

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 405

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE ANTI-PRICE DISCRIMINATION ACT; AMENDING SECTION 48-202,
2 IDAHO CODE, TO PROVIDE THAT CERTAIN ACTIONS REGARDING VIDEO PROGRAMMING
3 OF ATHLETIC OR SPORTS GAMES OR CONTESTS SHALL BE UNLAWFUL AND TO MAKE
4 TECHNICAL CORRECTIONS.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 48-202, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 48-202. DISCRIMINATION UNLAWFUL -- DIFFERENTIALS -- CUSTOMER SELEC-
10 TION -- PRICE CHANGES -- REBUTTING PRIMA FACIE CASE -- COMMISSIONS OR BRO-
11 KERAGES PROHIBITED -- CUSTOMER DISCRIMINATION OR RECEIPT OF DISCRIMINATION
12 PROHIBITED. (a) It shall be unlawful for any person engaged in commerce, in
13 the course of such commerce, either directly or indirectly, to discriminate
14 in price between different purchasers of commodities of like grade and qual-
15 ity or to discriminate in price between different sections, communities or
16 cities or portions thereof or between different locations in such sections,
17 communities, cities or portions thereof in this state, where the effect of
18 such discriminations may be substantially to lessen competition or tend to
19 create a monopoly in any line of commerce, or to injure, destroy, or prevent
20 competition with any person who either grants or knowingly receives the ben-
21 efit of such discrimination, or with customers of either of them: provided,
22 that nothing herein contained shall prevent differentials which make only
23 due allowance for differences in the cost of manufacture, sale, or delivery,
24 resulting from the differing methods or quantities in which such commodi-
25 ties are to such purchasers sold or delivered: and provided further, that,
26 except as provided in subsection (f) of this section, nothing herein con-
27 tained shall prevent persons engaged in selling goods, wares, or merchandise
28 in commerce from selecting their own customers in bona fide transactions
29 and not in restraint of trade: and provided further, that nothing herein
30 contained shall prevent price changes from time to time where in response
31 to changing conditions affecting the market for or the marketability of the
32 goods concerned, such as but not limited to actual or imminent deterioration
33 of perishable goods, obsolescence of seasonable goods, distress sales under
34 court process, or sales in good faith in discontinuance of business in the
35 goods concerned.

36 (b) Upon proof being made, in any suit or other proceeding in which any
37 violation of this act may be at issue, that there has been discrimination in
38 price, or in services or facilities furnished, or in payment for services
39 or facilities to be rendered, the burden of rebutting the prima facie case
40 thus made by showing justification shall be upon the person charged with such
41 violation: provided, however, that nothing herein contained shall prevent
42 a seller rebutting the prima facie case thus made by showing that his lower

1 price, or the payment for or furnishing of services or facilities to any pur-
2 chaser or purchasers, was made in good faith to meet an equally low price of a
3 competitor or the services or facilities furnished by a competitor.

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

16 (d) It shall be unlawful for any person engaged in commerce, in the
17 course of such commerce, to pay or contract for the payment of anything of
18 value to or for the benefit of a customer of such person in the course of such
19 commerce as compensation or in consideration for any services or facilities
20 furnished by or through such customer in connection with the processing,
21 handling, sale, or offering for sale of any products or commodities manu-
22 factured, sold, or offered for sale by such person, unless such payment or
23 consideration is available on proportionally equal terms to all other cus-
24 tomers competing in the distribution of such products or commodities.

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

33 (f) It shall be unlawful for any person engaged in the licensing or
34 sale of a right to broadcast, stream, publish, transmit, or distribute
35 video programming consisting of athletic or sports games or contests owned,
36 sponsored, controlled, supervised, or managed by any state educational
37 institution governed by title 33, Idaho Code, to discriminate against an-
38 other licensee, purchaser, or potential licensee or purchaser or to permit
39 discrimination or anti-competitive practices in favor of one (1) licensee,
40 purchaser, or potential licensee or purchaser by means, including but not
41 limited to:

42 (1) Refusal to negotiate;

43 (2) Furnishing, contracting to furnish, or contributing to the fur-
44 nishing of any such video programming upon terms not offered and ac-
45 corded to all licensees or purchasers on proportionally equal terms; or

46 (3) Requiring, directly or indirectly, the purchase of any other prod-
47 ucts or services other than those that distribute such institution's
48 sports or athletic games, events, or contests.

49 The provisions of this subsection shall apply to the broadcasting, stream-
50 ing, publishing, transmitting, or distribution of video programming by any

1 means other than live in-person attendance, regardless of the technology or
2 transmission media used, and in the course of the licensing, sale, or pur-
3 chase of such video programming.

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