

SUBSTITUTE FOR
SENATE BILL NO. 1170

A bill to amend 2011 PA 15, entitled
"Shopping reform and modernization act,"
by amending the title and sections 2, 3, 7, 10, and 13 (MCL
445.312, 445.313, 445.317, 445.320, and 445.323) and by adding
section 10a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to regulate certain pricing of consumer items and the
3 advertising of consumer items, goods, merchandise, and commodities;
4 **to impose a fee for certain inspections and special services;** to
5 prescribe the powers and duties of certain state and local
6 officials; to provide remedies and ~~penalties;~~ **prescribe civil**
7 **sanctions;** to make appropriations; and to repeal acts and parts of

1 acts.

2 Sec. 2. As used in this act:

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

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

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

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

17 (e) ~~A price is "displayed" for a consumer item if the price is~~
18 **"Department" means the department of agriculture and rural**
19 **development.**

20 (f) **"Director" means the director of the department or the**
21 **director's designee.**

22 (g) **"Displayed" means** stamped, affixed, or otherwise marked on
23 the consumer item, ~~or the price of the consumer item is displayed~~
24 ~~by~~ signage, ~~by~~ an electronic reader, or ~~by~~ any other method that
25 clearly and reasonably conveys the current price of the consumer
26 item ~~to~~ a consumer when in the store at the place where the item
27 is located.

28 (h) **"Member club" means any membership-based business or**
29 **program that has a primary purpose of offering to members products**

1 or services and discounts related to areas falling within the
2 primary focus of the business or program.

3 (i) ~~(f)~~ "Person" means an individual, corporation, limited
4 liability company, partnership, association, **member club**, or other
5 legal entity.

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

10 (k) ~~(h)~~ "Total price" means the full purchase price, ~~of a~~
11 ~~consumer item~~, excluding sales tax and container deposit.

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

14 (a) ~~He or she~~ **The director** is responsible for the
15 implementation and administration of ~~sections 7 and 8.~~ **this act.**

16 (b) ~~He or she~~ **The director** shall investigate complaints
17 concerning violations of ~~sections 7 and 8.~~ **this act** and conduct any
18 other investigations ~~he or she~~ **the director** considers advisable.

19 (c) ~~As the state director of weights and measures, he or she~~
20 ~~shall~~ **The director may** promulgate rules under the administrative
21 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to
22 implement and administer ~~sections 7 and 8.~~ **this act.**

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

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

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

29 ~~(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.~~

(b) ~~(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.~~

(c) ~~(i)~~ Motor vehicles.

(d) ~~(j)~~ Motor vehicle parts **that are not accessible to the public for direct retail purchase.**

~~(k) Packages of 20 or fewer cigarettes.~~

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

(f) ~~(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.

(3) A consumer item that is sold by weight or volume and is not in a package or container must have the price per weight or price per volume displayed.

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~~ **If the director determines that a**
person, or an agent or employee of a person, 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.~~**or**
rules promulgated under this act, the director may enter into a
consent agreement with the person for the assessment of a civil
fine as follows:

~~(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~~

1 ~~which the assurance of discontinuance applies and the specific~~
2 ~~provisions of this act prohibiting that act or practice. An~~
3 ~~assurance of discontinuance is not considered an admission of any~~
4 ~~fact or issue at law.~~

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

12 ~~(5) A person that knowingly violates this act or the terms of~~
13 ~~an injunction, order, decree, or judgment issued under this section~~
14 ~~shall pay to the state~~

15 **(a) For a first violation, a civil fine of not less than**
16 **\$150.00 or more than \$2,500.00, plus the actual costs of the**
17 **investigation and the amount of any economic benefit associated**
18 **with the violation.**

19 **(b) For a second violation that occurs within 2 years after a**
20 **violation under subdivision (a), a civil fine of not less than**
21 **\$500.00 or more than \$5,000.00, plus the actual costs of the**
22 **investigation and 2 times the amount of any economic benefit**
23 **associated with the violation.**

24 **(c) For a third or subsequent violation that occurs within 2**
25 **years after a violation under subdivision (a), a civil fine of not**
26 **less than \$500.00 or more than \$10,000.00 for each violation, plus**
27 **the actual costs of the investigation and 3 times the amount of any**
28 **economic benefit associated with the violation.**

29 **(2) If a person that is alleged to have violated this act or**

1 rules promulgated under this act does not enter into a written
2 consent agreement as described in subsection (1) within 15 days
3 after the date a consent agreement is proposed by the director
4 under subsection (1), the director may bring a civil action in
5 court.

6 (3) A court may assess a civil fine of not more than ~~\$1,000.00~~
7 **\$10,000.00** for ~~the first~~ **each** violation, and not more than
8 ~~\$5,000.00 for the second and any subsequent violation. For the~~
9 ~~purposes of this subsection, the court that issues an injunction,~~
10 ~~order, decree, or judgment under this section retains jurisdiction,~~
11 ~~the action is continued, and the attorney general may petition for~~
12 ~~recovery of the civil fine described in this subsection.~~**plus the**
13 **actual costs of the investigation and the amount of any economic**
14 **benefit associated with the violation.**

15 (4) ~~(6)~~ **The director shall inform the attorney general of any**
16 **civil fine not received under this section. The attorney general**
17 ~~may promulgate rules to implement and administer this act under the~~
18 ~~administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to~~
19 ~~24.328.~~**bring an action in court to recover the civil fine.**

20 (5) A civil fine and any economic benefits collected under
21 this section must be deposited into the general fund and credited
22 to the department for the enforcement of this act.

23 (6) In addition to a civil fine under this section, the
24 director or the attorney general may bring a civil action in court
25 seeking a temporary or permanent injunction to restrain a person
26 that is engaging in, or about to engage in, an act or practice that
27 violates this act or rules promulgated under this act.

28 Sec. 10a. (1) The director may regularly inspect a person
29 subject to this act.

1 (2) A person subject to this act must not be charged a fee for
2 a regular inspection under subsection (1) unless either of the
3 following applies:

4 (a) The inspection is a reinspection of a person that has been
5 found to be noncompliant with this act.

6 (b) The inspection is performed at the request of the person
7 being inspected.

8 (3) The director shall establish the fees and expenses for
9 special services. Money collected by the department under this
10 section must be deposited into the general fund and credited to the
11 department for the enforcement of this act.

12 Sec. 13. A prosecuting attorney may conduct an investigation
13 under this act and may institute ~~and prosecute~~ an action under this
14 act in the same manner as the attorney general **or the department.**

15 Enacting section 1. Section 11 of the shopping reform and
16 modernization act, 2011 PA 15, MCL 445.321, is repealed.