

# HOUSE BILL No. 4676

April 19, 1989, Introduced by Rep. Ciaramitaro and referred to the Committee on Consumers.

A bill to amend sections 1, 2, 3, 4, 9, and 10a of Act No. 449 of the Public Acts of 1976, 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,"

section 10a as added by Act No. 344 of the Public Acts of 1984, being sections 445.351, 445.352, 445.353, 445.354, 445.359, and 445.360a of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 1, 2, 3, 4, 9, and 10a of Act No. 449  
2 of the Public Acts of 1976, section 10a as added by Act No. 344  
3 of the Public Acts of 1984, being sections 445.351, 445.352,  
4 445.353, 445.354, 445.359, and 445.360a of the Michigan Compiled  
5 Laws, are amended to read as follows:

1       Sec. 1. As used in this act:

2       (a) "Advertising" means all representations disseminated in  
3 any manner by any means for the purpose of inducing, or which are  
4 likely to induce, directly or indirectly, the purchase of a con-  
5 sumer item, service, good, merchandise, commodity, or real  
6 property..

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

11       (c) "Class of item" means a group of consumer items which  
12 may vary by brand, style, pattern, color, or size other than  
13 weight or volume. Items within a class must otherwise be identi-  
14 cal and offered at the same total price.

15       (d) "Consumer item" means an article of tangible personal  
16 property used or consumed, or bought for use or consumption, pri-  
17 marily for personal, family, or household purposes.

18       (e) "Director" means the director of the department of agri-  
19 culture or his OR HER authorized representative.

20       (f) "Person" means an individual, firm, partnership, corpo-  
21 ration, association, or other legal entity.

22       (G) "REDUCED PRICE" MEANS A PRICE AT WHICH AN ITEM IS  
23 OFFERED FOR SALE, WHICH IS BELOW THE PRICE AT WHICH THE SAME ITEM  
24 HAS BEEN IN STOCK, DISPLAYED, OFFERED FOR SALE, AND SOLD AT THAT  
25 RETAIL ESTABLISHMENT WITHIN THE PREVIOUS 15 DAYS.

26       (H) ~~-(g)-~~ "Sale at retail" means the transfer of an interest  
27 in a consumer item by a person regularly and principally engaged

1 in the business of selling consumer items to a buyer for use or  
2 consumption and not for resale.

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

5 Sec. 2. The director shall be responsible for the implemen-  
6 tation and administration of sections 3 and 4 and SHALL DO ALL OF  
7 THE FOLLOWING:

8 (a) ~~Shall investigate~~ INVESTIGATE complaints concerning  
9 violations of sections 3 and 4 ~~,~~ and ~~shall~~ conduct ~~such~~  
10 other investigations as he ~~deems~~ OR SHE CONSIDERS advisable.

11 (b) ~~Shall, as~~ AS the state director of weights and mea-  
12 sures, promulgate rules pursuant to THE ADMINISTRATIVE PROCEDURES  
13 ACT OF 1969, Act No. 306 of the Public Acts of 1969, as amended,  
14 being sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled  
15 Laws, for the implementation and administration of sections 3 and  
16 4.

17 (C) MAKE PERIODIC CHECKS OF PERSONS REGULATED BY THIS ACT TO  
18 ENSURE THEY ARE COMPLYING WITH SECTIONS 3 AND 4.

19 Sec. 3. (1) The total price of a consumer item displayed or  
20 offered for sale at retail shall be clearly and conspicuously  
21 indicated in arabic numerals, so as to be readable and under-  
22 standable by visual inspection, and shall be stamped upon or  
23 affixed to the consumer item. If the consumer item is in a pack-  
24 age or container, the total price shall be stamped upon or  
25 affixed to the outside surface of the package or container and  
26 need not be placed directly upon the consumer item.

1       (2) The requirements of subsection (1) shall not apply to  
2 ANY OF THE FOLLOWING:

3       (a) A consumer item sold by weight or volume which is not in  
4 a package or container.

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

7       (c) Prepared food intended for immediate consumption, as  
8 defined in section 4g of THE GENERAL SALES TAX ACT, Act No. 167  
9 of the Public Acts of 1933, being section 205.54g of the Michigan  
10 Compiled Laws.

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

18       (e) An unpackaged food item.

19       (f) A consumer item which has a total weight of not more  
20 than 3 ounces, a total volume of not more than 3 cubic inches,  
21 and a total price of not more than ~~30~~ 50 cents.

22       (g) Live plants.

23       (h) Live animals.

24       (i) Motor vehicles.

25       (j) Motor vehicle parts.

26       (k) Packages of 20 or fewer cigarettes.

1 (L) Greeting cards sold individually which have a readable  
2 coded price on the back of the card.

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

6 (N) A CONSUMER ITEM THAT IS NOT AVAILABLE FOR SELF-SERVICE  
7 BY THE CONSUMER, BUT IS SOLD FROM A SAMPLE, WHICH SAMPLE SHALL BE  
8 INDIVIDUALLY PRICE MARKED. A RETAILER OR PERSON WHOSE PRIMARY  
9 METHOD OF SALE IS FROM SAMPLE SHALL REMOVE THE SAMPLE FROM DIS-  
10 PLAY IF THE ITEM IS NOT AVAILABLE IN THE STORE.

11 (3) In addition to the exemptions allowed in subsection (2),  
12 a retailer may choose to not individually price mark not more  
13 than 25 classes of items or individual items ~~which classes or~~  
14 ~~items shall be listed and posted in a conspicuous place in the~~  
15 ~~retail store,~~ and may choose to not individually price mark not  
16 more than 25 additional classes of items or individual items  
17 which are advertised or featured at a reduced price.

18 (4) ~~The price and the name or description of a class of~~  
19 ~~items or individual items not marked pursuant to subsection (3)~~  
20 ~~shall be indicated by a clear, readable, and conspicuous sign in~~  
21 ~~immediate conjunction with the area in which the unmarked item or~~  
22 ~~class of items is displayed.~~ FOR AN ITEM WHICH IS NOT MARKED  
23 PURSUANT TO SUBSECTION (3), A RETAILER SHALL INDICATE THE PRICE  
24 AND THE NAME OR DESCRIPTION OF THE ITEM ON A CLEAR, READABLE, AND  
25 CONSPICUOUS SIGN IN IMMEDIATE CONJUNCTION WITH THE DISPLAYED ITEM  
26 AND SHALL ADVERTISE IN A PRINTED FORM THE PRICE AND THE NAME OR  
27 DESCRIPTION OF THE ITEM, WHICH FORM SHALL BE MAILED OR CIRCULATED

1 BROADLY IN THE GENERAL MARKET AREA AND BE PROMINENTLY DISPLAYED  
2 IN THE RETAIL ESTABLISHMENT AT WHICH THE ITEM IS AVAILABLE FOR  
3 SALE, OR BE AVAILABLE TO, AND BE RETAINABLE BY, CONSUMERS.

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

11 Sec. 4. (1) A person shall not knowingly charge or attempt  
12 to charge for a consumer item a retail sale price exceeding the  
13 price required to be indicated pursuant to section 3. It shall  
14 not be construed to be a violation of this act to charge for a  
15 consumer item a total price less than the price required to be  
16 indicated pursuant to section 3.

17 (2) It shall be prima facie evidence of a violation of this  
18 section if a price charged or attempted to be charged as a result  
19 of electronic identification or calculation by an automatic  
20 checkout system exceeds the price required to be indicated pursu-  
21 ant to section 3. IF THE ERROR IN AN AUTOMATIC CHECKOUT SYSTEM  
22 IS NOT CORRECTED WITHIN 24 HOURS FROM WHEN DISCOVERED, THE  
23 RETAILER SHALL FORFEIT AND PAY TO THE STATE A CIVIL PENALTY OF  
24 \$10,000.00.

25 Sec. 9. (1) The attorney general may maintain an action to  
26 enjoin a continuing violation of this act. If the court finds  
27 that the defendant is violating or has violated this act, it

1 shall enjoin him OR HER from ~~a continuance of that~~ CONTINUING  
2 THE violation. It ~~shall~~ IS not ~~be~~ necessary ~~that~~ TO ALLEGE  
3 OR PROVE actual damages to a person. ~~be alleged or proved.~~

4 (2) A proceeding shall not be instituted for an injunction  
5 unless the attorney general has notified the defendant of his OR  
6 HER intention to seek an injunction ~~if~~ AND the defendant ~~does~~  
7 HAS not ~~cease~~ CEASED and ~~desist~~ DESISTED or ~~take~~ TAKEN pos-  
8 itive action to cease and desist from continuing to act in viola-  
9 tion of this act. The notice shall be given at least 48 hours  
10 before the filing of the action. An injunction shall not issue  
11 if the defendant has ceased or has taken positive action to cease  
12 and desist violating this act ~~—~~ upon receipt of the notice.

13 (3) The attorney general may accept an assurance of discon-  
14 tinuance of a practice alleged to be in violation of this act  
15 from the person engaging in, or who was engaged in, that  
16 practice. The assurance of discontinuance shall be in writing  
17 and be filed with the clerk of the circuit court of the county in  
18 which the alleged violator resides or has his OR HER principal  
19 place of business. A filing fee shall not be required for the  
20 filing of an assurance with the clerk of the circuit court. The  
21 assurance of discontinuance shall be signed by the person and  
22 shall contain a statement describing the acts or practices for  
23 which the assurance of discontinuance is being given and the spe-  
24 cific sections of the law prohibiting those acts or practices.  
25 The assurance is not an admission of any fact or issue at law.

26 (4) A prosecuting attorney or law enforcement officer  
27 receiving notice of an alleged violation of this act, or of a

1 violation of an injunction, order, decree, or judgment issued in  
2 an action brought pursuant to this section, or of an assurance  
3 under this act, shall immediately forward written notice of the  
4 violation together with any information he OR SHE may have to the  
5 office of the attorney general.

6 (5) ~~—A—~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION 4, A person  
7 who knowingly violates this act or the terms of an injunction,  
8 order, decree, or judgment issued pursuant to this section shall  
9 forfeit and pay to the state a civil penalty of not more than  
10 \$1,000.00 for the first violation and not more than \$5,000.00 for  
11 the second and any subsequent violation. For the purposes of  
12 this section, the court issuing an injunction, order, decree, or  
13 judgment shall retain jurisdiction, the cause shall be continued,  
14 and the attorney general may petition for recovery of a civil  
15 penalty as provided by this section OR SECTION 4.

16 (6) The attorney general may promulgate rules pursuant to  
17 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of the  
18 Public Acts of 1969, as amended, BEING SECTIONS 24.201 TO 24.328  
19 OF THE MICHIGAN COMPILED LAWS, to implement and administer sec-  
20 tions 5 to 12. ~~—of this act.—~~

21 Sec. 10a. (1) Except as provided in subsection (3), this  
22 section applies to a sale at retail which meets all of the fol-  
23 lowing conditions:

24 (a) There is a price stamped on or affixed to the item.

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

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



1 (2) Before bringing or joining in an action as provided in  
2 section 10(2), within 30 days after purchasing an item, a buyer  
3 who suffers loss because the price charged for the item is more  
4 than the price stamped on or affixed to the item shall notify the  
5 seller in person or in writing that the price charged is more  
6 than the price stamped or affixed. The notice shall include evi-  
7 dence of the loss suffered by the buyer. If, within 2 days after  
8 the notification, the seller tenders to the buyer an amount equal  
9 to the difference between the price stamped or affixed and the  
10 price charged, plus an amount equal to 10 times that difference  
11 but which is not less than \$1.00, ~~or more than \$5.00,~~ the buyer  
12 is barred from any further recovery for that loss. If the loss  
13 is suffered by 1 buyer within 1 transaction on 2 or more identi-  
14 cal items, the amount to be tendered by the seller shall be the  
15 difference on each item, plus an amount equal to 10 times the  
16 difference on a single item but which is not less than \$1.00.  
17 ~~and not more than \$5.00.~~ If the seller does not tender this  
18 amount, the buyer may bring or join in an action as provided in  
19 section 10(2).

20 (3) This section does not apply to a sale at retail in which  
21 the seller intentionally charges more for an item than the price  
22 stamped on or affixed to the item.