

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
3 BILL NO. 2231

By: Dorman, Murphey, Turner,  
Cockroft, Derby and Kern of  
the House

4  
5 and

6 Anderson of the Senate  
7

8 An Act relating to civil emergency management;  
9 requiring the Office of Management and Enterprise  
10 Services to develop mobile application; requiring  
11 administration by the Chief Information Officer;  
12 providing for content related to preparedness,  
13 response, recovery and mitigation; requiring  
14 assistance by the Department of Emergency Management;  
15 and providing for codification.

14 AUTHORS: Add the following Senate Coauthors: Ivester and Johnson  
15 (Constance)

16 AUTHOR: Add the following House Coauthor: Cox

17 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
entire bill and insert

18 "An Act relating to civil emergency management;  
19 requiring the Office of Management and Enterprise  
20 Services to develop mobile application; requiring  
21 administration by the Chief Information Officer;  
22 providing for content related to preparedness,  
23 response, recovery and mitigation; requiring  
24 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

1 below cost evidence of intent; precluding criminal  
2 prosecution based on civil testimony; providing  
3 exceptions to prohibited activities; providing  
4 situations where invoice price does not constitute  
5 cost of merchandise; providing for codification; and  
6 providing an effective date.

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

8 SECTION 1. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 34.11.10 of Title 62, unless  
10 there is created a duplication in numbering, reads as follows:

11 A. The Office of Management and Enterprise Services shall  
12 develop and maintain a mobile application, to be administered by the  
13 Chief Information Officer, for the benefit of the citizens of  
14 Oklahoma in order to make preparedness, response, recovery and  
15 mitigation information more accessible to the public. The mobile  
16 application shall be associated with the following address:  
17 [www.emergency.ok.gov](http://www.emergency.ok.gov) and be developed and distributed for all major  
18 mobile operating devices.

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

24 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:

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

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

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

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

- 13 a. freight charges not otherwise included in the invoice  
14 cost or the replacement cost of the merchandise,
- 15 b. cartage to the retail outlet if done or paid for the  
16 retailer, which cartage cost, in the absence of proof  
17 of a lesser cost, shall be deemed to be three-fourths  
18 of one percent (3/4 of 1%) of the cost to the retailer  
19 as herein defined after adding freight charges, but  
20 before adding cartage and taxes,
- 21 c. all state and federal taxes, and
- 22 d. a markup to cover a proportionate part of the cost of  
23 doing business, which markup, in the absence of proof  
24 of a lesser cost, shall be six percent (6%) of the

1 cost of the retailer after adding freight charges and  
2 cartage, but before adding a markup;

3 2. "Cost to the wholesaler" means the invoice cost of the  
4 merchandise to the wholesaler, or the replacement cost of the  
5 merchandise to the wholesaler, whichever is the lower; less all  
6 trade discounts except customary discounts for cash; to which shall  
7 be added:

8 a. freight charges, not otherwise included in the invoice  
9 cost or the replacement cost of the merchandise,

10 b. cartage to the retail outlet if done or paid for by  
11 the wholesaler, which cartage cost, in the absence of  
12 proof of a lesser cost, shall be deemed to be three-  
13 fourths of one percent ( $3/4$  of 1%) of the cost to the  
14 wholesaler after adding freight charges, but before  
15 adding cartage and taxes, and

16 c. all state and federal taxes;

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

1 4. "Excessive price" means a price exceeding one hundred fifty  
2 percent (150%) of the highest price charged by the retailer or  
3 wholesaler for the item within the previous thirty (30) days;

4 5. "Replacement costs" means the cost per unit at which the  
5 merchandise sold or offered for sale could have been bought by the  
6 seller at any time within thirty (30) days prior to the date of sale  
7 or the date upon which it is offered for sale by the seller if  
8 bought in the same quantity or quantities as the seller's last  
9 purchase of such merchandise;

10 6. "Retailer" means and includes every person, partnership,  
11 corporation or association engaged in the business of making sales  
12 of retail disaster relief materials 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 7. "Sell at retail", "sales at retail", "retail sale", "sell at  
18 wholesale", "sales at wholesale", or "wholesale sales" means any  
19 transfer for a valuable consideration made in the ordinary course of  
20 trade or the usual conduct of the seller's business of title to  
21 personal property to the purchaser for purposes of resale or further  
22 processing or manufacturing. The above terms shall include any  
23 transfer of such property where title is retained by the seller as  
24 security for the payment of the purchase price;

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

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

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

15 A. A retailer or wholesaler shall not, in connection with the  
16 advertisement or sale of disaster relief materials:

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

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

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

1 B. A retailer shall not advertise, offer to sell, or sell at  
2 retail disaster relief materials at less than cost to the retailer  
3 with the intent and purpose of inducing the purchase of disaster  
4 relief materials or of unfairly diverting trade from a competitor or  
5 otherwise injuring a competitor, impair and prevent fair  
6 competition, injure public welfare, where the result of such  
7 advertising, offer or sale is to tend to deceive any purchaser or  
8 prospective purchaser, or to substantially lessen competition, or to  
9 unreasonably restrain trade, or to tend to create a monopoly in any  
10 line of commerce.

11 C. A wholesaler shall not advertise, offer to sell, or sell  
12 disaster relief materials at less than cost to the wholesaler with  
13 the intent and purpose of inducing the purchase of disaster relief  
14 materials or of unfairly diverting trade from a competitor or  
15 otherwise injuring a competitor, impair and prevent fair  
16 competition, injure public welfare, where the result of such  
17 advertising, offer or sale is to tend to deceive any purchaser or  
18 prospective purchaser, or to substantially lessen competition, or to  
19 unreasonably restrain trade, or to tend to create a monopoly in any  
20 line of commerce.

21 D. Any person who is found to be in violation of this act shall  
22 forfeit and pay a civil penalty of not more than One Thousand  
23 Dollars (\$1,000.00) per violation. The Attorney General, acting in  
24

1 the name of the state, or a district attorney may petition for  
2 recovery of civil penalties.

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

6 A. In addition to the penalties provided by this act, any  
7 person injured by any violation, or who shall suffer injury from any  
8 threatened violation of this act, may maintain an action in any  
9 court of equitable jurisdiction to prevent, restrain or enjoin such  
10 violation or threatened violation. If in such action a violation or  
11 threatened violation of this act shall be established, the court  
12 shall enjoin and restrain or otherwise prohibit such violation or  
13 threatened violation and, in addition thereto, shall assess in favor  
14 of the plaintiff and against the defendant the cost of suit. In  
15 such action if damages are alleged and proved, the plaintiff in the  
16 action, in addition to such injunctive relief and costs of suit,  
17 shall be entitled to recover actual damages from the defendant.

18 B. In the event no injunctive relief is sought or required, any  
19 person injured by a violation of this act may maintain an action for  
20 damages in any court of general jurisdiction, and the measure of  
21 damages shall be the same as prescribed in subsection A of this  
22 section. Provided, this act shall not authorize suits or actions  
23 against newspapers, radio broadcasters, or other advertising  
24



1 agencies through which such advertisements are published, broadcast  
2 or otherwise made.

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

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

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

21 A. The provisions of this act shall not apply to sales  
22 otherwise prohibited by subsections B and C of Section 3 of this act  
23 when disaster relief materials are:

24 1. Sold to relief agencies or for charitable purposes;

1           2. Sold on contract to departments of the government or  
2 governmental institutions;

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

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

7           5. Sold upon the final liquidation of any business;

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

10          7. Sold at any bona fide auction sale.

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

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

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

