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House Bill 4636 (Substitute H-2 as passed by the House)
Sponsor: Representative Dave Hildenbrand
House Committee: Commerce
Senate Committee: Commerce and Labor

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CONTENT

The bill would amend the consumer item pricing Act to do all of the following:

- Expand the Act's list of exceptions from its item pricing requirements.**
- Exclude items that were not food or nonprescription medicine from the item pricing requirements, if the retailer met certain requirements for the display and availability of pricing information.**
- Increase the number of classes of items or individual items that a retailer may choose not to price mark.**
- Establish UPC code scanner and price verification terminal requirements for a retailer to qualify for the proposed exception for nonfood and nondrug items.**
- Establish audit requirements for a retailer's automatic checkout system in order for the retailer to qualify for the exception for nonfood and nondrug items.**
- Prohibit a person from knowingly charging a price exceeding the price displayed or printed as required for the exception for nonfood and nondrug items, and specify civil remedies.**

The bill also would name the Act the "Pricing Modernization Act".

Item Pricing Requirement & Exceptions

The Act requires the total price of a consumer item displayed or offered for sale at retail to be indicated clearly and conspicuously in Arabic numerals. The total price must be readable and understandable by visual inspection and must be stamped upon or affixed to the consumer item. If the consumer item is in a package or container, the total price must be stamped upon or affixed to the outside surface of the package or container.

"Consumer item" means an article of tangible personal property used or consumed, or bought for use or consumption, primarily for personal, family, or household purposes. "Total price" means the full purchase price of a consumer item, excluding sales tax and container deposit.

The Act specifies exceptions from the pricing requirement for certain items, including a consumer item that has a total weight of not more than three ounces, a total volume of not more than three cubic inches, *and* a total price of not more than 30 cents. Under the bill, that exception would apply instead to a consumer item that had a total weight of not more than three ounces, a total volume of not more than three cubic inches, *or* a total price of not more than 99 cents.

The current exceptions to the pricing requirement also apply to live plants. The bill also would exclude trees, seeds, and bulbs.

The bill would add all of the following to the list of exceptions:

- A consumer item sold in compliance with the bill's exceptions for a consumer item that was not a food item or nonprescription medicine (described below).
- Frozen foods.
- "Qualified perishable products".

("Qualified perishable products" would mean refrigerated Grade A milk and milk products, as those items are defined in the Grade A Milk Law, or refrigerated eggs, cheese, butter, or soy milk. Under the Grade A Milk Law, "Grade A milk" means milk or milk products produced in substantial compliance with the requirements of that Law. The Law's definition of "milk products" lists a number of dairy products.)

In addition to the specifically listed exceptions to the item pricing requirement, the Act allows a retailer to choose not to price mark up to 25 classes of items or individual items, which must be listed and posted in a conspicuous place in the retail store, and not more than 25 additional classes of items or individual items that are advertised or featured at a reduced price. The bill would allow up to 75 classes or items listed or posted in a conspicuous place and not more than 25 additional items advertised or featured at a reduced price.

Exception for Nonfood & Nondrug Items

Under the bill, the consumer item pricing requirement would not apply to a consumer item displayed or offered for sale at retail that met all of the following requirements:

- The consumer item was not a food item or "nonprescription medicine" (an over-the-counter drug product, other than vitamins or a nutritional or dietary supplement, that is subject to Federal labeling requirements.)
- At the point of display of the consumer item, there was a label or sign posted immediately above, below, or adjacent to the consumer item that clearly and conspicuously displayed to the consumer the total price of the consumer item in Arabic numerals and a description of the consumer item, including the product name or description, brand, and size of the item.
- The retailer used at the retail store an automatic checkout system that was audited every calendar quarter by a certified public accountant (CPA) or accounting firm, and the CPA or firm certified, and issued a certificate of compliance that the system demonstrated an accuracy rate of at least 98% or had an error rate not over 2% for sales of consumer items during the preceding calendar quarter.
- The retailer met the UPC code scanner or price verification terminal requirements described below.

The Director of the Michigan Department of Agriculture (MDA) would be responsible for the implementation and administration of the bill's exception for items that were not food or nonprescription medication. The MDA could promulgate rules regarding audit and certification standards for automatic checkout systems, remote UPC code scanners, and price verification terminals.

UPC Code Scanner

A retailer could satisfy the UPC code scanner requirements for the exception for items that were not food or nonprescription drugs by providing at least one remote UPC code scanner

for each 5,000 square feet of retail floor selling space in each retail store location. The scanner would have to meet all of the following:

- Be compatible with and synchronized with the UPC code 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 retail store.
- Display the price of a consumer item scanned by a consumer in Arabic numerals.

Alternatively, the retailer could have at least one remote UPC code scanner for each 10,000 square feet of retail selling space in each retail store location if the scanner met the above requirements and allowed a consumer to print the price of an item on a label that the consumer could affix to the item.

Price Verification Terminal

A retailer could satisfy the price verification terminal requirements for the exception for items that were not food or nonprescription drugs by providing a price verification terminal at each exit used by consumers at each retail store location. A price verification terminal would have to be readily accessible to consumers and be capable of scanning the bar code on a consumer's sales receipt and printing a list of the items shown on the receipt, and the regular price of the item, in Arabic numerals, from the retailer's pricing database. ("Pricing database" would mean the retailer's database of regular retail prices for items that the retailer used to prepare pricing signs and labels at the point of display.)

Scanner System's Accuracy or Error Rate

In determining an accuracy rate or error rate of a retail store's price scanner, a CPA or accounting firm would have to include overcharges to a consumer but not undercharges. The CPA or firm could use recognized sampling techniques in the quarterly audit. A retailer would have to maintain audit reports and certificates of compliance for five years and make them available to the Director of the MDA upon request. The retailer would have to post the most recent certificate of compliance in a conspicuous location in the retail store.

If a retailer failed to meet the bill's accuracy and certification requirements, the retailer would have 30 days in which to correct any system deficiencies and to obtain a recertification from the CPA or accounting firm. If the retailer did not obtain a recertification within that period, the bill's exception for items that were not food or nonprescription medication would not apply to the consumer items at that retail store, and the retailer would have to comply with the Act's general consumer item pricing requirements for those items. The retailer could not use the nonfood or nondrug exception at the store for at least 180 days.

Violation & Civil Remedies

The bill would prohibit a person from knowingly charging or attempting to charge for a consumer item a retail price that exceeded the price displayed on a sign, displayed by a remote UPC code scanner, or printed at a price verification terminal. It would not be a violation of the Act to charge for a consumer item a total price less than the price displayed on a sign or by a UPC code scanner or printed on a price verification terminal. 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 by a UPC code scanner or printed at a price verification terminal.

The Act allows a person who suffered a loss as a result of a violation of the Act to bring an individual or a class action to recover actual damages or \$250, whichever is greater, for each day on which violations have been found, together with reasonable attorneys' fees not to exceed \$300 in an individual action.

Under the bill, unless a retailer intentionally charged more for an item than the posted, displayed, or printed price, before bringing or joining such an action, within 30 days after purchasing a consumer item that was not a food item or nonprescription medicine at a retail store that met the bill's accuracy and certification requirement, a consumer who suffered a loss because the price charged for the consumer item was more than the displayed or printed price would have to notify the retailer in person or in writing of the price discrepancy. If, within two days after the notification, the retailer tendered to the consumer an amount equal to the difference, plus an amount equal to 20 times that difference, but not less than \$2 or more than \$10, the consumer would be barred from further recovery for the loss. If the loss were suffered by one consumer within one transaction on two or more identical items, the retailer would have to tender the difference on each item, plus an amount equal to 20 times the difference on a single item, but not less than \$2 or more than \$10. If the retailer did not tender the amount required, the consumer could bring or join an action as allowed under the Act.

MCL 445.351 et al.

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FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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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.