

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL 550

By: Holt and Sharp of the  
Senate

6 and

7 Newell, Hall, Walker and  
8 Cockroft of the House

9  
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to contracts; amending 15 O.S. 2011,  
12 Sections 598.1, 598.2, 598.3, 598.4, 598.5, 598.6 and  
13 598.7, which relate to the Unfair Sales Act;  
14 modifying language; updating references; exempting  
15 certain sales; and providing an effective date.

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

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

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

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

23 Section 598.2. For the purposes of the Unfair Sales Act:  
24

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~~ mean and include any transfer for a valuable  
23 consideration made in the ordinary course of trade or in the usual  
24 prosecution of the seller's business of title to tangible personal

1 property to the purchaser for consumption or use other than resale  
2 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~~ mean and include any transfer for a  
7 valuable consideration made in the ordinary course of trade or the  
8 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 within this state; provided that,  
16 in the case of a person, partnership, corporation or association  
17 engaged in the business of making both sales at retail and sales at  
18 wholesale, such term shall be applied only to the retail portion of  
19 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 within this state;  
23 provided that, in the case of a person, partnership, corporation or  
24 association engaged in the business of making both sales at

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

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

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

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

19 Section 598.4. Any retailer who shall, in contravention of the  
20 policy of ~~this act~~ the Unfair Sales Act, advertise, offer to sell or  
21 sell at retail any item of merchandise at less than cost to the  
22 retailer as defined in this act; or any wholesaler who shall in  
23 contravention of the policy of ~~this act~~ the Unfair Sales Act,  
24 advertise, offer to sell, or sell at wholesale any item of

1 merchandise at less than cost to the wholesaler as defined in ~~this~~  
2 ~~act~~ the Unfair Sales Act, shall be guilty of a misdemeanor and upon  
3 conviction ~~thereof~~, shall be punished by a fine of not more than  
4 Five Hundred Dollars (\$500.00).

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

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

21 (b) In the event no injunctive relief is sought or required,  
22 any person injured by a violation of ~~this act~~ the Unfair Sales Act  
23 may maintain an action for damages alone in any court of general  
24 jurisdiction, and the measure of damages in such action shall be the

1 same as prescribed in subsection (a) of this section. Provided ~~this~~  
2 ~~act~~ the Unfair Sales Act shall not authorize suits or actions  
3 against newspapers, radio broadcasters, or other advertising  
4 agencies through which such advertisements are published, broadcast  
5 or otherwise made.

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

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

13 Section 598.6. The provisions of ~~this act~~ the Unfair Sales Act  
14 shall not apply to the following sales at retail or sales at  
15 wholesale-:

16 ~~(a) where~~ 1. Where seasonable merchandise is sold in bona fide  
17 clearance sales, if advertised, marked, and sold as such;

18 ~~(b) where~~ 2. Where perishable merchandise must be sold  
19 promptly in order to forestall loss;

20 ~~(c) where~~ 3. Where merchandise is imperfect or damaged or is  
21 being discontinued and is advertised, marked and sold as such;

22 ~~(d) where~~ 4. Where merchandise is sold upon the final  
23 liquidation of any business;

24

1       ~~(e) where~~ 5. Where merchandise is sold for charitable purposes  
2 or to relief agencies;

3       ~~(f) where~~ 6. Where merchandise is sold on contract to  
4 departments of the government or governmental institutions;

5       ~~(g) where~~ 7. Where merchandise is sold by any officer acting  
6 under the order or direction of any court;

7       ~~(h) where~~ 8. Where merchandise is sold at any bona fide  
8 auction sale; and

9       9. Where a particular item of merchandise corresponding to a  
10 unique identifier is sold at below cost for fifteen (15) or fewer  
11 sequential days and where such single-day or multi-day sale does not  
12 occur more than ten (10) separate times in any twelve-month period.

13 This exemption shall not apply to:

14       a. gasoline and diesel fuel,

15       b. legend drug products,

16       c. food and nonalcoholic beverages sold for off-premise  
17 use or consumption,

18       d. household soaps and detergents,

19       e. health and beauty aids,

20       f. over-the-counter medicines, vitamins, and health  
21 products, excluding exercise equipment and durable  
22 medical products,

23       g. pet food and pet supplies,

24       h. paper and plastic goods,

- 1            i. household cleaning agents and cleaning supplies,  
2            j. baby supplies directly related to nutrition and food  
3            preservation, consumption and disposal, including  
4            disposable diapers,  
5            k. low-point beer, as defined in paragraph 1 of Section  
6            163.2 of Title 37 of the Oklahoma Statutes, sold for  
7            off-premise use or consumption, and  
8            l. structural building materials, including but not  
9            limited to lumber and lumber composites, engineered  
10           wood products, structural wood panels, roofing,  
11           guttering, siding, drywall, insulation, flooring,  
12           windows, doors and plumbing elements.

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

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

1 a competitor within the purview of the first sentence of this  
2 section.

3 SECTION 8. This act shall become effective November 1, 2013.

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