

ENROLLED ACT NO. 88, SENATE

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING
2009 GENERAL SESSION

AN ACT relating to trade and commerce; amending price regulation provisions as specified; repealing duplicative and archaic provisions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 40-4-101(a)(intro), (i), (b), (c)(iii), by creating new paragraphs (v) through (vii) and by creating a new subsection (d), 40-4-107(b), 40-4-110(a)(intro), (iv), by creating a new paragraph (v) through (vii) and (c) and 40-4-114(b) are amended to read:

40-4-101. What constitutes unfair discrimination; penalty; exceptions.

(a) Any person, firm, ~~or~~ corporation, foreign or domestic, or other entity doing business in the state of Wyoming and engaged in the production, manufacture, sale or distribution of any commodity in general use, shall not:

(i) Make, enter into, form or become a party to any plan, contract, agreement, consolidation, merger or combination of any kind whatsoever to prevent competition or to control or influence production or prices thereof; or

(b) Any person, firm, ~~or~~ corporation or other entity violating subsection (a) of this section is guilty of unfair discrimination and any agreement, contract, whether express or implied, or any provision of an agreement or contract violating subsection (a) of this section is illegal and void to the extent it violates subsection (a) of this section.

(c) This chapter shall not:

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(iii) Prevent the sale of goods at ~~proper~~ commercial discounts customary in the sale of ~~such particular~~the goods;

(v) Prohibit the development, agreement on and use of standards designed to permit or encourage competition or interoperability among products or services, provided the standards do not include provisions fixing or colluding on the prices or colluding to prevent competition by limiting the availability of the products or services; or

(vi) Prohibit any person, firm, corporation or other entity from entering into any agreement or contract with a customer which specifies the price charged, or the services furnished, to the customer, or which gives discounts or additional services to the customer for purchasing specified volumes or multiple products of the same or similar product or service;

(vii) Prohibit any person, firm, corporation or other entity from offering a customer loyalty program.

(d) As used in this chapter "this act" means W.S. 40-4-101 through 40-4-105, 40-4-107, 40-4-109, 40-4-110 and 40-4-114.

40-4-107. Sale at less than cost prohibited; cost defined.

(b) The term cost as applied to production or manufacturing is hereby defined as including the cost of raw materials, and labor ~~and all overhead expense of the producer;~~ and as applied to distribution cost shall mean the invoice or replacement cost, whichever is lower, of the

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article or product to the distributor and vendor plus ~~the cost of doing business~~ any freight charges, all applicable federal, state and local taxes and any charges imposed by federal, state or local government that are not taxes that are paid by said the distributor and vendor and are not included in the invoice cost.

40-4-110. Persons, agreements and transactions exempted from W.S. 40-4-107 and 40-4-109.

(a) The provisions of W.S. 40-4-107, ~~40-4-108,~~ and 40-4-109 shall not apply to any sale made:

(iv) In an endeavor made in good faith to meet the ~~legal~~ prices of a competitor ~~as herein defined~~ selling the same or similar article or product in the same locality or trade area;~~;~~

(v) When the goods are sold for promotional purposes at a special sale of limited duration including but not limited to a grand opening sale, an annual anniversary sale, an annual customer appreciation sale or a community, neighborhood or mall wide sale;

(vi) In a sale of limited duration to reduce inventory, dispose of slow selling items or dispose of items replaced or to be replaced by new models;

(vii) Of any products in a class of products where the prices are identical for the same volume throughout the class provided the total revenues from all the sales of products of that class by the vendor exceed the costs as defined in W.S. 40-4-107. For pharmaceuticals, for the purposes of this subsection, prices are identical if they are identical for a supply for

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a defined period of time even though the physical quantities of pharmaceuticals may be different.

(c) W.S. ~~40-4-106~~ 40-4-107 through ~~40-4-116~~ 40-4-110 shall not apply to any person entering into a cooperative arrangement for antitrust exceptions approved pursuant to W.S. 35-24-101 through 35-24-116.

40-4-114. Enjoining violations; recovery of damages.

(b) Any injured person, ~~firm, private corporation or trade association~~ may maintain an action ~~against the alleged violator of W.S. 40-4-101(a)(i) to recover three (3) times the actual damages sustained, together with costs, where there is a reasonably foreseeable physical and economic causal nexus between the injury and the violation~~ for violation of this act against the alleged violator to recover the actual damages sustained by the injured person together with reasonable attorneys fees and costs.

Section 2. W.S. 40-4-101(a)(ii), (iii), (c)(i) and (ii), 40-4-106, 40-4-107(c), 40-4-108, 40-4-111 through 40-4-113, 40-4-114(c) through (g) and 40-4-115 through 40-4-121 are repealed.

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Section 3. This act is effective July 1, 2009.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk