

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL 493

By: Sharp, Quinn, Griffin,
Boggs, Smalley, Sparks and
Allen of the Senate

and

Coody, Sanders, Osborn
(Leslie), West (Rick),
Kerbs, Renegar, Moore,
Bennett (John), Fourkiller,
Lepak, Casey, Loring,
Perryman and Cockroft of
the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to weights and measures; amending 2
O.S. 2011, Section 14-38, which relates to
misrepresentation of prices and quantities; exempting
certain industry; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 14-38, is
amended to read as follows:

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

1. "Advertised price" means the price of a consumer item which
price a store has caused to be disseminated by means of promotional

1 methods such as an in-store sign, newspaper, circular, television,
2 radio advertising, or other means;

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

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

8 4. "Commissioner" means the Commissioner of the Department of
9 Agriculture, Food, and Forestry;

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

12 6. "Department" means the Oklahoma Department of Agriculture,
13 Food, and Forestry;

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

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

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

22 10. "Price look-up function" means the capacity of any checkout
23 system to determine the retail price of a consumer item by way of
24 the manual entry into the system of a code number assigned to that

1 particular consumer item by an inspector or the store or the
2 checkout operator's consultation of a file maintained at the point
3 of sale or within the store;

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

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

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

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

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

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

21 a. sell, offer, or expose for sale a quantity less than
22 the quantity represented,
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1 b. take more than the represented quantity when, as a
2 buyer, the person furnishes the weight or measure by
3 means of which the quantity is determined,

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

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

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

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

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

23 2. Disclosing to the consumer the item price of the consumer
24 items by causing a shelf price to be posted at the point of display

1 in Arabic numerals or maintaining a price look-up function for the
2 consumer items, except for consumer items held in outside storage
3 and warehouses.

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

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

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

22 c. for violations identified in a third or subsequent
23 inspection in a twelve-month period following a
24 previous violation of this section, the penalties

1 shall be doubled, up to a maximum of One Thousand
2 Dollars (\$1,000.00) per inspection.

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

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

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

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

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

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

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

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

22 J. Any store found in violation of this section shall be
23 subject to the penalties specified in this subsection. Each day on
24 which a violation is continued shall constitute a separate

1 violation. The failure to accurately price ninety-five percent
2 (95%) of all consumer items sampled as part of a given inspection
3 shall be deemed a failed inspection. If the programmed computer
4 price or manual checkout price, in cases where there is no
5 programmed computer price, exceeds the shelf, sale, advertised, or
6 otherwise publicly communicated price of any consumer item, the
7 store shall be subject to the following penalties:

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

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

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

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

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

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

20 L. Persons primarily engaged in selling lumber and other
21 building materials classified under Industry Group No. 4441 of the
22 North American Industrial Classification System (NAICS), except for
23 national home centers classified under NAICS code 444110, shall be
24 exempt from this section.

1 M. 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, 2017.

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