

**SUBSTITUTE FOR  
HOUSE BILL NO. 4636**

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 sections 1 and 3 (MCL 445.351 and 445.353) and by adding sections 3a and 3b.

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

1           Sec. 1. (1) **THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE**  
2 **"PRICING MODERNIZATION ACT".**

3           (2) As used in this act:

4           (a) "Advertising" means all representations disseminated in  
5 any manner by any means for the purpose of inducing, or ~~which~~

1 **THAT** are likely to induce, directly or indirectly, the purchase of  
2 a consumer item, service, good, merchandise, commodity, or real  
3 property.

4 (b) "Automatic checkout system" means an electronic device,  
5 computer, or machine ~~which~~ **THAT** determines the price of a  
6 consumer item by using a product identity code, and may but is not  
7 required to include an optical scanner.

8 (c) "Class of item" means a group of consumer items ~~which~~  
9 **THAT** may vary by brand, style, pattern, color, or size other than  
10 weight or volume. Items within a class must otherwise be identical  
11 and offered at the same total price.

12 (d) "Consumer item" means an article of tangible personal  
13 property used or consumed, or bought for use or consumption,  
14 primarily for personal, family, or household purposes.

15 (e) "Director" means the director of the department of  
16 agriculture or his **OR HER** authorized representative.

17 **(F) "NONPRESCRIPTION MEDICINE" MEANS AN OVER-THE-COUNTER DRUG**  
18 **PRODUCT, OTHER THAN VITAMINS OR A NUTRITIONAL OR DIETARY**  
19 **SUPPLEMENT, THAT IS SUBJECT TO THE LABELING REQUIREMENTS OF 21 CFR**  
20 **201.66.**

21 **(G) ~~(f)~~ "Person" means an individual, ~~firm,~~ partnership,**  
22 **corporation, LIMITED LIABILITY COMPANY, association, or other legal**  
23 **entity.**

24 **(H) ~~(g)~~ "Sale at retail" means the transfer of an interest**  
25 **in a consumer item by a person regularly and principally engaged in**  
26 **the business of selling consumer items to a buyer for use or**  
27 **consumption and not for resale.**

1           (I) ~~(h)~~ "Total price" means the full purchase price of a  
2 consumer item, excluding sales tax and container deposit.

3           Sec. 3. (1) ~~The~~ **A PERSON SHALL CLEARLY AND CONSPICUOUSLY**  
4 **INDICATE THE** total price of a consumer item displayed or offered  
5 for sale at retail ~~shall be clearly and conspicuously indicated~~  
6 in ~~arabic~~ **ARABIC** numerals. ~~, so as to~~ **THE TOTAL PRICE MUST** be  
7 readable and understandable by visual inspection ~~,~~ and ~~shall be~~  
8 stamped upon or affixed to the consumer item. If the consumer item  
9 is in a package or container, the total price ~~shall~~ **MUST** be  
10 stamped upon or affixed to the outside surface of the package or  
11 container and need not be placed directly upon the consumer item.

12           (2) ~~The requirements of subsection~~ **SUBSECTION** (1) ~~shall~~  
13 **DOES** not apply to:

14           (a) A consumer item sold by weight or volume ~~which~~ **THAT** is  
15 not in a package or container.

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

17           (c) Prepared food intended for immediate consumption, as  
18 defined in section 4g of ~~Act No. 167 of the Public Acts of 1933,~~  
19 ~~being section 205.54g of the Michigan Compiled Laws~~ **THE GENERAL**  
20 **SALES TAX ACT, 1933 PA 167, MCL 205.54G.**

21           (d) A consumer item purchased by mail or through catalog  
22 order, or ~~which~~ **THAT** is not otherwise visible for inspection by  
23 the consumer at the time of the sale, and ~~which~~ **THAT** is ordered  
24 or requested by the consumer, if the price of the **CONSUMER** item is  
25 on the consumer's written order or request or on a bill, invoice,  
26 or other notice ~~which~~ **THAT** describes or names the **CONSUMER** item  
27 and ~~which~~ is enclosed with the **CONSUMER** item.

1 (e) An unpackaged food item.

2 (f) A consumer item ~~which~~ **THAT** has a total weight of not  
3 more than 3 ounces, a total volume of not more than 3 cubic inches,  
4 ~~and~~ **OR** a total price of not more than ~~30~~ **99** cents.

5 (g) Live plants, **TREES, SEEDS, OR BULBS.**

6 (h) Live animals.

7 (i) Motor vehicles.

8 (j) Motor vehicle parts.

9 (k) Packages of 20 or fewer cigarettes.

10 (l) Greeting cards sold individually ~~which~~ **THAT** have a  
11 readable coded price on the back of the card.

12 (m) Merchandise ordered as a gift by a consumer ~~which~~ **THAT**  
13 is sent by mail or other delivery service to a person other than  
14 the consumer by the retailer at the request of the consumer.

15 **(N) A CONSUMER ITEM SOLD IN COMPLIANCE WITH SECTION 3A.**

16 **(O) FROZEN FOODS.**

17 **(P) QUALIFIED PERISHABLE PRODUCTS. AS USED IN THIS**  
18 **SUBDIVISION, "QUALIFIED PERISHABLE PRODUCTS" MEANS REFRIGERATED**  
19 **GRADE A MILK AND MILK PRODUCTS, AS THOSE TERMS ARE DEFINED IN THE**  
20 **GRADE A MILK LAW OF 2001, 2001 PA 266, MCL 288.471 TO 288.540, OR**  
21 **REFRIGERATED EGGS, CHEESE, BUTTER, OR SOY MILK.**

22 (3) In addition to the ~~exemptions allowed in~~ **EXCEPTIONS**  
23 **UNDER** subsection (2), a retailer may choose to not individually  
24 price mark not more than ~~25~~ **75** classes of items or individual  
25 items, which classes or items shall be listed and posted in a  
26 conspicuous place in the retail store, and may choose to not  
27 individually price mark not more than 25 additional classes of

1 items or individual items ~~which~~ **THAT** are advertised or featured  
2 at a reduced price.

3 (4) ~~The~~ **IF THE** price and the name or description of a class  
4 of items or individual items **ARE** not **PRICE** marked pursuant to  
5 subsection (3), ~~shall be indicated~~ **THE RETAILER SHALL INDICATE**  
6 **THE PRICE AND THE NAME OR DESCRIPTION OF THE CLASS OF ITEMS OR**  
7 **INDIVIDUAL ITEMS** by **POSTING** a clear, readable, and conspicuous sign  
8 in immediate conjunction with the area in which the unmarked item  
9 or class of items is displayed.

10 (5) As used in subsections (3) and (4), "item", except as  
11 otherwise provided in this subsection, means 1 or more identical  
12 articles ~~—~~ sold in identical quantities or measures. An item may  
13 include more than 1 product, brand, kind, size, or type of  
14 packaging, if they are packaged together and sold as a set and the  
15 sets are identical in all respects, including quantity or measure.

16 **SEC. 3A. (1) SECTION 3(1) DOES NOT APPLY TO A CONSUMER ITEM**  
17 **DISPLAYED OR OFFERED FOR SALE AT RETAIL THAT MEETS ALL OF THE**  
18 **FOLLOWING REQUIREMENTS:**

19 (A) **THE CONSUMER ITEM IS NOT A FOOD ITEM OR NONPRESCRIPTION**  
20 **MEDICINE.**

21 (B) **AT THE POINT OF DISPLAY OF THE CONSUMER ITEM, THERE IS A**  
22 **LABEL OR SIGN POSTED IMMEDIATELY ABOVE, BELOW, OR ADJACENT TO THE**  
23 **CONSUMER ITEM THAT CLEARLY AND CONSPICUOUSLY DISPLAYS TO THE**  
24 **CONSUMER THE TOTAL PRICE OF THE CONSUMER ITEM IN ARABIC NUMERALS**  
25 **AND A DESCRIPTION OF THE CONSUMER ITEM, INCLUDING, BUT NOT LIMITED**  
26 **TO, THE PRODUCT NAME OR DESCRIPTION, BRAND, AND SIZE OF THE ITEM.**

27 (C) **THE RETAILER UTILIZES AN AUTOMATIC CHECKOUT SYSTEM AT THE**

1 RETAIL STORE THAT IS AUDITED EVERY CALENDAR QUARTER BY A CERTIFIED  
2 PUBLIC ACCOUNTANT OR ACCOUNTING FIRM, AND THE ACCOUNTANT OR FIRM  
3 CERTIFIES, AND ISSUES A CERTIFICATE OF COMPLIANCE, THAT THE  
4 AUTOMATIC CHECKOUT SYSTEM MEETS 1 OF THE FOLLOWING:

5 (i) DEMONSTRATES AN ACCURACY RATE OF NOT LESS THAN 98%.

6 (ii) HAS AN ERROR RATE NOT GREATER THAN 2% FOR SALES OF  
7 CONSUMER ITEMS DURING THE PRECEDING CALENDAR QUARTER.

8 (D) THE RETAILER MEETS THE REQUIREMENTS OF SUBSECTION (2) OR  
9 (3).

10 (2) A RETAILER MAY SATISFY SUBSECTION (1) (D) BY PROVIDING ALL  
11 OF THE FOLLOWING:

12 (A) AT LEAST 1 REMOTE UPC CODE SCANNER FOR EACH 5,000 SQUARE  
13 FEET OF RETAIL FLOOR SELLING SPACE IN EACH RETAIL STORE LOCATION. A  
14 REMOTE UPC CODE SCANNER PROVIDED UNDER THIS SUBDIVISION MUST MEET  
15 ALL OF THE FOLLOWING REQUIREMENTS:

16 (i) IT IS COMPATIBLE WITH AND SYNCHRONIZED WITH THE UPC CODE  
17 SCANNING CAPABILITY OF THE RETAILER'S AUTOMATIC CHECKOUT SYSTEM  
18 USED AT THE POINT OF SALE.

19 (ii) IT IS READILY ACCESSIBLE TO CONSUMERS AND LOCATED IN A  
20 CONVENIENT PLACE WITHIN THE RETAIL STORE.

21 (iii) IT DISPLAYS THE PRICE OF A CONSUMER ITEM SCANNED BY A  
22 CONSUMER IN ARABIC NUMERALS.

23 (B) AT LEAST 1 REMOTE UPC CODE SCANNER FOR EACH 10,000 SQUARE  
24 FEET OF RETAIL FLOOR SELLING SPACE IN EACH RETAIL STORE LOCATION. A  
25 REMOTE UPC CODE SCANNER PROVIDED UNDER THIS SUBDIVISION MUST MEET  
26 ALL OF THE FOLLOWING REQUIREMENTS:

27 (i) IT 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) IT IS READILY ACCESSIBLE TO CONSUMERS AND LOCATED IN A  
4 CONVENIENT PLACE WITHIN THE RETAIL STORE.

5 (iii) IT DISPLAYS THE PRICE OF A CONSUMER ITEM SCANNED BY A  
6 CONSUMER IN ARABIC NUMERALS.

7 (iv) IT ALLOWS A CONSUMER TO PRINT THE PRICE OF A CONSUMER ITEM  
8 ON A LABEL THAT THE CONSUMER CAN AFFIX TO THE ITEM.

9 (3) A RETAILER MAY SATISFY SUBSECTION (1) (D) BY PROVIDING A  
10 PRICE VERIFICATION TERMINAL AT EACH EXIT USED BY CONSUMERS AT EACH  
11 RETAIL STORE LOCATION. A PRICE VERIFICATION TERMINAL PROVIDED  
12 UNDER THIS SUBSECTION MUST MEET ALL OF THE FOLLOWING REQUIREMENTS:

13 (A) IT IS READILY ACCESSIBLE TO CONSUMERS.

14 (B) IT IS CAPABLE OF SCANNING THE BAR CODE ON A CONSUMER'S  
15 SALES RECEIPT AND PRINTING OUT A LIST OF THE ITEMS SHOWN ON THE  
16 SALES RECEIPT, AND THE REGULAR PRICE OF THE ITEM IN ARABIC NUMERALS  
17 FROM THE RETAILER'S PRICING DATABASE. AS USED IN THIS SUBDIVISION,  
18 "PRICING DATABASE" MEANS THE RETAILER'S DATABASE OF REGULAR RETAIL  
19 PRICES FOR ITEMS THAT THE RETAILER USES TO PREPARE SIGNS AND LABELS  
20 FOR PURPOSES OF SUBSECTION (1) (B).

21 (4) IN DETERMINING AN ACCURACY RATE OR ERROR RATE UNDER  
22 SUBSECTION (1) (C), THE CERTIFIED PUBLIC ACCOUNTANT OR ACCOUNTING  
23 FIRM SHALL INCLUDE OVERCHARGES TO A CONSUMER BUT NOT UNDERCHARGES.  
24 THE ACCOUNTANT OR FIRM MAY USE RECOGNIZED SAMPLING TECHNIQUES IN  
25 THE QUARTERLY AUDIT. A RETAILER SHALL MAINTAIN AUDIT REPORTS AND  
26 CERTIFICATES OF COMPLIANCE FOR 5 YEARS AND MAKE THEM AVAILABLE TO  
27 THE DIRECTOR ON REQUEST. THE RETAILER SHALL POST THE MOST RECENT

1 CERTIFICATE OF COMPLIANCE IN A CONSPICUOUS LOCATION IN THE RETAIL  
2 STORE.

3 (5) IF THE RETAILER FAILS TO MEET THE ACCURACY AND  
4 CERTIFICATION REQUIREMENTS OF SUBSECTION (1) FOR A RETAIL STORE,  
5 THE RETAILER HAS 30 DAYS IN WHICH TO CORRECT ANY SYSTEM  
6 DEFICIENCIES AND TO OBTAIN A RECERTIFICATION FROM THE CERTIFIED  
7 PUBLIC ACCOUNTANT OR ACCOUNTING FIRM. IF THE RETAILER DOES NOT  
8 OBTAIN A RECERTIFICATION WITHIN THE 30-DAY PERIOD, THIS SECTION  
9 DOES NOT APPLY TO THE CONSUMER ITEMS AT THAT RETAIL STORE, AND THE  
10 RETAILER SHALL COMPLY WITH SECTION 3 WITH RESPECT TO THE CONSUMER  
11 ITEMS DESCRIBED IN THIS SECTION, AND MAY NOT UTILIZE THE EXCEPTION  
12 TO SECTION 3(1) CONTAINED IN THIS SECTION AT THAT RETAIL STORE FOR  
13 A PERIOD OF AT LEAST 180 DAYS.

14 (6) THE DIRECTOR IS RESPONSIBLE FOR THE IMPLEMENTATION AND THE  
15 ADMINISTRATION OF THIS SECTION. THE DEPARTMENT MAY PROMULGATE RULES  
16 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,  
17 MCL 24.201 TO 24.328, REGARDING AUDIT AND CERTIFICATION STANDARDS  
18 FOR AUTOMATIC CHECKOUT SYSTEMS, REMOTE UPC CODE SCANNERS, AND PRICE  
19 VERIFICATION TERMINALS.

20 SEC. 3B. (1) A PERSON SHALL NOT KNOWINGLY CHARGE OR ATTEMPT TO  
21 CHARGE FOR A CONSUMER ITEM A RETAIL PRICE EXCEEDING THE PRICE  
22 DISPLAYED ON A SIGN, DISPLAYED BY A REMOTE UPC CODE SCANNER, OR  
23 PRINTED AT A PRICE VERIFICATION TERMINAL UNDER SECTION 3A. IT IS  
24 NOT A VIOLATION OF THIS ACT TO CHARGE FOR A CONSUMER ITEM A TOTAL  
25 PRICE LESS THAN THE PRICE DISPLAYED ON A SIGN, DISPLAYED BY A  
26 REMOTE UPC CODE SCANNER, OR PRINTED AT A PRICE VERIFICATION  
27 TERMINAL UNDER SECTION 3A.



1           (2) IT IS PRIMA FACIE EVIDENCE OF A VIOLATION OF THIS SECTION  
2 IF A PRICE CHARGED OR ATTEMPTED TO BE CHARGED AS A RESULT OF  
3 ELECTRONIC IDENTIFICATION OR CALCULATION BY AN AUTOMATIC CHECKOUT  
4 SYSTEM EXCEEDS THE PRICE DISPLAYED ON A SIGN, DISPLAYED BY A REMOTE  
5 UPC CODE SCANNER, OR PRINTED AT A PRICE VERIFICATION TERMINAL UNDER  
6 SECTION 3A.

7           (3) BEFORE BRINGING OR JOINING AN ACTION UNDER SECTION 10(2),  
8 WITHIN 30 DAYS AFTER PURCHASING A CONSUMER ITEM THAT IS NOT A FOOD  
9 ITEM OR NONPRESCRIPTION MEDICINE AT A RETAIL STORE THAT MEETS THE  
10 ACCURACY AND CERTIFICATION REQUIREMENT OF SECTION 3A, A CONSUMER  
11 WHO SUFFERS A LOSS BECAUSE THE PRICE CHARGED FOR THE CONSUMER ITEM  
12 IS MORE THAN THE DISPLAYED PRICE FOR THE ITEM OR THE PRICE PRINTED  
13 BY THE REMOTE UPC CODE SCANNER OR PRICE VERIFICATION TERMINAL SHALL  
14 NOTIFY THE RETAILER IN PERSON OR IN WRITING OF THE PRICE  
15 DISCREPANCY. IF, WITHIN 2 DAYS AFTER THE NOTIFICATION, THE RETAILER  
16 TENDERS TO THE CONSUMER AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN  
17 THE DISPLAYED PRICE OR THE PRICE PRINTED BY THE REMOTE UPC CODE  
18 SCANNER OR PRICE VERIFICATION TERMINAL AND THE PRICE CHARGED, PLUS  
19 AN AMOUNT EQUAL TO 20 TIMES THAT DIFFERENCE, BUT THAT IS NOT LESS  
20 THAN \$2.00 OR MORE THAN \$10.00, THE CONSUMER IS BARRED FROM FURTHER  
21 RECOVERY FOR THAT LOSS. IF THE LOSS IS SUFFERED BY 1 CONSUMER  
22 WITHIN 1 TRANSACTION ON 2 OR MORE IDENTICAL ITEMS, THE RETAILER  
23 SHALL TENDER THE DIFFERENCE ON EACH ITEM, PLUS AN AMOUNT EQUAL TO  
24 20 TIMES THE DIFFERENCE ON A SINGLE ITEM BUT THAT IS NOT LESS THAN  
25 \$2.00 AND NOT MORE THAN \$10.00. IF THE RETAILER DOES NOT TENDER  
26 THIS AMOUNT, THE CONSUMER MAY BRING OR JOIN IN AN ACTION AS  
27 PROVIDED IN SECTION 10(2).

1           (4) SUBSECTION (3) DOES NOT APPLY TO A SALE AT RETAIL IF THE  
2   RETAILER INTENTIONALLY CHARGES MORE FOR AN ITEM THAN THE POSTED  
3   PRICE, THE PRICE DISPLAYED BY A REMOTE UPC CODE SCANNER, OR THE  
4   PRICE PRINTED AT THE PRICE VERIFICATION TERMINAL.