

1 SEC. 3. This Act being deemed of immediate importance shall be in
 2 full force and effect on its publication in the Northwood Anchor &
 3 Index, a newspaper published at Northwood, Iowa, and in The Ameri-
 4 can Citizen, a newspaper published at Des Moines, Iowa.

Approved February 8, 1949.

I hereby certify that the foregoing act was published in the Northwood Anchor &
 Index, February 17, 1949, and in The American Citizen, February 18, 1949.

MELVIN D. SYNHORST, *Secretary of State.*

CHAPTER 226

CIGARETTE SALES ACT

S. F. 199

AN ACT to prevent unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes below cost; to protect and stabilize the collection of taxes on the sale of cigarettes and of revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and duties on the Iowa state tax commission and on persons, as herein defined, engaged in the sale of cigarettes at wholesale or retail; and to provide remedies and imposing penalties for violations thereof.

WHEREAS, unfair, dishonest and fraudulent business practices exist in transactions involving the sale of, or offer to sell, cigarettes in the wholesale and retail trades in this State which are demoralizing and disorganizing the said trades, and

WHEREAS, offering for sale, or sale of cigarettes below cost in the wholesale and retail trade with intent to injure competitors, destroy or lessen competition, is deemed an unfair and deceptive business practice, and

WHEREAS, such practices affect collection of taxes and license fees imposed on distributors, wholesalers, retailers and persons engaged in the sale of cigarettes, and

WHEREAS, it is hereby declared to be the policy of this State and the purpose of this Act to protect the public by prohibiting such sales.

NOW, THEREFORE,

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Short title. This act shall be known and cited as the
 2 "Iowa Unfair Cigarette Sales Act".

1 SEC. 2. Definitions. When used in any part of this act, the fol-
 2 lowing words, terms and phrases shall have the meaning ascribed to
 3 them except where the context clearly indicates a different meaning:
 4 a. "Cigarettes" shall mean and include any roll for smoking, made
 5 wholly or in part of tobacco, irrespective of size or shape and whether
 6 or not such tobacco is flavored, adulterated or mixed with any other
 7 ingredient, the wrapper or cover of which is made of paper or any
 8 other substance or material except tobacco.

9 b. "Person" shall mean and include any individual, firm, associa-
 10 tion, company, partnership, corporation, joint stock company, club
 11 agency, syndicate, or anyone engaged in the sale of cigarettes.

12 c. "Wholesaler" means and includes any person who acquires ciga-
 13 rettes for the purpose of sale to retailers or to other persons for
 14 resale, and who maintains an established place of business when any
 15 part of the business is the sale of cigarettes at wholesale to persons
 16 licensed under this Act, and where at all times a stock of cigarettes
 17 is available to retailers for resale.

18 d. "Retailer" means any person who is engaged in this State in
 19 the business of selling, or offering to sell, cigarettes at retail.

20 e. "Sale" and "sell" shall mean and include any transfer for a con-
 21 sideration, exchange, barter, gift, offer for sale and distribution in
 22 any manner or by any means whatsoever.

23 f. "Sell at wholesale", "sale at wholesale", and "wholesale sales"
 24 shall mean and include any sale or offer for sale made in the course of
 25 trade or usual conduct of the wholesaler's business to a retailer for the
 26 purpose of resale.

27 g. "Sell at retail", "sale at retail" and "retail sales" shall mean and
 28 include any sale or offer for sale for consumption or use made in the
 29 ordinary course of trade of the seller's business.

30 h. "Basic cost of cigarettes" shall mean whichever of the two fol-
 31 lowing amounts is lower, namely, (1) the true invoice cost of ciga-
 32 rettes to the wholesaler or retailer, as the case may be, or (2) the
 33 lowest replacement cost of cigarettes to the wholesaler or retailer in
 34 the quantity last purchased, less, in either case, all trade discounts
 35 and customary discounts for cash, plus the full face value of any
 36 stamps which may be required by any cigarette tax act of this State,
 37 unless included by the manufacturer in his list price.

38 i. (1) "Cost to wholesaler" shall mean the basic cost of the ciga-
 39 rettes plus the cost of doing business by the wholesaler, as defined in
 40 this Act.

41 (2) The cost of doing business by the wholesaler is presumed to
 42 be four per centum (4%) of the basic cost of said cigarettes in the
 43 absence of proof of a lesser or higher cost, plus cartage to the retail
 44 outlet, if furnished or paid for by the wholesaler. Such cartage cost
 45 is presumed to be one-half of one per cent ($\frac{1}{2}$ of 1%) of the basic
 46 cost of the cigarettes in the absence of proof of a lesser or higher cost.

47 j. (1) "Cost to the retailer" shall mean the basic cost of the ciga-
 48 rettes involved to the retailer plus the cost of doing business by the
 49 retailer as defined in this Act.

50 (2) The cost of doing business by the said retailer is presumed to
 51 be eight per centum (8%) of the basic cost of cigarettes in the absence
 52 of proof of a lesser or higher cost.

53 (3) If any retailer in connection with his purchase of any ciga-
 54 rettes shall receive the discounts ordinarily allowed upon purchases by
 55 a retailer and in whole or in part discounts ordinarily allowed upon
 56 purchases by a wholesaler, the cost of doing business by the retailer
 57 with respect to the said cigarettes shall be, in the absence of proof
 58 of a lesser or higher cost of doing business, the sum of the cost of
 59 doing business by the retailer and, to the extent that he shall have
 60 received the full discounts allowed to a wholesaler, the cost of doing
 61 business by a wholesaler as hereinabove defined in subdivision i (2).

1 SEC. 3. Sales at less than cost; penalty. a. It shall be unlawful
 2 for any wholesaler or retailer to offer to sell, or sell, at wholesale or

3 retail, cigarettes at less than cost to such wholesaler or retailer, as
4 the case may be, as defined in this Act. Any wholesaler or retailer
5 who violates the provisions of this Section shall be guilty of a misde-
6 meanor and be punishable by fine of not less than one hundred dollars
7 (\$100.00), nor more than five hundred dollars (\$500.00).

8 b. Evidence of advertisement, offering to sell, or sale of ciga-
9 rettes by any wholesaler or retailer at less than cost to him as defined
10 by this Act shall be evidence of a violation of this Act.

1 SEC. 4. Combination sales. In all offers for sale or sales involving
2 cigarettes and any other item at a combined price, and in all offers for
3 sale, or sales, involving the giving of any gift or concession of any
4 kind whatsoever (whether it be coupons or otherwise), the whole-
5 saler's or retailer's combined selling price shall not be below the cost
6 to the wholesaler or the cost to the retailer, respectively, of the total
7 of all articles, products, commodities, gifts and concessions included
8 in such transactions; if any such articles, products, commodities, gifts
9 or concessions, shall not be cigarettes, the basic cost thereof shall be
10 determined in like manner as provided in subdivision "h" of Section 2.

1 SEC. 5. Sales by a wholesaler to a wholesaler. When one whole-
2 saler sells cigarettes to any other wholesaler, the former shall not be
3 required to include in his selling price to the latter, the cost to the
4 wholesaler, as defined by Section 2 of this Act, but the latter whole-
5 saler, upon resale to a retailer, shall be subject to the provisions of
6 the said Section.

1 SEC. 6. Sales exceptions. The provisions of this Act shall not
2 apply to a sale at wholesale or a sale at retail made (a) in an isolated
3 transaction; (b) where cigarettes are offered for sale, or sold in a
4 bona fide clearance sale for the purpose of discontinuing trade in such
5 cigarettes and said offer to sell, or sale shall state the reason therefor
6 and the quantity of such cigarettes offered for sale, or to be sold;
7 (c) where cigarettes are offered for sale, or sold as imperfect or
8 damaged, and said offer to sell, or sale shall state the reason therefor
9 and the quantity of such cigarettes offered for sale, or to be sold.

1 SEC. 7. Transactions permitted to meet lawful competition.
2 a. Any wholesaler may advertise, offer to sell or sell cigarettes at a
3 price made in good faith to meet the price of a competitor who is sell-
4 ing the same article at the cost to the competing wholesaler as defined
5 by this Act. Any retailer may offer to sell or sell cigarettes at a price
6 made in good faith to meet the price of a competitor who is selling at
7 the cost to the said competing retailer as defined in this Act. The
8 price of cigarettes offered for sale, or sold under the exceptions speci-
9 fied in Section 6 shall not be considered the price of a competitor
10 and shall not be used as a basis for establishing prices below
11 cost, nor shall the price established at a bankrupt or forced sale
12 be considered the price of a competitor within the purview of this
13 Section.

14 b. In the absence of proof of the actual cost to a competing whole-
15 saler or to a competing retailer, as the case may be, such cost shall
16 be the lowest cost to wholesalers or the lowest cost to retailers, as the

17 case may be, within the same trading area as determined by a cost
18 survey made pursuant to Section 8-b.

1 SEC. 8. Admissible evidence. a. In determining cost to the
2 wholesaler and cost to the retailer the court shall receive and consider
3 as bearing on the bona fides of such cost, evidence that any person
4 complained against under any of the provisions of this Act purchased
5 the cigarettes involved in the complaint before the Court, at a ficti-
6 tious price, or upon terms, or in such a manner, or under such in-
7 voices, as to conceal the true cost, discounts or terms of purchase, and
8 shall also receive and consider as bearing on the bona fides of such
9 cost, evidence of the normal, customary and prevailing terms and dis-
10 counts in connection with other sales of a similar nature in the trade
11 area or State.

12 b. Cost Survey. Where a cost survey pursuant to recognized sta-
13 tistical and cost accounting practices has been made for the trading
14 area in which a violation of this Act is committed or charged, to de-
15 termine and establish the lowest cost to wholesalers or the lowest
16 cost to retailers within the area, the cost survey shall be deemed
17 competent evidence in any action or proceeding under this Act to
18 establish actual cost to the wholesaler or actual cost to the retailer
19 complained against. In such surveys to determine cost to the whole-
20 saler or retailer there shall be included in the cost of doing business
21 without limitation, labor, rent, depreciation, sales costs, compensa-
22 tion, maintenance of equipment, cartage, licenses, taxes, insurance
23 and other expenses.

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1 SEC. 9. Sales outside ordinary channels of business; effect. In
2 establishing the basic cost of cigarettes to a wholesaler or a retailer,
3 it shall not be permissible to use the invoice cost or the actual cost
4 of any cigarettes purchased at a forced, bankrupt, or close out sale,
5 or other sale outside of the ordinary channels of trade.

1 SEC. 10. The State Tax Commission, or any person or persons
2 injured by any violation, or who would suffer injury from any
3 threatened violation of this Act, may maintain an action in any
4 equity court to enjoin such actual or threatened violation. If a viola-
5 tion or threatened violation of this Act shall be established, the court
6 shall enjoin such violation or threatened violation, and, in addition
7 thereto, the court shall assess in favor of the plaintiff and against the
8 defendant the costs of suit including reasonable attorney's fees.
9 Where alleged and proved, the plaintiff, in addition to such injunctive
10 relief and costs of suit, including reasonable attorney's fees, shall be
11 entitled to recover from the defendant the actual damages sustained
12 by him.

1 SEC. 11. State Tax Commission; powers and duties. The State
2 Tax Commission may adopt rules and regulations for the enforce-
3 ment of this Act and it is empowered to and may from time to time
4 undertake and make or cause to be made such cost surveys for the
5 State or such trading area or areas as it shall deem necessary and it
6 shall be permissible to use such cost survey as provided in sections
7 7-b and 8-b of this Act.

8 Said Commission may, upon notice and after hearing, suspend or
 9 revoke any permit issued under the provisions of The Cigarette Tax
 10 Act and the rules and regulations of the Commission promulgated
 11 thereunder, for failure of the permit holder to comply with any pro-
 12 vision of this Unfair Cigarette Sales Act or any rule or regulation
 13 adopted thereunder. The suspension or revocation of a permit shall
 14 be for a period of not less than six (6) months from the date of sus-
 15 pension or revocation, and no permit shall be issued for the location
 16 designated in the suspended or revoked permit, during the period
 17 of suspension or revocation.

18 Any person aggrieved by the decision, order or finding of the Com-
 19 mission relative to suspending or revoking any such permit, may
 20 appeal therefrom to the District Court in the same manner and sub-
 21 ject to the same procedure as is provided in Section 422.55, Code 1946,
 22 except that the judgment of the District Court shall be final.

1 SEC. 12. Partial unconstitutionality. The provisions of this Act
 2 shall be deemed to be severable and if for any reason any provision
 3 shall be determined to be unconstitutional or invalid, such determina-
 4 tion shall not be held to affect any other provision hereof. And no
 5 such determination shall be deemed to invalidate or render ineffectual
 6 any of the other provisions of this Act.

1 SEC. 13. This Act being deemed of immediate importance shall be
 2 in full force and effect after publication in The Monitor Coggon, a
 3 newspaper published at Coggon, Iowa, and The Clarinda Herald, a
 4 newspaper published at Clarinda, Iowa.

Approved April 8, 1949.

I hereby certify that the foregoing act was published in The Monitor Coggon, April
 28, 1949, and in The Clarinda Herald, April 21, 1949.

MELVIN D. SYNHORST, *Secretary of State.*

CHAPTER 227

RIGHT OF WAY IN ABANDONED CHANNEL

H. F. 449

AN ACT to amend section five hundred sixty-eight point ten (568.10), Code 1946, relat-
 ing to the preservation of rights of way in the event of sale of abandoned channel
 or bed of any navigable stream.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Section five hundred sixty-eight point ten (568.10),
 2 Code 1946, is amended by adding at the end thereof the following:
 3 "Any such sale shall be subject to the permanent right of a utility
 4 association, company or corporation to continue in possession of a
 5 right of way for its underground and serial* plant, including cables,
 6 wires, poles, fixtures, piers and abutments, where such right of way
 7 has existed on lands which have become subject to sale under section
 8 five hundred sixty-eight point one (568.1)."

Approved March 18, 1949.

*According to enrolled Act, "aerial" probably intended.