An Act

ENROLLED SENATE
BILL NO. 550

By: Holt and Sharp of the Senate

and

Newell, Hall, Walker and Cockroft of the House

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

SUBJECT: Unfair Sales Act

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

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

Section 598.1. This act shall be known and ~~designated, and~~ may 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:

(a) ~~When used in this act, the~~ The term "cost to the retailer" ~~shall mean~~ 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 (1) freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and (2) 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 (3/4 of 1%) of the cost to the retailer as herein defined after adding thereto freight charges but before adding thereto cartage, and taxes, (3) 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) ~~When used in this act, the~~ The term "cost to the wholesaler" ~~shall mean~~ 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) freight charges, not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and (2) 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) all state and federal taxes not heretofore added to the cost as such~~.~~;

(c) ~~When used in this act the~~ The term "replacement costs" ~~shall mean~~ 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 said merchandise~~.~~;

(d) When one or more items ~~are~~ advertised, offered for sale, or sold with one or more other items at a combined price, or ~~are~~ advertised, offered as a gift, or given with the sale of one or more other items, each and all of ~~said~~ the items shall ~~for the purposes of this act~~ be deemed to be advertised, offered for sale, or sold,

and the price of each item named shall be governed by the provisions of paragraphs (a) or (b) of ~~Section 2~~ this section, respectively~~.~~;

(e) The terms "sell at retail", "sales at retail", and "retail sale" ~~shall mean~~ mean and include any transfer for ~~a~~ 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 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 at wholesale", "sales at wholesale", and "wholesale sales" ~~shall mean~~ 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 terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price~~.~~;

(g) The term "retailer" ~~shall mean~~ means and ~~include~~ 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~~.~~;

(h) The term "wholesaler" ~~shall mean~~ means and ~~include~~ includes every person, partnership, corporation, or association engaged in the business of making sales at wholesale 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 3. AMENDATORY 15 O.S. 2011, Section 598.3, is amended to read as follows:

Section 598.3. It is hereby declared that any advertising, offer to sell, or sale of any merchandise, either by retailers or

wholesalers, at less than cost as defined in ~~this act~~ the Unfair Sales Act with the intent and purpose of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare, are unfair competition and contrary to public policy and the policy of ~~this act~~ the Unfair Sales Act, 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.

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

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

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

Section 598.5. (a) In addition to the penalties provided in ~~this act~~ the Unfair Sales Act, any person injured by any violation, or who shall suffer injury from any threatened violation of ~~this act~~ the Unfair Sales 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~~ the Unfair Sales 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 ~~said~~ the action, in addition to such injunctive relief and costs of suit, shall be entitled to recover from the defendant the actual damages sustained by him or her.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of ~~this act~~ the Unfair Sales Act may maintain an action for damages alone in any court of general jurisdiction, and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section. Provided ~~this act~~ the Unfair Sales 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 merchandise by any retailer or wholesaler at less than cost to ~~him~~ such retailer or wholesaler, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

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

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

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

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

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

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

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

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

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

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

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

a. gasoline and diesel fuel,

b. legend drug products,

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

d. household soaps and detergents,

e. health and beauty aids,

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

g. pet food and pet supplies,

h. paper and plastic goods,

i. household cleaning agents and cleaning supplies,

j. baby supplies directly related to nutrition and food preservation, consumption and disposal, including disposable diapers,

k. low-point beer, as defined in paragraph 1 of Section 163.2 of Title 37 of the Oklahoma Statutes, sold for off-premise use or consumption, and

l. structural building materials, 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.

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

Section 598.7. Any retailer or wholesaler may advertise, offer to sell, or sell merchandise 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 to ~~him as a~~ such wholesaler or retailer. The price of merchandise advertised, offered for sale or sold under the exemptions specified in Section ~~6~~ 598.6 of this title, 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 within the purview of the first sentence of this section.

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

Passed the Senate the 15th day of May, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May, 2013.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd day of May, 2013, at 12:06 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 24th day of May, 2013, at 1:23 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 24th day of May, 2013, at 1:55 o'clock P. M.

By: Chris Morris