

Reported Recommending.....
Ind. Postponed.....
Passed Senate.....
Failed to Pass Senate.....
Passed House.....
Failed to Pass House.....

Senate File 198

January 31, 1941.
Passed on File.

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A BILL FOR

An Act to define and prohibit unfair sales and unfair trade practices; to prevent the advertising or offering for sale or selling of merchandise below actual cost for the purpose of or having the effect of injuring competitors or destroying competition; and to provide remedies and penalties for violations thereof.

WHEREAS, the practice of selling certain items of merchandise below cost in order to attract patronage is generally a form of deceptive advertising and an unfair method of competition in commerce; and

Whereas, such practice causes commercial dislocations, misleads the consumer, works back to the prejudice of and against the farmer, directly burdens and obstructs commerce, and diverts business from dealers who maintain a fair price policy; and

WHEREAS, bankruptcies among merchants who fail because of the competition of those who use such methods result in unemployment, disruption of leases, and nonpayment of taxes and loans, and contribute to an inevitable train of undesirable consequences, including economic depression; and

WHEREAS, such practices result in damage to the public interests and welfare and are against public policy; and

WHEREAS, it is hereby declared that any advertising, offer to sell, or sale of any merchandise, either by retailers or wholesalers at less than cost as defined in this act, with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impairs and prevents fair competition, injures public welfare, and is unfair competition and contrary to public policy and to the policy of this act,

where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create a monopoly in any line of commerce; now therefore,

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

1 Section 1. For the purposes of this chapter:

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

7 a. Freight charges not otherwise included in the
8 invoice cost or the replacement cost of the merchandise.

9 b. Cartage to the retail outlet if performed or
10 paid for by the retailer; which cartage cost, in the absence
11 of proof of a lesser cost, shall be deemed to be three fourths
12 of one per cent of the invoice or actual cost to the retailer
13 as herein defined plus freight charges as defined in paragraph
14 "a" above.

15 c. A markup to cover the proportionate part of the
16 cost of doing business, which markup, in the absence of proof
17 of a lesser cost, shall be six per cent of the cost to the
18 retailer as herein set forth after adding thereto freight
19 charges and cartage but before adding thereto a markup.

20 "Cost to retailer" shall also include the actual cost to
21 the retailer of any processing, packing, bottling or canning of

22 merchandise done or performed by the retailer and paid for
23 by the retailer, provided, however, that the actual cost of
24 such processing, packing, bottling or canning done or performed
25 by the retailer and paid for by the retailer shall be added to
26 the cost of the item or items processed, etc., and each item
27 thereof shall bear its proportionate cost of such processing,
28 packing, bottling or canning.

29 2. "Cost to the wholesaler" shall mean the actual invoice
30 cost of merchandise to the wholesaler or the replacement cost
31 of the merchandise to the wholesaler, whichever is lower;
32 less all trade discounts except customary discounts for cash,
33 to which shall be added:

34 a. Freight charges not otherwise included in the
35 invoice cost or the replacement cost of the merchandise.

36 b. Cartage to the retail outlet as performed or
37 paid for by the wholesaler, which cartage cost, in the absence
38 of proof of a lesser cost, shall be deemed to be three fourths
39 of one per cent of the cost to the wholesaler as herein set
40 forth after adding thereto freight charges but before adding
41 thereto cartage.

42 c. A markup to cover the proportionate part of the
43 cost of doing business, which markup, in the absence of proof
44 of a lesser cost, shall be two per cent of the cost to the
45 wholesaler as herein set forth after adding thereto freight
46 charges and cartage but before adding thereto a markup.

47 "Cost to the wholesaler" shall also include the actual

48 cost to the wholesaler of any processing, packing, bottling or
49 canning of merchandise done or performed by the wholesaler
50 and paid for by the wholesaler; provided, however, that the
51 actual cost of such processing, packing, bottling, or canning
52 done or performed by the wholesaler and paid for by the whole-
53 saler shall be added to the cost of the item or items processed,
54 etc., and each item thereof shall bear its proportionate cost
55 of such processing, packing, bottling and canning.

56 3. "Replacement costs" shall mean the cost per unit at
57 which the merchandise sold or offered for sale could have
58 been bought by the seller at any time within thirty days prior
59 to the date of sale or the date upon which it is offered for
60 sale by the seller if bought in the same quantity or quantities
61 as the seller's last purchase of the said merchandise.

62 4. "Sell at retail," "sales at retail," and "retail sale"
63 shall mean and include any transfer for a valuable consideration,
64 made in the ordinary course of trade or in the usual prosecution
65 of the seller's business, of title to tangible personal property
66 to the purchaser for consumption or use other than resale or
67 further processing or manufacturing; provided, however, that
68 sales to contractors or subcontractors engaged in any type of
69 building operation or the repair of buildings or other improve-
70 ments upon real estate shall be deemed sales for consumption and
71 not for further processing or manufacturing. The above terms
72 shall include any transfer of such property where title is
73 retained by the seller as security for the payment of the

74 purchase price.

75 5. "Sell at wholesale," "sales at wholesale," and
76 "wholesale sales" shall mean and include any transfer for
77 a valuable consideration made in ordinary course of trade or
78 the usual conduct of the seller's business, of title to tangible
79 personal property to the purchaser for purposes of resale or
80 further processing or manufacturing; provided, however, that
81 sales to contractors engaged in any type of building operation
82 or the repair of buildings or other improvements upon real
83 estate regardless of further processing or manufacturing of
84 the material sold shall be deemed retail sales and not wholesale
85 sales. The above terms shall include any transfer of such
86 property where title is retained by the seller as security for
87 the payment of the purchase price.

88 6. "Retailer" shall mean and include every person, partner-
89 ship, corporation or association engaged in the business of
90 making sales at retail within this state; provided, that, in
91 the case of a person, partnership, corporation or association
92 engaged in business of making both sales at retail and sales
93 at wholesale, such terms shall be applied only to the retail
94 portion of such business.

95 7. "Wholesaler" shall mean and include every person,
96 partnership, corporation or association engaged in the business
97 of making sales at wholesale within this state; provided that,
98 in the case of a person, partnership, corporation or association
99 engaged in the business of making both sales at wholesale and

100 sales at retail, such terms shall be applied only to the whole-
101 sale portion of such business.

102 Any sale made by the retail vendor at less than eight per
103 cent above the manufacturer's published list price, less his pub-
104 lished discounts, except customary discounts for cash, where the
105 manufacturer publishes a list price, or in the absence of such a
106 list price, at less than eight per cent above the actual current
107 delivered invoice or replacement cost, for the purpose or with
108 the effect of injuring competitors or destroying competition,
109 shall be deemed a violation of this chapter.

110 When one or more items are advertised, offered for sale,
111 or sold with one or more other items at a combined price, or are
112 advertised, offered, as a gift, or given with the sale of one
113 or more other items, each and all of said items shall for
114 the purposes of this chapter be deemed to be advertised, offered
115 for sale, or sold and the price of each item named shall be
116 governed by the provisions of subsections 1 and 2 above,
117 respectively.

1 Sec. 2. Any retailer who shall advertise, offer to sell
2 or sell at retail any item of merchandise at less than cost
3 to the retailer; as defined in this chapter, or any wholesaler
4 who shall advertise, offer to sell, or sell at wholesale any
5 item of merchandise at less than cost to the wholesaler as
6 defined in this chapter shall be guilty of a misdemeanor and
7 upon conviction thereof shall be punished by a fine of not
8 more than \$100.00. Proof of any such advertising, offer to sell

9 or sale by any retailer or wholesaler shall be prima facie
10 evidence of a violation of this chapter.

1 Sec. 3. In addition to the penalties provided in this
2 chapter, the courts of this state are hereby invested with
3 jurisdiction to prevent and restrain violations of this chapter,
4 and it shall be the duty of the several county attorneys in the
5 respective counties to institute proceedings in equity to
6 prevent and restrain violations. Any person damaged, or who
7 is threatened with loss or injury, by reason of a violation of
8 this chapter, shall be entitled to sue for and have injunctive
9 relief in any court of competent jurisdiction against any
10 damage or threatened loss or injury by reason of such violation.

1 Sec. 4. This chapter shall not apply to sales at retail
2 or sales at wholesale;

3 1. Where merchandise is sold in bona fide clearance
4 sales, if advertised, marked and sold as such.

5 2. Where perishable merchandise must be sold promptly
6 in order to forestall loss.

7 3. Where merchandise is imperfect or damaged or is
8 being discontinued and is advertised, marked and sold as such.

9 4. Where merchandise is sold upon the final liquid-
10 ation of any business.

11 5. Where the price of merchandise is made in good
12 faith to meet competition.

13 6. Where merchandise is sold by any officer acting
14 under the order or direction of any court.

15 7. Where merchandise sold is used or second-hand
16 merchandise.

17 Provided, however, that any retailer or wholesaler claiming
18 the benefits of any of the exemptions hereinabove provided, shall
19 have the burden of proof of facts entitling such retailer or
20 wholesaler to any of the benefits of said exemptions.

1 Sec 5. Any party of record to any civil action or pro-
2 ceeding instituted or brought pursuant to the provisions of
3 this chapter may be required to testify in such proceedings
4 and to produce books, papers, tariffs, contracts, agreements
5 and documents before the court in such proceedings; provided,
6 however, that no person compelled under the provisions of
7 this section to testify or produce evidence tending to incrimin-
8 ate him or expose him to public ignominy shall be prosecuted for
9 any crime which such testimony or evidence tends to prove or
10 to which the same relates. This section shall not exempt any
11 person from prosecution for perjury.

1 Sec. 6. This chapter shall be known and designated as the
2 “Unfair Trade Practices Act.”

1 Sec. 7. If any section, sentence, clause or provision of
2 this chapter shall for any reason be held invalid or unconstitu-
3 tional, the validity of the remaining parts hereof shall not
4 be affected thereby.