

CHAPTER 205
UNFAIR SALES ACT

§1201. Short title

This chapter shall be known and may be cited as the "Unfair Sales Act."

§1202. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings. [PL 1979, c. 541, Pt. A, §92 (NEW).]

1. Cost to the retailer. "Cost to the retailer" shall mean the invoice cost of the merchandise to the retailer within 30 days prior to the date of sale, or the replacement cost of the merchandise to the retailer within 30 days prior to the date of sale, in the quantity last purchased, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added:

- A. Freight charges not otherwise included in the cost of the merchandise,
- B. Cartage to the retail outlet if performed or paid for by the retailer, which cartage cost shall be deemed to be 3/4 of 1% of the cost of the merchandise to the retailer, unless said retailer claims and proves a lower cartage cost, and
- C. A markup to cover in part the cost of doing business, which markup in the absence of proof of a lesser cost shall be 6% of the total cost at the retail outlet.

2. Cost to the wholesaler. "Cost to the wholesaler" shall mean the invoice cost of the merchandise to the wholesaler within 30 days prior to the date of sale, or the replacement cost of the merchandise to the wholesaler within 30 days prior to the date of sale, in the quantity last purchased, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added:

- A. Freight charges not otherwise included in the cost of the merchandise,
- B. Cartage to the retail outlet if performed or paid for by the wholesaler, which cartage cost shall be deemed to be 3/4 of 1% of the cost of the merchandise to the wholesaler, unless said wholesaler claims and proves a lower cartage cost,
- C. A markup to cover in part the cost of doing business, which markup in the absence of proof of a lesser cost shall be 2% of the total cost at the wholesale establishment, and
- D. Sales made by a cigarette distributor to a licensed wholesale dealer or to the operator of 15 or more vending machines shall not be subject to a markup of 2% as stated in paragraph C, but such sales shall be subject to full trade discount only.

3. Combined price of 2 or more items. Where 2 or more items are advertised, offered for sale or sold at a combined price, the price of each such item shall be determined in the manner set forth in subsections 1 and 2.

4. Bona fide costs. "Cost to the retailer" and "cost to the wholesaler" as defined in said subsections 1 and 2 shall mean bona fide costs. Sales to consumers, retailers and wholesalers at prices which cannot be justified by existing market conditions within this State shall not be used as a basis for computing replacement costs with respect to sales by retailers and wholesalers.

5. Retail sale; wholesale sale. "Sell at retail," "sales at retail" and "retail sale" shall mean and include any transfer of title to tangible personal property for a valuable consideration made, in the ordinary course of trade or in the usual prosecution of the seller's business, to the purchaser for consumption or use other than resale or further processing or manufacturing. The terms "sell at

wholesale," "sales at wholesale" and "wholesale sale" shall mean and include any such transfer of title to tangible personal property for the purpose of resale or further processing or manufacturing. In this and in subsection 4 the above terms shall include any such transfer of property where title is retained by the seller as security for the payment of the purchase price.

6. Retailer. "Retailer" shall mean and include every person, copartnership, corporation or association engaged in the business of making sales at retail within this State. In the case of a retailer engaged in the business of making sales both at retail and at wholesale, such term shall be applied only to the retail portion of such business.

7. Wholesaler. "Wholesaler" shall mean and include every person, copartnership, corporation or association engaged in the business of making sales at wholesale within this State. In the case of a wholesaler engaged in the business of making sales both at wholesale and at retail, such term shall be applied only to the wholesale portion of such business.

8. Costs to be added. When a retailer sells at retail any merchandise that is the product of the retailer's own manufacture or that has been purchased by the retailer at the purchase price or prices available to wholesalers, in the absence of proof of a lesser cost, both the wholesale markup of 2% and the retail markup of 6% to cover in part the cost of doing business, as provided in subsections 1 and 2, must be added in determining the cost to the retailer of such merchandise.

[RR 2023, c. 2, Pt. C, §17 (COR).]

9. Sub-jobber. "Sub-jobber" shall mean and include a wholesaler who purchases cigarettes at wholesale for the purpose of resale to retail dealers, and who maintains a regularly established place of business where stocks of cigarettes are kept for sale and whose sales are chiefly to other persons for resale.

SECTION HISTORY

PL 1979, c. 541, §A92 (AMD). RR 2023, c. 2, Pt. C, §17 (COR).

§1203. Exceptions

This chapter shall not apply with respect to advertising or offering to sell, or selling, at retail or at wholesale, as the case may be, if done:

- 1. Isolated transaction.** In an isolated transaction and not in the usual course of business;
- 2. Clearance sales.** Where merchandise is sold in bona fide clearance sales, if advertised or offered for sale as such or marked and sold as such, or where merchandise is marked down in an effort to sell the same after bona fide efforts to sell the same prior to such markdown;
- 3. Perishable merchandise.** Where perishable merchandise must be sold promptly in order to forestall loss;
- 4. Imperfect or damaged merchandise.** Where merchandise is imperfect or damaged or its sale is being discontinued, if advertised or offered for sale as such or marked and sold as such;
- 5. Final liquidation of business.** Where merchandise is advertised or offered for sale or sold upon the final liquidation of any business;
- 6. Charitable purposes.** Where merchandise is advertised or offered for sale or sold for charitable purposes or to relief agencies;
- 7. Sold to State, political subdivisions.** Where merchandise is sold on contract to any department, board or commission of the State or of any political subdivision thereof, or to any institution maintained thereby;
- 8. Price in good faith to meet competition.** Where the price of merchandise is made in good faith to meet legal competition;

9. Order of court. Where merchandise is advertised or offered for sale or sold by any fiduciary or other officer acting under the order or direction of any court.

§1204. Applicability of provisions

This chapter shall prevail whenever the application of any provision of any other law of this State, other than Title 7, chapter 603-A, conflicts with the application of any provision of this chapter. [PL 1983, c. 484, §3 (AMD).]

SECTION HISTORY

PL 1983, c. 484, §3 (AMD).

§1204-A. Unlawful practices

It is unlawful for any person engaged in the distribution or sale of merchandise of general use or consumption to sell such merchandise at less than the cost thereof to such vendor with the purpose or intent to injure competitors or destroy competition. Any merchandise offered for sale at a price below cost shall be prominently displayed in the outlet offering the same in sufficient quantities to meet the usual and reasonable expected demand therefor. [PL 1965, c. 305 (NEW).]

SECTION HISTORY

PL 1965, c. 305 (NEW).

§1205. Bill in equity by injured person

1. Injunctive relief; damages and costs. A person damaged or who is threatened with loss or injury by reason of a violation or threatened violation of this chapter may bring a civil action in the Superior Court in the county where the person resides to prevent, restrain or enjoin the violation or threatened violation. If in such an action a violation or threatened violation of this chapter is established, the court may enjoin and restrain or otherwise prohibit the violation or threatened violation. In such an action, it is not necessary that actual damages to the plaintiff be alleged or proved. In addition to injunctive relief, the plaintiff in the action is entitled to recover from the defendant 3 times the amount of actual damages sustained by the plaintiff and the costs of the action including reasonable attorney's fees.

[RR 2023, c. 2, Pt. C, §18 (COR).]

2. Damages only. In the event injunctive relief is not sought or required, a person injured by a violation of this chapter may maintain an action for damages alone in the Superior Court in the county where the person resides and the measure of damages in that action is the same as prescribed in subsection 1.

[RR 2023, c. 2, Pt. C, §19 (COR).]

3. Evidence of intent to injure. In all proceedings under this section, proof of consistent and repeated advertisements, offers to sell or sales of any items of merchandise by any retailer or wholesaler at less than cost to them as defined in this chapter, said advertisements, offers to sell and sales thereby forming a pattern of sales below cost, shall be prima facie evidence of intent to injure competitors and destroy competition.

SECTION HISTORY

RR 2023, c. 2, Pt. C, §§18, 19 (COR).

§1206. Sale of cigarettes

(REPEALED)

SECTION HISTORY

PL 1979, c. 407, §1 (RP).

§1207. Penalties

Any retailer who, with intent to injure competitors or destroy competition, advertises, offers to sell or sells at retail any item of merchandise at less than cost to the retailer, or any wholesaler who, with intent as aforesaid, advertises, offers to sell or sells at wholesale any item of merchandise at less than cost to the wholesaler shall be punished by a fine of not more than \$500. In all prosecutions under this section, proof of consistent and repeated advertisements, offers to sell or sales of any items of merchandise by any retailer or wholesaler at less than cost to them as defined in this chapter, said advertisements, offers to sell and sales thereby forming a pattern of sales below cost, shall be prima facie evidence of intent to injure competitors and destroy competition.

§1208. Summons

1. Authority. Whenever the Attorney General reasonably believes that a violation of section 1204-A may be occurring in the sale of motor fuel, the Attorney General may require by summons the attendance and testimony of witnesses and the production of books and papers before the Attorney General relating to any and all costs of operation of any motor fuel retailer or wholesaler. [RR 2023, c. 2, Pt. C, §20 (COR).]

2. Penalty. Any person who fails to comply with a summons issued under this section is subject to a civil penalty of not more than \$5,000, payable to the State to be recovered in a civil action. [PL 1981, c. 423, §1 (NEW).]

SECTION HISTORY

PL 1981, c. 423, §1 (NEW). RR 2023, c. 2, Pt. C, §20 (COR).

§1209. Reports

1. Requirement. Whenever the price of motor fuel sold at a retail outlet operated or controlled by a wholesaler of motor fuel is less than the dealer tankwagon price charged for the same motor fuel to any independent retail outlet supplied by the wholesaler and located within one mile of the wholesaler's outlet, the wholesaler shall file a written report with the Attorney General setting forth the information specified in subsection 2. This section shall apply only when the price at the wholesaler's outlet is less, for one full business day, than the most recent dealer tankwagon price to the independent outlet, provided that such sale was made to the independent retail outlet within 30 days prior to the date the lower price was posted by the wholesaler. "Dealer tankwagon price" means the wholesaler's price for motor fuel delivered to the independent retail outlet. [PL 1981, c. 423, §2 (NEW).]

2. Contents. The report required from the wholesaler shall contain the following information:

- A. The date on which the underpricing occurred; [PL 1981, c. 423, §2 (NEW).]
- B. The name and location of the wholesaler's retail outlet; [PL 1981, c. 423, §2 (NEW).]
- C. The wholesale cost of the motor fuel sold at that outlet; [PL 1981, c. 423, §2 (NEW).]
- D. The retail price the wholesaler charged on the date the underpricing occurred; [PL 1981, c. 423, §2 (NEW).]
- E. The name and location of the independent outlet which the wholesaler has underpriced; [PL 1981, c. 423, §2 (NEW).]
- F. The most recent dealer tankwagon price and date of sale to the independent retail outlet; and [PL 1981, c. 423, §2 (NEW).]
- G. The retail price of the independent on the date the underpricing occurred. [PL 1981, c. 423, §2 (NEW).]

The report shall be filed by postmarking it within 5 business days of the date on which the underpricing occurred.

[PL 1981, c. 423, §2 (NEW).]

3. Penalty. A person who fails to file a report as required by this section is subject to a penalty of not more than \$500 a day for each day after the first 5 business days on which the person fails to file a report by postmarking it. The penalty must be payable to the State and recoverable in a civil action.

[RR 2023, c. 2, Pt. C, §21 (COR).]

SECTION HISTORY

PL 1981, c. 423, §2 (NEW). RR 2023, c. 2, Pt. C, §21 (COR).

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