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February 21, 2017

By: Sharp

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 2. Disclosing to the consumer the item price of the consumer
13 items by causing a shelf price to be posted at the point of display
14 in Arabic numerals or maintaining a price look-up function for the
15 consumer items, except for consumer items held in outside storage
16 and warehouses.

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

20 a. for violations discovered upon the first inspection
21 following any twelve-month period in which no
22 violation of this section has been found, the store
23 will receive a Letter of Warning and be placed on an
24 increased inspection frequency. Stores will remain on

1 an increased inspection frequency until they have
2 achieved a twelve-month period in which no violation
3 of this section has been found,

4 b. for violations identified in the second inspection
5 following any twelve-month period within which no such
6 violations have been found, a penalty in the amount of
7 Ten Dollars (\$10.00) per violation shall be imposed,
8 but in no event shall the total penalty for all
9 violations identified at the second inspection exceed
10 Five Hundred Dollars (\$500.00), and

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

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

18 E. For the purpose of determining the compliance of a store
19 with this section, an inspection shall be conducted of a sample of
20 no fewer than fifty and no more than three hundred consumer items,
21 with inspectors typically sampling fifty consumer items for each
22 cash register that may be operational in a given store using a
23 computer-assisted checkout system. Inspections for manually entered
24 prices may consist of sample sizes of no fewer than ten and no more

1 than fifty items. The sample shall be selected by the inspector
2 from a cross section of all items offered for sale at the store
3 inspected.

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

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

22 G. Undercharges shall not be considered an inaccurately priced
23 item when calculating price accuracy under this section.
24

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

5 I. Any prior adoption in statute or rule of the Examination
6 Procedure for Price Verification Handbook 130 issued by the National
7 Institute of Standards and Technology is revoked. However, the
8 inspection and testing procedures used by inspectors shall generally
9 conform to the standards of the then current Handbook 130 issued by
10 the National Institute of Standards and Technology, specifically
11 including verification procedures for manually entered prices.

12 J. Any store found in violation of this section shall be
13 subject to the penalties specified in this subsection. Each day on
14 which a violation is continued shall constitute a separate
15 violation. The failure to accurately price ninety-five percent
16 (95%) of all consumer items sampled as part of a given inspection
17 shall be deemed a failed inspection. If the programmed computer
18 price or manual checkout price, in cases where there is no
19 programmed computer price, exceeds the shelf, sale, advertised, or
20 otherwise publicly communicated price of any consumer item, the
21 store shall be subject to the following penalties:

22 1. For violations discovered upon the first inspection
23 following any twelve-month period in which no violation of this
24 section has been found, the store will receive a Letter of Warning

1 and be placed on an increased inspection frequency. Stores shall
2 remain on an increased inspection frequency until they have achieved
3 a twelve-month period in which no violation of this section has been
4 found;

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

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

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

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

19 6. Sixth or subsequent violations within any twelve-month
20 period will be assessed a five-hundred-dollar penalty per consumer
21 item which results in an overcharge or potential overcharge, with a
22 maximum penalty per overcharge of Five Hundred Dollars (\$500.00) per
23 consumer item, regardless of additional violations per inspection
24 per store location.

1 K. The provisions of the Oklahoma Small Business Regulatory
2 Flexibility Act pertaining to waiver or reduction of any
3 administrative penalty or administrative fine shall not be
4 applicable to this section and may not be relied upon for a
5 reduction or deferral or as imposing any procedural prerequisite or
6 as a defense, respecting actions investigated and/or brought under
7 this section.

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

13 M. The State Board of Agriculture shall have the authority to
14 promulgate rules as necessary to carry out the purposes of this
15 section.

16 SECTION 2. This act shall become effective November 1, 2017.
17 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE AND WILDLIFE
18 February 21, 2017 - DO PASS
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