

Legislative Analysis



ITEM PRICING REPEAL

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House Bill 4158

Sponsor: Rep. Lisa Posthumus Lyons

Committee: Commerce

Complete to 2-7-11

A REVISED SUMMARY OF HOUSE BILL 4158 AS INTRODUCED 1-27-11

The bill would:

(1) Repeal the Consumer Item Pricing Act, which generally speaking requires that the total price of a consumer item be stamped on or affixed to the consumer item.

(2) Create a new act, the Shopping Reform and Modernization Act, which would contain many of the provisions currently found in the Consumer Item Pricing Act on advertising the price and quality of goods and on prohibited practices, with some modifications. For example, the current penalties would remain for when a retailer charges a price for an item that is more than the price "displayed" for the item, but the definition of "displayed" would no longer require the pricing of each item. The bill would require instead that the price be displayed by signage, in a current advertisement, by an electronic reader, or by any other method that conveys the price.

Repealer

The bill contains an Enacting Section 1 that repeals the Consumer Item Pricing Act, Public Act 449 of 1976, MCL 445.351 to 445.364.

New Act

The new act to be created, the Shopping Reform and Modernization Act, contains ten sections, each of which corresponds to a section in the current Consumer Item Pricing Act.

Section 2 contains definitions of terms. These are contained in Section 1 of the current law. The bill drops definitions for the terms "class of item" and "total price." (These are terms directly related to item pricing in the current law.) It also drops the definition of "director" [of the Department of Agriculture], since the current provisions that authorize the Agriculture Department to implement and administer item pricing and its overcharging provisions are not contained in the proposed new act.

Section 3 corresponds to Section 5 in current law. It addresses the availability of items advertised for sale, and appears to be substantially the same as current law.

Section 4 corresponds to Section 6 in current law and addresses untrue, deceptive, and misleading advertising and the sale of "seconds" and "blemished goods." This section appears to be substantially similar to current law.

Section 5 in the proposed act corresponds to Section 8 in current law and deals with immunity to publishers and printers.

Section 6 corresponds to Section 10A of the Item Pricing Act and addresses cases where prices charged for an item are more than the price displayed. The key difference in this section appears to be that prices no longer would need to be displayed on or affixed to individual items. The new act would continue to allow customers to claim the difference between the price displayed and the price charged per item, plus an amount equal to 10 times that difference, but no less than \$1 or more than \$5. As now, if a seller does not make this payment to a buyer, then the buyer could bring or join in an individual or class action lawsuit to recover actual damages or \$250, whichever is greater, for each day on which a violation is found, together with attorney fees (under Section 8(2)).

As noted earlier, under the bill, a price is "displayed" for a consumer item "if the price is stamped, affixed, or otherwise marked on the consumer item or the price of the consumer item is displayed by signage, in a current advertisement, by an electronic reader, or by any other method that conveys the current price of the consumer item to a consumer."

Section 7 corresponds to Section 9 in current law and authorizes the attorney general to maintain an action to enjoin a continuing violation of the act. As now, the attorney general must first notify a defendant of the intention to seek an injunction if the defendant does not cease and desist, and the bill allows the attorney general to accept an assurance of discontinuance of practices alleged to be in violation. Also under this section, a prosecuting attorney or law enforcement officer who receives notice of a violation of the act or of an injunction, judgment, or assurance is required to immediately forward written notice to the attorney general. The penalties for a knowing violation of the act remain as in current law: a civil penalty of up to \$1,000 for a first violation and up to \$5,000 for a second or subsequent violation. The attorney general, as now, would be authorized to promulgate rules to implement and administer the act.

Section 8 of the bill corresponds to Section 10 of current law and allows a person to bring an action to obtain a declaratory judgment that an act or practice is in violation, or to enjoin by temporary or permanent injunction a person that is engaging in or is about to engage in an act or practice that violates the act. This applies in cases where the attorney general has failed to initiate action within 60 days after receiving notice of an alleged violation.

Section 9 corresponds to Section 11 of current law and allows a prosecuting attorney to conduct an investigation and institute and prosecute an action in the same manner as the attorney general.

Section 10 corresponds to Section 12 but contains a key difference. Currently, Section 12 says, "This act shall not affect any other cause of action which is available and shall be liberally construed to effectuate its purpose." The bill instead says, "[The] remedies provided under this act are the exclusive remedies for any lawful advertising conduct or statutory violations related to the sale at retail of consumer items." As now, the bill prohibits a city, village, township, or county from enacting an ordinance or other regulation inconsistent with the act or a promulgated rule.

Omitted Sections

Several sections of current law are not found in the proposed new act. Section 2 in current law makes the director of the Department of Agriculture responsible for certain item pricing provisions and allows for the promulgation of rules. Current Section 3 requires prices to be stamped upon or affixed to consumer items (with exceptions). Section 4 prohibits a person from knowingly charging or attempting to charge for a consumer item a retail sale price exceeding the price that must be stamped on or affixed to the item under Section 3. Section 7 prohibits advertisements for the sale of real property that contain language expressing discrimination on the part of the seller concerning prospective buyers because of race, creed, color, national origin, sex, or marital status.

FISCAL IMPACT:

According to the Attorney General's Consumer Protection Division, the bill would result in a significant cost increase for the Department of Attorney General due to their responsibility for enforcement.

The bill would repeal 1976 PA 449, which gave to the director of the Michigan Department of Agriculture authority to implement and administer the item pricing provisions of the act. The Michigan Department of Agriculture indicates that its Consumer Protection Section currently investigates violations of the item pricing law on a complaint basis only. Complaints are generally investigated by a metrologist -- a person trained in the applied science of measurement and the certification of weights and measures. The department provided the following summary of complaints and inspector hours for the prior three fiscal years:

	FY 2007-08	FY 2008-09	FY 2009-10
Complaints	173	127	97
Inspector Hours	808	608	436

Assuming a metrologist pay rate of \$32.80 per hour, the average costs to the department of investigating violations of the current Item Pricing law would be approximately \$20,000 per year for direct labor, plus some additional amount for benefits and travel.

The changes to Michigan's retail pricing laws proposed in the bill could increase the number of complaints. Under the bill, investigation of these complaints would be the responsibility of the Attorney General, not the Michigan Department of Agriculture.

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