

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
4 SENATE BILL 1857

By: Coates, Barrington and
Burrage of the Senate

5 and

6 Sullivan, Jones and
7 Harrison of the House

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10 CONFERENCE COMMITTEE SUBSTITUTE

11 An act relating to weights and measures; amending 2
12 O.S. 2001, Section 14-38, as last amended by Section
13 2, Chapter 8, O.S.L. 2009 (2 O.S. Supp. 2009, Section
14 14-38), which relates to unlawful acts; adding
15 definitions; expanding unlawful acts; providing for
16 disclosure of certain prices; providing for
17 violations and penalties; setting parameters for
18 certain inspections; revoking use of certain
19 handbook; utilizing Handbook 130 issued by the
20 National Institute of Standards and Technology for
21 certain verification procedures; providing penalties
22 for certain violations; making certain statutory
23 provisions not applicable to certain circumstances;
24 authorizing the State Board of Agriculture to
25 promulgate rules; providing an effective date; and
26 declaring an emergency.

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

28 SECTION 1. AMENDATORY 2 O.S. 2001, Section 14-38, as
29 last amended by Section 2, Chapter 8, O.S.L. 2009 (2 O.S. Supp.
30 2009, Section 14-38), is amended to read as follows:

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

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

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

7 3. "Computer-assisted checkout system" means any electronic
8 device, computer system, or machine which determines the selling
9 price of a consumer item by interpreting the UPC of the consumer
10 item, or any other use of a similar price look-up function;

11 4. "Commissioner" means the Commissioner of the Department of
12 Agriculture, Food, and Forestry;

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

15 6. "Department" means the Oklahoma Department of Agriculture,
16 Food, and Forestry;

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

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

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

1 10. "Price look-up function" means the capacity of any checkout
2 system to determine the retail price of a consumer item by way of
3 the manual entry into the system of a code number assigned to that
4 particular consumer item by an inspector or the store or the
5 checkout operator's consultation of a file maintained at the point
6 of sale or within the store;

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

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

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

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

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

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

24 1. Sell

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

2. Take

b. take more than the represented quantity when, as a buyer, the person furnishes the weight or measure by means of which the quantity is determined; or,

3. Represent

c. represent the quantity in any manner calculated or tending to mislead or in any way deceive another person, or

4. Misrepresent

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

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

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

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

4 2. Disclosing to the consumer the item price of the consumer
5 items by causing a shelf price to be posted at the point of display
6 in Arabic numerals or maintaining a price look-up function for the
7 consumer items, except for consumer items held in outside storage
8 and warehouses.

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

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

20 b. for violations identified in the second inspection
21 following any twelve-month period within which no such
22 violations have been found, a penalty in the amount of
23 Ten Dollars (\$10.00) per violation shall be imposed,
24 but in no event shall the total penalty for all

violations identified at the second inspection exceed
Five Hundred Dollars (\$500.00), and
for violations identified in a third or subsequent
inspection in a twelve-month period following a
previous violation of this section, the penalties
shall be doubled, up to a maximum of One Thousand
Dollars (\$1,000.00) per inspection.

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

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

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

1 2. In a store with a laser scanning or other computer-assisted
2 checkout system, the inspector shall be permitted, whether through
3 an agency issued scanner or otherwise, to compare the item, shelf,
4 sale, or advertised price of any consumer items offered in the
5 store, not to exceed three hundred consumer items selected from a
6 cross section of all items offered for sale at the location at any
7 one inspection, with the programmed computer price. Inspectors
8 should sample fifty consumer items for each cash register that may
9 be operational in a given store not to exceed three hundred consumer
10 items selected from a cross section of all items offered for sale at
11 the location of that store at any one inspection. The store shall
12 provide access to its computers as necessary for the inspector to
13 make the inspection.

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

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

20 I. Any prior adoption in statute or rule of the Examination
21 Procedure for Price Verification Handbook 130 issued by the National
22 Institute of Standards and Technology is revoked. However, the
23 inspection and testing procedures used by inspectors shall generally
24 conform to the standards of the then current Handbook 130 issued by

1 the National Institute of Standards and Technology, specifically
2 including verification procedures for manually entered prices.
3 J. Any store found in violation of this section shall be
4 subject to the penalties specified in this subsection. Each day on
5 which a violation is continued shall constitute a separate
6 violation. The failure to accurately price ninety-five percent
7 (95%) of all consumer items sampled as part of a given inspection
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 July 1, 2010.

5 SECTION 3. It being immediately necessary for the preservation
6 of the public peace, health and safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

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