

## UNLAWFUL TRADE PRACTICES

### Act 271 of 1941

AN ACT to define certain unlawful trade practices connected with the sale or other transfer; or with the purchase for another of goods, wares or merchandise; to provide certain penalties for the commission of such unlawful trade practices; and to provide for enjoining the commission of such trade practices and permitting the rescission of certain contracts.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- Am. 1956, Act 214, Eff. Aug. 11, 1956 ;-- Am. 1962, Act 115, Eff. Mar. 28, 1963

*The People of the State of Michigan enact:*

#### **445.101 Unlawful trade practices; suppression.**

##### Sec. 1.

The legislature of the state of Michigan hereby finds: improper and misleading uses of the words "wholesale," "employee" and similar terms or phrases in connection with certain sales; and likewise improper and misleading uses of the words "manufacturer," "broker," "wholesaler," and similar terms or phrases denoting that the seller of a product is something other than a retailer thereof; and likewise the other practices hereinafter prohibited, are harmful to the welfare of the people of this state in the following ways, among others: consumers are misled into believing they are buying goods at a substantial discount from regular retail prices, when in fact they are not; trade is diverted from established retail outlets offering various customer services (such as free deliveries, exchange privileges, and credit facilities) to establishments not offering equal services but selling at substantially the same price, to the detriment of the consumer, who is deprived of the benefit of such services without receiving compensating advantages; purchases by business concerns, at discounts from current retail market prices, of goods, wares, and merchandise purchased not for business use but for the personal use of individuals, divert trade unfairly from established retail outlets, resulting in a loss of sales tax revenues and in a trend to higher retail prices. The legislature, acting in the exercise of the police power of the state, declares that the public policy of the state requires, and that the general welfare of the people of the state will be benefited by, the suppression of the trade practices hereinafter defined.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.101

#### **445.102 Unlawful trade practices; definitions.**

##### Sec. 2.

When used in this act:

(a) The term "person" includes any individual, firm, co-partnership, joint adventure, association, municipal or private corporation whether organized for profit or not, company, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(c) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.102

#### **445.103 Unlawful trade practices; wholesale, use of term.**

##### **Sec. 3.**

It shall be an unlawful trade practice for any seller or transferor of any goods, wares, or merchandise to advertise, claim, or imply that any sale or other transfer of goods, wares, or merchandise is a sale or transfer at wholesale unless such sale or transfer is made to a transferee for resale and unless such sale or transfer is not subject to the provisions of the sales tax law, being Act No. 167 of the Public Acts of 1933, as amended or hereafter amended.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.103

#### **445.104 Unlawful trade practices; employee, use of term.**

##### **Sec. 4.**

It shall be an unlawful trade practice for any seller or transferor of any goods, wares, or merchandise to use the word "employee" or any derivative thereof or synonym therefor, in connection with signs, advertising, notices, or other written or printed matter in any way referring to sales or other transfers of goods, wares, or merchandise, if such sales or transfers are made or offered to or for others than bona fide employees of such seller or transferor.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.104

#### **445.105 Unlawful trade practices; manufacturer, miller, wholesaler and broker, use of terms.**

##### **Sec. 5.**

It shall be an unlawful trade practice for any person engaged in selling goods, wares, or merchandise to individual consumers, to incorporate in his business name or otherwise to use in describing his business, the words "manufacturer," "miller," "wholesaler," "broker," or any derivative or synonym for any of them, unless such person is in fact engaged in 1 or more of such businesses in addition to his business of selling goods, wares, or merchandise to individual consumers. In cases where a person is engaged in manufacturing, milling, wholesaling, or brokerage and is in addition engaged in making sales to individual consumers, it shall be an unlawful trade practice for such person to imply directly or indirectly in connection with sales to individual consumers that the selling price is other than a retail price unless the sale is for resale.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.105

#### **445.106 Unlawful trade practices; purchase of unrelated business items; automobile seat belts, exemption.**

##### **Sec. 6.**

It shall be an unlawful trade practice for any employer, directly or indirectly, by itself or through a subsidiary agency owned or controlled in part by such employer, to purchase any goods, wares or merchandise in the name of or on the credit of such employer, or at special discounts available to such employer, for any other purpose than for use or resale in the regular course of business of such employer; to sell, cause to be sold, or have under his or its control for sale to his or its employees or to any other person, any goods, wares or merchandise not offered for sale by such employer in the regular course of his or its business; to authorize or permit his or its name, credit or

premises to be used in connection with the sale or offer for sale of any such merchandise and to authorize any of his or its officers, agents or employees, during working hours or on his or its premises, to perform any of the acts hereinabove in this section described. This section shall not apply to purchases by an employer for the purpose of use or resale to his or its employees of equipment, tools, candy, chewing gum, meals, tobacco or food services provided in the regular course of business; or to any goods, wares or merchandise which may be related to the business of the employer and which the employer so purchases for resale to his or its employees for the purpose of promoting a principal business of the employer, or for utilizing a principal product or service of the employer. It shall not apply to purchases by an employer for the purpose of resale to his or its employees of automobile safety seat belts for personal use by the employees.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.106 ;-- Am. 1956, Act 214, Eff. Aug. 11, 1956 ;-- Am. 1962, Act 115, Eff. Mar. 28, 1963

#### **445.106a Unlawful trade practices; sale at reduced price, false representation.**

Sec. 6a.

It shall be an unlawful trade practice for any person, in connection with an offer or exhibit of any goods, wares, or merchandise for sale at retail, or an exhibit of samples, catalogues or other forms of advertising listing goods, wares, or merchandise for retail sale, to display price tags or price quotations in any other form, which are substantially in excess of the prices at which such goods, wares, or merchandise are regularly or customarily sold at retail by such person or by the person issuing such samples, catalogues or other advertising, so as to imply falsely that the goods, wares or merchandise are offered for sale at a reduction from an indicated regular retail price.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.106a

#### **445.106b Unlawful trade practices; United States government, use of terms, exception.**

Sec. 6b.

It shall be an unlawful trade practice for any person engaged in selling goods, wares or merchandise to individual consumers to sell or offer for sale any surplus materials as defined in the surplus property act of 1944 or any other goods, wares or merchandise under corporate or trade names which carry or which trade under or which in any way use in dealing with the public, directly or indirectly, any name which by reason of the inclusion of a word or words such as "army," "navy," "United States," "federal," "treasury," "procurement," "GI," "post exchange" or any others which connoting the United States government or its armed forces, or any of its departments or agencies, has a tendency to lead the purchasing public to believe that the establishment has some official relation to the United States government or that all of the articles sold or offered for sale are surplus materials: Provided, however, That this section shall not apply to any corporation all of the stock of which is owned by the United States.

**History:** Add. 1945, Act 108, Eff. Sept. 6, 1945 ;-- CL 1948, 445.106b

#### **445.106c Unlawful trade practices; unclaimed freight.**

Sec. 6c.

It shall be an unlawful trade practice for any person engaged in selling goods, wares or merchandise to individual consumers to sell or offer for sale any goods, wares or merchandise under corporate or trade names which carry or which trade under or which in any way use, in dealing with the public, directly or indirectly, any

name which by reason of the inclusion of the words "unclaimed freight" has a tendency to lead the purchasing public to believe that the goods, wares or merchandise offered for sale are in fact unclaimed goods offered for sale by common carriers or authorized agents thereof: Provided, however, That this section shall not apply to any person if all goods, wares or merchandise sold or offered for sale are in fact unclaimed freight.

**History:** Add. 1945, Act 108, Eff. Sept. 6, 1945 ;-- CL 1948, 445.106c

#### **445.107 Unlawful trade practices; circuit court injunction; compensatory costs; sales tax, collection.**

##### **Sec. 7.**

The circuit court of the county where any unlawful trade practice is committed shall have jurisdiction and power, on petition of any person, and on a showing that the commission of such unlawful trade practice has caused damage or threatens to cause damage to the petitioner or those represented by petitioner, to enjoin the commission of such unlawful trade practice or practices. Upon the granting of an injunction, the plaintiff or plaintiffs, in addition to regular taxable costs, shall be awarded compensatory costs, which shall include all sums reasonably expended to prepare and present the cause including all reasonable attorney fees incurred: Provided, however, That such compensatory costs may be denied if the trial judge rules that a meritorious, even though unsuccessful, defense was presented. The court may, in any case where such injunction is sought or issued, require and order the defendant or defendants in such proceeding to pay to the state board of tax administration any sum which the court finds should have been paid, but was not paid as a sales tax (pursuant to the provisions of Act No. 167 of the Public Acts of 1933, as amended or hereafter amended, being sections 205.51 to 205.78, inclusive, of the Compiled Laws of 1948) in connection with any sale or sales consummated in the course of the unlawful trade practice or practices complained of.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.107 ;-- Am. 1956, Act 214, Eff. Aug. 11, 1956

#### **445.108 Unlawful trade practices; rescission.**

##### **Sec. 8.**

Any person to whom is sold any goods, wares or merchandise in the course of an unlawful trade practice at his option, on discovery of such unlawful trade practice and on due notice to the seller, may rescind the sale and recover back from the seller the price or any portion thereof theretofore paid by him to the seller. The right of rescission must be exercised within 8 months subsequent to the date of the sale complained of.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.108 ;-- Am. 1962, Act 115, Eff. Mar. 28, 1963

#### **445.109 Unlawful trade practices; sale of product by employer to employee.**

##### **Sec. 9.**

Nothing in this act shall be deemed to prohibit the sale by an employer to his employees of his own products or property at any price.

**History:** 1941, Act 271, Eff. Jan. 10, 1942 ;-- CL 1948, 445.109