

February 22, 1951.  
Passed on File

**Senate File 413**  
By O'MALLEY.

Passed Senate, Date.....  
Vote: Ayes..... Nays.....  
Passed House, Date .....  
Vote: Ayes..... Nays.....  
Approved .....

## **A BILL FOR**

An Act to create a state trade comission; to define its powers and duties; and 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 imposing 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; and

WHEREAS, such practice causes commercial dislocations, misleads the consumer, works back to 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 non-payment of taxes and loans, and contribute to undesirable consequences including economic depression, and also tends to create monopolies, and

WHEREAS, such practices result in damage to the public interests and welfare, and are against public policies, 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 intention or effect of inducing

the purchase of other merchandise or unfairly diverting trade from a competitor or otherwise injuring a competitor, impairs and prevents 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, 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  
2 as the "Iowa Unfair Sales Act".

1 Sec. 2. There is hereby created a state trade commission  
2 consisting of the members of the state tax commission, as provid-  
3 ed for in Chapter Four Hundred Twenty One (421), Code 1950.

1 Sec. 3. The state trade commission, in addition to the  
2 powers and duties it has as the state tax commission, shall have  
3 full power, jurisdiction and authority to:

4 a. Prescribe rules and regulations not in conflict with the  
5 constitution and laws of this state or of the United States or  
6 its own government for the administration of this act.

7 b. To administer and enforce the provisions of this  
8 act and for this purpose to compel attendance of witnesses  
9 and the production of records, administer oaths and certify  
10 to official acts.

11 c. To make cost surveys and collect, correlate and pub-

12 lish such statistical and other information as it may deem  
13 useful in the administration and enforcement of this act.

14 d. Under its own name to sue and be sued in connection  
15 with the provisions of this act.

1 Sec. 4. Definitions. When used in any part of this act,  
2 the following words, terms and phrases shall have the meaning  
3 ascribed to them except where the context clearly indicates  
4 a different meaning:

5 a. "Person" shall mean and include any individual, firm,  
6 association, partnership, corporation, joint stock company,  
7 syndicate, or club agency.

8 b. "Wholesaler" means and includes every person, part-  
9 nership, corporation, or association engaged in the business  
10 of making sales at wholesale within this state or acquire  
11 merchandise for the purpose of sale to retailers or to other  
12 persons for resale.

13 c. "Retailer" means and includes every person, partner-  
14 ship, corporation, or association engaged in the business of  
15 making sales at retail within this State; provided that, in  
16 case of a person, partnership, corporation or association en-  
17 gaged in the business of making both sales at retail and sales  
18 at wholesale, such term shall be applied to the retail portion  
19 of such business.

20 d. "Sale" and "Sell" shall mean and include any transfer  
21 for a consideration, exchange, gift, offer for sale, and dis-  
22 tribution in any manner or by any means whatsoever.

23 e. The term "cost" means and includes:

24 (1) In the case of a retailer, the invoice cost of the  
25 merchandise to the retailer or the replacement cost of the  
26 merchandise to the retailer, whichever is lower; less all  
27 trade discounts including customary discounts for cash; to which  
28 shall be added

29 (a) Freight charges not otherwise included in the invoice  
30 cost or the replacement cost of the merchandise as herein set  
31 forth, and,

32 (b) cartage to the retail outlet if done or paid for by  
33 the retailer, and,

34 (c) a markup to cover a proportionate part of the cost of  
35 doing business, which markup, in the absence of proof of a less-  
36 er cost shall be eight per cent (8%) of the cost to the retailer  
37 as herein set forth after adding thereto freight charges and  
38 cartage but before adding thereto a markup; provided that in  
39 the case where a person, partnership, corporation or association  
40 is engaged in the business of making sales both at retail and  
41 sales at wholesale, such invoice cost shall include all elements  
42 recognized by good accounting practice as proper elements of  
43 such cost.

44 (2) In the case of a wholesaler, the invoice cost of the  
45 merchandise to the wholesaler, or the replacement cost of the  
46 merchandise to the wholesaler, whichever is lower; less all  
47 trade discounts including customary discounts for cash; to which  
48 shall be added (a) freight charges, not otherwise included in

49 the invoice cost or the replacement cost of the merchandise as  
50 herein set forth, and (b) cartage to the retail outlet if done  
51 or paid for by the wholesaler, and (c) a markup to cover a  
52 proportionate part of the cost of doing business, which markup,  
53 in the absence of proof of a lesser cost, shall be four per cent  
54 (4%) of the cost to the wholesaler as herein set forth after  
55 adding thereto freight charges and cartage but before adding  
56 thereto a markup.

57 (3) In the case of a manufacturer or processor, the cost  
58 of raw materials, labor (including salaries of executives and  
59 officers), rent, interest paid or payable on borrowed capital,  
60 depreciation, selling cost, maintenance of equipment, delivery  
61 costs, credit losses, and such other business expenses as are  
62 deductible for Federal Income Tax purposes.

63 f. The term "replacement costs" means the cost per unit  
64 at which the merchandise sold or offered for sale could have  
65 been bought by the seller at any time within thirty days prior  
66 to the date of sale or the date upon which it is offered for  
67 sale by the seller if bought in the same quantity or quantities  
68 as the seller's last purchase of the said merchandise; provided,  
69 that in any case where a person, partnership, corporation or  
70 association is engaged in the business of making sales both at  
71 retail and wholesale, such "replacement cost" shall include all  
72 elements recognized by good accounting practice as proper ele-  
73 ments of such cost.

74 g. When one or more items are advertised, offered for sale,

75 or sold with one or more other items at a combined price, or are  
76 advertised, offered as a gift, or given with the sale of one or  
77 more other items, each and all of said items shall for the pur-  
78 poses of this act be deemed to be advertised, offered for sale,  
79 or sold, and the price of each item named shall be governed by  
80 the provisions of sub-paragraphs one, two and three of paragraph  
81 (e) of Sec. four of this act, respectively.

1     Sec. 5. Unfair Trade Practices Defined: It shall be an  
2 unfair method of competition for any person engaged in business  
3 to: a. Advertise, offer for sale, or sell any merchandise below  
4 cost as defined in this act where the intention or result of  
5 such advertising, offer, or sale is to injure one or more com-  
6 petitors, or substantially to lessen competition, or unreason-  
7 ably restrain trade, or to create a monopoly in any line of  
8 commerce; provided, that this paragraph shall not apply to ad-  
9 vertisements, offers to sell, or sales, where: (1) merchandise  
10 is sold in bona fide clearance sales, if advertised, marked,  
11 and sold as such; (2) perishable merchandise which must be sold  
12 promptly in order to forestall loss; (3) merchandise is imper-  
13 fect or damaged or is being discontinued and is advertised,  
14 marked and sold as such; (4) merchandise is sold upon the final  
15 liquidation of any business; (5) merchandise is sold for chari-  
16 table purposes or to relief agencies; (6) merchandise is sold on  
17 contract to departments of the government or governmental insti-  
18 tutions; or (7) merchandise is sold by any officer acting under  
19 the order or direction of any court. In all actions brought

20 under the provisions of this act, proof of one or more acts of  
21 advertising, offering for sale, or selling any articles or prod-  
22 uct below cost when shown not to be allowable by the existence of  
23 any of the conditions specifically enumerated in this paragraph  
24 shall be prima facie evidence of the purpose or intent to injure  
25 one or more competitors; provided, however, that nothing contained  
26 in this paragraph shall prevent a seller rebutting the prima  
27 facie case thus made by showing that his lower price was made in  
28 good faith to meet an equally lawful low price of one or more  
29 competitors.

30 b. Discriminate in price between different purchasers of  
31 commodities of like grade and quality, where such commodities  
32 are sold for use, consumption, or resale within the state of  
33 Iowa and where the effect of such discrimination may be to injure  
34 one or more competitors, or substantially to lessen competition  
35 or trend to create a monopoly, or to injure, destroy or prevent  
36 competition with any person who either grants or knowingly re-  
37 ceives the benefit of such discrimination, or with customers of  
38 either of them; provided, that nothing herein contained shall  
39 prevent differentials which make only due allowance for differ-  
40 ences in the cost of manufacture, sales or delivery resulting  
41 from the different methods or quantities in which such commodi-  
42 ties are to such purchasers sold or delivered; and further pro-  
43 vided, that nothing herein contained shall prevent persons en-  
44 gaged in selling goods, wares or merchandise in commerce from  
45 selecting their own customers in bona fide transactions and

46 not in restraint of trade; and further provided, that nothing  
47 herein contained shall prevent price changes from time to time  
48 where in response to changing conditions affecting the market  
49 for or the marketability of the goods concerned, such as, but  
50 not limited to, actual or imminent deterioration of perishable  
51 goods, obsolescence of seasonal goods, distress sales under  
52 court process, or sales in good faith in discontinuance of  
53 business in the goods concerned.

54 c. Pay or grant, or to receive or accept, anything of  
55 value as a commission, brokerage, or other compensation, or  
56 any allowance or discount in lieu thereof, except for and not  
57 exceeding the actual cost of such services rendered in connec-  
58 tion with the sale or purchase of goods, wares or merchandise.

59 d. Pay or contract for the payment of anything of value  
60 to or for the benefit of a customer of such person as compen-  
61 sation or in consideration for any services or facilities  
62 furnished by or through such customer in connection with the proc-  
63 essing, handling, sale or offering for sale of any products,  
64 or commodities manufactured, sold or offered for sale by such  
65 person, unless such payment or consideration is made known and  
66 available on proportionally equal terms to all other customers  
67 competing in the distribution of such products or commodities.

68 e. Discriminate in favor of one purchaser against another  
69 purchaser or purchasers of a commodity bought for resale with  
70 or without processing, by contracting to furnish or furnishing,  
71 or by contributing to the furnishing of, any services or facili-

72 ties connected with the processing, handling, sale or offering  
73 for sale of such commodity so purchased upon terms not made  
74 known and accorded to all purchasers on proportionally equal  
75 terms. Any contract, express or implied, made by any person  
76 in violation of any of the provisions of Sec. Three of this  
77 act is declared to be an unlawful contract and no recovery  
78 thereon shall be had.

79 f. To advertise goods, wares, or merchandise they are not  
80 prepared to supply, unless it is so stated in said advertisement,  
81 or the amounts available are stated.

1 Sec. 6. Any person who is an authorized director, officer  
2 or agent of any firm or corporation or is the agent of any per-  
3 son violating the provisions of this act, assists or aids  
4 directly or indirectly to such violation, shall be responsible  
5 therefor equally with the person, firm or corporation, for whom  
6 or for which he acts.

1 Sec. 7. Any advertising, offer to sell or sale of any  
2 item of merchandise, either by retailers or wholesalers, at  
3 less than cost as defined in this act and any advertising,  
4 offer of gift of any item of merchandise, coupons, or trading  
5 stamps contingent upon the sale of any other item of merchan-  
6 dise with the intent or effect of introducing the purchase of  
7 other merchandise or of unfairly diverting trade from a com-  
8 petitor, injures public welfare, is unfair competition and con-  
9 trary to public policy and the policy of this act.

1 Sec. 8. Unfair methods of competition in commerce, as

2 hereinbefore defined, are hereby declared unlawful and punish-  
3 able as hereinafter provided. The commission is hereby em-  
4 powered and directed to prevent persons, partnerships, cor-  
5 porations, joint stock company, syndicate, or club agency,  
6 from using unfair methods of competition in commerce or trade.

1     Sec. 9. Whenever the commission shall have reason to  
2 believe that any person has been or is using any unfair method  
3 of competition in commerce, and if it shall appear to the Com-  
4 mission that a proceeding by it in respect thereof would be to  
5 the interest of the public, it shall issue and serve upon such  
6 person a complaint stating its charges in that respect and con-  
7 taining a notice of a hearing upon a day and at a place therein  
8 fixed at least ten days after the service of said complaint.  
9 The person so complained of shall have the right to appear at  
10 the time and place so fixed and show cause why an order should  
11 not be entered by the commission requiring such person to  
12 cease and desist from the violation of the law so charged in  
13 said complaint. Any person or organization may make applica-  
14 tion, and upon good cause shown shall be allowed by the commis-  
15 sion to intervene and appear in said proceeding by counsel or  
16 in person. The testimony in any such proceeding, including the  
17 testimony of any intervening person or organization, shall be  
18 reduced to writing and filed in the office of the commission.  
19 If upon such hearing the commission shall be of the opinion  
20 that the method of competition or the act or practice in ques-  
21 tion is prohibited by this act, it shall make a report in

22 writing in which it shall state its findings as to the facts  
23 and shall issue and cause to be served on such person an order  
24 requiring such person to cease and desist from using such method  
25 of competition or such act or practice.

1     Sec. 10. Any person required by an order of the commission  
2 to cease and desist from using any method of competition or act  
3 or practice may obtain a review of such order in the District  
4 Court nearest where the method of competition or the act or  
5 practice in question was used or where such person resides or  
6 carries on business, by filing in the court, within twenty days  
7 from the date of the service of such order, a written petition  
8 praying that the order of the commission be set aside. A copy  
9 of such petition shall be forthwith served upon the commission,  
10 and thereupon the commission shall forthwith certify and file  
11 in the court a transcript of the entire record in the proceed-  
12 ing, including all the evidence taken and the report and order  
13 of the commission. Upon such filing of the petition and tran-  
14 script the court shall have jurisdiction of the proceeding and  
15 of the question determined therein, and shall have power to make  
16 and enter upon the pleadings, evidence, and proceedings set  
17 forth in such transcript a decree affirming, modifying, or  
18 setting aside the order of the commission, and enforcing the same  
19 to the extent that such order is affirmed, and to issue such  
20 writs as are ancillary to its jurisdiction or are necessary in  
21 its judgment to prevent injury to the public or to competi-  
22 tors pendente lite. The findings of the commission as to the

23 facts, if supported by evidence, shall be conclusive. To the  
24 extent that the order of the commission is affirmed, the court  
25 shall thereupon issue its own order commanding obedience to the  
26 terms of such order of the commission.

1 Sec. 11. Any person, partnership, or corporation who vio-  
2 lates an order of the commission to cease and desist after it  
3 has become final, and while such order is in effect, shall be  
4 guilty of a misdemeanor and shall be punished by a fine of not  
5 less than Two Hundred Dollars (\$200.00) and not more than Five  
6 Hundred Dollars (\$500.00) for each violation.

1 Sec. 12. The commission, or any person or persons injured  
2 by any violation, or who have suffered injury by any threatened  
3 violation of this act, may maintain an action in any equity  
4 court to enjoin and secure an injunction against such actual  
5 or threatened violation by any other person, irrespective of  
6 the remedies at law available to said person. If a violation  
7 or threatened violation of this act shall be established, the  
8 court shall grant a permanent injunction restraining any person  
9 from violation of the provisions of this act and, in addition  
10 thereto, the court shall assess in favor of the plaintiff and  
11 against the defendant the costs of the suit including reasonable  
12 attorney fees for plaintiff's attorneys. Where alleged and  
13 proved, the plaintiff, in addition to such injunctive relief and  
14 the costs of the suit including reasonable attorney fees, shall  
15 be entitled to recovery from the defendant threefold the damages  
16 by him sustained.

1     Sec. 13. The commission shall cause to be printed in prop-  
2     er form for distribution to the public, its orders, classifi-  
3     cations, rules, regulations, and rules of procedure, and shall  
4     furnish the same to any person upon application therefor.  
5     The expense of such publication shall be audited and paid as  
6     are other expenses of the commission.

1     Sec. 14. The commission shall make and submit to the  
2     Governor an annual report containing a full and complete ac-  
3     count of the transactions of its office, together with such  
4     facts, suggestions and recommendations as it may deem neces-  
5     sary. It shall be made and submitted as soon after July 1st  
6     of each year as may be feasible in order to bring the report  
7     down to that date and shall be published as are the reports of  
8     other departments of this state.

1     Sec. 16. If any word, clause, sentence, paragraph or  
2     section of this act shall be declared invalid by any court of  
3     competent jurisdiction, the remainder of the act shall not be  
4     affected thereby and the legislature hereby declares that it  
5     would have passed the remaining parts of this act if it had  
6     known that such part or parts would be declared unconstitution-  
7     al.