

**COMMITTEE AMENDMENT**

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB550 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: Tom Newell

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

PROPOSED COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 550

By: Holt of the Senate

and

Newell of the House

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to contracts; amending 15 O.S. 2011, Sections 598.1, 598.2, 598.3, 598.4, 598.5, 598.6, 598.7 and 598.8, which relate to the Unfair Sales Act; modifying language; defining term; limiting unfair sales provisions to covered merchandise; providing punishment and fine for violation; permitting civil relief for violation; exempting certain sales; permitting sale of covered merchandise at certain price; modifying term; and providing an effective date.

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

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

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

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

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

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

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

1 replacement cost of the merchandise as herein set forth, and (2)  
2 cartage to the retail outlet if done or paid for by the wholesaler,  
3 which cartage cost, in the absence of proof of a lesser cost, shall  
4 be deemed to be three-fourths of one percent ( $\frac{3}{4}$  of 1%) of the cost  
5 to the wholesaler as herein set forth after adding thereto freight  
6 charges but before adding thereto cartage, and taxes, and (3) all  
7 state and federal taxes not heretofore added to the cost as such-;

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

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

22 (e) The terms "sell at retail", "sales at retail", and "retail  
23 sale" ~~shall mean~~ means and ~~include~~ includes any transfer for a  
24 valuable consideration made in the ordinary course of trade or in

1 the usual prosecution of the seller's business of title to tangible  
2 personal property to the purchaser for consumption or use other than  
3 resale or further processing or manufacturing. The above terms shall  
4 include any transfer of such property where title is retained by the  
5 seller as security for the payment of the purchase price-;

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

14 (g) The term "retailer" ~~shall mean~~ means and ~~include~~ includes  
15 every person, partnership, corporation or association engaged in the  
16 business of making sales at retail of covered merchandise within  
17 this state; provided that, in the case of a person, partnership,  
18 corporation or association engaged in the business of making both  
19 sales at retail and sales at wholesale, such term shall be applied  
20 only to the retail portion of such business-;

21 (h) The term "wholesaler" ~~shall mean~~ means and ~~include~~ includes  
22 every person, partnership, corporation, or association engaged in  
23 the business of making sales at wholesale of covered merchandise  
24 within this state; provided that, in the case of a person,

1 partnership, corporation or association engaged in the business of  
2 making both sales at wholesale and sales at retail, such term shall  
3 be applied only to the wholesale portion of such business; and

4 (i) The term "covered merchandise" means any gasoline and  
5 diesel fuel, legend drug products, food sold for off-premise  
6 consumption, low-point beer, as defined in paragraph 1 of Section  
7 163.2 of Title 37 of the Oklahoma Statutes and alcoholic beverages,  
8 as defined in paragraph 3 of Section 506 of Title 37 of the Oklahoma  
9 Statutes.

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

12 Section 598.3. It is hereby declared that any advertising, offer  
13 to sell, or sale of any covered merchandise, either by retailers or  
14 wholesalers, at less than cost as defined in ~~this act~~ the Unfair  
15 Sales Act with the intent and purpose of inducing the purchase of  
16 other covered merchandise or of unfairly diverting trade from a  
17 competitor or otherwise injuring a competitor, impair and prevent  
18 fair competition, injure public welfare, are unfair competition and  
19 contrary to public policy and the policy of ~~this act~~ the Unfair  
20 Sales Act, where the result of such advertising, offer or sale is ~~to~~  
21 ~~tend to deceive any purchaser or prospective purchaser, or to~~  
22 substantially lessen competition, or to unreasonably restrain trade,  
23 or to tend to create a monopoly in any line of commerce.

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

3       Section 598.4 Any retailer who shall, in contravention of the  
4 policy of ~~this act~~ the Unfair Sales Act, advertise, offer to sell or  
5 sell at retail any ~~item of~~ covered merchandise at less than cost to  
6 the retailer as defined in this act; or any wholesaler who shall in  
7 contravention of the policy of ~~this act~~ the Unfair Sales Act,  
8 advertise, offer to sell, or sell at wholesale any ~~item of~~ covered  
9 merchandise at less than cost to the wholesaler as defined in this  
10 act, shall be guilty of a misdemeanor and upon conviction, ~~thereof~~  
11 shall be punished by a fine of not more than Five Hundred Dollars  
12 (\$500.00).

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

15       Section 598.5 (a) In addition to the penalties provided in ~~this~~  
16 ~~act~~ the Unfair Sales Act, any person injured by any violation, or  
17 who shall suffer injury from any threatened violation of ~~this act~~  
18 the Unfair Sales Act, may maintain an action in any court of  
19 equitable jurisdiction to prevent, restrain or enjoin such violation  
20 or threatened violation. If in such action a violation or  
21 threatened violation of ~~this act~~ the Unfair Sales Act shall be  
22 established, the court shall enjoin and restrain or otherwise  
23 prohibit, such violation or threatened violation and, in addition  
24 thereto, shall assess in favor of the plaintiff and against the

1 defendant the cost of suit. In such action if damages are alleged  
2 and proved, the plaintiff in ~~said~~ the action, in addition to such  
3 injunctive relief and costs of suit, shall be entitled to recover  
4 from the defendant the actual damages sustained by him or her.

5 (b) In the event no injunctive relief is sought or required, any  
6 person injured by a violation of ~~this act~~ the Unfair Sales Act may  
7 maintain an action for damages alone in any court of general  
8 jurisdiction, and the measure of damages in such action shall be the  
9 same as prescribed in subsection (a) of this section. Provided ~~this~~  
10 ~~act~~ the Unfair Sales Act shall not authorize suits or actions  
11 against newspapers, radio broadcasters, or other advertising  
12 agencies through which such advertisements are published, broadcast  
13 or otherwise made.

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

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

21 Section 598.6 The provisions of ~~this act~~ the Unfair Sales Act  
22 shall not apply to the following sales at retail or sales at  
23 wholesale~~:-~~:

24 (a) where seasonable merchandise is sold in bona fide clearance

1 sales, if advertised marked, and sold as such;

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

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

6 (d) where merchandise is sold upon the final liquidation of any  
7 business;

8 (e) where merchandise is sold for charitable purposes or to  
9 relief agencies;

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

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

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

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

17 Section 598.7 Any retailer or wholesaler may advertise, offer  
18 to sell, or sell covered merchandise at a price made in good faith  
19 to meet the price of a competitor who is selling the same ~~article~~  
20 products or such products of comparable quality at cost to ~~him as a~~  
21 such wholesaler or retailer. The price of covered merchandise  
22 advertised, offered for sale or sold under the exemptions specified  
23 in Section ~~6~~ 598.6 of this title, shall not be considered the price  
24 of a competitor and shall not be used as a basis for establishing

1 prices below cost, nor shall the price established at a bankrupt  
2 sale be considered the price of a competitor within the purview of  
3 the first sentence of this section.

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

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

14 SECTION 9. This act shall become effective November 1, 2013.

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16 54-1-7626 EK 03/28/13  
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