

No: 717

APPROVED AND SIGNED BY THE GOVERNOR

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



# ENROLLED

SENATE BILL NO. 717

(By Mr. Sucker)



PASSED March 11, 1983

In Effect ninety days for Passage



**ENROLLED**  
**Senate Bill No. 717**  
(BY MR. TUCKER)

[Passed March 11, 1983; in effect ninety days from passage.]

AN ACT to amend and reenact section six, article eleven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unfair trade practices; how retailer cost is determined; and providing for increase in wholesale markup cost for doing business.

*Be it enacted by the Legislature of West Virginia:*

That section six, article eleven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 11A. UNFAIR TRADE PRACTICES.**

**§47-11A-6. How cost determined.**

1 (a) The term "cost" when applicable to the business of  
2 retailer shall mean bona fide cost and shall mean (1) the  
3 invoice cost of the article, product or item of merchandise  
4 to the retailer or the replacement cost thereof to the  
5 retailer within thirty days prior to the date of sale, offer  
6 for sale or advertisement for sale, as the case may be, in  
7 the quantity last purchased, whichever is lower, from  
8 either of which there shall be deducted all trade dis-  
9 counts, except customary discounts for cash, and (2) to  
10 either of which there shall be added the following items  
11 of expense:

12 1. Freight charges not otherwise included in the cost  
13 of the article, product or item of merchandise, but which  
14 freight charges shall not be construed as including cartage  
15 to retail outlet if done or paid for by the retailer;

16     2. A markup to cover, in part, the cost of doing busi-  
17 ness, which markup, in the absence of proof of a lesser  
18 cost, shall be seven percent of the aggregate of invoice  
19 cost or replacement cost (whichever is used), less trade  
20 discounts as aforesaid, and plus said freight charges.

21     (b) The term "cost" when applicable to the business of  
22 a wholesaler shall mean bona fide cost and shall mean  
23 (1) the invoice cost of the merchandise to the wholesaler  
24 plus applicable taxes, or the replacement cost of the  
25 merchandise to the wholesaler within thirty days prior  
26 to the date of sale, offer for sale or advertisement for  
27 sale, as the case may be, in the quantity last purchased,  
28 whichever is lower, from either of which there shall be  
29 deducted all trade discounts except customary discounts  
30 for cash and (2) to either of which there shall be added  
31 the following items of expense:

32     1. Freight charges not otherwise included in the cost  
33 of the article, product or item of merchandise, but which  
34 freight charges shall not be construed as including cartage  
35 to the retail outlet if done or paid for by the wholesaler;

36     2. A markup to cover, in part, the cost of doing busi-  
37 ness, which markup in the absence of proof of a lesser  
38 cost, shall be four percent of the aggregate of invoice  
39 cost or replacement cost (whichever is used), less trade  
40 discounts as aforesaid, and plus said freight charges.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
Chairman Senate Committee

*[Handwritten Signature]*  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
Clerk of the Senate

*[Handwritten Signature]*  
Clerk of the House of Delegates

*[Handwritten Signature]*  
President of the Senate

*[Handwritten Signature]*  
Speaker House of Delegates

The within is approved this the 29  
day of March, 1982.

*[Handwritten Signature]*  
Governor



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