

An Act

ENROLLED HOUSE

BILL NO. 2231

By: Dorman, Murphey, Turner,
Cockroft, Derby, Kern, Cox,
Sherrer, Hoskin, Walker,
Shelton and McDaniel
(Jeannie) of the House

and

Anderson, Ivester and
Johnson (Constance) of the
Senate

An Act relating to civil emergency management; requiring the Office of Management and Enterprise Services to develop mobile application; requiring administration by the Chief Information Officer; providing for content related to preparedness, response, recovery and mitigation; requiring assistance by the Department of Emergency Management; creating the Oklahoma Disaster Relief Materials Price Stabilization Act; providing short title; defining terms; prohibiting excessive prices during extreme temporary conditions; prohibiting sales below cost; providing for a private cause of action; allowing injunctive relief without actual damages; making sale below cost evidence of intent; precluding criminal prosecution based on civil testimony; providing exceptions to prohibited activities; providing situations where invoice price does not constitute cost of merchandise; providing for codification; and providing an effective date.

SUBJECT: Civil emergency management

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

A. The Office of Management and Enterprise Services shall develop and maintain a mobile application, to be administered by the Chief Information Officer, for the benefit of the citizens of Oklahoma in order to make preparedness, response, recovery and mitigation information more accessible to the public. The mobile application shall be associated with the following address: *www.emergency.ok.gov* and be developed and distributed for all major mobile operating devices.

B. The Department of Emergency Management shall assist and cooperate with the Chief Information Officer in order to develop content for the mobile application to allow for rapid access to relevant information so that citizens are able to access and report response information to the Department of Emergency Management.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2203.1 of Title 62, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Disaster Relief Materials Price Stabilization Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2203.2 of Title 62, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Disaster Relief Materials Price Stabilization Act:

1. "Cost to the retailer" means the invoice cost of the merchandise to the retailer or the replacement cost of the merchandise to the retailer, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added:

- a. freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise,
- b. cartage to the retail outlet if done or paid for the retailer, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths of one percent ($\frac{3}{4}$ of 1%) of the cost to the retailer as herein defined after adding freight charges, but before adding cartage and taxes,

- c. all state and federal taxes, and
- d. 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 after adding freight charges and cartage, but before adding a markup;

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:

- a. freight charges, not otherwise included in the invoice cost or the replacement cost of the merchandise,
- 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 after adding freight charges, but before adding cartage and taxes, and
- c. all state and federal taxes;

3. "Disaster relief materials" means those structural elements that typically sustain damage during temporary conditions, including, but not limited to: lumber and lumber composites, engineered wood products, structural wood panels, roofing, guttering, siding, drywall, insulation, flooring, windows, doors and plumbing elements;

4. "Excessive price" means a price exceeding one hundred ten percent (110%) of the highest price charged by the retailer or wholesaler for the item within the previous thirty (30) days;

5. "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 for sale by the seller if bought in the same quantity or quantities as the seller's last purchase of such merchandise;

6. "Retailer" means and includes every person, partnership, corporation or association engaged in the business of making sales of retail disaster relief materials 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;

7. "Sell at retail", "sales at retail", "retail sale", "sell at wholesale", "sales at wholesale" or "wholesale sales" means 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 personal property to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price;

8. "Temporary conditions" means conditions lasting seven (7) days or less such as tornado, hail storm, ice storm or blizzard. It does not include conditions lasting longer than seven (7) days such as drought or low temperatures; and

9. "Wholesaler" means and includes every person, partnership, corporation or association engaged in the business of making sales of wholesale disaster relief materials within this state; provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at wholesale and sales at retail, such term shall be applied only to the wholesale portion of such business.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2203.3 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the provisions of the Emergency Price Stabilization Act, a retailer or wholesaler shall not, in connection with the advertisement or sale of disaster relief materials:

1. Take advantage of the physical or mental impairment or hardship of a person caused by extreme temporary conditions and charge an excessive price for disaster relief materials;

2. Charge within a disaster area an excessive price for any disaster relief materials; or

3. Charge any person an excessive price for disaster relief materials which the seller has reason to know is likely to be provided to consumers within a disaster area.

B. Notwithstanding the provisions of the Emergency Price Stabilization Act, a retailer shall not advertise, offer to sell, or sell at retail disaster relief materials at less than cost to the retailer with the intent and purpose of inducing the purchase of disaster relief materials or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create a monopoly in any line of commerce.

C. Notwithstanding the provisions of the Emergency Price Stabilization Act, a wholesaler shall not advertise, offer to sell, or sell disaster relief materials at less than cost to the wholesaler with the intent and purpose of inducing the purchase of disaster relief materials or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create a monopoly in any line of commerce.

D. Any person who is found to be in violation of this act shall forfeit and pay a civil penalty of not more than One Thousand Dollars (\$1,000.00) per violation. The Attorney General, acting in the name of the state, or a district attorney may petition for recovery of civil penalties.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2203.4 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. In addition to the penalties provided by this act, any person injured by any violation, or who shall suffer injury from any threatened violation of this act, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation or

threatened violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the cost of suit. In such action if damages are alleged and proved, the plaintiff in the action, in addition to such injunctive relief and costs of suit, shall be entitled to recover actual damages from the defendant.

B. In the event no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages in any court of general jurisdiction, and the measure of damages shall be the same as prescribed in subsection A of this section. Provided, this act shall not authorize suits or actions against newspapers, radio broadcasters, or other advertising agencies through which such advertisements are published, broadcast or otherwise made.

C. Evidence of advertisement, offering to sell, or sale of disaster relief materials by any retailer or wholesaler at less than cost, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

D. Any defendant or any witness in any civil action brought under the provisions of this act may be required to testify. Any defendant or any witness, may, upon proper process, be compelled to produce books, records, invoices and all other documents of the defendant or witness into court and may be introduced as evidence. No defendant or any witness in a civil action shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction or matter. The defendant or witness may be required to testify or produce evidence, documentary or otherwise. No testimony thus given or produced shall be received against the defendant or witness upon any criminal proceeding or investigation.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2203.5 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The provisions of this act shall not apply to sales otherwise prohibited by subsections B and C of Section 4 of this act when disaster relief materials are:

1. Sold to relief agencies or for charitable purposes;
2. Sold on contract to departments of the government or governmental institutions;

3. Sold in bona fide clearance sales, if advertised, marked, and sold as such;

4. Imperfect or damaged or are being discontinued and are advertised, marked and sold as such;

5. Sold upon the final liquidation of any business;

6. Sold by any officer acting under the order or direction of any court; or

7. Sold at any bona fide auction sale.

B. A retailer or wholesaler shall not be found to have sold or advertised at less than cost if the materials sold are at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at cost as a wholesaler or retailer.

C. The price of disaster relief materials advertised, offered for sale, or sold under the exemptions specified in Section 3 of this act, shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2203.6 of Title 62, unless there is created a duplication in numbering, reads as follows:

In establishing the cost of merchandise to the retailer or wholesaler, the invoice cost of such disaster relief materials purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the merchandise to the retailer or wholesaler, within thirty (30) days prior to the date of sale, in the quantity last purchased through the ordinary channels of trade.

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

Passed the House of Representatives the 24th day of May, 2013.

James Powell
Presiding Officer of the House
of Representatives

Passed the Senate the 24th day of May, 2013.

D.B. Williams
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 24th

day of May, 20 13, at 9:18 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 31st

day of May, 20 13, at 10:53 o'clock A M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 31st

day of May, 20 13, at 1:12 o'clock P M.

By: Chris Brown