# HOUSE BILL No. 4037

January 28, 2003, Introduced by Rep. DeRoche and referred to the Committee on Commerce.

A bill to amend 1976 PA 449, entitled

"An act to regulate the pricing of consumer items and the advertising of consumer items, services, goods, merchandise, commodities, and real property; to prescribe the powers and duties of certain state and local officials in relation thereto; to provide remedies and penalties; and to repeal certain acts and parts of acts,"

by amending section 3 (MCL 445.353) and by adding sections 3a and 3b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1  Sec. 3.  (1) ~~The~~ **A person shall clearly and conspicuously**

2  **indicate the** total price of a consumer item displayed or offered

3  for sale at retail ~~shall be clearly and conspicuously indicated~~

4  in ~~arabic~~ **Arabic** numerals. ~~, so as to~~ **The total price must** be

5  readable and understandable by visual inspection ~~,~~ and ~~shall~~

6  ~~be~~ stamped upon or affixed to the consumer item.  If the

7  consumer item is in a package or container, the total price

8  ~~shall~~ **must** be stamped upon or affixed to the outside surface of

00793'03                                                      DAM

**1** the package or container and need not be placed directly upon the

**2** consumer item.

**3** (2) ~~The requirements of subsection~~ **Subsection** (1) ~~shall~~

**4** **does** not apply to:

**5** (a) A consumer item sold by weight or volume ~~which~~ **that** is

**6** not in a package or container.

**7** (b) A consumer item sold in a coin operated vending machine.

**8** (c) Prepared food intended for immediate consumption, as

**9** defined in section 4g of ~~Act No. 167 of the Public Acts of 1933,~~

**10** ~~being section 205.54g of the Michigan Compiled Laws~~ **the general**

**11** **sales tax act, 1933 PA 167, MCL 205.54g**.

**12** (d) A consumer item purchased by mail or through catalog

**13** order, or ~~which~~ **that** is not otherwise visible for inspection by

**14** the consumer at the time of the sale, and ~~which~~ **that** is ordered

**15** or requested by the consumer, if the price of the **consumer** item

**16** is on the consumer's written order or request or on a bill,

**17** invoice, or other notice ~~which~~ **that** describes or names the

**18** **consumer** item and ~~which~~ is enclosed with the **consumer** item.

**19** (e) An unpackaged food item.

**20** (f) A consumer item ~~which~~ **that** has a total weight of not

**21** more than 3 ounces, a total volume of not more than 3 cubic

**22** inches, ~~and~~ **or** a total price of not more than 30 cents.

**23** (g) Live plants.

**24** (h) Live animals.

**25** (i) Motor vehicles.

**26** (j) Motor vehicle parts.

**27** (k) Packages of 20 or fewer cigarettes.

**1**　　　(*l*) Greeting cards sold individually ~~which~~ **that** have a

**2** readable coded price on the back of the card.

**3**　　　(m) Merchandise ordered as a gift by a consumer ~~which~~ **that**

**4** is sent by mail or other delivery service to a person other than

**5** the consumer by the retailer at the request of the consumer.

**6**　　　**(n) A consumer item sold in compliance with section 3a.**

**7**　　　(3) In addition to the ~~exemptions allowed in~~ **exceptions**

**8** **under** subsection (2), a retailer may choose to not individually

**9** price mark not more than 25 classes of items or individual items**,**

**10** which classes or items shall be listed and posted in a

**11** conspicuous place in the retail store, and may choose to not

**12** individually price mark not more than 25 additional classes of

**13** items or individual items ~~which~~ **that** are advertised or featured

**14** at a reduced price.

**15**　　　(4) ~~The~~ **If the** price and the name or description of a class

**16** of items or individual items **are** not **price** marked pursuant to

**17** subsection (3)**,** ~~shall be indicated~~ **the retailer shall indicate**

**18** **the price and the name or description of the class of items or**

**19** **individual items** by **posting** a clear, readable, and conspicuous

**20** sign in immediate conjunction with the area in which the unmarked

**21** item or class of items is displayed.

**22**　　　(5) As used in subsections (3) and (4), "item", except as

**23** otherwise provided in this subsection, means 1 or more identical

**24** articles ~~,~~ sold in identical quantities or measures.  An item

**25** may include more than 1 product, brand, kind, size, or type of

**26** packaging, if they are packaged together and sold as a set and

**27** the sets are identical in all respects, including quantity or

1 measure.

2     Sec. 3a. (1) Section 3(1) does not apply to a consumer item

3 displayed or offered for sale at retail that meets all of the

4 following requirements:

5     (a) The consumer item is not a food item or nonprescription

6 medicine.

7     (b) At the point of display of the consumer item, there is a

8 label or sign posted immediately above, below, or adjacent to the

9 consumer item that clearly and conspicuously displays to the

10 consumer the total price of the consumer item in arabic numerals

11 and a description of the consumer item, including, but not

12 limited to, the product name or description, brand, and size of

13 the item.

14     (c) The retailer utilizes an automatic checkout system at the

15 retail store that is audited at least every calendar quarter by

16 an independent certified public accountant or accounting firm,

17 and the accountant or firm certifies, and issues a certificate of

18 compliance, that the automatic checkout system meets 1 of the

19 following:

20     (*i*) Demonstrates an accuracy rate of not less than 98%.

21     (*ii*) Has an error rate not greater than 2% for sales of

22 consumer items during the preceding calendar quarter.

23     (d) The retailer provides at least 1 remote UPC code scanner

24 for each 5,000 square feet of retail floor space in each retail

25 store location.  A remote UPC code scanner shall meet all of the

26 following requirements:

27     (*i*) Is compatible with and synchronized with the UPC code

1 scanning capability of the retailer's automatic checkout system

2 used at the point of sale.

3     (*ii*) Is readily accessible to consumers and located in a

4 convenient place within the retail store.

5     (*iii*) Is able to print a paper sales confirmation report for

6 a consumer item scanned by a consumer that contains the total

7 price of the consumer item in arabic numerals and a description

8 of the consumer item, including, but not limited to, the product

9 name or designation, brand, and size of the item.

10     (2) In determining an accuracy rate or error rate under

11 subsection (1)(b), the certified public accountant or accounting

12 firm shall include overcharges to a consumer but not

13 undercharges.  The accountant or firm may use recognized sampling

14 techniques in the quarterly audit.  A retailer shall maintain

15 audit reports and certificates of compliance for 5 years and make

16 them available to the director on request.  The retailer shall

17 post the most recent certificate of compliance in a conspicuous

18 location in the retail store.

19     (3) If the retailer fails to meet the accuracy and

20 certification requirements of subsection (1) for a retail store,

21 the retailer has 30 days in which to correct any system

22 deficiencies and to obtain a recertification from the certified

23 public accountant or accounting firm.  If the retailer does not

24 obtain a recertification within the 30-day period, this section

25 does not apply to the consumer items at that retail store, and

26 the retailer shall comply with section 3 with respect to the

27 consumer items described in this section, and may not utilize the

1 exception to section 3(1) contained in this section at that

2 retail store for a period of at least 180 days.

3     (4) The director is responsible for the implementation and

4 the administration of this section.  The department may

5 promulgate rules pursuant to the administrative procedures act of

6 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding audit and

7 certification standards for automatic checkout systems and remote

8 UPC code scanners.

9     Sec. 3b.  (1) A person shall not knowingly charge or attempt

10 to charge for a consumer item a retail price exceeding the price

11 displayed on a sign or contained in a price confirmation report

12 for the item under section 3a.  It is not a violation of this act

13 to charge for a consumer item a total price less than the price

14 displayed on a sign or contained in a confirmation report under

15 section 3a.

16     (2) It is prima facie evidence of a violation of this section

17 if a price charged or attempted to be charged as a result of

18 electronic identification or calculation by an automatic checkout

19 system exceeds the price displayed on a sign or contained in a

20 confirmation report under section 3a.

21     (3) Before bringing or joining an action under section 10(2),

22 within 30 days after purchasing a consumer item that is not a

23 food item or nonprescription medicine at a retail store that

24 meets the accuracy and certification requirement of section 3a, a

25 consumer who suffers a loss because the price charged for the

26 consumer item is more than the displayed price for the item or

27 the price set forth on the price confirmation report shall notify

1 the retailer in person or in writing of the price discrepancy.

2 If, within 2 days after the notification, the retailer tenders to

3 the consumer an amount equal to the difference between the

4 displayed price or the price set forth on the price confirmation

5 report and the price charged, plus an amount equal to 20 times

6 that difference, but that is not less than $2.00 or more than

7 $10.00, the consumer is barred from further recovery for that

8 loss.  If the loss is suffered by 1 consumer within 1 transaction

9 on 2 or more identical items, the retailer shall tender the

10 difference on each item, plus an amount equal to 20 times the

11 difference on a single item but that is not less than $2.00 and

12 not more than $10.00.  If the retailer does not tender this

13 amount, the consumer may bring or join in an action as provided

14 in section 10(2).

15     (4) Subsection (3) does not apply to a sale at retail if the

16 retailer intentionally charges more for an item than the posted

17 price or the price set forth on the price confirmation report.