

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

3

SENATE BILL 378*

Manufacturing and Labor Committee Substitute Adopted 5/2/89
Manufacturing and Labor Committee Substitute #2 Adopted 5/8/89

Short Title: Retail Competition Preserved.

(Public)

Sponsors:

Referred to:

March 9, 1989

A BILL TO BE ENTITLED

AN ACT TO PRESERVE AND PROMOTE COMPETITION IN THE RETAIL SALES OF HOUSEHOLD FURNITURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75-5(b) reads as rewritten:

"(b) In addition to the other acts declared unlawful by this Chapter, it is unlawful for any person directly or indirectly to do, or to have any contract express or knowingly implied to do, any of the following acts:

- (1) To agree or conspire with any other person to put down or keep down the price of any goods produced in this State by the labor of others which goods the person intends, plans or desires to buy.
- (2) To sell any goods in this State upon condition that the purchaser thereof shall not deal in the goods of a competitor or rival in the business of the person making such sales.
- (3) To willfully destroy or injure, or undertake to destroy or injure, the business of any competitor or business rival in this State with the purpose of attempting to fix the price of any goods when the competition is removed.
- (4) While engaged in buying or selling any goods within the State, through himself or together with or through any allied, subsidiary or dependent person, to injure or destroy or undertake to injure or destroy the business of any rival or competitor, by unreasonably raising the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 price of any goods bought or by unreasonably lowering the price of
2 any goods sold with the purpose of increasing the profit on the
3 business when such rival or competitor is driven out of business, or his
4 business is injured.

5 (5) While engaged in dealing in goods within this State, at a place where
6 there is competition, to sell such goods at a price lower than is charged
7 by such person for the same thing at another place, when there is not
8 good and sufficient reason on account of transportation or the expense
9 of doing business for charging less at the one place than at the other, or
10 to give away such goods, with a view to injuring the business of
11 another.

12 (6) While engaged in buying or selling any goods in this State, to have any
13 agreement or understanding, express or implied, with any other person
14 not to buy or sell such goods within certain territorial limits within the
15 State, with the intention of preventing competition in selling or to fix
16 the price or prevent competition in buying such goods within these
17 limits.

18 (7) ~~Except as may be otherwise provided by Article 10 of Chapter 66, entitled~~
19 ~~"Fair Trade," while~~ While engaged in buying or selling any goods in this
20 State to make, enter into, execute or carry out any contract, obligation
21 or agreement of any kind by which the parties thereto or any two or
22 more of them bind themselves not to sell or dispose of any goods or
23 any article of trade, use or consumption, below a common standard
24 figure, or fixed value, or establish or settle the price of such goods
25 between them, or between themselves and others, at a fixed or
26 graduated figure, so as directly or indirectly to preclude a free and
27 unrestricted competition among themselves, or any purchasers or
28 consumers in the sale of such goods."

29 Sec. 2. Article 1 of Chapter 75 of the General Statutes is amended by adding
30 a new section to read:

31 **"§ 75-5.1. Particular acts prohibited; household furniture.**

32 (a) It is unlawful and constitutes a violation of G.S. 75-5 and G.S. 75-1.1 for any
33 person engaged in the distribution or selling of household furniture to retailers in this
34 State to sell to or deal with, directly or indirectly, or to have any contract, express or
35 knowingly implied, to sell to or deal with a retailer located in this State upon the
36 condition, prohibition or restriction that the retailer not:

37 (1) Sell to particular retail consumers or any particular class of retail
38 consumers,

39 (2) Sell to consumers who have not visited the retailer's place of business,

40 (3) Advertise the retailer's furniture store within or without the State of
41 North Carolina, provided that restrictions may be placed on the
42 advertising of a particular brand at the time it is distributed or sold to
43 the retailer,

1 (4) Communicate with, or effectuate sales to, consumers by means of a
2 particular communications medium, or

3 (5) Advertise the availability of a particular communications medium.

4 (b) Except as prohibited by subsection (a) above, a person engaged in the
5 distribution or selling of household furniture to retailers in this State is not prohibited
6 from establishing and enforcing reasonable retailing standards, including reasonable
7 showroom display requirements or reasonable advertisement format restrictions, or from
8 changing wholesale prices to retailers.

9 (c) The provisions of G.S. 75-15.2 shall not apply to actions brought under G.S.
10 75-5.1."

11 Sec. 3. This act is effective upon ratification, but shall not apply to pending
12 litigation.