

# Legislative Analysis

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## EXCEPTIONS TO ITEM PRICING:

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**House Bill 4636 (Substitute H-2)**  
**Sponsor: Rep. Dave Hildenbrand**  
**Committee: Commerce**

**Complete to 6-22-05**

## A SUMMARY OF HOUSE BILL 4636 AS REPORTED FROM COMMITTEE 6-21-05

The bill would amend the Consumer Item Pricing Act (MCL 445.353 and 445.353a) to provide exceptions 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 act would be renamed the Pricing Modernization Act.] The exceptions would not apply to food items except for frozen foods and refrigerated dairy products (referred to as "qualified perishable products"). The exceptions would apply to those food items and other consumer products but only when all of 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 selling space in each retail store location and at least one remote UPC code scanner for each 10,000 square feet of retail floor selling space that had the capacity to allow a consumer to print the price of a consumer item on a label that the consumer can affix to the item. Both kinds of 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 display the price of a consumer item scanned by a consumer in Arabic numerals.
- As an alternative to remote UPC code scanners, a retailer could provide a price verification terminal at each exit used by consumers at each retail store location. Such a terminal would have to be readily accessible to all consumers; capable of

scanning the bar code on a consumer's sales receipt; and capable of printing out a list of the items shown on the sales receipt and the regular price of the item from the retailer's pricing database. That database would be the retailer's database of regular retail prices for items that the retailer uses to prepare required price signs and labels.

Items Not Price Marked. Currently, a retailer can choose to not individually price mark up to 25 classes of items or individual items, which must then be listed and posted in a conspicuous place in the store. The bill would increase the number of exempt items to 75.

Currently the act exempts an item with a total price of 30 cents or less. The bill would increase that amount to 99 cents or less. Also exempt are live plants, and the bill would add "trees, seeds, or bulbs."

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.

Correcting Deficiencies. A retailer that failed to meet accuracy and certification requirements would have 30 days to correct system deficiencies and obtain a recertification. If the retailer failed to obtain recertification, the exceptions in the bill would not apply to the items in the retail store for at least 180 days.

Violations and Penalties. The bill contains penalties for violations that are double the penalties currently found in the item pricing 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 on each item but the penalty would be the same as for a single item. If the retailer did not tender the amount, the consumer could bring or join a legal action. Under the bill, it would be prima facie evidence of a violation if a price charged or attempted to be charged as a result of electronic identification or calculation by an automatic checkout system exceeded the price displayed on a sign or displayed by a remote UPC code scanner. These provisions would not apply in cases where a retailer intentionally charged more for an item than the posted price or the price displayed by a remote UPC code scanner.

Implementation and Administration. The director of the Department of Agriculture would be responsible for implementing and administering the provisions of the bill. The

department could promulgate rules under the Administrative Procedures Act regarding audit and certification standards for automatic checkout systems and remote UPC code scanners.

**POSITIONS:**

The Michigan Retailers Association testified in support of the bill. (6-21-05)

The Michigan Grocers Association testified in support of the bill. (6-21-05)

Representatives of Home Depot, Kroger, and Spartan Stores indicated support for the bill (6-21-05)

The Michigan Chamber of Commerce indicated support for the bill. (6-21-05)

The United Food and Commercial Workers, Local 876, testified in opposition to the bill. (6-21-05)

The Michigan Consumer Federation testified in opposition to the bill. (6-21-05)

The International Union, UAW indicated opposition to the bill. (6-21-05)

Legislative Analyst: Chris Couch

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.