

## CHAPTER 140

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**CONSUMER AND COMMERCIAL TRANSACTIONS**

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**HOUSE BILL 07-1208**

BY REPRESENTATIVE(S) Jahn and Lundberg, Balmer, Carroll T., Casso, Gibbs, Green, Kefalas, Liston, Rice, Riesberg, Stafford, Stephens, Todd, Frangas, Gardner B., Kerr J., Labuda, Lambert, May M., and Rose;  
also SENATOR(S) Johnson, Boyd, May R., McElhany, Romer, Spence, Harvey, Kopp, Schultheis, and Ward.

**AN ACT**

**CONCERNING CHANGES TO THE COLORADO "UNFAIR PRACTICES ACT", AND, IN CONNECTION THEREWITH, MAKING CHANGES TO THE CALCULATION OF THE SELLING PRICE OF A PRODUCT OR SERVICE TO DETERMINE IF THE PRODUCT OR SERVICE IS SOLD BELOW COST.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 6-2-103 (1), Colorado Revised Statutes, is amended to read:

**6-2-103. Discriminatory sales - exceptions.** (1) It is unlawful for any person, firm, or corporation doing business in the state of Colorado and engaged in the production, manufacture, distribution, or sale of any commodity, product, or service ~~or output of a service trade~~ of general use or consumption, or the sale of any merchandise or product by any public utility, with the intent to destroy the competition of any regular established dealer in such commodity, product, or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation ~~which~~ THAT in good faith intends and attempts to become a dealer, to discriminate between different sections, communities, or cities, or portions thereof, or between different locations in such sections, communities, cities, or portions thereof in this state by selling or furnishing a commodity, product, or service at a lower rate in one section, community, or city, or any portion thereof, or in one location in such section, community, or city, or any portion thereof than in another after making allowance for the difference, if any, in the grade or quality, quantity, and actual cost of transportation from the point of production, if a raw product or commodity, or from the point of manufacture, if a manufactured product or commodity. Motion picture films when delivered under a lease to motion picture houses shall not be deemed to be a commodity or product of general use or consumption.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**SECTION 2.** 6-2-105 (1) and (2), Colorado Revised Statutes, are amended to read:

**6-2-105. Unlawful to sell below cost.** (1) (a) It is unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaged in business within this state to sell, offer for sale, or advertise for sale any ~~article or product or service or output of a service trade~~ for less than the cost thereof ~~to such vendor, or give, offer to give, or advertise the intent to give away any article or product or service or output of a service trade~~ for the purpose of injuring competitors and destroying competition. A vendor who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the penalties provided in section 6-2-116.

(b) ~~It is unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaged in business within this state to engage in a pattern of selling, offering for sale, or advertising for sale motor fuel for less than the cost thereof to such vendor, when such pattern has the effect of injuring one or more competitors or destroying competition. A vendor who violates this paragraph (b) is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the penalties provided in section 6-2-116.~~

(2) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer; and as applied to distribution "cost" means the invoice or replacement cost, whichever is lower, of the ~~article or~~ product to the distributor and vendor plus the cost of doing business by said distributor and vendor.

**SECTION 3.** 6-2-106, Colorado Revised Statutes, is amended to read:

**6-2-106. How cost established.** In establishing the cost of a given ~~article or~~ product to the distributor and vendor, the invoice cost of ~~said article or~~ THE product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of ~~said article or~~ THE product replaced through the ordinary channels of trade, unless ~~said article or~~ THE product is kept separate from goods purchased in the ordinary channels of trade and unless ~~said article or~~ THE product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade. The advertising shall state the conditions under which said goods were purchased and the quantity of such merchandise to be sold or offered for sale.

**SECTION 4.** 6-2-110 (1) (d), Colorado Revised Statutes, is amended to read:

**6-2-110. When provisions not applicable.** (1) The provisions of sections 6-2-105 to 6-2-107 shall not apply to any sale made:

(d) In an endeavor made in good faith to meet the ~~legal~~ prices of a competitor selling the same ~~article or~~ product or service ~~or output of a service trade~~, in the same locality or trade area.

**SECTION 5.** 6-2-113, Colorado Revised Statutes, is amended to read:

~~6-2-113. Selling below cost. For the purpose of preventing evasion of the provisions of this article in all sales involving more than one item or commodity and in all sales involving the giving of any concession of any kind, whether it be coupons or otherwise, the vendors' or distributors' selling price shall not be below the cost of all articles, products, commodities, and concessions included in such transactions: FOR THE PURPOSES OF THIS ARTICLE, IN ALL SALES INVOLVING MORE THAN ONE PRODUCT OR SERVICE AND IN ALL SALES INVOLVING THE GIVING OF ANY CONCESSION OF ANY KIND, THE COMBINED TOTAL SELLING PRICE OF ALL PRODUCTS OR SERVICES SHALL BE COMPARED TO THE COMBINED TOTAL COST OF ALL PRODUCTS OR SERVICES INVOLVED IN THE SALES TO DETERMINE WHETHER THE VENDOR OR DISTRIBUTOR IS SELLING BELOW COST.~~

**SECTION 6. Repeal.** 6-2-115, Colorado Revised Statutes, is repealed as follows:

~~6-2-115. Evidence to establish legal price. (1) For purposes of obtaining an injunction or restraining order, it shall constitute a sufficient prima facie showing of a violation of this article to show that the defendant has sold goods at retail at a price equal to or lower than the wholesale price of such goods, which is the price of such goods, wares, and merchandise at wholesale to jobbers, supply houses, or other persons on the jobbers' lists. The defendant, upon showing of violation, shall be enjoined from selling any such goods, wares, and merchandise below such wholesale cost thereof to persons on the jobbers' lists, unless they shall make it specifically appear that they have themselves purchased such goods, wares, and merchandise below cost to the wholesaler or below prices to persons on the jobbers' lists or that they are in good faith meeting the legal price of a competitor.~~

~~(2) In order that such price of a competitor be considered a legal price within the meaning of this article, it shall be incumbent upon the defendant to show:~~

~~(a) That he has met the specific price of a specific competitor in an area directly competitive with the defendant so claiming to have met such price at a time when such price was in actuality competitive with that of those offered by such competitor;~~

~~(b) That such price has been quoted by the competitor on the same or similar goods, wares, and merchandise and that such goods, wares, and merchandise of such competitor were sold or offered for sale by the competitor to the consuming public in direct competition with the goods, wares, and merchandise of such defendant in the trade area of the defendant;~~

~~(c) That such price has been quoted by the defendant directly and immediately in an endeavor in good faith to meet the price quoted by such competitor;~~

~~(d) That the defendant made a bona fide effort to determine the legality of such price of such competitor.~~

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 16, 2007