

# HOUSE BILL No. 4636

April 20, 2005, Introduced by Reps. Hildenbrand, Accavitti, Drolet, Huizenga, Stahl, Palsrok, Gosselin, Murphy, Gonzales, Cushingberry, Elsenheimer, Wenke, Garfield, Marleau, Brandenburg, LaJoy, David Law, Pearce, Green, Hansen, Sheen, Hoogendyk, Pavlov, Farhat, Baxter, Jones, Moolenaar, Steil, Taub, Robertson, Nitz, Mortimer, Vander Veen, Proos, Caul, Stakoe, Ward, Palmer, DeRoche, Hummel, Kooiman and Lemmons, III 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 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~~  
6 **THAT** are likely to induce, directly or indirectly, the purchase of

1 a consumer item, service, good, merchandise, commodity, or real  
2 property.

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

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

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

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

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

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

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

27 **(I) ~~(h)~~** "Total price" means the full purchase price of a

1 consumer item, excluding sales tax and container deposit.

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

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

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

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

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

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

27       (e) An unpackaged food item.

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

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

5 (h) Live animals.

6 (i) Motor vehicles.

7 (j) Motor vehicle parts.

8 (k) Packages of 20 or fewer cigarettes.

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

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

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

15 (3) In addition to the ~~exemptions allowed in~~ **EXCEPTIONS**  
 16 **UNDER** subsection (2), a retailer may choose to not individually  
 17 price mark not more than ~~25~~ **75** classes of items or individual  
 18 items, which classes or items shall be listed and posted in a  
 19 conspicuous place in the retail store, and may choose to not  
 20 individually price mark not more than 25 additional classes of  
 21 items or individual items ~~which~~ **THAT** are advertised or featured  
 22 at a reduced price.

23 (4) ~~The~~ **IF THE** price and the name or description of a class  
 24 of items or individual items **ARE** not **PRICE** marked pursuant to  
 25 subsection (3), ~~shall be indicated~~ **THE RETAILER SHALL INDICATE**  
 26 **THE PRICE AND THE NAME OR DESCRIPTION OF THE CLASS OF ITEMS OR**  
 27 **INDIVIDUAL ITEMS** by **POSTING** a clear, readable, and conspicuous sign

1 in immediate conjunction with the area in which the unmarked item  
2 or class of items is displayed.

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

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

12 (A) THE CONSUMER ITEM IS NOT A FOOD ITEM OR NONPRESCRIPTION  
13 MEDICINE.

14 (B) AT THE POINT OF DISPLAY OF THE CONSUMER ITEM, THERE IS A  
15 LABEL OR SIGN POSTED IMMEDIATELY ABOVE, BELOW, OR ADJACENT TO THE  
16 CONSUMER ITEM THAT CLEARLY AND CONSPICUOUSLY DISPLAYS TO THE  
17 CONSUMER THE TOTAL PRICE OF THE CONSUMER ITEM IN ARABIC NUMERALS  
18 AND A DESCRIPTION OF THE CONSUMER ITEM, INCLUDING, BUT NOT LIMITED  
19 TO, THE PRODUCT NAME OR DESCRIPTION, BRAND, AND SIZE OF THE ITEM.

20 (C) THE RETAILER UTILIZES AN AUTOMATIC CHECKOUT SYSTEM AT THE  
21 RETAIL STORE THAT IS AUDITED AT LEAST EVERY CALENDAR QUARTER BY AN  
22 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT OR ACCOUNTING FIRM, AND THE  
23 ACCOUNTANT OR FIRM CERTIFIES, AND ISSUES A CERTIFICATE OF  
24 COMPLIANCE, THAT THE AUTOMATIC CHECKOUT SYSTEM MEETS 1 OF THE  
25 FOLLOWING:

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

27 (ii) HAS AN ERROR RATE NOT GREATER THAN 2% FOR SALES OF

1 CONSUMER ITEMS DURING THE PRECEDING CALENDAR QUARTER.

2 (D) THE RETAILER PROVIDES AT LEAST 1 REMOTE UPC CODE SCANNER  
3 FOR EACH 5,000 SQUARE FEET OF RETAIL FLOOR SELLING SPACE IN EACH  
4 RETAIL STORE LOCATION. A REMOTE UPC CODE SCANNER PROVIDED UNDER  
5 THIS SUBDIVISION MUST MEET ALL OF THE FOLLOWING REQUIREMENTS:

6 (i) BE COMPATIBLE WITH AND SYNCHRONIZED WITH THE UPC CODE  
7 SCANNING CAPABILITY OF THE RETAILER'S AUTOMATIC CHECKOUT SYSTEM  
8 USED AT THE POINT OF SALE.

9 (ii) BE READILY ACCESSIBLE TO CONSUMERS AND LOCATED IN A  
10 CONVENIENT PLACE WITHIN THE RETAIL STORE.

11 (iii) DISPLAY THE PRICE OF A CONSUMER ITEM SCANNED BY A CONSUMER  
12 IN ARABIC NUMERALS.

13 (E) THE RETAILER PROVIDES AT LEAST 1 REMOTE UPC CODE SCANNER  
14 FOR EACH 10,000 SQUARE FEET OF RETAIL FLOOR SELLING SPACE IN EACH  
15 RETAIL STORE LOCATION. A REMOTE UPC CODE SCANNER PROVIDED UNDER  
16 THIS SUBDIVISION MUST MEET ALL OF THE FOLLOWING REQUIREMENTS:

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

20 (ii) BE READILY ACCESSIBLE TO CONSUMERS AND LOCATED IN A  
21 CONVENIENT PLACE WITHIN THE RETAIL STORE.

22 (iii) DISPLAY THE PRICE OF A CONSUMER ITEM SCANNED BY A CONSUMER  
23 IN ARABIC NUMERALS.

24 (iv) ALLOW A CONSUMER TO PRINT THE PRICE OF A CONSUMER ITEM ON  
25 A LABEL THAT THE CONSUMER CAN AFFIX TO THE ITEM.

26 (2) IN DETERMINING AN ACCURACY RATE OR ERROR RATE UNDER  
27 SUBSECTION (1)(B), THE CERTIFIED PUBLIC ACCOUNTANT OR ACCOUNTING

1 FIRM SHALL INCLUDE OVERCHARGES TO A CONSUMER BUT NOT UNDERCHARGES.  
2 THE ACCOUNTANT OR FIRM MAY USE RECOGNIZED SAMPLING TECHNIQUES IN  
3 THE QUARTERLY AUDIT. A RETAILER SHALL MAINTAIN AUDIT REPORTS AND  
4 CERTIFICATES OF COMPLIANCE FOR 5 YEARS AND MAKE THEM AVAILABLE TO  
5 THE DIRECTOR ON REQUEST. THE RETAILER SHALL POST THE MOST RECENT  
6 CERTIFICATE OF COMPLIANCE IN A CONSPICUOUS LOCATION IN THE RETAIL  
7 STORE.

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

19 (4) THE DIRECTOR IS RESPONSIBLE FOR THE IMPLEMENTATION AND THE  
20 ADMINISTRATION OF THIS SECTION. THE DEPARTMENT MAY PROMULGATE RULES  
21 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,  
22 MCL 24.201 TO 24.328, REGARDING AUDIT AND CERTIFICATION STANDARDS  
23 FOR AUTOMATIC CHECKOUT SYSTEMS AND REMOTE UPC CODE SCANNERS.

24 SEC. 3B. (1) A PERSON SHALL NOT KNOWINGLY CHARGE OR ATTEMPT TO  
25 CHARGE FOR A CONSUMER ITEM A RETAIL PRICE EXCEEDING THE PRICE  
26 DISPLAYED ON A SIGN OR DISPLAYED BY A REMOTE UPC CODE SCANNER UNDER  
27 SECTION 3A. IT IS NOT A VIOLATION OF THIS ACT TO CHARGE FOR A

1 CONSUMER ITEM A TOTAL PRICE LESS THAN THE PRICE DISPLAYED ON A SIGN  
2 OR DISPLAYED BY A REMOTE UPC CODE SCANNER UNDER SECTION 3A.

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

8 (3) BEFORE BRINGING OR JOINING AN ACTION UNDER SECTION 10(2),  
9 WITHIN 30 DAYS AFTER PURCHASING A CONSUMER ITEM THAT IS NOT A FOOD  
10 ITEM OR NONPRESCRIPTION MEDICINE AT A RETAIL STORE THAT MEETS THE  
11 ACCURACY AND CERTIFICATION REQUIREMENT OF SECTION 3A, A CONSUMER  
12 WHO SUFFERS A LOSS BECAUSE THE PRICE CHARGED FOR THE CONSUMER ITEM  
13 IS MORE THAN THE DISPLAYED PRICE FOR THE ITEM OR THE PRICE PRINTED  
14 BY THE REMOTE UPC CODE SCANNER SHALL NOTIFY THE RETAILER IN PERSON  
15 OR IN WRITING OF THE PRICE DISCREPANCY. IF, WITHIN 2 DAYS AFTER THE  
16 NOTIFICATION, THE RETAILER TENDERS TO THE CONSUMER AN AMOUNT EQUAL  
17 TO THE DIFFERENCE BETWEEN THE DISPLAYED PRICE OR THE PRICE PRINTED  
18 BY THE REMOTE UPC CODE SCANNER AND THE PRICE CHARGED, PLUS AN  
19 AMOUNT EQUAL TO 20 TIMES THAT DIFFERENCE, BUT THAT IS NOT LESS THAN  
20 \$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 OR THE PRICE DISPLAYED BY A REMOTE UPC CODE SCANNER.