

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 2026

By: Sullivan

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5
6 AS INTRODUCED

7 An Act relating to agriculture; amending 2 O.S. 2001,
8 Section 14-38, as last amended by Section 1, Chapter
9 434, O.S.L. 2010 (2 O.S. Supp. 2010, Section 14-38),
10 which relates to weights and measures; setting
11 pricing standard for lumber and building material
12 sellers; excepting and including certain sellers;
13 declaring pricing failure to be a violation and
14 failed inspection; and providing an effective date.

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 2 O.S. 2001, Section 14-38, as
17 last amended by Section 1, Chapter 434, O.S.L. 2010 (2 O.S. Supp.
18 2010, Section 14-38), is amended to read as follows:

19 Section 14-38. A. For the purposes of this section:

20 1. "Advertised price" means the price of a consumer item which
21 price a store has caused to be disseminated by means of promotional
22 methods such as an in-store sign, newspaper, circular, television,
23 radio advertising, or other means;

24 2. "Board" means the State Board of Agriculture;

3. "Computer-assisted checkout system" means any electronic
device, computer system, or machine which determines the selling

1 price of a consumer item by interpreting the UPC of the consumer
2 item, or any other use of a similar price look-up function;

3 4. "Commissioner" means the Commissioner of the Oklahoma
4 Department of Agriculture, Food, and Forestry;

5 5. "Consumer item" means each item being offered or exposed for
6 sale;

7 6. "Department" means the Oklahoma Department of Agriculture,
8 Food, and Forestry;

9 7. "Inspector" means an authorized representative of the
10 Oklahoma Department of Agriculture, Food, and Forestry;

11 8. "Item price" means the tag, stamp, or mark affixed by an
12 authorized person to a consumer item which sets forth, in Arabic
13 numerals, the retail price thereof;

14 9. "Manually entered prices" means any method of determining
15 the selling price of a consumer item by means other than a computer-
16 assisted checkout system;

17 10. "Price look-up function" means the capacity of any checkout
18 system to determine the retail price of a consumer item by way of
19 the manual entry into the system of a code number assigned to that
20 particular consumer item by an inspector or the store or the
21 checkout operator's consultation of a file maintained at the point
22 of sale or within the store;

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1 11. "Sale price" means the price of consumer items offered for
2 sale in good faith at a price below the price for which the consumer
3 items are usually sold in the store;

4 12. "Shelf price" means the sign or tag placed by an authorized
5 person at each point of display which clearly sets forth the retail
6 price of the consumer item;

7 13. "Store" means any establishment which offers consumer items
8 for sale at retail. Each separate building within which consumer
9 items are offered for sale at retail shall constitute a separate
10 store location for purposes of this section;

11 14. "Store-coded item" means the application of a UPC to any
12 consumer item by that particular store; and

13 15. "Universal product code" (UPC) means the digital figure
14 depicted through the use of bars and spaces, typically attached by
15 the manufacturer or distributor, which may be scanned into the
16 pricing system of a store.

17 B. 1. It shall be unlawful for any person to:

18 a. sell, offer, or expose for sale a quantity less than
19 the quantity represented,

20 b. take more than the represented quantity when, as a
21 buyer, the person furnishes the weight or measure by
22 means of which the quantity is determined,
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1 c. represent the quantity in any manner calculated or
2 tending to mislead or in any way deceive another
3 person, or

4 d. misrepresent the price of any commodity or service
5 sold, offered, exposed, or advertised for sale by
6 weight, measure, or count or represent the price in
7 any manner calculated or tending to mislead or in any
8 way deceive a person.

9 2. It shall be unlawful for a store to charge a retail price
10 for any consumer item which exceeds the lowest then price in that
11 store, whether a shelf, sale, advertised, or otherwise publicly
12 communicated price, of the consumer item.

13 C. Every person, store, firm, partnership, corporation, or
14 association which sells, offers for sale, or exposes consumer items
15 for sale at retail within this state shall disclose to the consumer
16 the item price of the consumer items by:

17 1. Causing to be conspicuously, clearly, and plainly marked,
18 stamped, typed, or affixed to the items, the retail price in Arabic
19 numerals; or

20 2. Disclosing to the consumer the item price of the consumer
21 items by causing a shelf price to be posted at the point of display
22 in Arabic numerals or maintaining a price look-up function for the
23 consumer items, except for consumer items held in outside storage
24 and warehouses.

1 D. 1. If the shelf labels do not conform with the provisions
2 of this section, the store shall be subject to the following
3 penalties:

4 a. for violations discovered upon the first inspection
5 following any twelve-month period in which no
6 violation of this section has been found, the store
7 will receive a Letter of Warning and be placed on an
8 increased inspection frequency. Stores will remain on
9 an increased inspection frequency until they have
10 achieved a twelve-month period in which no violation
11 of this section has been found,

12 b. for violations identified in the second inspection
13 following any twelve-month period within which no such
14 violations have been found, a penalty in the amount of
15 Ten Dollars (\$10.00) per violation shall be imposed,
16 but in no event shall the total penalty for all
17 violations identified at the second inspection exceed
18 Five Hundred Dollars (\$500.00), and

19 c. for violations identified in a third or subsequent
20 inspection in a twelve-month period following a
21 previous violation of this section, the penalties
22 shall be doubled, up to a maximum of One Thousand
23 Dollars (\$1,000.00) per inspection.

1 2. Every day a violation is continued shall constitute a
2 separate violation.

3 E. For the purpose of determining the compliance of a store
4 with this section, an inspection shall be conducted of a sample of
5 no fewer than fifty and no more than three hundred consumer items,
6 with inspectors typically sampling fifty consumer items for each
7 cash register that may be operational in a given store using a
8 computer-assisted checkout system. Inspections for manually entered
9 prices may consist of sample sizes of no fewer than ten and no more
10 than fifty items. The sample shall be selected by the inspector
11 from a cross section of all items offered for sale at the store
12 inspected.

13 F. 1. For any price accuracy inspection under this section,
14 the store representative shall afford the inspector access to the
15 test mode of the computer-assisted checkout system in use at the
16 store or to a comparable function of the system and to the retail
17 price information contained in any price look-up system.

18 2. In a store with a laser scanning or other computer-assisted
19 checkout system, the inspector shall be permitted, whether through
20 an agency issued scanner or otherwise, to compare the item, shelf,
21 sale, or advertised price of any consumer items offered in the
22 store, not to exceed three hundred consumer items selected from a
23 cross section of all items offered for sale at the location at any
24 one inspection, with the programmed computer price. Inspectors

1 should sample fifty consumer items for each cash register that may
2 be operational in a given store not to exceed three hundred consumer
3 items selected from a cross section of all items offered for sale at
4 the location of that store at any one inspection. The store shall
5 provide access to its computers as necessary for the inspector to
6 make the inspection.

7 G. Undercharges shall not be considered an inaccurately priced
8 item when calculating price accuracy under this section.

9 H. Stores on a routine inspection frequency may be inspected
10 once per six (6) months, depending upon available resources of the
11 Department. Stores on an increased inspection frequency may be
12 inspected in sixty-day intervals.

13 I. Any prior adoption in statute or rule of the Examination
14 Procedure for Price Verification Handbook 130 issued by the National
15 Institute of Standards and Technology is revoked. However, the
16 inspection and testing procedures used by inspectors shall generally
17 conform to the standards of the then current Handbook 130 issued by
18 the National Institute of Standards and Technology, specifically
19 including verification procedures for manually entered prices.

20 J. Any store found in violation of this section shall be
21 subject to the penalties specified in this subsection. Each day on
22 which a violation is continued shall constitute a separate
23 violation. The failure to accurately price ninety-five percent
24 (95%) of all consumer items sampled as part of a given inspection

1 shall be deemed a failed inspection. Provided, persons primarily
2 engaged in the selling of lumber and other building materials,
3 including cement and concrete, except for home centers classified
4 under Industry No. 444110 of the North American Industrial
5 Classification System (NAICS) Manual, shall be in violation of this
6 section for failure to accurately price eighty-five percent (85%) or
7 less of all consumer items sampled as part of a given inspection and
8 shall be deemed a failed inspection. If the programmed computer
9 price or manual checkout price, in cases where there is no
10 programmed computer price, exceeds the shelf, sale, advertised, or
11 otherwise publicly communicated price of any consumer item, the
12 store shall be subject to the following penalties:

13 1. For violations discovered upon the first inspection
14 following any twelve-month period in which no violation of this
15 section has been found, the store will receive a Letter of Warning
16 and be placed on an increased inspection frequency. Stores shall
17 remain on an increased inspection frequency until they have achieved
18 a twelve-month period in which no violation of this section has been
19 found;

20 2. For violations discovered upon the second inspection
21 following any twelve-month period in which no violation of this
22 section has been found, the store shall pay a penalty of Seventy-
23 five Dollars (\$75.00) for each consumer item which results in an
24 overcharge or potential overcharge;

1 3. Third violations discovered within any twelve-month period
2 will be assessed a one-hundred-fifty-dollar penalty per consumer
3 item which results in an overcharge or potential overcharge;

4 4. Fourth violations discovered within any twelve-month period
5 will be assessed a two-hundred-fifty-dollar penalty per consumer
6 item which results in an overcharge or potential overcharge;

7 5. Fifth violations discovered within any twelve-month period
8 will be assessed a three-hundred-fifty-dollar penalty per consumer
9 item which results in an overcharge or potential overcharge; and

10 6. Sixth or subsequent violations within any twelve-month
11 period will be assessed a five-hundred-dollar penalty per consumer
12 item which results in an overcharge or potential overcharge, with a
13 maximum penalty per overcharge of Five Hundred Dollars (\$500.00) per
14 consumer item, regardless of additional violations per inspection
15 per store location.

16 K. The provisions of the Oklahoma Small Business Regulatory
17 Flexibility Act pertaining to waiver or reduction of any
18 administrative penalty or administrative fine shall not be
19 applicable to this section and may not be relied upon for a
20 reduction or deferral or as imposing any procedural prerequisite or
21 as a defense, respecting actions investigated and/or brought under
22 this section.

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1 L. The State Board of Agriculture shall have the authority to
2 promulgate rules as necessary to carry out the purposes of this
3 section.

4 SECTION 2. This act shall become effective November 1, 2011.

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