

# SENATE BILL No. 702

September 4, 2007, Introduced by Senators ALLEN, KUIPERS, GILBERT and BIRKHOLZ 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

1 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 consumer  
5 item by using a product identity code, and may but is not required  
6 to include an optical scanner.

7 (c) "Class of item" means a group of consumer items ~~which~~**THAT**  
8 may vary by brand, style, pattern, color, or size other than weight  
9 or volume. Items within a class must otherwise be identical and  
10 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 in  
24 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~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 3A, A**  
3 **PERSON SHALL CLEARLY AND CONSPICUOUSLY INDICATE THE** total price of  
4 a consumer item displayed or offered for sale at retail ~~shall be~~  
5 ~~clearly and conspicuously indicated in arabic~~ **ARABIC** numerals. ~~, so~~  
6 ~~as to~~ **THE TOTAL PRICE MUST** be readable and understandable by visual  
7 inspection ~~, and shall be~~ stamped upon or affixed to the consumer  
8 item. If the consumer item is in a package or container, the total  
9 price ~~shall~~ **MUST** be stamped upon or affixed to the outside surface  
10 of the package or container and need not be placed directly upon  
11 the consumer item.

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

14       (a) A consumer item sold by weight or volume ~~which~~ **THAT** is not  
15 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 the  
23 consumer at the time of the sale, and ~~which~~ **THAT** is ordered or  
24 requested by the consumer, if the price of the **CONSUMER** item is on  
25 the consumer's written order or request or on a bill, invoice, or  
26 other notice ~~which~~ **THAT** describes or names the **CONSUMER** item and  
27 ~~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 more  
3 than 3 ounces, a total volume of not more than 3 cubic inches, ~~and~~  
4 **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 readable  
11 coded price on the back of the card.

12 (m) Merchandise ordered as a gift by a consumer ~~which~~**THAT** is  
13 sent by mail or other delivery service to a person other than the  
14 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 UNDER**  
23 subsection (2), a retailer may choose to not individually price  
24 mark not more than 25 classes of items or individual items, which  
25 classes or items shall be listed and posted in a conspicuous place  
26 in the retail store, and may choose to not individually price mark  
27 not more than 25 additional classes of items or individual items

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

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

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

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

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

24       **(A) THE CONSUMER ITEM IS NOT A FOOD ITEM OR NONPRESCRIPTION**  
25 **MEDICINE.**

26       **(B) AT THE POINT OF DISPLAY OF THE CONSUMER ITEM, THERE IS A**  
27 **LABEL OR SIGN POSTED IMMEDIATELY ABOVE, BELOW, OR ADJACENT TO THE**

1 CONSUMER ITEM THAT CLEARLY AND CONSPICUOUSLY DISPLAYS TO THE  
2 CONSUMER THE TOTAL PRICE OF THE CONSUMER ITEM IN ARABIC NUMERALS  
3 AND IN AT LEAST 18-POINT FONT AND A DESCRIPTION OF THE CONSUMER  
4 ITEM, INCLUDING, BUT NOT LIMITED TO, THE PRODUCT NAME OR  
5 DESCRIPTION, BRAND, AND SIZE OF THE ITEM.

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

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

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

14 (D) THE RETAILER PROVIDES A PRICE VERIFICATION TERMINAL AT  
15 EACH EXIT USED BY CONSUMERS AT EACH RETAIL STORE LOCATION. A PRICE  
16 VERIFICATION TERMINAL PROVIDED UNDER THIS SUBDIVISION MUST MEET ALL  
17 OF THE FOLLOWING REQUIREMENTS:

18 (i) IT IS READILY ACCESSIBLE TO CONSUMERS.

19 (ii) IT IS CAPABLE OF SCANNING THE BAR CODE ON A CONSUMER'S  
20 SALES RECEIPT AND PRINTING OUT A LIST OF THE ITEMS SHOWN ON THE  
21 SALES RECEIPT, AND THE REGULAR PRICE AND SALE PRICE, IF APPLICABLE,  
22 OF THE ITEM IN ARABIC NUMERALS FROM AN INDEPENDENT DATABASE SOURCE  
23 WITHIN THE RETAILER'S PRICING DATABASE. AS USED IN THIS  
24 SUBDIVISION, "PRICING DATABASE" MEANS THE RETAILER'S DATABASE OF  
25 REGULAR RETAIL PRICES FOR ITEMS THAT THE RETAILER USES TO PREPARE  
26 SIGNS AND LABELS FOR PURPOSES OF SUBDIVISION (B).

27 (2) IN DETERMINING AN ACCURACY RATE OR ERROR RATE UNDER

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

9 (3) IF THE RETAILER FAILS TO MEET THE ACCURACY AND  
10 CERTIFICATION REQUIREMENTS OF SUBSECTION (1) FOR A RETAIL STORE,  
11 THE RETAILER HAS 21 DAYS IN WHICH TO CORRECT ANY SYSTEM  
12 DEFICIENCIES AND TO OBTAIN A RECERTIFICATION FROM THE CERTIFIED  
13 PUBLIC ACCOUNTANT OR ACCOUNTING FIRM. IF THE RETAILER DOES NOT  
14 OBTAIN A RECERTIFICATION WITHIN THE 21-DAY PERIOD, THIS SECTION  
15 DOES NOT APPLY TO THE CONSUMER ITEMS AT THAT RETAIL STORE, AND THE  
16 RETAILER SHALL COMPLY WITH SECTION 3 WITH RESPECT TO THE CONSUMER  
17 ITEMS DESCRIBED IN THIS SECTION, AND MAY NOT UTILIZE THE EXCEPTION  
18 TO SECTION 3 (1) CONTAINED IN THIS SECTION AT THAT RETAIL STORE FOR  
19 A PERIOD OF AT LEAST 180 DAYS.

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

25 SEC. 3B. (1) A PERSON SHALL NOT KNOWINGLY CHARGE OR ATTEMPT TO  
26 CHARGE FOR A CONSUMER ITEM A RETAIL PRICE EXCEEDING THE PRICE  
27 DISPLAYED ON A SIGN OR PRINTED AT A PRICE VERIFICATION TERMINAL

1 UNDER SECTION 3A. IT IS NOT A VIOLATION OF THIS ACT TO CHARGE FOR A  
2 CONSUMER ITEM A TOTAL PRICE LESS THAN THE PRICE DISPLAYED ON A SIGN  
3 OR PRINTED AT A PRICE VERIFICATION TERMINAL UNDER SECTION 3A.

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

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



1 PROVIDED IN SECTION 10(2).

2 (4) SUBSECTION (3) DOES NOT APPLY TO A SALE AT RETAIL IF THE  
3 RETAILER INTENTIONALLY CHARGES MORE FOR AN ITEM THAN THE POSTED  
4 PRICE OR THE PRICE PRINTED AT THE PRICE VERIFICATION TERMINAL.