

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 550

By: Holt of the Senate

and

Newell of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to contracts; amending 15 O.S. 2011,
11 Sections 598.1, 598.2, 598.3, 598.4, 598.5, 598.6,
12 598.7 and 598.8, which relate to the Unfair Sales
13 Act; modifying language; defining terms; limiting
14 unfair sales provisions to covered merchandise;
15 providing punishment and fine for violation;
16 permitting civil relief for violation; exempting
17 certain sales; permitting sale of covered merchandise
18 at certain price; modifying term; and providing an
19 effective date.

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

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

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

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

Section 598.2 For the purposes of the Unfair Sales Act:

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

18 (b) ~~When used in this act, the~~ The term "cost to the
19 wholesaler" ~~shall mean~~ means the invoice cost of the merchandise to
20 the wholesaler, or the replacement cost of the merchandise to the
21 wholesaler, whichever is the lower; less all trade discounts except
22 customary discounts for cash; to which shall be added, (1) freight
23 charges, not otherwise included in the invoice cost or the
24 replacement cost of the merchandise as herein set forth, and (2)

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

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

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

21 (e) The terms "sell at retail", "sales at retail", and "retail
22 sale" ~~shall mean~~ means and ~~include~~ includes any transfer for a
23 valuable consideration made in the ordinary course of trade or in
24 the usual prosecution of the seller's business of title to tangible

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

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

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

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

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

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

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

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

1 sale is to tend to deceive any purchaser or prospective purchaser,
2 or to substantially lessen competition, or to unreasonably restrain
3 trade, or to tend to create a monopoly in any line of commerce.

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

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

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

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

1 established, the court shall enjoin and restrain or otherwise
2 prohibit, such violation or threatened violation and, in addition
3 thereto, shall assess in favor of the plaintiff and against the
4 defendant the cost of suit. In such action if damages are alleged
5 and proved, the plaintiff in ~~said~~ the action, in addition to such
6 injunctive relief and costs of suit, shall be entitled to recover
7 from the defendant the actual damages sustained by him or her.

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

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

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

24 Section 598.6 The provisions of ~~this act~~ the Unfair Sales Act

1 ashall not apply to the following sales at retail or sales at
2 wholesale-;

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

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

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

9 (d) where merchandise is sold upon the final liquidation of any
10 business;

11 (e) where merchandise is sold for charitable purposes or to
12 relief agencies;

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

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

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

18 and

19 (i) where a particular item of merchandise corresponding to a
20 unique identifier is sold at below cost for fifteen (15) or fewer
21 sequential days and where such sale does not occur more than ten
22 times in any twelve-month period. This exemption shall not apply to
23 the following types of merchandise: gasoline and diesel fuel; legend
24 drug products; food and non-alcoholic beverages sold for off-premise

1 use or consumption; household soaps and detergents; health and
2 beauty aids; over-the-counter medicines, vitamins, and health
3 products excluding exercise equipment and durable medical products;
4 pet food and pet supplies; paper and plastic goods; household
5 cleaning agents and cleaning supplies; baby supplies directly
6 related to nutrition and food preservation, consumption and
7 disposal, including disposable diapers; and low-point beer, as
8 defined in subsection 1 of Section 163.2 of Title 37 of the Oklahoma
9 Statutes, sold for off-premise use or consumption.

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

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

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

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

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

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