

# HOUSE BILL No. 5752

June 14, 2012, Introduced by Rep. Olumba and referred to the Committee on Regulatory Reform.

A bill to amend 1984 PA 274, entitled  
"Michigan antitrust reform act,"  
by amending section 9 (MCL 445.779) and by adding section 3a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 3A. (1) A PERSON ENGAGED IN TRADE OR COMMERCE, EITHER  
2        DIRECTLY OR INDIRECTLY, SHALL NOT DISCRIMINATE IN PRICE WHEN  
3        SELLING COMMODITIES OF LIKE GRADE AND QUALITY TO DIFFERENT  
4        PURCHASERS IF THE SALES TRANSACTIONS MEET ALL OF THE FOLLOWING:

5        (A) EITHER OR ANY OF THE PURCHASES INVOLVED IN THE  
6        DISCRIMINATION ARE MADE IN TRADE OR COMMERCE.

7        (B) THE COMMODITIES ARE SOLD FOR USE, CONSUMPTION, OR RESALE  
8        WITHIN THIS STATE.

9        (C) THE EFFECT OF THE DISCRIMINATION MAY BE SUBSTANTIALLY TO  
10        LESSEN COMPETITION OR TEND TO CREATE A MONOPOLY IN ANY LINE OF  
11        TRADE OR COMMERCE, OR TO INJURE, DESTROY, OR PREVENT COMPETITION

1 WITH A PERSON THAT EITHER GRANTS OR KNOWINGLY RECEIVES THE BENEFIT  
2 OF THE DISCRIMINATION, OR WITH CUSTOMERS OF EITHER OF THEM, AND FOR  
3 THE PURPOSE OF DESTROYING COMPETITION OR ELIMINATING A COMPETITOR.

4 (2) A PERSON ENGAGED IN TRADE OR COMMERCE SHALL NOT BE A PARTY  
5 TO, OR ASSIST IN, A SALE OR CONTRACT TO SELL THAT, TO THE PERSON'S  
6 KNOWLEDGE, DISCRIMINATES AGAINST COMPETITORS OF THE PURCHASER BY  
7 DOING ANY OF THE FOLLOWING:

8 (A) GRANTING A DISCOUNT, REBATE, ALLOWANCE, OR ADVERTISING  
9 SERVICE CHARGE TO THE PURCHASER OVER AND ABOVE A DISCOUNT, REBATE,  
10 ALLOWANCE, OR ADVERTISING SERVICE CHARGE AVAILABLE AT THE TIME OF  
11 THE SALE TO COMPETITORS CONCERNING A SALE OF GOODS OF LIKE GRADE,  
12 QUALITY, AND QUANTITY.

13 (B) SELLING, OR CONTRACTING TO SELL, GOODS IN ANY PART OF THIS  
14 STATE AT A LOWER PRICE THAN THE PRICE CHARGED BY THAT PERSON IN  
15 ANOTHER PART OF THIS STATE FOR THE PURPOSE OF DESTROYING OR  
16 ELIMINATING A COMPETITOR.

17 (C) SELLING, OR CONTRACTING TO SELL, GOODS AT UNREASONABLY LOW  
18 PRICES FOR THE PURPOSE OF DESTROYING COMPETITION OR ELIMINATING A  
19 COMPETITOR.

20 (3) THIS SECTION DOES NOT PROHIBIT ANY OF THE FOLLOWING:

21 (A) PRICE DIFFERENTIALS THAT MAKE ONLY A REASONABLE ALLOWANCE  
22 FOR DIFFERING COMPETITIVE CONDITIONS OR FOR DIFFERENCES IN THE COST  
23 OF MANUFACTURE, SALE, OR DELIVERY RESULTING FROM THE DIFFERING  
24 METHODS OR QUANTITIES IN WHICH THE COMMODITIES ARE SOLD OR  
25 DELIVERED.

26 (B) PERSONS ENGAGED IN SELLING GOODS, WARES, OR MERCHANDISE IN  
27 TRADE OR COMMERCE FROM SELECTING THEIR OWN CUSTOMERS IN BONA FIDE

1 TRANSACTIONS AND NOT IN RESTRAINT OF TRADE.

2 (C) PRICE CHANGES FROM TIME TO TIME MADE IN RESPONSE TO  
3 CHANGING CONDITIONS THAT AFFECT THE MARKET FOR OR THE MARKETABILITY  
4 OF THE GOODS CONCERNED, INCLUDING, BUT NOT LIMITED TO, ANY OF THE  
5 FOLLOWING:

6 (i) ACTUAL OR IMMINENT DETERIORATION OF PERISHABLE GOODS.

7 (ii) OBSOLESCENCE OF SEASONAL GOODS.

8 (iii) A DISTRESS SALE OF GOODS UNDER COURT PROCESS.

9 (iv) SALES OF GOODS MADE IN GOOD FAITH IN DISCONTINUING  
10 BUSINESS IN THE GOODS CONCERNED.

11 (v) SALES OF GOODS MADE IN A BONA FIDE ATTEMPT TO REHABILITATE  
12 A BUSINESS IN DISTRESS.

13 (D) TEMPORARY RETAIL SALES OR SPECIAL ADVERTISED OFFERINGS  
14 UNDERTAKEN IN A GOOD-FAITH EFFORT TO FOSTER COMPETITION OR INCREASE  
15 SALES OR CUSTOMER VOLUME, AND NOT UNDERTAKEN FOR THE PURPOSE OR  
16 WITH THE EFFECT OF DESTROYING COMPETITION, ELIMINATING A  
17 COMPETITOR, OR CREATING A MONOPOLY.

18 (E) A PERSON ENGAGED IN THE BUSINESS OF SELLING COMMODITIES AT  
19 RETAIL THROUGH 2 OR MORE RETAIL OUTLETS LOCATED IN THIS STATE FROM  
20 SELLING THE SAME COMMODITIES AT A LOWER PRICE IN 1 LOCATION THAN  
21 THAT CHARGED BY THAT PERSON AT ANOTHER LOCATION, UNLESS SUCH A  
22 DIFFERENTIAL IS UNDERTAKEN FOR THE SPECIFIC PURPOSE OF ELIMINATING  
23 A COMPETITOR.

24 (4) IN AN ACTION FOR A VIOLATION OF SUBSECTION (1) OR (2), IF  
25 A PERSON MAKES A PRIMA FACIE CASE THAT THERE WAS DISCRIMINATION IN  
26 PRICE OR SERVICES OR FACILITIES FURNISHED AND THAT THE PERSON WAS  
27 INJURED BY THE EFFECTS OF THAT DISCRIMINATION, THE BURDEN OF

1 REBUTTING THE PRIMA FACIE CASE BY SHOWING JUSTIFICATION FOR THE  
 2 PRICE DIFFERENTIAL IS ON THE PERSON CHARGED WITH THE VIOLATION, AND  
 3 UNLESS JUSTIFICATION IS AFFIRMATIVELY SHOWN, THE COURT MAY ISSUE AN  
 4 ORDER TERMINATING THE DISCRIMINATION. HOWEVER, A PERSON CHARGED  
 5 WITH A VIOLATION OF SUBSECTION (1) OR (2) MAY REBUT THE PRIMA FACIE  
 6 CASE MADE BY A PURCHASER BY SHOWING THAT THE LOWER PRICE TO A  
 7 PURCHASER WAS MADE IN GOOD FAITH TO MEET THE OVERALL PRICING OF A  
 8 COMPETITOR OR BY PROOF OF ANY OF THE ELEMENTS OF SUBSECTION (3).

9 Sec. 9. (1) A person ~~who engages in any violation of section 2~~  
 10 ~~or 3~~ THAT VIOLATES SECTION 2, 3, OR 3A with the intent to  
 11 accomplish a result prohibited by this act ~~shall be~~ IS guilty of a  
 12 misdemeanor ~~—~~ punishable by imprisonment of not more than 2 years  
 13 or a fine of not more than \$10,000.00, or both, if **THE PERSON IS** an  
 14 individual, or **A FINE OF** not more than \$1,000,000.00 if a person  
 15 ~~other than~~ IS NOT an individual. A

16 (2) **THE ATTORNEY GENERAL OR A PROSECUTING ATTORNEY SHALL NOT**  
 17 **BRING A** criminal prosecution ~~shall not be brought~~ under this  
 18 section if a prior criminal prosecution has been initiated under  
 19 the Sherman act, 15 USC 1 TO 7, OR THE ROBINSON-PATMAN ACT, 15 USC  
 20 13, 13A, 13B, AND 21A, arising out of the same transactions or  
 21 occurrences.