4 ~~thereof~~ and shall be punished by a fine of not more than Five  
5 Hundred Dollars (\$500.00).

6 SECTION 14. AMENDATORY 15 O.S. 2011, Section 598.5, is  
7 amended to read as follows:

8 Section 598.5. (a) In addition to the penalties provided in  
9 ~~this act~~ the Unfair Fuel and Legend Drug Products Sales Act, any  
10 person injured by any violation, or who shall suffer injury from any  
11 threatened violation of ~~this act~~ the Unfair Fuel and Legend Drug  
12 Products Sales Act, may maintain an action in any court of equitable  
13 jurisdiction to prevent, restrain or enjoin such violation or  
14 threatened violation. If in such action a violation or threatened  
15 violation of ~~this act~~ the Unfair Fuel and Legend Drug Products Sales  
16 Act shall be established, the court shall enjoin and restrain or  
17 otherwise prohibit, such violation or threatened violation and, in  
18 addition thereto, shall assess in favor of the plaintiff and against  
19 the defendant the cost of suit. In such action if damages are  
20 alleged and proved, the plaintiff in ~~said~~ the action, in addition to  
21 such injunctive relief and costs of suit, shall be entitled to  
22 recover from the defendant the actual damages sustained by him or  
23 her.

24 (b) In the event no injunctive relief is sought or required, any

1 person injured by a violation of ~~this act~~ the Unfair Fuel and Legend  
2 Drug Products Sales Act may maintain an action for damages alone in  
3 any court of general jurisdiction, and the measure of damages in  
4 such action shall be the same as prescribed in subsection (a) of  
5 this section. Provided ~~this act~~ the Unfair Fuel and Legend Drug  
6 Products Sales Act shall not authorize suits or actions against  
7 newspapers, radio broadcasters, or other advertising agencies  
8 through which such advertisements are published, broadcast or  
9 otherwise made.

10 (c) Evidence of advertisement, offering to sell, or sale of  
11 merchandise by any retailer or wholesaler at less than cost to ~~him~~  
12 such retailer or wholesaler, shall be prima facie evidence of intent  
13 to injure competitors and to destroy or substantially lessen  
14 competition.

15 SECTION 15. AMENDATORY 15 O.S. 2011, Section 598.6, is  
16 amended to read as follows:

17 Section 598.6. The provisions of ~~this act~~ the Unfair Fuel and  
18 Legend Drug Products Sales Act shall not apply to sales at retail or  
19 sales at wholesale- as follows:

20 (a) where seasonable merchandise is sold in bona fide clearance  
21 sales, if advertised marked, and sold as such;

22 (b) where perishable merchandise must be sold promptly in order  
23 to forestall loss;

24 (c) where merchandise is imperfect or damaged or is being

1 discontinued and is advertised, marked and sold as such;

2 (d) where merchandise is sold upon the final liquidation of any  
3 business;

4 (e) where merchandise is sold for charitable purposes or to  
5 relief agencies;

6 (f) where merchandise is sold on contract to departments of the  
7 government or governmental institutions;

8 (g) where merchandise is sold by any officer acting under the  
9 order or direction of any court;

10 (h) where merchandise is sold at any bona fide auction sale.

11 SECTION 16. AMENDATORY 15 O.S. 2011, Section 598.7, is  
12 amended to read as follows:

13 Section 598.7. Any retailer or wholesaler may advertise, offer  
14 to sell, or sell ~~merchandise~~ gasoline, diesel fuel or legend drug  
15 products at a price made in good faith to meet the price of a  
16 competitor who is selling the same ~~article~~ gasoline, diesel fuel or  
17 legend drug products or such products of comparable quality at cost  
18 to ~~him as a~~ such wholesaler or retailer. The price of ~~merchandise~~  
19 gasoline, diesel fuel, or legend drug products advertised, offered  
20 for sale or sold under the exemptions specified in Section ~~6~~ 598.6  
21 of this title, shall not be considered the price of a competitor and  
22 shall not be used as a basis for establishing prices below cost, nor  
23 shall the price established at a bankrupt sale be considered the  
24 price of a competitor within the purview of the first sentence of

1 this section.

2 SECTION 17. AMENDATORY 15 O.S. 2011, Section 598.8, is  
3 amended to read as follows:

4 Section 598.8. In establishing the cost of merchandise to the  
5 retailer or wholesaler, the invoice cost of such ~~merchandise~~  
6 gasoline, diesel fuel, or legend drug products purchased at a  
7 forced, bankrupt, closeout sale, or other sale outside of the  
8 ordinary channels of trade, may not be used as a basis for  
9 justifying a price lower than one based upon the replacement cost of  
10 the merchandise to the retailer or wholesaler, within thirty (30)  
11 days prior to the date of sale, in the quantity last purchased  
12 through the ordinary channels of trade.

13 SECTION 18. This act shall become effective November 1, 2013.

14 Passed the Senate the 6th day of March, 2013.

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\_\_\_\_\_  
Presiding Officer of the Senate

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18 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
19 2013.

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

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