

CHAPTER 437

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 08-246

BY SENATOR(S) Williams, McElhany, Mitchell S., Romer, and Spence;
 also REPRESENTATIVE(S) Jahn and Lundberg, Massey, Balmer, Buescher, Rice, Rose, Frangas, Liston, Mitchell V., Summers,
 and Swalm.

AN ACT

**CONCERNING A CLARIFICATION OF THE PROHIBITION ON SELLING BELOW COST UNDER THE
 COLORADO "UNFAIR PRACTICES ACT".**

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

SECTION 1. 6-2-105, Colorado Revised Statutes, is 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 product or service for less than the cost thereof for the purpose of injuring OF THE PRODUCT OR SERVICE WITH THE INTENT TO BOTH INJURE competitors and ~~destroying~~ DESTROY competition AND WHERE THE LIKELY RESULT OF SUCH SALE WOULD BE THE ACQUISITION OR MAINTENANCE OF A MONOPOLY. 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) (Deleted by amendment, L. 2007, p. 514, § 2, effective April 16, 2007.)

(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 product to the distributor and vendor plus the cost of doing business by said distributor and vendor~~ FOR PURPOSES OF THIS SECTION, "COST" MEANS AN APPROPRIATE DETERMINATION OF COST THAT IS CONSISTENT WITH FEDERAL COURT INTERPRETATIONS OF COST IN FEDERAL PREDATORY PRICING CASES UNDER THE FEDERAL "SHERMAN ACT", 15 U.S.C. SEC. 1 ET SEQ.

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

(3) ~~"Cost of doing business" or "overhead expense" means all costs of doing business incurred in the conduct of such business and includes without limitation the following items of expense: Labor, including salaries of executives and officers, rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance, and advertising.~~

SECTION 2. 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: June 5, 2008