

SENATE FILE NO. SF0112

Archaic price regulation repeal.

Sponsored by: Senator(s) Scott and Representative(s) Brown
and Stubson

A BILL

for

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

5

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

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8 **Section 1.** W.S. 40-4-101(a)(intro), (i), by creating
9 a new paragraph (iv), (b), (c)(iii) and by creating new
10 paragraphs (v) and (vi), 40-4-107(a) and (b),
11 40-4-110(a)(intro), (iv), by creating a new paragraph (v)
12 through (vii) and (c) are amended to read:

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14 **40-4-101. What constitutes unfair discrimination;**
15 **penalty; exceptions.**

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

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

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11 (iv) Impose any charge on a customer for using a
12 competing or different supplier.

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

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22 (c) This chapter shall not:
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1 (iii) Prevent the sale of goods at ~~proper~~
2 commercial discounts customary in the sale of ~~such~~
3 ~~particular~~the goods;

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

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13 (vi) Prohibit any person, firm, corporation or
14 other entity from entering into any agreement or contract
15 with a customer which specifies the price charged, or the
16 services furnished, to the customer, or which gives
17 discounts or additional services to the customer for
18 purchasing specified volumes or multiple products, provided
19 that the contract or agreement does not prohibit the
20 customer from purchasing an identical or similar product or
21 any different product from a competing supplier or vendor.

22
23 **40-4-107. Sale at less than cost prohibited; cost**
24 **defined.**

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2 (a) It shall be unlawful for any person, partnership,
3 firm, corporation, joint-stock company, or other
4 ~~association~~ entity engaged in business within this state,
5 to sell, offer for sale or advertise for sale any article
6 or product, at less than the cost thereof to ~~such~~ the
7 vendor, or give, offer to give or advertise the intent to
8 give away any article or product for ~~the purpose of~~
9 ~~injuring competitors and destroying competition~~ purposes
10 other than specified in W.S. 40-4-110 except that gifts may
11 be made provided there is no obligation to purchase any
12 item.

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14 (b) The term cost as applied to production or
15 manufacturing is hereby defined as including the cost of
16 raw materials, and labor ~~and all overhead expense of the~~
17 ~~producer,~~ and as applied to distribution cost shall mean
18 the invoice or replacement cost, whichever is lower, of the
19 article or product to the distributor and vendor plus ~~the~~
20 ~~cost of doing business~~ any freight charges, all applicable
21 federal, state and local taxes and any charges imposed by
22 federal, state or local government that are not taxes that
23 are paid by ~~said~~ the distributor and vendor and are not
24 included in the invoice cost.

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

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

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(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;~~;~~

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(v) When the goods are sold for promotional
purposes at a special sale of limited duration including a
grand opening sale, an annual anniversary sale, an annual
customer appreciation sale or a community, neighborhood or
mall wide sale provided the sum of all the special sales
does not exceed one hundred and twenty (120) days per year;

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(vi) In a sale of limited duration to reduce
inventory, dispose of slow selling items or items no longer
in fashion or dispose of items replaced or to be replaced
by new models;

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1 (vii) Of any products in a class of products
2 where the prices are identical for the same volume
3 throughout the class provided the total revenues from all
4 the sales of products of that class by the vendor exceed
5 the costs as defined in W.S. 40-4-107. For
6 pharmaceuticals, for the purposes of this subsection,
7 prices are identical if they are identical for a supply for
8 a defined period of time even though the physical
9 quantities of pharmaceuticals may be different.

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(c) W.S. 40-4-106 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.

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16 **Section 2.** W.S. 40-4-101(a)(ii), (iii), (c)(i) and
17 (ii), 40-4-106, 40-4-107(c), 40-4-108 and 40-4-111 through
18 40-4-121 are repealed.

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

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22 (END)