

## EXCEPTIONS TO ITEM PRICING

House Bill 4037

Sponsor: Rep. Craig DeRoche

Committee: Commerce

Complete to 2-7-03

### A SUMMARY OF HOUSE BILL 4037 AS INTRODUCED 1-28-03

The bill would amend the Consumer Item Pricing Act to provide an exception to the act's requirements that the total price of a consumer item displayed or offered for retail sale must be clearly and conspicuously indicated so as to be readable and understandable by visual inspection and be stamped on or affixed to the consumer item. The exception would apply only to consumer items that were not food items or nonprescription medicines and only when the following conditions were met.

- At the point of display of the consumer item, there would have to be a label or sign posted immediately above, below, or adjacent to the item that clearly and conspicuously displayed to the consumer the total price of the item in Arabic numerals and a description of the item, including the product name or description, brand, and size.

- The retailer would have to use an automatic checkout system audited at least every calendar quarter by an independent certified public accountant or accounting firm, and would need to receive from that audit a certificate of compliance that during the preceding calendar quarter the checkout system either demonstrated an accuracy rate of not less than 98 percent or had an error rate of not greater than 2 percent.

- The retailer would have to provide at least one remote UPC code scanner for each 5,000 square feet of retail floor space in each retail store location. The scanner would have to be compatible with and synchronized with the UPC scanning capability of the retailer's automatic checkout system used at the point of sale; be readily accessible to consumers and located in a convenient place within the store; and be able to print a paper sales confirmation report for a consumer item scanned by a consumer containing the total price of the item and a description of the item, including the product name or designation, brand, and size of the item.

Error Rates. In determining an accuracy rate or error rate, the accountant or accounting firm would have to include overcharges but not undercharges and could use recognized sampling techniques. A retailer would be required to maintain audit reports and certificates of compliance for five years and make them available to the director of the Department of Agriculture on request. The retailer would have to post the most recent certificate of compliance in a conspicuous location in the retail store.

Penalties for Violating New Provisions. The bill contains provisions regarding violations that are similar to those in existing law, but violations of the new provisions would result in double the penalties for violations of existing law. A consumer who suffered a loss because the price charged was greater than the displayed price would be required to notify the retailer in person or in writing of the discrepancy within 30 days. If the retailer, within two days of

notification, tendered to the consumer an amount equal to the discrepancy plus an amount equal to 20 times that amount (rather than 10 times as for item pricing violations) but not less than \$2 or more than \$10 (rather than \$1 and \$5), the consumer would be barred from further recovery. If the loss was suffered by one consumer within one transaction on two or more identical items, the retailer would have to tender the difference and the penalty amount on each item. This provision would not apply to cases where a retailer intentionally charged more for an item than the posted price or the price set forth on the price confirmation report.

MCL 445.353 and 445.353a

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