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BILL ANALYSIS

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House Bill 4158 (Substitute H-3 as passed by the House)
Sponsor: Representative Lisa Posthumus Lyons
House Committee: Commerce
Senate Committee: Economic Development

Date Completed: 2-23-11

CONTENT

The bill would repeal Public Act 449 of 1976, the consumer item pricing act (which requires the price of a consumer item offered for sale at retail to be affixed to the item); and create the "Shopping Reform and Modernization Act" to require the price of an item to be displayed where the item was located. The bill also would appropriate \$100,000 for a consumer education program regarding item pricing and advertising.

Item Pricing

Under the consumer item pricing act, the total price of a consumer item offered for sale at retail must be stamped upon or affixed to the item, or, if applicable, the outside surface of the item's package or container. Under the proposed Act, a person would have to display the total price of a consumer item at the place of the retail sale.

A price would be "displayed" if it were stamped, affixed, or otherwise marked on the item; or displayed by signage, an electronic reader, or any other method that clearly and reasonably conveyed the item's current price, to a consumer when in the store at the place where the item was located.

The proposed Act would make generally the same exceptions to its requirements as those that apply to the pricing law. These include exceptions for items sold in vending machines or purchased by mail or through catalog order.

(The consumer item pricing act does not apply to nonprofit food cooperatives. The proposed Act does not include this exemption.)

Administration & Enforcement

The Director of the Department of Agriculture and Rural Development would be responsible for implementation and administration of pricing and advertising requirements, and would have to promulgate rules for this purpose and investigate complaints concerning violations, as is the case under the existing law.

Currently, a person may not knowingly charge or attempt to charge for a consumer item a retail price that exceeds the price displayed for it. It is prima facie evidence of a violation if a price that is charged is established by electronic identification or calculation by an

automatic checkout system and exceeds the displayed price for that item. The proposed Act contains similar provisions, but specifies that it would not be a violation to charge less for an item than the price displayed for it.

The proposed Act also includes provisions similar to those of the existing item pricing act pertaining to the advertising of prices, authorizing the Attorney General and prosecuting attorneys to institute actions for violations, and the right of a consumer to bring an action for a declaratory judgment or an injunction in the absence of action by the Attorney General or a prosecuting attorney.

In addition, as currently allowed, a person who suffered a loss as a result of a violation could bring an individual or class action to recover actual damages or \$250, whichever was greater, for each day a violation was found (subject to provisions that would require the person first to notify the seller, and bar recovery if the seller paid the difference between the price displayed and the price charged plus up to 10 times the difference but not more than \$5).

The proposed Act also would maintain existing penalties for people who knowingly violated the Act (a maximum civil fine of \$1,000 for a first violation or \$5,000 for a second or subsequent violation, payable to the State).

The current item pricing act provides that it does not affect any other cause of action that is available and it must be liberally construed to effectuate its purpose. The proposed Act specifies that the remedies provided under it would be the exclusive remedies for violations.

Consumer Education & Awareness

For fiscal year 2010-11, the bill would appropriate \$100,000 from the General Fund to the Department of Attorney General to develop and implement a consumer education program to provide general information and advice regarding the advertising and pricing requirements of the proposed Act and the remedies available to consumers under it. The Attorney General would have to establish and maintain an internet website available to the public that provided this information and advice.

The appropriation and the expenditures authorized under the bill, as well as the Department of Attorney General, would be subject to the Management and Budget Act.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have a minimal fiscal impact on the Department of Agriculture and Rural Development. The Department's Consumer Protection Section currently investigates allegations of item pricing violations under existing law on a complaint basis. The Department estimates that it spends between \$50,000 and \$100,000 per year on this activity. Under the bill, the Department would be required to promulgate rules and investigate complaints involving suspected violations of its provisions, which would result in some additional costs over current expenditures. In total, department costs on an annual basis for personnel, equipment, and software would be approximately \$110,000.

The bill would appropriate \$100,000 from General Fund/General Purpose (GF/GP) revenue to the Attorney General in FY 2010-11 for consumer education regarding the proposed advertising and pricing requirements and the consumer remedies that would be available in case of violations. This would support website development and revision of other consumer education materials and programs, such as training for volunteer speakers who provide outreach and education to senior citizen, civic, and other community groups. The Attorney

General also would incur increased expenses to promulgate new rules to implement the bill. It is likely that this expense could be absorbed within current resources. As under current law, the bill would provide for civil fines of up to \$5,000 for a person who knowingly violated the requirements of the bill or related court orders or assurances. Any revenue from these fines would be deposited in the General Fund and the amount would depend on the level of fines assessed and the number of violations.

Fiscal Analyst: Bruce Baker
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.