

TITLE 48
MONOPOLIES AND TRADE PRACTICES

CHAPTER 2
ANTI-PRICE DISCRIMINATION ACT

48-201. DEFINITIONS. The following terms for the purposes of this act are hereby defined as follows:

(a) "Person" means the plural as well as the singular and shall include an individual, partnership, association, a joint stock company, business trust and an incorporated as well as an unincorporated organization.

(b) The term "price" as used herein shall mean the net price to the buyer after deduction of all discounts, rebates or other price concessions paid or allowed by the seller.

(c) The term "commerce" means trade or commerce within this state.

[48-201, added 1937, ch. 229, sec. 1, p. 406.]

48-202. DISCRIMINATION UNLAWFUL -- DIFFERENTIALS -- CUSTOMER SELECTION -- PRICE CHANGES -- REBUTTING PRIMA FACIE CASE -- COMMISSIONS OR BROKERAGES PROHIBITED -- CUSTOMER DISCRIMINATION OR RECEIPT OF DISCRIMINATION PROHIBITED. (a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality or to discriminate in price between different sections, communities or cities or portions thereof or between different locations in such sections, communities, cities or portions thereof in this state, where the effect of such discriminations may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery, resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: and provided further, that nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: and provided further, that nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonable goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Upon proof being made, in any suit or other proceeding in which any violation of this act may be at issue, that there has been discrimination in price, or in services or facilities furnished, or in payment for services or facilities to be rendered, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with such violation: provided, however, that nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price, or the payment for or furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor or the services or facilities furnished by a competitor.

(c) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise; provided, however, that in all such transactions of sale and purchase it shall be unlawful for either party to such transaction to pay or grant anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, to the other party to the transaction or to any agent, representative, or other intermediary therein, where such agent, representative, or other intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of the said other party to such transaction.

(d) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

[48-202, added 1937, ch. 229, sec. 2, p. 406.]

48-203. COOPERATIVE ASSOCIATIONS EXEMPT. Nothing in this act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

[48-203, added 1937, ch. 229, sec. 3, p. 406.]

48-204. RIGHTS OF PERSONS INJURED BY VIOLATIONS OF ACT. (a) Any person injured by any violation, or who will suffer injury from any threatened violation, of this act, may maintain an action, in any court of competent jurisdiction of this state, to prevent, restrain or enjoin such violation or threatened violation. If in such action, a violation or threatened violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation or threatened violation, and the plaintiff in said action shall be entitled to recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

(b) In the event no injunctive relief is sought or required, any person injured by any violation of this act, may maintain an action for damages

alone in any court of competent jurisdiction in this state, and the measure of damages in such action shall be the same as that prescribed by subsection (a) of this section.

(c) In any proceedings instituted or action brought in pursuance of the provisions of subsections (a) and (b) of this section, the plaintiff, upon proof that he has been unlawfully discriminated against by the defendant, shall be conclusively presumed to have sustained damages equal to the monetary amount or equivalent of the unlawful discrimination; and in addition thereto, may establish such further damages, if any, as he may have sustained as a result of such discrimination.

(d) Where a particular trade or industry of which the person, firm or corporation complained against is a member, has an established cost survey for the localities and vicinities in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this act.

(e) Any contract, express or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal contract and no recovery thereon shall be had.

[48-204, added 1937, ch. 229, sec. 4, p. 406.]

48-205. TITLE OF ACT. This act shall be known and designated as the "Anti-Price Discrimination Act" and its inhibitions against discrimination shall embrace any scheme of special concessions or rebates, any collateral contracts or agreements or any device of any nature whereby discrimination is, in substance or fact, effected in violation of the spirit and intent of this act.

[48-205, added 1937, ch. 229, sec. 5, p. 406.]

48-206. SEPARABILITY. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

[48-206, added 1937, ch. 229, sec. 6, p. 406.]