

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Reps. Lyons, Bumstead, Knollenberg, Agema, Cotter, Ouimet, MacGregor, Haveman, O'Brien, Moss, Haines, Crawford, Callton, Kowall, Franz, Kurtz, Farrington, Gilbert, Olson, Zorn, Outman, Glardon, Price, Wayne Schmidt, Foster, Heise, Tyler, Potvin, Yonker, Somerville, Poleski, Forlini, Lund and MacMaster

ENROLLED HOUSE BILL No. 4158

AN ACT to regulate certain pricing of consumer items and the advertising of consumer items, goods, merchandise, and commodities; to prescribe the powers and duties of certain state and local officials; to provide remedies and penalties; to make appropriations; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the “shopping reform and modernization act”.

Sec. 2. As used in this act:

(a) “Advertise” means the use or dissemination of an advertising by a person that is subject to this act.

(b) “Advertising” or “advertisement” means a communication or representation that is disseminated in any manner by any means for the purpose of inducing, or that is likely to induce, directly or indirectly, the purchase of a consumer item, good, merchandise, or commodity.

(c) “Automatic checkout system” means an electronic device, computer, or machine that determines the price of a consumer item by using a product identity code. An automatic checkout system may but is not required to include an optical scanner.

(d) “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.

(e) A price is “displayed” for a consumer item if the price is stamped, affixed, or otherwise marked on the consumer item; or the price of the consumer item is displayed, by signage, by an electronic reader, or by any other method that clearly and reasonably conveys the current price of the consumer item, to a consumer when in the store at the place where the item is located.

(f) “Person” means an individual, corporation, limited liability company, partnership, association, or other legal entity.

(g) “Sale at retail” means a transfer of an interest in a consumer item by a person that is regularly and principally engaged in the business of selling consumer items to a buyer for use or consumption and not for resale.

(h) “Total price” means the full purchase price of a consumer item, excluding sales tax and container deposit.

Sec. 3. All of the following apply to the director of the department of agriculture and rural development:

(a) He or she is responsible for the implementation and administration of sections 7 and 8.

(b) He or she shall investigate complaints concerning violations of sections 7 and 8 and conduct any other investigations he or she considers advisable.

(c) As the state director of weights and measures, he or she shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and administer sections 7 and 8.

Sec. 4. (1) A person shall not knowingly advertise the availability of a consumer item for sale at retail at a sale or special price, or as being reduced in price by an amount or proportion, unless the advertisement meets all of the following:

(a) It includes the dates that item is available at the advertised price, or the quantity available at the advertised price.

(b) If applicable, it states that the item is available at that price only as long as the advertised quantity lasts or as long as quantities or supplies last.

(c) If there is a limitation on the quantity available of a consumer item to each customer, that limitation is clearly disclosed.

(2) If a person advertises a consumer item at a specific price that is not indicated to be a special, sale, or reduced price, the advertiser shall do 1 of the following:

(a) Make the consumer item available at the advertised price for not less than 5 days after the date the consumer item was last advertised. If the item is not available for that period of time, the requirements of subsection (3) apply. The advertiser is not required to make the consumer item available nor fulfill the requirements of subsection (3) if the unavailability of the consumer item is due to a governmental action, a plant closing, or an act of God and if the specific cause of the unavailability of the consumer item is posted conspicuously for review by the consumer.

(b) Indicate in the advertisement the dates the consumer item is available at the advertised price. If the item is not available for those dates, the requirements of subsection (3) apply.

(c) Indicate in the advertisement the quantity of the consumer item that is available at the advertised price and include in the advertisement that the consumer item is available at the advertised price only as long as the stated quantity lasts.

(3) If an advertisement under this section does not state the quantity of a consumer item available or meet the requirements of subsection (1) or (2)(c), and if the consumer item cannot be sold at the advertised price throughout the advertised period of sale, the advertiser shall make available to the customer a written guarantee to deliver under the advertised conditions the consumer item at a future date stated in the guarantee, or when notified by the advertiser that the item is available. If the advertised consumer item cannot be obtained to satisfy the condition of the guarantee, the advertiser may provide a similar consumer item of equal or greater monetary value.

(4) If an advertiser elects in a written guarantee under subsection (3) to notify a consumer when a consumer item will be available, the notification of availability shall take place within 90 days after the guarantee is given. After the notice of availability is given, the advertiser shall hold the consumer item for delivery to the customer for at least 7 days, except the advertiser is required to hold the consumer item for only 2 days if it is a perishable item.

(5) This section does not apply to baked goods, fresh fruit, or fresh vegetables.

Sec. 5. (1) A person shall not knowingly make, publish, disseminate, circulate, or place before the public an advertisement that contains a statement or representation that is untrue, deceptive, or misleading.

(2) A failure to sell goods, merchandise, or commodities in the manner advertised, or a refusal to sell at the price at which they are advertised or in accordance with other terms and conditions of the advertisement, creates a rebuttable presumption of an intent to violate this act.

(3) For purposes of this section, the extent to which an advertising fails to reveal facts that are material in light of the representations made or suggested in a positive manner shall be considered in determining whether the advertising is deceptive or misleading.

(4) A person shall not make, publish, disseminate, circulate, or place before the public an advertisement with the intent, design, or purpose not to sell the goods, merchandise, or commodities at the price stated in the advertisement or otherwise communicated, or with intent not to sell the goods, merchandise, or commodities included in the advertisement.

(5) A person shall not advertise, call attention to, or give publicity to the sale of goods, merchandise, or commodities that the person knows are not first class, if the manufacturer of those goods, merchandise, or commodities has rejected them as not first class, unless there is displayed directly in connection with the name and description of the goods, merchandise, or commodities, a direct and unequivocal statement, phrase, or word that clearly indicates that the advertised goods, merchandise, or commodities are seconds or are blemished goods, merchandise, or commodities, or

have been rejected by the manufacturer of the goods, merchandise, or commodities. For purposes of this section, goods, merchandise, or commodities that are advertised, offered for sale, and sold as a unit or set consisting of more than 1 part or piece are sufficiently identified as not first class if advertised, offered for sale, and sold as a unit or set at the single price advertised, and are displayed in connection with a direct and unequivocal statement, phrase, or word identifying the goods as not first class. As used in this subsection, "not first class" means the goods, merchandise, or commodities are substantially defective or consist of articles or units or parts commonly referred to as seconds or blemished goods, merchandise, or commodities.

Sec. 6. Sections 4 and 5 do not apply to an owner, publisher, printer, agent, or employee of a newspaper, a person that publishes any other publication, periodical, or circular, including a circular prepared for national distribution, a person that provides outdoor advertising, or a radio or television station, if that person in good faith and without knowledge of the falsity or deceptive character of the advertisement, publishes, causes to be published, or takes part in the publication of an advertisement that violates section 4 or 5.

Sec. 7. (1) Except as otherwise provided in subsection (2), a person shall display the total price of a consumer item offered for sale at retail at the place of the retail sale.

(2) Subsection (1) does not apply to any of the following:

(a) A consumer item that is sold by weight or volume and is not in a package or container.

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

(c) Prepared food intended for immediate consumption, as defined in section 4g of the general sales tax act, 1933 PA 167, MCL 205.54g.

(d) A consumer item purchased by mail or through catalog order, or that is not otherwise visible for inspection by the consumer at the time of the sale, and that is ordered or requested by the consumer, if the price of the consumer item is on the consumer's written order or request or on a bill, invoice, or other notice that describes or names the consumer item and is enclosed with the consumer item.

(e) An unpackaged food item.

(f) A consumer item that has a total weight of not more than 3 ounces, a total volume of not more than 3 cubic inches, and a total price of not more than 30 cents.

(g) Live plants.

(h) Live animals.

(i) Motor vehicles.

(j) Motor vehicle parts.

(k) Packages of 20 or fewer cigarettes.

(l) Greeting cards that are sold individually and have a readable coded price on the back of the card.

(m) Merchandise that is ordered as a gift by a consumer and is sent by mail or other delivery service to a person other than the consumer by the retailer at the request of the consumer.

Sec. 8. (1) A person shall not knowingly charge or attempt to charge for a consumer item that is subject to section 7 a retail sale price that is higher than the price displayed for that item.

(2) It is not a violation of subsection (1) to charge a total price for a consumer item that is subject to section 7 that is less than the price displayed for that item.

(3) It is prima facie evidence of a violation of this section if a price a person charges or attempts to charge for a consumer item that is subject to section 7 is established by electronic identification or calculation by an automatic checkout system and that price exceeds the price displayed for that item.

Sec. 9. (1) Except as provided in subsection (4), this section applies to a sale at retail that meets all of the following conditions:

(a) There is a price displayed for the consumer item.

(b) The sale is recorded by an automatic checkout system.

(c) The buyer is given a receipt that describes the item and states the price charged for the item.

(2) Before bringing or joining in an action under section 12(2), within 30 days after purchasing a consumer item, a buyer who suffers loss because the price charged for the item is more than the price displayed for that item shall notify the seller in person or in writing that the price charged is more than the price displayed for that item. The notice shall include evidence of the loss suffered by the buyer. If the seller pays the buyer 1 of the following amounts within 2 days after the seller receives notification under this subsection, the buyer is barred from any further recovery for that loss:

(a) Unless subdivision (b) applies, an amount equal to the difference between the price displayed and the price charged for the consumer item, plus an amount equal to 10 times that difference but that is not less than \$1.00 or more than \$5.00.

(b) If a loss is suffered by a buyer on 2 or more identical consumer items in a single transaction, an amount equal to the difference between the price displayed and the price charged for each of those identical items, plus an amount equal to 10 times that difference for 1 of the identical items but that is not less than \$1.00 or more than \$5.00.

(3) If a seller does not pay a buyer who suffers a loss described in subsection (2) the amount described in that subsection for that loss, the buyer may bring or join in an action against the seller under section 12(2).

(4) This section does not apply to a sale at retail in which the seller intentionally charges more for a consumer item than the price displayed for the item.

Sec. 10. (1) The attorney general may maintain an action to enjoin a continuing violation of this act. If the court finds that the defendant is violating or has violated this act, it shall enjoin the defendant from continuing that violation. It is not necessary that actual damages to a person are alleged or proved for a court to enjoin a defendant under this section.

(2) The attorney general shall not institute a proceeding for an injunction under this section unless the attorney general has notified the defendant of his or her intention to seek an injunction if the defendant does not cease and desist or take positive action to cease and desist from continuing to act in a manner that violates this act. The attorney general must provide this notice at least 48 hours before instituting the proceeding. A court shall not issue the injunction if the defendant ceased, or took positive action to cease and desist, violating this act after receiving the notice from the attorney general.

(3) The attorney general may accept an assurance of discontinuance of an act or practice alleged to be a violation of this act from the person engaging in, or that was engaged in, that act or practice. An assurance of discontinuance shall be in writing and be filed with the clerk of the circuit court of the county in which the alleged violator resides or has its principal place of business. A filing fee is not required for the filing of an assurance of discontinuance with the clerk of the circuit court. An assurance of discontinuance shall be signed by the alleged violator and shall contain a statement describing each act or practice to which the assurance of discontinuance applies and the specific provisions of this act prohibiting that act or practice. An assurance of discontinuance is not considered an admission of any fact or issue at law.

(4) If a prosecuting attorney or law enforcement officer receives notice of an alleged violation of this act, of a violation of an injunction, order, decree, or judgment issued in an action brought under this section, or of an assurance of discontinuance given under subsection (3), he or she shall immediately forward written notice of the violation, and any information he or she has concerning the violation, to the office of the attorney general.

(5) A person that knowingly violates this act or the terms of an injunction, order, decree, or judgment issued under this section shall pay to the state a civil fine of not more than \$1,000.00 for the first violation and not more than \$5,000.00 for the second and any subsequent violation. For the purposes of this subsection, the court that issues an injunction, order, decree, or judgment under this section retains jurisdiction, the action is continued, and the attorney general may petition for recovery of the civil fine described in this subsection.

(6) The attorney general may promulgate rules to implement and administer this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 11. (1) For the fiscal year ending September 30, 2011, \$100,000.00 is appropriated from the general fund to the department of attorney general to develop and implement a public consumer education program to provide general information and advice regarding the advertising and pricing requirements of this act and the remedies available to consumers under this act.

(2) The attorney general shall establish and maintain an internet website available to the public that provides general information and advice regarding the advertising and pricing requirements of this act and the remedies available to consumers under this act.

(3) The appropriation made and the expenditures authorized under this section and the department of attorney general are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Sec. 12. (1) Whether or not a person seeks damages or has an adequate remedy at law, a person may bring an action to do either or both of the following if the attorney general or prosecuting attorney fails to initiate action within 60 days after receiving notice of an alleged violation of this act:

(a) Obtain a declaratory judgment that an act or practice violates this act.

(b) Enjoin by temporary or permanent injunction a person that is engaging or is about to engage in an act or practice that violates this act.

(2) Except as provided in section 9, a person that suffers loss as a result of a violation of this act may bring an individual or a class action to recover actual damages or \$250.00, whichever is greater, for each day on which a violation of this act is found, together with reasonable attorneys' fees that do not exceed \$300.00 in an individual action.

Sec. 13. A prosecuting attorney may conduct an investigation under this act and may institute and prosecute an action under this act in the same manner as the attorney general.

Sec. 14. (1) The remedies provided under this act are the exclusive remedies for violations of section 4, 7, 8, or 9.

(2) A city, village, township, or county shall not enact an ordinance or other regulation that is inconsistent with this act or with a rule promulgated under this act.

Enacting section 1. 1976 PA 449, MCL 445.351 to 445.364, is repealed effective September 1, 2011.

Enacting section 2. This act takes effect September 1, 2011.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor