

**SUBSTITUTE FOR
HOUSE BILL NO. 4158**

A bill to regulate certain pricing of consumer items and the advertising of consumer items, goods, merchandise, and commodities; to prescribe the powers and duties of certain state and local officials; to provide remedies and penalties; to make appropriations; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "shopping reform and modernization act".

3 Sec. 2. As used in this act:

4 (a) "Advertise" means the use or dissemination of an
5 advertising by a person that is subject to this act.

6 (b) "Advertising" or "advertisement" means a communication or
7 representation that is disseminated in any manner by any means for

1 the purpose of inducing, or that is likely to induce, directly or
2 indirectly, the purchase of a consumer item, good, merchandise, or
3 commodity.

4 (c) "Automatic checkout system" means an electronic device,
5 computer, or machine that determines the price of a consumer item
6 by using a product identity code. An automatic checkout system may
7 but is not required to include an optical scanner.

8 (d) "Consumer item" means an article of tangible personal
9 property used or consumed, or bought for use or consumption,
10 primarily for personal, family, or household purposes.

11 (e) A price is "displayed" for a consumer item if the price is
12 stamped, affixed, or otherwise marked on the consumer item; or the
13 price of the consumer item is displayed, by signage, by an
14 electronic reader, or by any other method that clearly and
15 reasonably conveys the current price of the consumer item, to a
16 consumer when in the store at the place where the item is located.

17 (f) "Person" means an individual, corporation, limited
18 liability company, partnership, association, or other legal entity.

19 (g) "Sale at retail" means a transfer of an interest in a
20 consumer item by a person that is regularly and principally engaged
21 in the business of selling consumer items to a buyer for use or
22 consumption and not for resale.

23 (h) "Total price" means the full purchase price of a consumer
24 item, excluding sales tax and container deposit.

25 Sec. 3. (1) All of the following apply to the director of the
26 department of agriculture and rural development:

27 (a) He or she is responsible for the implementation and

1 administration of sections 7 and 8.

2 (b) He or she shall investigate complaints concerning
3 violations of sections 7 and 8 and conduct any other investigations
4 he or she considers advisable.

5 (c) As the state director of weights and measures, he or she
6 shall promulgate rules under the administrative procedures act of
7 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and
8 administer sections 7 and 8.

9 Sec. 4. (1) A person shall not knowingly advertise the
10 availability of a consumer item for sale at retail at a sale or
11 special price, or as being reduced in price by an amount or
12 proportion, unless the advertisement meets all of the following:

13 (a) It includes the dates that item is available at the
14 advertised price, or the quantity available at the advertised
15 price.

16 (b) If applicable, it states that the item is available at
17 that price only as long as the advertised quantity lasts or as long
18 as quantities or supplies last.

19 (c) If there is a limitation on the quantity available of a
20 consumer item to each customer, that limitation is clearly
21 disclosed.

22 (2) If a person advertises a consumer item at a specific price
23 that is not indicated to be a special, sale, or reduced price, the
24 advertiser shall do 1 of the following:

25 (a) Make the consumer item available at the advertised price
26 for not less than 5 days after the date the consumer item was last
27 advertised. If the item is not available for that period of time,

1 the requirements of subsection (3) apply. The advertiser is not
2 required to make the consumer item available nor fulfill the
3 requirements of subsection (3) if the unavailability of the
4 consumer item is due to a governmental action, a plant closing, or
5 an act of God and if the specific cause of the unavailability of
6 the consumer item is posted conspicuously for review by the
7 consumer.

8 (b) Indicate in the advertisement the dates the consumer item
9 is available at the advertised price. If the item is not available
10 for those dates, the requirements of subsection (3) apply.

11 (c) Indicate in the advertisement the quantity of the consumer
12 item that is available at the advertised price and include in the
13 advertisement that the consumer item is available at the advertised
14 price only as long as the stated quantity lasts.

15 (3) If an advertisement under this section does not state the
16 quantity of a consumer item available or meet the requirements of
17 subsection (1) or (2)(c), and if the consumer item cannot be sold
18 at the advertised price throughout the advertised period of sale,
19 the advertiser shall make available to the customer a written
20 guarantee to deliver under the advertised conditions the consumer
21 item at a future date stated in the guarantee, or when notified by
22 the advertiser that the item is available. If the advertised
23 consumer item cannot be obtained to satisfy the condition of the
24 guarantee, the advertiser may provide a similar consumer item of
25 equal or greater monetary value.

26 (4) If an advertiser elects in a written guarantee under
27 subsection (3) to notify a consumer when a consumer item will be

1 available, the notification of availability shall take place within
2 90 days after the guarantee is given. After the notice of
3 availability is given, the advertiser shall hold the consumer item
4 for delivery to the customer for at least 7 days, except the
5 advertiser is required to hold the consumer item for only 2 days if
6 it is a perishable item.

7 (5) This section does not apply to baked goods, fresh fruit,
8 or fresh vegetables.

9 Sec. 5. (1) A person shall not knowingly make, publish,
10 disseminate, circulate, or place before the public an advertisement
11 that contains a statement or representation that is untrue,
12 deceptive, or misleading.

13 (2) A failure to sell goods, merchandise, or commodities in
14 the manner advertised, or a refusal to sell at the price at which
15 they are advertised or in accordance with other terms and
16 conditions of the advertisement, creates a rebuttable presumption
17 of an intent to violate this act.

18 (3) For purposes of this section, the extent to which an
19 advertising fails to reveal facts that are material in light of the
20 representations made or suggested in a positive manner shall be
21 considered in determining whether the advertising is deceptive or
22 misleading.

23 (4) A person shall not make, publish, disseminate, circulate,
24 or place before the public an advertisement with the intent,
25 design, or purpose not to sell the goods, merchandise, or
26 commodities at the price stated in the advertisement or otherwise
27 communicated, or with intent not to sell the goods, merchandise, or

1 commodities included in the advertisement.

2 (5) A person shall not advertise, call attention to, or give
3 publicity to the sale of goods, merchandise, or commodities that
4 the person knows are not first class, if the manufacturer of those
5 goods, merchandise, or commodities has rejected them as not first
6 class, unless there is displayed directly in connection with the
7 name and description of the goods, merchandise, or commodities, a
8 direct and unequivocal statement, phrase, or word that clearly
9 indicates that the advertised goods, merchandise, or commodities
10 are seconds or are blemished goods, merchandise, or commodities, or
11 have been rejected by the manufacturer of the goods, merchandise,
12 or commodities. For purposes of this section, goods, merchandise,
13 or commodities that are advertised, offered for sale, and sold as a
14 unit or set consisting of more than 1 part or piece are
15 sufficiently identified as not first class if advertised, offered
16 for sale, and sold as a unit or set at the single price advertised,
17 and are displayed in connection with a direct and unequivocal
18 statement, phrase, or word identifying the goods as not first
19 class. As used in this subsection, "not first class" means the
20 goods, merchandise, or commodities are substantially defective or
21 consist of articles or units or parts commonly referred to as
22 seconds or blemished goods, merchandise, or commodities.

23 Sec. 6. Sections 4 and 5 do not apply to an owner, publisher,
24 printer, agent, or employee of a newspaper, a person that publishes
25 any other publication, periodical, or circular, including a
26 circular prepared for national distribution, a person that provides
27 outdoor advertising, or a radio or television station, if that

1 person in good faith and without knowledge of the falsity or
2 deceptive character of the advertisement, publishes, causes to be
3 published, or takes part in the publication of an advertisement
4 that violates section 4 or 5.

5 Sec. 7. (1) Except as otherwise provided in subsection (2), a
6 person shall display the total price of a consumer item offered for
7 sale at retail at the place of the retail sale.

8 (2) Subsection (1) does not apply to any of the following:

9 (a) A consumer item that is sold by weight or volume and is
10 not in a package or container.

11 (b) A consumer item sold in a coin-operated vending machine.

12 (c) Prepared food intended for immediate consumption, as
13 defined in section 4g of the general sales tax act, 1933 PA 167,
14 MCL 205.54g.

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

22 (e) An unpackaged food item.

23 (f) A consumer item that has a total weight of not more than 3
24 ounces, a total volume of not more than 3 cubic inches, and a total
25 price of not more than 30 cents.

26 (g) Live plants.

27 (h) Live animals.

1 (i) Motor vehicles.

2 (j) Motor vehicle parts.

3 (k) Packages of 20 or fewer cigarettes.

4 (l) Greeting cards that are sold individually and have a
5 readable coded price on the back of the card.

6 (m) Merchandise that is ordered as a gift by a consumer and is
7 sent by mail or other delivery service to a person other than the
8 consumer by the retailer at the request of the consumer.

9 Sec. 8. (1) A person shall not knowingly charge or attempt to
10 charge for a consumer item that is subject to section 7 a retail
11 sale price that is higher than the price displayed for that item.

12 (2) It is not a violation of subsection (1) to charge a total
13 price for a consumer item that is subject to section 7 that is less
14 than the price displayed for that item.

15 (3) It is prima facie evidence of a violation of this section
16 if a price a person charges or attempts to charge for a consumer
17 item that is subject to section 7 is established by electronic
18 identification or calculation by an automatic checkout system and
19 that price exceeds the price displayed for that item.

20 Sec. 9. (1) Except as provided in subsection (4), this section
21 applies to a sale at retail that meets all of the following
22 conditions:

23 (a) There is a price displayed for the consumer item.

24 (b) The sale is recorded by an automatic checkout system.

25 (c) The buyer is given a receipt that describes the item and
26 states the price charged for the item.

27 (2) Before bringing or joining in an action under section

1 12(2), within 30 days after purchasing a consumer item, a buyer who
2 suffers loss because the price charged for the item is more than
3 the price displayed for that item shall notify the seller in person
4 or in writing that the price charged is more than the price
5 displayed for that item. The notice shall include evidence of the
6 loss suffered by the buyer. If the seller pays the buyer 1 of the
7 following amounts within 2 days after the seller receives
8 notification under this subsection, the buyer is barred from any
9 further recovery for that loss:

10 (a) Unless subdivision (b) applies, an amount equal to the
11 difference between the price displayed and the price charged for
12 the consumer item, plus an amount equal to 10 times that difference
13 but that is not less than \$1.00 or more than \$5.00.

14 (b) If a loss is suffered by a buyer on 2 or more identical
15 consumer items in a single transaction, an amount equal to the
16 difference between the price displayed and the price charged for
17 each of those identical items, plus an amount equal to 10 times
18 that difference for 1 of the identical items but that is not less
19 than \$1.00 or more than \$5.00.

20 (3) If a seller does not pay a buyer who suffers a loss
21 described in subsection (2) the amount described in that subsection
22 for that loss, the buyer may bring or join in an action against the
23 seller under section 12(2).

24 (4) This section does not apply to a sale at retail in which
25 the seller intentionally charges more for a consumer item than the
26 price displayed for the item.

27 Sec. 10. (1) The attorney general may maintain an action to

1 enjoin a continuing violation of this act. If the court finds that
2 the defendant is violating or has violated this act, it shall
3 enjoin the defendant from continuing that violation. It is not
4 necessary that actual damages to a person are alleged or proved for
5 a court to enjoin a defendant under this section.

6 (2) The attorney general shall not institute a proceeding for
7 an injunction under this section unless the attorney general has
8 notified the defendant of his or her intention to seek an
9 injunction if the defendant does not cease and desist or take
10 positive action to cease and desist from continuing to act in a
11 manner that violates this act. The attorney general must provide
12 this notice at least 48 hours before instituting the proceeding. A
13 court shall not issue the injunction if the defendant ceased, or
14 took positive action to cease and desist, violating this act after
15 receiving the notice from the attorney general.

16 (3) The attorney general may accept an assurance of
17 discontinuance of an act or practice alleged to be a violation of
18 this act from the person engaging in, or that was engaged in, that
19 act or practice. An assurance of discontinuance shall be in writing
20 and be filed with the clerk of the circuit court of the county in
21 which the alleged violator resides or has its principal place of
22 business. A filing fee is not required for the filing of an
23 assurance of discontinuance with the clerk of the circuit court. An
24 assurance of discontinuance shall be signed by the alleged violator
25 and shall contain a statement describing each act or practice to
26 which the assurance of discontinuance applies and the specific
27 provisions of this act prohibiting that act or practice. An

1 assurance of discontinuance is not considered an admission of any
2 fact or issue at law.

3 (4) If a prosecuting attorney or law enforcement officer
4 receives notice of an alleged violation of this act, of a violation
5 of an injunction, order, decree, or judgment issued in an action
6 brought under this section, or of an assurance of discontinuance
7 given under subsection (3), he or she shall immediately forward
8 written notice of the violation, and any information he or she has
9 concerning the violation, to the office of the attorney general.

10 (5) A person that knowingly violates this act or the terms of
11 an injunction, order, decree, or judgment issued under this section
12 shall pay to the state a civil fine of not more than \$1,000.00 for
13 the first violation and not more than \$5,000.00 for the second and
14 any subsequent violation. For the purposes of this subsection, the
15 court that issues an injunction, order, decree, or judgment under
16 this section retains jurisdiction, the action is continued, and the
17 attorney general may petition for recovery of the civil fine
18 described in this subsection.

19 (6) The attorney general may promulgate rules to implement and
20 administer this act under the administrative procedures act of
21 1969, 1969 PA 306, MCL 24.201 to 24.328.

22 Sec. 11. (1) For the fiscal year ending September 30, 2011,
23 \$100,000.00 is appropriated from the general fund to the department
24 of attorney general to develop and implement a public consumer
25 education program to provide general information and advice
26 regarding the advertising and pricing requirements of this act and
27 the remedies available to consumers under this act.

1 (2) The attorney general shall establish and maintain an
2 internet website available to the public that provides general
3 information and advice regarding the advertising and pricing
4 requirements of this act and the remedies available to consumers
5 under this act.

6 (3) The appropriation made and the expenditures authorized
7 under this section and the department of attorney general are
8 subject to the management and budget act, 1984 PA 431, MCL 18.1101
9 to 18.1594.

10 Sec. 12. (1) Whether or not a person seeks damages or has an
11 adequate remedy at law, a person may bring an action to do either
12 or both of the following if the attorney general or prosecuting
13 attorney fails to initiate action within 60 days after receiving
14 notice of an alleged violation of this act:

15 (a) Obtain a declaratory judgment that an act or practice
16 violates this act.

17 (b) Enjoin by temporary or permanent injunction a person that
18 is engaging or is about to engage in an act or practice that
19 violates this act.

20 (2) Except as provided in section 9, a person that suffers
21 loss as a result of a violation of this act may bring an individual
22 or a class action to recover actual damages or \$250.00, whichever
23 is greater, for each day on which a violation of this act is found,
24 together with reasonable attorneys' fees that do not exceed \$300.00
25 in an individual action.

26 Sec. 13. A prosecuting attorney may conduct an investigation
27 under this act and may institute and prosecute an action under this

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1 act in the same manner as the attorney general.

2 Sec. 14. (1) The remedies provided under this act are the
3 exclusive remedies for violations of section 4, 7, 8, or 9.

4 (2) A city, village, township, or county shall not enact an
5 ordinance or other regulation that is inconsistent with this act or
6 with a rule promulgated under this act.

7 <<Enacting section 1. 1976 PA 449, MCL 445.351 to 445.364, is
repealed effective September 1, 2011.

8 Enacting section 2. This act takes effect September 1, 2011.>>