

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 HOUSE BILL NO. 2231

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

6 and

7 Anderson of the Senate

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to civil emergency management;
11 requiring the Office of Management and Enterprise
12 Services to develop mobile application; requiring
13 administration by the Chief Information Officer;
14 providing for content related to preparedness,
15 response, recovery and mitigation; requiring
16 assistance by the Department of Emergency Management;
17 creating the Oklahoma Disaster Relief Materials Price
18 Stabilization Act; providing short title; defining
19 terms; prohibiting excessive prices during extreme
20 temporary conditions; prohibiting sales below cost;
21 providing for a private cause of action; allowing
22 injunctive relief without actual damages; making sale
23 below cost evidence of intent; precluding criminal
24 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.

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

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

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

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

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

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

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

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

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

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

8 b. cartage to the retail outlet if done or paid for the
9 retailer, which cartage cost, in the absence of proof
10 of a lesser cost, shall be deemed to be three-fourths
11 of one percent ($\frac{3}{4}$ of 1%) of the cost to the retailer
12 as herein defined after adding freight charges, but
13 before adding cartage and taxes,

14 c. all state and federal taxes, and

15 d. a markup to cover a proportionate part of the cost of
16 doing business, which markup, in the absence of proof
17 of a lesser cost, shall be six percent (6%) of the
18 cost of the retailer after adding freight charges and
19 cartage, but before adding a markup;

20 2. "Cost to the wholesaler" means the invoice cost of the
21 merchandise to the wholesaler, or the replacement cost of the
22 merchandise to the wholesaler, whichever is the lower; less all
23 trade discounts except customary discounts for cash; to which shall
24 be added:

- 1 a. freight charges, not otherwise included in the invoice
2 cost or the replacement cost of the merchandise,
3 b. cartage to the retail outlet if done or paid for by
4 the wholesaler, which cartage cost, in the absence of
5 proof of a lesser cost, shall be deemed to be three-
6 fourths of one percent (3/4 of 1%) of the cost to the
7 wholesaler after adding freight charges, but before
8 adding cartage and taxes, and
9 c. all state and federal taxes;

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

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

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

1 6. "Retailer" means and includes every person, partnership,
2 corporation or association engaged in the business of making sales
3 of retail disaster relief materials within this state; provided
4 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, such term shall be applied only to the
7 retail portion of such business;

8 7. "Sell at retail", "sales at retail", "retail sale", "sell at
9 wholesale", "sales at wholesale", or "wholesale sales" means any
10 transfer for a valuable consideration made in the ordinary course of
11 trade or the usual conduct of the seller's business of title to
12 personal property to the purchaser for purposes of resale or further
13 processing or manufacturing. The above terms shall include any
14 transfer of such property where title is retained by the seller as
15 security for the payment of the purchase price;

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

20 9. "Wholesaler" means and includes every person, partnership,
21 corporation, or association engaged in the business of making sales
22 of wholesale disaster relief materials within this state; provided
23 that, in the case of a person, partnership, corporation or
24 association engaged in the business of making both sales at

1 wholesale and sales at retail, such term shall be applied only to
2 the wholesale portion of such business.

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

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

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

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

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

16 B. A retailer shall not advertise, offer to sell, or sell at
17 retail disaster relief materials at less than cost to the retailer
18 with the intent and purpose of inducing the purchase of disaster
19 relief materials or of unfairly diverting trade from a competitor or
20 otherwise injuring a competitor, impair and prevent fair
21 competition, injure public welfare, where the result of such
22 advertising, offer or sale is to tend to deceive any purchaser or
23 prospective purchaser, or to substantially lessen competition, or to

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1 unreasonably restrain trade, or to tend to create a monopoly in any
2 line of commerce.

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

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

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

21 A. In addition to the penalties provided by this act, any
22 person injured by any violation, or who shall suffer injury from any
23 threatened violation of this act, may maintain an action in any
24 court of equitable jurisdiction to prevent, restrain or enjoin such

1 violation or threatened violation. If in such action a violation or
2 threatened violation of this act shall be established, the court
3 shall enjoin and restrain or otherwise prohibit such violation or
4 threatened violation and, in addition thereto, shall assess in favor
5 of the plaintiff and against the defendant the cost of suit. In
6 such action if damages are alleged and proved, the plaintiff in the
7 action, in addition to such injunctive relief and costs of suit,
8 shall be entitled to recover actual damages from the defendant.

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

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

21 D. Any defendant or any witness in any civil action brought
22 under the provisions of this act may be required to testify. Any
23 defendant or any witness, may, upon proper process, be compelled to
24 produce books, records, invoices and all other documents of the

1 defendant or witness into court and may be introduced as evidence.
2 No defendant or any witness in a civil action shall be prosecuted or
3 subjected to any penalty or forfeiture for or on account of any
4 transaction or matter. The defendant or witness may be required to
5 testify or produce evidence, documentary or otherwise. No testimony
6 thus given or produced shall be received against the defendant or
7 witness upon any criminal proceeding or investigation.

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

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

- 14 1. Sold to relief agencies or for charitable purposes;
- 15 2. Sold on contract to departments of the government or
16 governmental institutions;
- 17 3. Sold in bona fide clearance sales, if advertised marked, and
18 sold as such;
- 19 4. Imperfect or damaged or are being discontinued and are
20 advertised, marked and sold as such;
- 21 5. Sold upon the final liquidation of any business;
- 22 6. Sold by any officer acting under the order or direction of
23 any court; or
- 24 7. Sold at any bona fide auction sale.

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

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

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

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

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

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