

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1365

By: Sanders

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5
6 AS INTRODUCED

7 An Act relating to contracts; providing legislative
8 findings; amending 15 O.S. 2011, Sections 598.1,
9 598.2, 598.3, 598.4, 598.5, 598.7 and 598.8, which
10 relate to the Unfair Sales Act; renaming Unfair Sales
11 Act to Unfair Fuel and Legend Drug Products Sales
12 Act; updating language; modifying definitions;
13 restricting applicability of act to sales of
14 gasoline, diesel fuel or legend drug products; and
15 providing for noncodification.

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

17 SECTION 1. NEW LAW A new section of law not to be
18 codified in the Oklahoma Statutes reads as follows:

19 The Legislature finds as follows:

20 1. For most products, competitive pricing, subject to the
21 limitations of the Sherman Antitrust Act, 15 U.S.C. Section 1,
22 et seq., the Robinson-Patman Act, 15 U.S.C. Section 13, and the
23 Oklahoma Antitrust Reform Act, Sections 201 through 212 of Title
24 79 of the Oklahoma Statutes, establishes market equilibrium and

1 benefits consumers.

2 2. For fuel and legend drug products, which are produced in
3 highly regulated industries, different pricing standards may
4 help ensure orderly market conditions and benefit the welfare of
5 the citizens of Oklahoma. These different standards ensure
6 Retailer and Wholesaler pricing does not lead to unfair
7 competition, which ultimately harms consumers, in the markets
8 for these select products.

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

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

13 SECTION 3. AMENDATORY 15 O.S. 2011, Section 598.2, is
14 amended to read as follows:

15 Section 598.2 (a) When used in ~~this act~~ the Unfair Fuel and
16 Legend Drug Products Sales Act, the term "cost to the ~~retailer~~
17 Retailer" shall mean the invoice cost of the merchandise to the
18 ~~retailer~~ Retailer or the replacement cost of the merchandise to the
19 ~~retailer~~ Retailer, whichever is the lower; less all trade discounts
20 except customary discounts for cash; to which shall be added (1)
21 freight charges not otherwise included in the invoice cost or the
22 replacement cost of the merchandise as herein set forth, and (2)
23 cartage to the retail outlet if done or paid for the ~~retailer~~
24 Retailer, which cartage cost, in the absence of proof of a lesser

1 cost, shall be deemed to be three-fourths of one percent (3/4 of 1%)
2 of the cost to the ~~retailer~~ Retailer as herein defined after adding
3 thereto freight charges but before adding thereto cartage, and
4 taxes, (3) all State and Federal taxes not heretofore added to the
5 cost as such, and (4) a markup to cover a proportionate part of the
6 cost of doing business, which markup, in the absence of proof of a
7 lesser cost, shall be six percent (6%) of the cost of the ~~retailer~~
8 Retailer as herein set forth after adding thereto freight charges
9 and cartage but before adding thereto a markup.

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

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

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

15 (e) The terms "sell at retail", "sales at retail", and "retail
16 sale" shall mean and include any transfer for a valuable
17 consideration made in the ordinary course of trade or in the usual
18 prosecution of the seller's business of title to tangible personal
19 property to the purchaser for consumption or use other than resale
20 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 and include any transfer for a valuable

1 consideration made in the ordinary course of trade or the usual
2 conduct of the seller's business, of title to tangible personal
3 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"~~ "Retailer" shall mean and include every
8 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 (h) The term ~~"wholesaler"~~ "Wholesaler" shall mean and include
15 every person, partnership, corporation, or association engaged in
16 the business of making sales at wholesale of gasoline, diesel fuel
17 or legend drug products within this state; provided that, in the
18 case of a person, partnership, corporation or association engaged in
19 the business of making both sales at wholesale and sales at retail,
20 such term shall be applied only to the wholesale portion of such
21 business.

22 SECTION 4. AMENDATORY 15 O.S. 2011, Section 598.3, is
23 amended to read as follows:
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1 Section 598.3 It is hereby declared that any advertising, offer
2 to sell, or sale of any ~~merchandise~~ gasoline, diesel fuel or legend
3 drug products, either by ~~retailers~~ Retailers or ~~wholesalers~~
4 Wholesalers, at less than cost as defined in this act with the
5 intent and purpose of inducing the purchase of other ~~merchandise~~
6 gasoline, diesel fuel or legend drug products or of unfairly
7 diverting trade from a competitor or otherwise injuring a
8 competitor, impair and prevent fair competition, injure public
9 welfare, are unfair competition and contrary to public policy and
10 the policy of this act, where the result of such advertising, offer
11 or sale is ~~to tend to deceive any purchaser or prospective~~
12 ~~purchaser,~~ or to substantially lessen competition, or to
13 unreasonably restrain trade, or to tend to create a monopoly in any
14 line of commerce.

15 SECTION 5. AMENDATORY 15 O.S. 2011, Section 598.4, is
16 amended to read as follows:

17 Section 598.4 Any ~~retailer~~ Retailer who shall, in contravention
18 of the policy of this act, advertise, offer to sell or sell at
19 retail any ~~item of merchandise~~ gasoline, diesel fuel or legend drug
20 products at less than cost to the ~~retailer~~ Retailer as defined in
21 this act; or any ~~wholesaler~~ Wholesaler who shall in contravention of
22 the policy of this act, advertise, offer to sell, or sell at
23 wholesale any ~~item of merchandise~~ gasoline, diesel fuel or legend
24 drug products at less than cost to the ~~wholesaler~~ Wholesaler as

1 defined in this act, shall be guilty of a misdemeanor and upon
2 conviction thereof shall be punished by a fine of not more than Five
3 Hundred Dollars (\$500.00).

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

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

20 (b) In the event no injunctive relief is sought or required, any
21 person injured by a violation of this act may maintain an action for
22 damages alone in any court of general jurisdiction, and the measure
23 of damages in such action shall be the same as prescribed in
24 subsection (a) of this section. Provided this act shall not

1 authorize suits or actions against newspapers, radio broadcasters,
2 or other advertising agencies through which such advertisements are
3 published, broadcast or otherwise made.

4 (c) Evidence of advertisement, offering to sell, or sale of
5 merchandise by any ~~retailer~~ Retailer or ~~wholesaler~~ Wholesaler at
6 less than cost ~~to him~~, shall be prima facie evidence of intent to
7 injure competitors and to destroy or substantially lessen
8 competition.

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

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

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

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

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