

SHOPPING REFORM AND MODERNIZATION ACT

Act 15 of 2011

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.

History: 2011, Act 15, Eff. Sept. 1, 2011.

The People of the State of Michigan enact:

445.311 Short title.

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

History: 2011, Act 15, Eff. Sept. 1, 2011.

445.312 Definitions.

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

(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.

History: 2011, Act 15, Eff. Sept. 1, 2011.

445.315 Untrue, deceptive, or misleading advertisement; "not first class" defined.

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

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.

History: 2011, Act 15, Eff. Sept. 1, 2011.

445.317 Display of total price of consumer item offered for sale; exceptions.

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.

(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.

History: 2011, Act 15, Eff. Sept. 1, 2011.

445.320 Injunction; proceeding; assurance of discontinuance of act or practice; forwarding of notice of violation; civil fine; rules.

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.

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.

History: 2011, Act 15, Eff. Sept. 1, 2011.

445.323 Investigation by prosecuting attorney; 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.

History: 2011, Act 15, Eff. Sept. 1, 2011.

445.324 Remedies; enactment of inconsistent ordinances or regulations.

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.

History: 2011, Act 15, Eff. Sept. 1, 2011.

CAUTION!
This document is from an archive and may
contain outdated information.