

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]

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

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

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

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

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

19 (a) ~~When used in this act,~~ the term "cost to the retailer" shall
20 ~~mean~~ means the invoice cost of the merchandise to the retailer or
21 the replacement cost of the merchandise to the retailer, whichever
22 is the lower; less all trade discounts except customary discounts
23 for cash; to which shall be added (1) freight charges not otherwise
24 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 3. 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 4. 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 5. 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 6. 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 7. 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 8. 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 9. This act shall become effective November 1, 2013.

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

15

16

Presiding Officer of the Senate

17

18 Passed the House of Representatives the ____ day of _____,
19 2013.

20

21

Presiding Officer of the House
of Representatives

22

23

24