

365.030 Sale at less than cost or gift of commodity to destroy competition prohibited.

- (1) Except as provided in KRS 365.040, no person engaged in business within this state shall sell, offer for sale or advertise for sale any article or product, or service or output of a service trade, at less than the cost thereof to such vendor, or give, offer to give or advertise the intent to give away any article or product, or service or output of a service trade, for the purpose of injuring competitors and destroying competition.
- (2) In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt or close-out sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of the sale of the article or product replaced through the ordinary channels of trade, unless the article or product is kept separate from goods purchased in the ordinary channels of trade and unless the article or product is advertised and sold as merchandise purchased at a forced, bankrupt or close-out sale or by means other than through the ordinary channels of trade, and the advertising states the conditions under which the goods were so purchased, and the quantity of the merchandise to be sold or offered for sale.
- (3) As applied to production, "cost" includes the cost of raw materials, labor and all overhead expenses of the producer. As applied to distribution, "cost" means the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor plus the cost of doing business by the distributor and vendor. The "cost of doing business" or "overhead expense" means all costs of doing business incurred in the conduct of the business and must include without limitation the following items of expense: Labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery cost, credit losses, all types of licenses, taxes, insurance and advertising. "Vendor" includes any person who performs work upon, renovates, alters or improves any personal property belonging to another person.
- (4) Where a person complained of as violating any of the provisions of this section is a member of a particular trade or industry that has an established cost survey for the locality and vicinity in which the offense is committed, the cost survey shall be competent evidence to be used in proving the costs of such person.

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4748h-3, 4748h-4, 4748h-5, 4748h-6.