

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 638 By: Daniels of the Senate
3 and
4 Bashore of the House
5
6
7 An Act relating to the Unfair Sales Act; amending 15
8 O.S. 2021, Section 598.2, which relates to
9 definitions; modifying definitions; updating
10 statutory language and references; and providing an
11 effective date.
12
13 AUTHORS: Add the following House Coauthors: Moore, Eaves, Banning,
14 Pfeiffer, Turner, Osburn, and Lepak
15 AUTHORS: Add the following Senate Coauthors: Frix and Woods
16 AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill
17 and insert:
18 "An Act relating to the Unfair Sales Act; amending 15
19 O.S. 2021, Section 598.2, which relates to
20 definitions; modifying definitions; defining term;
21 updating statutory language and references; amending
22 15 O.S. 2021, Section 598.4, which relates to
23 violations of act; creating penalty for retailers who
24 violate act when selling motor fuel; and providing an
effective date.

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

2 SECTION 1. AMENDATORY 15 O.S. 2021, Section 598.2, is
3 amended to read as follows:

4 Section 598.2. For the purposes of the Unfair Sales Act:

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

22 ~~(b) The term "cost~~ 2. "Cost to the wholesaler" means the
23 invoice cost of the merchandise to the wholesaler, or the
24 replacement cost of the merchandise to the wholesaler, whichever is

1 the lower; less all trade discounts except customary discounts for
2 cash; to which shall be added, ~~(1)~~ (a) freight charges, not
3 otherwise included in the invoice cost or the replacement cost of
4 the merchandise as herein set forth, and ~~(2)~~ (b) cartage to the
5 retail outlet if done or paid for by the wholesaler, which cartage
6 cost, in the absence of proof of a lesser cost, shall be deemed to
7 be three-fourths of one percent ($3/4$ of 1%) of the cost to the
8 wholesaler as herein set forth after adding thereto freight charges
9 but before adding thereto cartage, and taxes, and ~~(3)~~ (c) all state
10 and federal taxes not heretofore added to the cost as such;

11 ~~(c) The term "replacement~~ 3. "Replacement costs" means the
12 cost per unit at which the merchandise sold or offered for sale
13 could have been bought by the seller at any time within thirty (30)
14 days prior to the date of sale or the date upon which it is offered
15 for sale by the seller if bought in the same quantity or quantities
16 as the seller's last purchase of said merchandise~~+~~.

17 ~~(d)~~ When one or more items advertised, offered for sale, or sold
18 with one or more other items at a combined price, or advertised,
19 offered as a gift, or given with the sale of one or more other
20 items, each and all of the items shall be deemed to be advertised,
21 offered for sale, or sold, and the price of each item named shall be
22 governed by the provisions of ~~paragraphs (a) or (b)~~ paragraph 1 or 2
23 of this section, respectively;

24

~~(e) The terms "sell~~ 4. "Retailer" means and includes every
person, partnership, corporation, or association engaged in the
business of making sales at retail within this state; provided,
that, in the case of a person, partnership, corporation, or
association engaged in the business of making both sales at retail
and sales at wholesale, such term shall be applied only to the
retail portion of such business;

5. "Sell at retail", "sales at retail", and "retail sale" mean
and include any transfer for valuable consideration made in the
ordinary course of trade or in the usual prosecution of the seller's
business of title to tangible personal property to the purchaser for
consumption or use other than resale or further processing or
manufacturing. ~~The above~~ Such terms shall include any transfer of
~~such~~ property where title is retained by the seller as security for
the payment of the purchase price;

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

1 ~~(g) The term "retailer" means and includes every person,~~
2 ~~partnership, corporation or association engaged in the business of~~
3 ~~making sales at retail within this state; provided that, in the case~~
4 ~~of a person, partnership, corporation or association engaged in the~~
5 ~~business of making both sales at retail and sales at wholesale, such~~
6 ~~term shall be applied only to the retail portion of such business;~~

7 ~~(h) The term "wholesaler"~~ 7. "Wholesaler" means and includes
8 every person, partnership, corporation, or association engaged in
9 the business of making sales at wholesale within this state;
10 provided, that, in the case of a person, partnership, corporation,
11 or association engaged in the business of making both sales at
12 wholesale and sales at retail, such term shall be applied only to
13 the wholesale portion of such business.

14 SECTION 2. AMENDATORY 15 O.S. 2021, Section 598.4, is
15 amended to read as follows:

16 Section 598.4. A. Any retailer who shall, in contravention of
17 the policy of the Unfair Sales Act, advertise, offer to sell or sell
18 at retail any item of merchandise at less than cost to the retailer
19 as defined in this act~~+~~, or any wholesaler who shall, in
20 contravention of the policy of the Unfair Sales Act, advertise,
21 offer to sell, or sell at wholesale any item of merchandise at less
22 than cost to the wholesaler as defined in the Unfair Sales Act,
23 shall be guilty of a misdemeanor and, upon conviction, shall be
24 punished by a fine of not more than Five Hundred Dollars (\$500.00).

B. Any retailer who shall, in contravention of the policy of the Unfair Sales Act, advertise, offer to sell or sell at retail motor fuel as defined in paragraph 44 of Section 500.3 of Title 68 of the Oklahoma Statutes at less than cost to the retailer as defined in this act, or any wholesaler, who shall in contravention of the policy of the Unfair Sales Act, advertise, offer to sell, or sell at wholesale motor fuel as defined in paragraph 44 of Section 500.3 of Title 68 of the Oklahoma Statutes at less than cost to the wholesaler as defined in the Unfair Sales Act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00).

SECTION 3. This act shall become effective November 1, 2025."

Passed the House of Representatives the 29th day of April, 2025.

Presiding Officer of the House of
Representatives

Passed the Senate the day of , 2025.

Presiding Officer of the Senate

1 ENGROSSED SENATE
2 BILL NO. 638

By: Daniels of the Senate

3 and

4 Bashore of the House

5
6 An Act relating to the Unfair Sales Act; amending 15
7 O.S. 2021, Section 598.2, which relates to
8 definitions; modifying definitions; updating
9 statutory language and references; and providing an
10 effective date.

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

12 SECTION 4. AMENDATORY 15 O.S. 2021, Section 598.2, is
13 amended to read as follows:

14 Section 598.2. For the purposes of the Unfair Sales Act:

15 ~~(a) The term "cost~~ 1. "Cost to the retailer" means the invoice
16 cost of the merchandise to the retailer or the replacement cost of
17 the merchandise to the retailer, whichever is the lower; less all
18 trade discounts except customary discounts for cash; to which shall
19 be added ~~(1)~~ (a) freight charges not otherwise included in the
20 invoice cost or the replacement cost of the merchandise as herein
21 set forth, and ~~(2)~~ (b) cartage to the retail outlet if done or paid
22 for the retailer, which cartage cost, in the absence of proof of a
23 lesser cost, shall be deemed to be three-fourths of one percent (3/4
24 of 1%) of the cost to the retailer as herein defined after adding

thereto freight charges but before adding thereto cartage, and taxes, ~~(3)~~ and (c) all state and federal taxes not heretofore added to the cost as such, and ~~(4)~~ a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be six percent (6%) of the cost of the retailer as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup;

~~(b)~~ The term "cost 2. "Cost to the wholesaler" means the invoice cost of the merchandise to the wholesaler, or the replacement cost of the merchandise to the wholesaler, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added, ~~(1)~~ (a) freight charges, not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and ~~(2)~~ (b) cartage to the retail outlet if done or paid for by the wholesaler, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths of one percent ($3/4$ of 1%) of the cost to the wholesaler as herein set forth after adding thereto freight charges but before adding thereto cartage, and taxes, and ~~(3)~~ (c) all state and federal taxes not heretofore added to the cost as such;

~~(c)~~ The term "replacement 3. "Replacement costs" means the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time within thirty (30) days prior to the date of sale or the date upon which it is offered

1 for sale by the seller if bought in the same quantity or quantities
2 as the seller's last purchase of said merchandise~~+~~.

3 ~~(d)~~ When one or more items advertised, offered for sale, or
4 sold with one or more other items at a combined price, or
5 advertised, offered as a gift, or given with the sale of one or more
6 other items, each and all of the items shall be deemed to be
7 advertised, offered for sale, or sold, and the price of each item
8 named shall be governed by the provisions of paragraphs ~~(a) or (b)~~ 1
9 or 2 of this section, respectively;

10 ~~(e)~~ ~~The terms "sell~~ 4. "Retailer" means and includes every
11 person, partnership, corporation or association engaged in the
12 business of making sales at retail within this state; provided,
13 that, in the case of a person, partnership, corporation or
14 association engaged in the business of making both sales at retail
15 and sales at wholesale, such term shall be applied only to the
16 retail portion of such business;

17 5. "Sell at retail", "sales at retail", and "retail sale" mean
18 and include any transfer for valuable consideration made in the
19 ordinary course of trade or in the usual prosecution of the seller's
20 business of title to tangible personal property to the purchaser for
21 consumption or use other than resale or further processing or
22 manufacturing. ~~The above~~ Such terms shall include any transfer of
23 ~~such~~ property where title is retained by the seller as security for
24 the payment of the purchase price;

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

9 ~~(g) The term "retailer" means and includes every person,
10 partnership, corporation or association engaged in the business of
11 making sales at retail within this state; provided that, in the case
12 of a person, partnership, corporation or association engaged in the
13 business of making both sales at retail and sales at wholesale, such
14 term shall be applied only to the retail portion of such business;~~

15 ~~(h) The term "wholesaler"~~ 7. "Wholesaler" means and includes
16 every person, partnership, corporation, or association engaged in
17 the business of making sales at wholesale within this state;
18 provided, that, in the case of a person, partnership, corporation or
19 association engaged in the business of making both sales at
20 wholesale and sales at retail, such term shall be applied only to
21 the wholesale portion of such business.

22 SECTION 5. This act shall become effective November 1, 2025.
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1 Passed the Senate the 25th day of March, 2025.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2025.

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8 _____
9 Presiding Officer of the House
10 of Representatives