

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 POLICY COMMITTEE
4 RECOMMENDATION

5 FOR

6 HOUSE BILL NO. 1024

7 By: Bashore

8 POLICY COMMITTEE RECOMMENDATION

9 An Act relating to the Unfair Sales Act; amending 15
10 O.S. 2021, Sections 598.2 and 598.3, which relate to
11 the Unfair Sales Act; modifying definitions;
12 modifying provisions related to unreasonably low
13 profit margins; and providing an effective date.

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

15 SECTION 1. AMENDATORY 15 O.S. 2021, Section 598.2, is
16 amended to read as follows:

17 Section 598.2. For the purposes of the Unfair Sales Act:

18 ~~(a) The~~

19 1. a. Except as provided for in subparagraph b of this

20 paragraph, the term "cost to the retailer" means the

21 invoice cost of the merchandise to the retailer or the

22 replacement cost of the merchandise to the retailer,

23 whichever is the lower; less all trade discounts

24 except customary discounts for cash; to which shall be

1 added (1) freight charges not otherwise included in
2 the invoice cost or the replacement cost of the
3 merchandise as herein set forth, and (2) cartage to
4 the retail outlet if done or paid for the retailer,
5 which cartage cost, in the absence of proof of a
6 lesser cost, shall be deemed to be three-fourths of
7 one percent (3/4 of 1%) of the cost to the retailer as
8 herein defined after adding thereto freight charges
9 but before adding thereto cartage, and taxes, and (3)
10 all state and federal taxes not heretofore added to
11 the cost as such, ~~and (4) a markup to cover a~~
12 ~~proportionate part of the cost of doing business,~~
13 ~~which markup, in the absence of proof of a lesser~~
14 ~~cost, shall be six percent (6%) of the cost of the~~
15 ~~retailer as herein set forth after adding thereto~~
16 ~~freight charges and cartage but before adding thereto~~
17 ~~a markup;~~

18 b. For gasoline and diesel fuel retailers, the term "cost
19 to the retailer" means the invoice cost of the
20 merchandise to the retailer or the replacement cost of
21 the merchandise to the retailer, whichever is the
22 lower; less all trade discounts except customary
23 discounts for cash; to which shall be added (1)
24 freight charges not otherwise included in the invoice

1 cost or the replacement cost of the merchandise as
2 herein set forth, and (2) cartage to the retail outlet
3 if done or paid for the retailer, which cartage cost,
4 in the absence of proof of a lesser cost, shall be
5 deemed to be three-fourths of one percent (3/4 of 1%)
6 of the cost to the retailer as herein defined after
7 adding thereto freight charges but before adding
8 thereto cartage, and taxes, and (3) all state and
9 federal taxes not heretofore added to the cost as
10 such, and (4) a markup to cover a proportionate part
11 of the cost of doing business, which markup, in the
12 absence of proof of a lesser cost, shall be six
13 percent (6%) of the cost of the retailer as herein set
14 forth after adding thereto freight charges and cartage
15 but before adding thereto a markup;

16 ~~(b)~~ 2. The term "cost to the wholesaler" means the invoice cost
17 of the merchandise to the wholesaler, or the replacement cost of the
18 merchandise to the wholesaler, whichever is the lower; less all
19 trade discounts except customary discounts for cash; to which shall
20 be added, (1) freight charges, not otherwise included in the invoice
21 cost or the replacement cost of the merchandise as herein set forth,
22 and (2) cartage to the retail outlet if done or paid for by the
23 wholesaler, which cartage cost, in the absence of proof of a lesser
24 cost, shall be deemed to be three-fourths of one percent (3/4 of 1%)

1 of the cost to the wholesaler as herein set forth after adding
2 thereto freight charges but before adding thereto cartage, and
3 taxes, and (3) all state and federal taxes not heretofore added to
4 the cost as such;

5 ~~(e)~~ 3. The term "replacement costs" means the cost per unit at
6 which the merchandise sold or offered for sale could have been
7 bought by the seller at any time within thirty (30) days prior to
8 the date of sale or the date upon which it is offered for sale by
9 the seller if bought in the same quantity or quantities as the
10 seller's last purchase of said merchandise;

11 ~~(d)~~ 4. When one or more items advertised, offered for sale, or
12 sold with one or more other items at a combined price, or
13 advertised, offered as a gift, or given with the sale of one or more
14 other items, each and all of the items shall be deemed to be
15 advertised, offered for sale, or sold, and the price of each item
16 named shall be governed by the provisions of paragraphs (a) or (b)
17 of this section, respectively;

18 ~~(e)~~ 5. The terms "sell at retail", "sales at retail", and
19 "retail sale" mean and include any transfer for valuable
20 consideration made in the ordinary course of trade or in the usual
21 prosecution of the seller's business of title to tangible personal
22 property to the purchaser for consumption or use other than resale
23 or further processing or manufacturing. The above terms shall
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1 include any transfer of such property where title is retained by the
2 seller as security for the payment of the purchase price;

3 ~~(f)~~ 6. The terms "sell at wholesale", "sales at wholesale", and
4 "wholesale sales" mean and include any transfer for a valuable
5 consideration made in the ordinary course of trade or the usual
6 conduct of the seller's business, of title to tangible personal
7 property to the purchaser for purposes of resale or further
8 processing or manufacturing. The above terms shall include any
9 transfer of such property where title is retained by the seller as
10 security for the payment of the purchase price;

11 ~~(g)~~ 7. The term "retailer" means and includes every person,
12 partnership, corporation or association engaged in the business of
13 making sales at retail within this state; provided that, in the case
14 of a person, partnership, corporation or association engaged in the
15 business of making both sales at retail and sales at wholesale, such
16 term shall be applied only to the retail portion of such business;

17 ~~(h)~~ 8. The term "wholesaler" means and includes every person,
18 partnership, corporation, or association engaged in the business of
19 making sales at wholesale within this state; provided that, in the
20 case of a person, partnership, corporation or association engaged in
21 the business of making both sales at wholesale and sales at retail,
22 such term shall be applied only to the wholesale portion of such
23 business; and

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1 9. The term "unreasonably low profit margin" means that a
2 seller of goods has established a price for an item of tangible
3 personal property which is offered for sale at the cost to the
4 seller as otherwise defined by this act, but with an increment in
5 price above such cost that is intended to have the effect of
6 eliminating market competition for the sale of such item of tangible
7 personal property by any other seller within a reasonable geographic
8 area where the item is offered for sale by such seller or which has
9 the actual effect of eliminating market competition for the sale of
10 such item of tangible personal property by any other seller within a
11 reasonable geographic area where the item is offered for sale.

12 SECTION 2. AMENDATORY 15 O.S. 2021, Section 598.3, is
13 amended to read as follows:

14 Section 598.3. It is hereby declared that any advertising,
15 offer to sell, or sale of any merchandise, either by retailers or
16 wholesalers, at less than cost or at an unreasonably low profit
17 margin as defined in the Unfair Sales Act with the intent and
18 purpose of inducing the purchase of other merchandise or of unfairly
19 diverting trade from a competitor or otherwise injuring a
20 competitor, impair and prevent fair competition, injure public
21 welfare, are unfair competition and contrary to public policy and
22 the policy of the Unfair Sales Act, where the result of such
23 advertising, offer or sale is to tend to deceive any purchaser or
24 prospective purchaser, or to substantially lessen competition, or to

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

3 SECTION 3. This act shall become effective November 1, 2025.

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