

HOUSE BILL No. 5544

December 21, 2001, Introduced by Reps. Bishop, Raczkowski, Julian, Hale, Thomas, Ruth Johnson, Daniels and McConico and referred to the Committee on Commerce.

A bill to amend 1976 PA 449, entitled

"An act to regulate the pricing of consumer items and the advertising of consumer items, services, goods, merchandise, commodities, and real property; to prescribe the powers and duties of certain state and local officials in relation thereto; to provide remedies and penalties; and to repeal certain acts and parts of acts,"

by amending section 3 (MCL 445.353) and by adding sections 3a and 3b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) ~~The~~ A PERSON SHALL CLEARLY AND CONSPICUOUSLY
2 INDICATE THE total price of a consumer item displayed or offered
3 for sale at retail ~~shall be clearly and conspicuously indicated~~
4 in ~~arabic~~ ARABIC numerals. ~~, so as to be~~ THE TOTAL PRICE MUST
5 BE readable and understandable by visual inspection ~~,~~ and
6 ~~shall be~~ stamped upon or affixed to the consumer item. If the
7 consumer item is in a package or container, the total price

1 ~~shall~~ MUST be stamped upon or affixed to the outside surface of
2 the package or container and need not be placed directly upon the
3 consumer item.

4 (2) ~~The requirements of subsection~~ SUBSECTION (1) ~~shall~~
5 DOES not apply to:

6 (a) A consumer item sold by weight or volume ~~which~~ THAT is
7 not in a package or container.

8 (b) A consumer item sold in a coin operated vending
9 machine.

10 (c) Prepared food intended for immediate consumption, as
11 defined in section 4g of ~~Act No. 167 of the Public Acts of 1933,~~
12 ~~being section 205.54g of the Michigan Compiled Laws~~ THE GENERAL
13 SALES TAX ACT, 1933 PA 167, MCL 205.54G.

14 (d) A consumer item purchased by mail or through catalog
15 order, or ~~which~~ THAT is not otherwise visible for inspection by
16 the consumer at the time of the sale, and ~~which~~ THAT is ordered
17 or requested by the consumer, if the price of the CONSUMER item
18 is on the consumer's written order or request or on a bill,
19 invoice, or other notice ~~which~~ THAT describes or names the
20 CONSUMER item and ~~which~~ is enclosed with the CONSUMER item.

21 (e) An unpackaged food item.

22 (f) A consumer item ~~which~~ THAT has a total weight of not
23 more than 3 ounces, a total volume of not more than 3 cubic
24 inches, ~~and~~ OR a total price of not more than 30 cents.

25 (g) Live plants.

26 (h) Live animals.

- 1 (i) Motor vehicles.
- 2 (j) Motor vehicle parts.
- 3 (k) Packages of 20 or fewer cigarettes.
- 4 (l) Greeting cards sold individually ~~which~~ THAT have a
5 readable coded price on the back of the card.
- 6 (m) Merchandise ordered as a gift by a consumer ~~which~~ THAT
7 is sent by mail or other delivery service to a person other than
8 the consumer by the retailer at the request of the consumer.
- 9 (N) A CONSUMER ITEM SOLD IN COMPLIANCE WITH SECTION 3A.
- 10 (3) In addition to the ~~exemptions allowed in~~ EXCEPTIONS
11 UNDER subsection (2), a retailer may choose to not individually
12 price mark not more than 25 classes of items or individual items,
13 which classes or items shall be listed and posted in a conspicu-
14 ous place in the retail store, and may choose to not individually
15 price mark not more than 25 additional classes of items or indi-
16 vidual items ~~which~~ THAT are advertised or featured at a reduced
17 price.
- 18 (4) ~~The~~ IF THE price and the name or description of a
19 class of items or individual items ARE not PRICE marked pursuant
20 to subsection (3), ~~shall be indicated~~ THE RETAILER SHALL INDI-
21 CATE THE PRICE AND THE NAME OR DESCRIPTION OF THE CLASS OF ITEMS
22 OR INDIVIDUAL ITEMS by POSTING a clear, readable, and conspicuous
23 sign in immediate conjunction with the area in which the unmarked
24 item or class of items is displayed.
- 25 (5) As used in subsections (3) and (4), "item", except as
26 otherwise provided in this subsection, means 1 or more identical
27 articles ~~—~~ sold in identical quantities or measures. An item

1 may include more than 1 product, brand, kind, size, or type of
2 packaging, if they are packaged together and sold as a set and
3 the sets are identical in all respects, including quantity or
4 measure.

5 SEC. 3A. (1) SECTION 3(1) DOES NOT APPLY TO A CONSUMER ITEM
6 DISPLAYED OR OFFERED FOR SALE AT RETAIL THAT MEETS ALL OF THE
7 FOLLOWING REQUIREMENTS:

8 (A) THE CONSUMER ITEM IS NOT A FOOD ITEM OR NONPRESCRIPTION
9 MEDICINE.

10 (B) AT THE POINT OF DISPLAY OF THE CONSUMER ITEM, THERE IS A
11 LABEL OR SIGN POSTED IMMEDIATELY ABOVE, BELOW, OR ADJACENT TO THE
12 CONSUMER ITEM THAT CLEARLY AND CONSPICUOUSLY DISPLAYS TO THE CON-
13 SUMER THE TOTAL PRICE OF THE CONSUMER ITEM IN ARABIC NUMERALS AND
14 A DESCRIPTION OF THE CONSUMER ITEM, INCLUDING, BUT NOT LIMITED
15 TO, THE PRODUCT NAME OR DESCRIPTION, BRAND, AND SIZE OF THE
16 ITEM.

17 (C) THE RETAILER UTILIZES AN AUTOMATIC CHECKOUT SYSTEM AT
18 THE RETAIL STORE THAT IS AUDITED AT LEAST EVERY CALENDAR QUARTER
19 BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT OR ACCOUNTING FIRM,
20 AND THE ACCOUNTANT OR FIRM CERTIFIES, AND ISSUES A CERTIFICATE OF
21 COMPLIANCE, THAT THE AUTOMATIC CHECKOUT SYSTEM MEETS 1 OF THE
22 FOLLOWING:

23 (i) DEMONSTRATES AN ACCURACY RATE OF NOT LESS THAN 98%.

24 (ii) HAS AN ERROR RATE NOT GREATER THAN 2% FOR SALES OF CON-
25 SUMER ITEMS DURING THE PRECEDING CALENDAR QUARTER.

26 (D) THE RETAILER PROVIDES AT LEAST 1 REMOTE UPC CODE SCANNER
27 FOR EACH 5,000 SQUARE FEET OF RETAIL FLOOR SPACE IN EACH RETAIL

1 STORE LOCATION. A REMOTE UPC CODE SCANNER SHALL MEET ALL OF THE
2 FOLLOWING REQUIREMENTS:

3 (i) IS COMPATIBLE WITH AND SYNCHRONIZED WITH THE UPC CODE
4 SCANNING CAPABILITY OF THE RETAILER'S AUTOMATIC CHECKOUT SYSTEM
5 USED AT THE POINT OF SALE.

6 (ii) IS READILY ACCESSIBLE TO CONSUMERS AND LOCATED IN A
7 CONVENIENT PLACE WITHIN THE RETAIL STORE.

8 (iii) IS ABLE TO PRINT A PAPER SALES CONFIRMATION REPORT FOR
9 A CONSUMER ITEM SCANNED BY A CONSUMER THAT CONTAINS THE TOTAL
10 PRICE OF THE CONSUMER ITEM IN ARABIC NUMERALS AND A DESCRIPTION
11 OF THE CONSUMER ITEM, INCLUDING, BUT NOT LIMITED TO, THE PRODUCT
12 NAME OR DESIGNATION, BRAND, AND SIZE OF THE ITEM.

13 (2) IN DETERMINING AN ACCURACY RATE OR ERROR RATE UNDER
14 SUBSECTION (1)(B), THE CERTIFIED PUBLIC ACCOUNTANT OR ACCOUNTING
15 FIRM SHALL INCLUDE OVERCHARGES TO A CONSUMER BUT NOT
16 UNDERCHARGES. THE ACCOUNTANT OR FIRM MAY USE RECOGNIZED SAMPLING
17 TECHNIQUES IN THE QUARTERLY AUDIT. A RETAILER SHALL MAINTAIN
18 AUDIT REPORTS AND CERTIFICATES OF COMPLIANCE FOR 5 YEARS AND MAKE
19 THEM AVAILABLE TO THE DIRECTOR ON REQUEST. THE RETAILER SHALL
20 POST THE MOST RECENT CERTIFICATE OF COMPLIANCE IN A CONSPICUOUS
21 LOCATION IN THE RETAIL STORE.

22 (3) IF THE RETAILER FAILS TO MEET THE ACCURACY AND CERTIFI-
23 CATION REQUIREMENTS OF SUBSECTION (1) FOR A RETAIL STORE, THE
24 RETAILER HAS 30 DAYS IN WHICH TO CORRECT ANY SYSTEM DEFICIENCIES
25 AND TO OBTAIN A RECERTIFICATION FROM THE CERTIFIED PUBLIC ACCOUN-
26 TANT OR ACCOUNTING FIRM. IF THE RETAILER DOES NOT OBTAIN A
27 RECERTIFICATION WITHIN THE 30-DAY PERIOD, THIS SECTION DOES NOT

1 APPLY TO THE CONSUMER ITEMS AT THAT RETAIL STORE, AND THE
2 RETAILER SHALL COMPLY WITH SECTION 3 WITH RESPECT TO THE CONSUMER
3 ITEMS DESCRIBED IN THIS SECTION, AND MAY NOT UTILIZE THE EXCEP-
4 TION TO SECTION 3(1) CONTAINED IN THIS SECTION AT THAT RETAIL
5 STORE FOR A PERIOD OF AT LEAST 180 DAYS.

6 (4) THE DIRECTOR IS RESPONSIBLE FOR THE IMPLEMENTATION AND
7 THE ADMINISTRATION OF THIS SECTION. THE DEPARTMENT MAY PROMUL-
8 GATE RULES PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
9 1969 PA 306, MCL 24.201 TO 24.328, REGARDING AUDIT AND CERTIFICA-
10 TION STANDARDS FOR AUTOMATIC CHECKOUT SYSTEMS AND REMOTE UPC CODE
11 SCANNERS.

12 SEC. 3B. (1) A PERSON SHALL NOT KNOWINGLY CHARGE OR ATTEMPT
13 TO CHARGE FOR A CONSUMER ITEM A RETAIL PRICE EXCEEDING THE PRICE
14 DISPLAYED ON A SIGN OR CONTAINED IN A PRICE CONFIRMATION REPORT
15 FOR THE ITEM UNDER SECTION 3A. IT IS NOT A VIOLATION OF THIS ACT
16 TO CHARGE FOR A CONSUMER ITEM A TOTAL PRICE LESS THAN THE PRICE
17 DISPLAYED ON A SIGN OR CONTAINED IN A CONFIRMATION REPORT UNDER
18 SECTION 3A.

19 (2) IT IS PRIMA FACIE EVIDENCE OF A VIOLATION OF THIS SEC-
20 TION IF A PRICE CHARGED OR ATTEMPTED TO BE CHARGED AS A RESULT OF
21 ELECTRONIC IDENTIFICATION OR CALCULATION BY AN AUTOMATIC CHECKOUT
22 SYSTEM EXCEEDS THE PRICE DISPLAYED ON A SIGN OR CONTAINED IN A
23 CONFIRMATION REPORT UNDER SECTION 3A.

24 (3) BEFORE BRINGING OR JOINING AN ACTION UNDER
25 SECTION 10(2), WITHIN 30 DAYS AFTER PURCHASING A CONSUMER ITEM
26 THAT IS NOT A FOOD ITEM OR NONPRESCRIPTION MEDICINE AT A RETAIL
27 STORE THAT MEETS THE ACCURACY AND CERTIFICATION REQUIREMENT OF

1 SECTION 3A, A CONSUMER WHO SUFFERS A LOSS BECAUSE THE PRICE
2 CHARGED FOR THE CONSUMER ITEM IS MORE THAN THE DISPLAYED PRICE
3 FOR THE ITEM OR THE PRICE SET FORTH ON THE PRICE CONFIRMATION
4 REPORT SHALL NOTIFY THE RETAILER IN PERSON OR IN WRITING OF THE
5 PRICE DISCREPANCY. IF, WITHIN 2 DAYS AFTER THE NOTIFICATION, THE
6 RETAILER TENDERS TO THE CONSUMER AN AMOUNT EQUAL TO THE DIFFER-
7 ENCE BETWEEN THE DISPLAYED PRICE OR THE PRICE SET FORTH ON THE
8 PRICE CONFIRMATION REPORT AND THE PRICE CHARGED, PLUS AN AMOUNT
9 EQUAL TO 20 TIMES THAT DIFFERENCE, BUT THAT IS NOT LESS THAN
10 \$2.00 OR MORE THAN \$10.00, THE CONSUMER IS BARRED FROM FURTHER
11 RECOVERY FOR THAT LOSS. IF THE LOSS IS SUFFERED BY 1 CONSUMER
12 WITHIN 1 TRANSACTION ON 2 OR MORE IDENTICAL ITEMS, THE RETAILER
13 SHALL TENDER THE DIFFERENCE ON EACH ITEM, PLUS AN AMOUNT EQUAL TO
14 20 TIMES THE DIFFERENCE ON A SINGLE ITEM BUT THAT IS NOT LESS
15 THAN \$2.00 AND NOT MORE THAN \$10.00. IF THE RETAILER DOES NOT
16 TENDER THIS AMOUNT, THE CONSUMER MAY BRING OR JOIN IN AN ACTION
17 AS PROVIDED IN SECTION 10(2).

18 (4) SUBSECTION (3) DOES NOT APPLY TO A SALE AT RETAIL IF THE
19 RETAILER INTENTIONALLY CHARGES MORE FOR AN ITEM THAN THE POSTED
20 PRICE OR THE PRICE SET FORTH ON THE PRICE CONFIRMATION REPORT.