

nor more than one thousand (\$1000) dollars, or to undergo imprisonment not exceeding one year, or both or either, at the discretion of the court.

(b) The Attorney General, at the request of the Department of Agriculture, may, in the name of the Commonwealth, institute proceedings in equity in the court of common pleas of Dauphin County for the purpose of enjoining the sale within the Commonwealth of any sausage adulterated under the provisions of this act, and for such purpose, jurisdiction is hereby conferred upon said court. In such cases, the Attorney General shall not be required to give bond.

Section 5. That the [Dairy and Food Commissioner] *Department of Agriculture* shall be charged with the enforcement of the provisions of this act.

Section 6. That all fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid [to the Dairy and Food Commissioner, or his agent, and when so collected and paid shall thereafter be by the Dairy and Food Commissioner paid] into the State Treasury, [for the use of the Commonwealth] *through the Department of Revenue, and credited to the General Fund.*

APPROVED—The 1st day of July, A. D. 1937.

GEORGE H. EARLE

No. 533

AN ACT

To insure and protect fair trade practices in distribution; defining such practices; prohibiting the advertisement, offer for sale, or sale of merchandise at less than cost; and fixing a penalty for such advertisement, offer for sale, or sale; and investing the courts with jurisdiction to prevent and restrain violations of the act.

Be it enacted, &c., That,

Section 1. Definitions.—The words and phrases used herein shall, unless the context otherwise indicates, have the following meanings:

Definitions.

(a) "Cost to the retailer" shall mean—(1) the total consideration paid by the retailer for the merchandise delivered at the retail outlet; or (2) the total consideration necessary for the replacement of the merchandise to the retailer at the retail outlet, such consideration to be determined by applying to said merchandise the same cost per unit as the last quantity purchased by the retailer prior to the sale of said merchandise would have cost per unit if bought at the most favorable market price available to the retailer at any time within thirty

(30) days prior to said sale, whichever is lower, less any customary trade discounts, but exclusive of discounts for cash.

(b) "Cost to the wholesaler" shall mean—(1) the total consideration paid by the wholesaler for merchandise delivered at the wholesale outlet; or (2) the total consideration necessary for the replacement of the merchandise to the wholesaler at the wholesale outlet, such consideration to be determined by applying to said merchandise the same cost per unit as the last quantity purchased by the wholesaler prior to the sale of said merchandise would have cost per unit if bought at the most favorable market price available to the wholesaler at any time within sixty (60) days prior to said sale, whichever is lower, less any customary trade discounts, but exclusive of discounts for cash.

(c) "Cost to the retailer" and "cost to the wholesaler" must be bona fide costs; and sales to consumers, retailers, and wholesalers, at prices which cannot be justified by existing market conditions within this State, shall not be used as basis for computing costs with respect to sales by retailers and wholesalers.

(d) "Sales at retail" and "sales at retail" shall mean any transfer of title to tangible personal property for a valuable consideration, where such property is to be used by the purchaser for purposes other than resale, manufacture, or further processing. The above terms shall also include any such transfer of property where title is retained by the seller as security for the payment of the purchase price.

(e) "Sell at wholesale" and "sales at wholesale" shall mean any transfer of title to tangible personal property for a valuable consideration, where such property is to be used by the purchaser for purposes of resale, manufacture, or further processing. The above terms shall also include any such transfer of property where title is retained by the seller as security for the payment of the purchase price.

(f) "Retailer" shall include every person, firm, corporation, or association engaged in the business of making sales at retail within this State: Proviso. That in the case of a person, firm, corporation, or association engaged in the business of making both sales at retail and at wholesale, such term shall be applied only to the retail portion of such business.

(g) "Wholesaler" shall mean and include every person, firm, corporation, or association engaged in the business of making sales at wholesale within this State: Proviso. That in the case of a person, firm, corporation, or association engaged in the business of making both sales at wholesale and at retail, such term shall be applied only to the wholesale portion of such business.

Advertisement,
offer or sale at
less than cost
prohibited.

Section 2. It is hereby declared that the advertisement, offer for sale, or sale of any merchandise at less than cost by retailers or wholesalers is prohibited.

Section 3. Any retailer who shall advertise, offer to sell, or sell at retail, any merchandise at less than cost to the retailer, as defined in this act, or any wholesaler who shall advertise, offer to sell, or sell at wholesale, any merchandise at less than cost to the wholesaler, as defined in this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500). Proof of any such advertisement, offer to sell, or sale, by any retailer or wholesaler, shall be prima facie evidence of a violation of this act.

Court of com-
mon pleas.

Section 4. In addition to the penalties provided in this act, the courts of common pleas of this Commonwealth are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys, in their respective districts, to institute proceedings in equity to prevent and restrain violations. Any person shall be entitled to sue for and have injunctive relief in any court of common pleas of this Commonwealth against threatened loss or damage by reason of a violation of this act.

District
attorneys.

Injunctions.

Where act does
not apply.

Section 5. The provisions of this act shall not apply to sales at retail or sales at wholesale—(a) where merchandise is sold in bona fide clearance sales, and is advertised, marked, and sold as such; (b) where perishable merchandise must be promptly sold in order to forestall loss; (c) where merchandise is imperfect, or damaged, or is being discontinued, and is advertised, marked, and sold as such; (d) where merchandise is sold upon the final liquidation of any business; (e) where merchandise is sold for charitable purposes; (f) where the price of merchandise is made to meet the legal price of a competitor for merchandise of the same grade, quality, and quantity; and (g) where merchandise is sold by any officer acting under the direction of any court.

Title.

Section 6. This act may be known and cited as the "Fair Sales Act."

Constitutional
provision.

Section 7. If any section, sentence, or clause of this act shall for any reason be held invalid or unconstitutional, such decision shall not affect the validity of the remaining parts hereof.

APPROVED—The 1st day of July, A. D. 1937.

GEORGE H. EARLE