

HOUSE RESEARCH

Bill Summary

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Subject: Selling prescription drugs below cost

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Background

This bill amends a law enacted in 1937, which prohibits a business from selling any item below its cost for the purpose of harming a competitor or destroying competition. Some economists and antitrust lawyers refer to that practice as "predatory pricing." "Cost" is defined for the purpose of this law as what the business paid for the item plus "the cost of doing business at that location by the vendor." The existing law is subject to some exceptions not shown in the statutory section being amended in the bill. The existing law makes a violation a misdemeanor, and also permits injured competitors to get a court injunction against a business that is engaging in these below-cost sales.

Section

1

Selling below cost prohibited. Provides that sale of a prescription drug below cost is permitted if two or more competitors sell it at prices that are within 10 percent of each other (calculated as that percentage of the lowest of the prices charged), even if one or more of those prices is below cost. Makes that exception apply only in cities that have a population of at least 50,000 and in the seven-county metropolitan area. The bill sunsets in one year. It has an immediate effective date.