

HOUSE BILL No. 4158

January 27, 2011, Introduced by Reps. Lyons, Bumstead, Knollenberg, Agema, Cotter, Ouimet, MacGregor, Haveman, O'Brien, Moss, Haines, Crawford, Callton, Kowall, Franz, Kurtz, Farrington, Gilbert, Olson, Zorn, Outman, Glardon, Price, Wayne Schmidt, Foster, Heise, Tyler, Potvin, Yonker, Somerville, Poleski, Forlini, Lund and MacMaster and referred to the Committee on Commerce.

A bill to regulate certain pricing of consumer items and the advertising of consumer items, services, goods, merchandise, and commodities; to prescribe the powers and duties of certain state and local officials; to provide remedies and penalties; 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
8 the purpose of inducing, or that is likely to induce, directly or

1 indirectly, the purchase of a consumer item, service, good,
2 merchandise, or commodity.

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

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

10 (e) "Person" means an individual, corporation, limited
11 liability company, partnership, association, or other legal entity.

12 (f) "Sale at retail" means a transfer of an interest in a
13 consumer item by a person that is regularly and principally engaged
14 in the business of selling consumer items to a buyer for use or
15 consumption and not for resale.

16 Sec. 3. (1) A person shall not knowingly advertise the
17 availability of a consumer item for sale at retail at a sale or
18 special price, or as being reduced in price by an amount or
19 proportion, unless the advertisement meets all of the following:

20 (a) It includes the dates that item is available at the
21 advertised price, or the quantity available at the advertised
22 price.

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

26 (c) If there is a limitation on the quantity available of a
27 consumer item to each customer, that limitation is clearly

1 disclosed.

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

5 (a) Make the consumer item available at the advertised price
6 for not less than 5 days after the date the consumer item was last
7 advertised. If the item is not available for that period of time,
8 the requirements of subsection (3) apply. The advertiser is not
9 required to make the consumer item available nor fulfill the
10 requirements of subsection (3) if the unavailability of the
11 consumer item is due to a governmental action, a plant closing, or
12 an act of God and if the specific cause of the unavailability of
13 the consumer item is posted conspicuously for review by the
14 consumer.

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

18 (c) Indicate in the advertisement the quantity of the consumer
19 item that is available at the advertised price and include in the
20 advertisement that the consumer item is available at the advertised
21 price only as long as the stated quantity lasts.

22 (3) If an advertisement under this section does not state the
23 quantity of a consumer item available or meet the requirements of
24 subsection (1) or (2)(c), and if the consumer item cannot be sold
25 at the advertised price throughout the advertised period of sale,
26 the advertiser shall make available to the customer a written
27 guarantee to deliver under the advertised conditions the consumer

1 item at a future date stated in the guarantee, or when notified by
2 the advertiser that the item is available. If the advertised
3 consumer item cannot be obtained to satisfy the condition of the
4 guarantee, the advertiser may provide a similar consumer item of
5 equal or greater monetary value.

6 (4) If an advertiser elects in a written guarantee under
7 subsection (3) to notify a consumer when a consumer item will be
8 available, the notification of availability shall take place within
9 90 days after the guarantee is given. After the notice of
10 availability is given, the advertiser shall hold the consumer item
11 for delivery to the customer for at least 7 days, except the
12 advertiser is required to hold the consumer item for only 2 days if
13 it is a perishable item.

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

16 Sec. 4. (1) A person shall not knowingly make, publish,
17 disseminate, circulate, or place before the public an advertisement
18 that contains a statement or representation that is untrue,
19 deceptive, or misleading.

20 (2) A failure to sell goods, merchandise, commodities, or
21 services in the manner advertised, or a refusal to sell at the
22 price at which they are advertised or in accordance with other
23 terms and conditions of the advertisement, creates a rebuttable
24 presumption of an intent to violate this act.

25 (3) For purposes of this section, the extent to which an
26 advertising fails to reveal facts that are material in light of the
27 representations made or suggested in a positive manner shall be

1 considered in determining whether the advertising is deceptive or
2 misleading.

3 (4) A person shall not make, publish, disseminate, circulate,
4 or place before the public an advertisement with the intent,
5 design, or purpose not to sell the goods, merchandise, commodities,
6 or services at the price stated in the advertisement or otherwise
7 communicated, or with intent not to sell the goods, merchandise,
8 commodities, or services included in the advertisement.

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

1 consist of articles or units or parts commonly referred to as
2 seconds or blemished goods, merchandise, or commodities.

3 Sec. 5. Sections 3 and 4 do not apply to an owner, publisher,
4 printer, agent, or employee of a newspaper, a person that publishes
5 any other publication, periodical, or circular, including a
6 circular prepared for national distribution, a person that provides
7 outdoor advertising, or a radio or television station, if that
8 person in good faith and without knowledge of the falsity or
9 deceptive character of the advertisement, publishes, causes to be
10 published, or takes part in the publication of an advertisement
11 that violates section 3 or 4.

12 Sec. 6. (1) Except as provided in subsection (4), this section
13 applies to a sale at retail that meets all of the following
14 conditions:

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

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

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

19 (2) Before bringing or joining in an action under section
20 8(2), within 30 days after purchasing a consumer item, a buyer who
21 suffers loss because the price charged for the item is more than
22 the price displayed for that item shall notify the seller in person
23 or in writing that the price charged is more than the price
24 displayed for that item. The notice shall include evidence of the
25 loss suffered by the buyer. If the seller pays the buyer 1 of the
26 following amounts within 2 days after the seller receives
27 notification under this subsection, the buyer is barred from any

1 further recovery for that loss:

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

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

12 (3) If a seller does not pay a buyer who suffers a loss
13 described in subsection (2) the amount described in that subsection
14 for that loss, the buyer may bring or join in an action against the
15 seller under section 8(2).

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

19 (5) As used in this section, a price is "displayed" for a
20 consumer item if the price is stamped, affixed, or otherwise marked
21 on the consumer item or the price of the consumer item is displayed
22 by signage, in a current advertisement, by an electronic reader, or
23 by any other method that conveys the current price of the consumer
24 item to a consumer.

25 Sec. 7. (1) The attorney general may maintain an action to
26 enjoin a continuing violation of this act. If the court finds that
27 the defendant is violating or has violated this act, it shall

1 enjoin the defendant from continuing that violation. It is not
2 necessary that actual damages to a person are alleged or proved for
3 a court to enjoin a defendant under this section.

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

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

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

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

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

20 Sec. 8. (1) Whether or not a person seeks damages or has an
21 adequate remedy at law, a person may bring an action to do either
22 or both of the following if the attorney general or prosecuting
23 attorney fails to initiate action within 60 days after receiving
24 notice of an alleged violation of this act:

25 (a) Obtain a declaratory judgment that an act or practice
26 violates this act.

27 (b) Enjoin by temporary or permanent injunction a person that

1 is engaging or is about to engage in an act or practice that
2 violates this act.

3 (2) Except as provided in section 6, a person that suffers
4 loss as a result of a violation of this act may bring an individual
5 or a class action to recover actual damages or \$250.00, whichever
6 is greater, for each day on which a violation of this act is found,
7 together with reasonable attorneys' fees that do not exceed \$300.00
8 in an individual action.

9 Sec. 9. A prosecuting attorney may conduct an investigation
10 under this act and may institute and prosecute an action under this
11 act in the same manner as the attorney general.

12 Sec. 10. This remedies provided under this act are the
13 exclusive remedies for any unlawful advertising conduct or
14 statutory violations related to the sale at retail of consumer
15 items. A city, village, township, or county shall not enact an
16 ordinance or other regulation that is inconsistent with this act or
17 with a rule promulgated under this act.

18 Enacting section 1. 1976 PA 449, MCL 445.351 to 445.364, is
19 repealed.