

CS for SB 768

THE STATE SENATE
Thursday, February 24, 2005

Committee Substitute for
Senate Bill No. 768

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 768 - By: RABON of the Senate and ROGGOW of the House.

An Act relating to contracts; amending 15 O.S. 2001, Sections 598.2, 598.7 and 598.8, which relate to the Unfair Sales Act; clarifying language; modifying definitions; providing certain exception to meeting certain prices; modifying certain time frame for determining certain cost of sales; and providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 2001, Section 598.2, is amended to read as follows:

Section 598.2 ~~(a) When~~ As used in this act ~~the term "cost,"~~:

1. "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)~~

a. freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, ~~and~~

~~(2)~~

1 b. cartage to the retail outlet if done or paid for the
2 retailer, which cartage cost, in the absence of proof
3 of a lesser cost, shall be deemed to be three-fourths
4 of one percent (3/4 of 1%) of the cost to the retailer
5 as herein defined after adding thereto freight charges
6 but before adding thereto cartage, and taxes,

7 ~~(3)~~

8 c. all State and Federal taxes not heretofore added to
9 the cost as such, and

10 ~~(4)~~

11 d. a markup to cover a proportionate part of the cost of
12 doing business, which markup, in the absence of proof
13 of a lesser cost, shall be six percent (6%) of the
14 cost of the retailer as herein set forth after adding
15 thereto freight charges and cartage but before adding
16 thereto a markup.

17 ~~(b) When used in this act, the term "cost~~ 2. "Cost to the
18 wholesaler" ~~shall mean~~ means the invoice cost of the merchandise to
19 the wholesaler, or the replacement cost of the merchandise to the
20 wholesaler, whichever is the lower; less all trade discounts except
21 customary discounts for cash; to which shall be added, :

22 ~~(1)~~

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

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

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

1 ~~(g) The term "retailer" shall mean~~ 7. "Retailer" means and
2 include every person, partnership, corporation or association
3 engaged in the business of making sales at retail within this state;
4 provided that, in the case of a person, partnership, corporation or
5 association engaged in the business of making both sales at retail
6 and sales at wholesale, provided, such term shall be applied only to
7 the retail portion of such business.

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

15 SECTION 2. AMENDATORY 15 O.S. 2001, Section 598.7, is
16 amended to read as follows:

17 Section 598.7 Any retailer or wholesaler may advertise, offer
18 to sell, or sell merchandise at a price made in good faith to meet
19 the price of a competitor who is selling the same article or
20 products of comparable quality at cost to him or her as a wholesaler
21 or retailer, unless there is reason to believe the competitor is
22 offering below his or her cost. The price of merchandise
23 advertised, offered for sale or sold under the exemptions specified

1 in Section ~~6~~ 598.6 of this title, shall not be considered the price
2 of a competitor and shall not be used as a basis for establishing
3 prices below cost, nor shall the price established at a bankrupt
4 sale be considered the price of a competitor within the purview of
5 the first sentence of this section.

6 SECTION 3. AMENDATORY 15 O.S. 2001, Section 598.8, is
7 amended to read as follows:

8 Section 598.8 In establishing the cost of merchandise to the
9 retailer or wholesaler, the invoice cost of such merchandise
10 purchased at a forced, bankrupt, closeout sale, or other sale
11 outside of the ordinary channels of trade, may not be used as a
12 basis for justifying a price lower than one based upon the
13 replacement cost of the merchandise to the retailer or wholesaler,
14 within ~~thirty (30) days~~ twenty-four (24) hours prior to the date of
15 sale, in the quantity last purchased through the ordinary channels
16 of trade.

17 SECTION 4. This act shall become effective November 1, 2005.

18 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 2-21-05
19 - DO PASS, As Amended and Coauthored.