

# SENATE BILL No. 376

March 12, 2009, Introduced by Senators BROWN, JANSEN, HARDIMAN, GILBERT and KAHN and referred to the Committee on Commerce and Tourism.

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~~**THAT**  
6 are likely to induce, directly or indirectly, the purchase of a  
7 consumer item, service, good, merchandise, commodity, or real  
8 property.

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

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

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

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

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

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

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

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

27 Sec. 3. (1) ~~The~~**EXCEPT AS OTHERWISE PROVIDED IN SECTION 3A, A**

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

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

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

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

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

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

26 (e) An unpackaged food item.

27 (f) A consumer item ~~which~~ **THAT** has a total weight of not more

1 than 3 ounces, a total volume of not more than 3 cubic inches, and  
 2 OR a total price of not more than ~~30~~99 cents.

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

4 (h) Live animals.

5 (i) Motor vehicles.

6 (j) Motor vehicle parts.

7 (k) Packages of 20 or fewer cigarettes.

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

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

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

14 **(O) FROZEN FOODS.**

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

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

27 (4) ~~The~~**IF THE** price and the name or description of a class of

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

7 (5) IF A CONSUMER ITEM SUBJECT TO THIS SECTION IS AN ITEM OF  
8 FOOD OR A NONPRESCRIPTION MEDICINE SOLD BY WEIGHT OR VOLUME, THE  
9 PRICE MARKED ON THE ITEM UNDER SUBSECTION (1) OR THE SIGN REQUIRED  
10 UNDER SUBSECTION (4) SHALL DISPLAY THE TOTAL PRICE OF THE ITEM AND  
11 CLEARLY AND CONSPICUOUSLY DISPLAY THE PRICE OF THE ITEM EXPRESSED  
12 AS A DOLLAR AMOUNT PER UNIT OF WEIGHT OR VOLUME.

13 (6) ~~(5)~~ As used in subsections (3) and (4), "item", except as  
14 otherwise provided in this subsection, means 1 or more identical  
15 articles ~~—~~ sold in identical quantities or measures. An item may  
16 include more than 1 product, brand, kind, size, or type of  
17 packaging, if they are packaged together and sold as a set and the  
18 sets are identical in all respects, including quantity or measure.

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

22 (A) THE CONSUMER ITEM IS NOT A FOOD ITEM OR NONPRESCRIPTION  
23 MEDICINE.

24 (B) AT THE POINT OF DISPLAY OF THE CONSUMER ITEM, THERE IS A  
25 LABEL OR SIGN POSTED IMMEDIATELY ABOVE, BELOW, OR ADJACENT TO THE  
26 CONSUMER ITEM THAT CLEARLY AND CONSPICUOUSLY DISPLAYS TO THE  
27 CONSUMER THE TOTAL PRICE OF THE CONSUMER ITEM IN ARABIC NUMERALS

1 AND IN AT LEAST 18-POINT FONT AND A DESCRIPTION OF THE CONSUMER  
2 ITEM, INCLUDING, BUT NOT LIMITED TO, THE PRODUCT NAME OR  
3 DESCRIPTION, BRAND, AND SIZE OF THE ITEM.

4 (C) THE RETAILER UTILIZES AN AUTOMATIC CHECKOUT SYSTEM AT THE  
5 RETAIL STORE THAT IS AUDITED EVERY CALENDAR QUARTER BY A CERTIFIED  
6 PUBLIC ACCOUNTANT OR ACCOUNTING FIRM, AND THE ACCOUNTANT OR FIRM  
7 CERTIFIES, AND ISSUES A CERTIFICATE OF COMPLIANCE, THAT THE  
8 AUTOMATIC CHECKOUT SYSTEM MEETS 1 OF THE FOLLOWING:

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

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

12 (2) IN DETERMINING AN ACCURACY RATE OR ERROR RATE UNDER  
13 SUBSECTION (1) (C), THE CERTIFIED PUBLIC ACCOUNTANT OR ACCOUNTING  
14 FIRM SHALL INCLUDE OVERCHARGES TO A CONSUMER BUT NOT UNDERCHARGES.  
15 THE ACCOUNTANT OR FIRM MAY USE RECOGNIZED SAMPLING TECHNIQUES IN  
16 THE QUARTERLY AUDIT. A RETAILER SHALL MAINTAIN AUDIT REPORTS AND  
17 CERTIFICATES OF COMPLIANCE FOR 5 YEARS AND MAKE THEM AVAILABLE TO  
18 THE DIRECTOR ON REQUEST. THE RETAILER SHALL POST THE MOST RECENT  
19 CERTIFICATE OF COMPLIANCE IN A CONSPICUOUS LOCATION IN THE RETAIL  
20 STORE.

21 (3) IF THE RETAILER FAILS TO MEET THE ACCURACY AND  
22 CERTIFICATION REQUIREMENTS OF SUBSECTION (1) FOR A RETAIL STORE,  
23 THE RETAILER HAS 21 DAYS IN WHICH TO CORRECT ANY SYSTEM  
24 DEFICIENCIES AND TO OBTAIN A RECERTIFICATION FROM THE CERTIFIED  
25 PUBLIC ACCOUNTANT OR ACCOUNTING FIRM. IF THE RETAILER DOES NOT  
26 OBTAIN A RECERTIFICATION WITHIN THE 21-DAY PERIOD, THIS SECTION  
27 DOES NOT APPLY TO THE CONSUMER ITEMS AT THAT RETAIL STORE, AND THE

1 RETAILER SHALL COMPLY WITH SECTION 3 WITH RESPECT TO THE CONSUMER  
2 ITEMS DESCRIBED IN THIS SECTION, AND MAY NOT UTILIZE THE EXCEPTION  
3 TO SECTION 3(1) CONTAINED IN THIS SECTION AT THAT RETAIL STORE FOR  
4 A PERIOD OF AT LEAST 180 DAYS.

5 (4) THE DIRECTOR IS RESPONSIBLE FOR THE IMPLEMENTATION AND THE  
6 ADMINISTRATION OF THIS SECTION. THE DEPARTMENT MAY PROMULGATE RULES  
7 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,  
8 MCL 24.201 TO 24.328, REGARDING AUDIT AND CERTIFICATION STANDARDS  
9 FOR AUTOMATIC CHECKOUT SYSTEMS.

10 SEC. 3B. (1) A PERSON SHALL NOT KNOWINGLY CHARGE OR ATTEMPT TO  
11 CHARGE FOR A CONSUMER ITEM A RETAIL PRICE EXCEEDING THE PRICE  
12 DISPLAYED ON A SIGN OR LABEL UNDER SECTION 3A. IT IS NOT A  
13 VIOLATION OF THIS ACT TO CHARGE FOR A CONSUMER ITEM A TOTAL PRICE  
14 LESS THAN THE PRICE DISPLAYED ON A SIGN OR LABEL UNDER SECTION 3A.

15 (2) IT IS PRIMA FACIE EVIDENCE OF A VIOLATION OF THIS SECTION  
16 IF A PRICE CHARGED OR ATTEMPTED TO BE CHARGED AS A RESULT OF  
17 ELECTRONIC IDENTIFICATION OR CALCULATION BY AN AUTOMATIC CHECKOUT  
18 SYSTEM EXCEEDS THE PRICE DISPLAYED ON A SIGN OR LABEL UNDER SECTION  
19 3A.

20 (3) BEFORE BRINGING OR JOINING AN ACTION UNDER SECTION 10(2),  
21 WITHIN 30 DAYS AFTER PURCHASING A CONSUMER ITEM THAT IS NOT A FOOD  
22 ITEM OR NONPRESCRIPTION MEDICINE AT A RETAIL STORE THAT MEETS THE  
23 ACCURACY AND CERTIFICATION REQUIREMENT OF SECTION 3A, A CONSUMER  
24 WHO SUFFERS A LOSS BECAUSE THE PRICE CHARGED FOR THE CONSUMER ITEM  
25 IS MORE THAN THE PRICE DISPLAYED ON THE SIGN OR LABEL UNDER SECTION  
26 3A FOR THE ITEM SHALL NOTIFY THE RETAILER IN PERSON OR IN WRITING  
27 OF THE PRICE DISCREPANCY. IF, WITHIN 2 DAYS AFTER THE NOTIFICATION,

1 THE RETAILER TENDERS TO THE CONSUMER AN AMOUNT EQUAL TO THE  
2 DIFFERENCE BETWEEN THE PRICE DISPLAYED ON THE SIGN OR LABEL AND THE  
3 PRICE CHARGED, PLUS AN AMOUNT EQUAL TO 20 TIMES THAT DIFFERENCE,  
4 BUT THAT IS NOT LESS THAN \$2.00 OR MORE THAN \$10.00, THE CONSUMER  
5 IS BARRED FROM FURTHER RECOVERY FOR THAT LOSS. IF THE LOSS IS  
6 SUFFERED BY 1 CONSUMER WITHIN 1 TRANSACTION ON 2 OR MORE IDENTICAL  
7 ITEMS, THE RETAILER SHALL TENDER THE DIFFERENCE ON EACH ITEM, PLUS  
8 AN AMOUNT EQUAL TO 20 TIMES THE DIFFERENCE ON A SINGLE ITEM BUT  
9 THAT IS NOT LESS THAN \$2.00 AND NOT MORE THAN \$10.00. IF THE  
10 RETAILER DOES NOT TENDER THIS AMOUNT, THE CONSUMER MAY BRING OR  
11 JOIN IN AN ACTION AS PROVIDED IN SECTION 10(2).

12 (4) SUBSECTION (3) DOES NOT APPLY TO A SALE AT RETAIL IF THE  
13 RETAILER INTENTIONALLY CHARGES MORE FOR AN ITEM THAN THE PRICE  
14 DISPLAYED ON A SIGN OR LABEL UNDER SECTION 3A.