

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL  
No. 1549 Session of  
1993

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INTRODUCED BY DURHAM, MARKOSEK AND RITTER, MAY 5, 1993

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MAY 5, 1993

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AN ACT

1 Relating to item pricing; requiring mandatory item pricing for  
2 certain establishments; and providing for violations and  
3 penalties for noncompliance.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Item Pricing  
8 Law.

9 Section 2. Legislative purpose.

10 In the interests of the consumer and the general public at  
11 large, it is the intent of the General Assembly to provide for  
12 the universal product code checkout system without the removal  
13 of item prices. The General Assembly believes that the use of  
14 scanning devices and item pricing is indispensable to a  
15 consumer's right to all reasonable information to make an  
16 informed purchase decision.

17 Section 3. Definitions.

18 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Department." The Department of Agriculture of the  
4 Commonwealth.

5 "Food store." Any store primarily engaged in the sale of  
6 food items at retail for consumption off the premises.

7 "Item." One or more identical articles, sold in identical  
8 quantities or measures. An item may include more than one  
9 product, brand, kind, size or type of packaging if they are  
10 packaged together and sold as a set and the sets are identical  
11 in all respects, including quantity or measure.

12 "Item price." The full purchase price of a grocery item,  
13 excluding sales tax and container deposit.

14 "Person." An individual, firm, partnership, copartnership,  
15 corporation or association.

16 "Secretary." The Secretary of Agriculture of the  
17 Commonwealth.

18 Section 4. Total price display requirements.

19 (a) Marking of product.--In any food store using an  
20 electronic or mechanical scanner to read the price of a grocery  
21 item presented for checkout, every grocery item sold or offered  
22 for sale shall have the total price in Arabic numerals clearly  
23 affixed to each item by stamp, tag, label or other conspicuous  
24 marking device if the item or its package or container is  
25 designed to be electronically or magnetically scanned for  
26 checkout. If the grocery item is in a package or container, the  
27 total price shall be marked on the outside surface of the  
28 package or container and need not be placed directly upon the  
29 grocery item.

30 (b) Display.--Item price shall be displayed to any consumer

1 through markings which are clear, conspicuous and plainly  
2 visible. The markings shall be marked, stamped, tagged or  
3 affixed to the item and shall display the selling price in  
4 Arabic numerals.

5 (c) Violation.--Food stores to which this section applies  
6 which have demonstrated a pattern of unreadable prices shall be  
7 guilty of a violation of subsections (a) and (b). An improper  
8 item pricing caused by a nonintentional, technical error shall  
9 not, however, constitute a violation of subsections (a) and (b).  
10 Any violation for one grocery item or a series of grocery items  
11 shall constitute a single violation for a day. Every day a  
12 violation continues shall constitute a separate violation.

#### 13 Section 5. Penalty.

14 A food store which violates section 3 commits a summary  
15 offense and shall, upon conviction, be sentenced to pay a fine  
16 of \$2,000 for each violation.

#### 17 Section 6. Enforcement.

18 (a) Injunction.--Whenever the secretary or a district  
19 attorney has reason to believe that any person is using or is  
20 about to use any method, act or practice which violates this  
21 act, he may bring an action in the name of the Commonwealth  
22 against the person to restrain, by temporary or permanent  
23 injunction, the use of the method, act or practice.

24 (b) Assurance of voluntary compliance.--The secretary or  
25 district attorney may accept an assurance of voluntary  
26 compliance with respect to any method, act or practice deemed to  
27 be in violation of this act from any person who has engaged or  
28 was about to engage in the method, act or practice. The  
29 assurance shall be in writing and shall be filed with the court  
30 of common pleas of the judicial district in which the grocery

1 store is located and with the department. The assurance of  
2 voluntary compliance shall not be considered an admission of  
3 violation for any purpose. Matters closed by filing a written  
4 assurance may, at any time, be reopened by the secretary or  
5 district attorney for further proceedings in the public  
6 interest.

7 (c) Willful violations.--In an action brought under this  
8 act, if the court finds that a person is willfully using or has  
9 willfully used a method, act or practice which violates the  
10 terms of an injunction issued under this section or any of the  
11 terms of an assurance of voluntary compliance duly filed in  
12 court, the secretary or the appropriate district attorney,  
13 acting in the name of the Commonwealth, may recover, on behalf  
14 of the Commonwealth, a civil penalty not exceeding \$1,000 per  
15 violation, which civil penalty shall be in addition to other  
16 relief which may be granted under this act. For the purposes of  
17 this section, the court issuing an injunction, or in which an  
18 assurance of voluntary compliance is filed, shall retain  
19 jurisdiction, and the cause shall be continued; and in such  
20 cases, the secretary or the appropriate district attorney,  
21 acting in the name of the Commonwealth, may petition for  
22 recovery of civil penalties and any other equitable relief  
23 deemed necessary or proper.

#### 24 Section 7. Item Pricing Fund.

25 The Item Pricing Fund is hereby established as a nonlapsing,  
26 revolving fund in the State Treasury. All moneys from fines  
27 collected under this act shall be received by the State  
28 Treasurer, who shall deposit the money in an interest-bearing  
29 account. All money removed from the fund shall be used  
30 exclusively to carry out enforcement of this act. Interest

1 received on moneys in the fund shall be credited to the fund.  
2 The secretary or his appointed delegate shall have the authority  
3 to remove money from the fund to be used for the enforcement of  
4 this act.

5 Section 8. Certain commodities exempt.

6 This act shall apply to all consumer commodities except for:

7 (1) Items sold through vending machines.

8 (2) Food sold for consumption on the premises.

9 (3) Snack foods offered for sale in single packages  
10 weighing five ounces or less.

11 (4) Cigarettes, cigars and tobacco products.

12 (5) Milk, eggs and unpackaged produce if the price is  
13 clearly indicated by a conspicuous sign or otherwise located  
14 at or near the point of sale.

15 (6) Consumer commodities offered on sale, in good faith,  
16 where the price is clearly indicated by a conspicuous sign or  
17 otherwise located at or near the point of sale.

18 (7) Drugs sold by prescription.

19 Section 9. Certain establishments exempt.

20 This act shall not apply to a food store that:

21 (1) had annual gross sales in the previous calendar year  
22 of less than \$3,000,000, unless the store is part of a  
23 network of subsidiaries, affiliates or other member stores  
24 which are directly or indirectly under common control and  
25 which, as a group, had annual gross sales in the previous  
26 calendar year of at least \$3,000,000; or

27 (2) has as its only full-time employees, the owner or  
28 members of the immediate family of the owners.

29 Section 10. Preemption.

30 No local ordinance, rule, resolution or regulation which

1 relates to item pricing of grocery items shall be adopted which  
2 is inconsistent with the provisions of this act and the rules  
3 and regulations adopted hereunder.

4 Section 11. Rules and regulations.

5 The department shall promulgate rules and regulations  
6 necessary to carry out this act.

7 Section 12. Legal action.

8 (a) Failure of department to take action.--A person may  
9 bring an action to do either or both of the following if the  
10 department fails to initiate action within 60 days after  
11 receiving notice of an alleged violation:

12 (1) Obtain a declaratory judgment that a practice is in  
13 violation of this act.

14 (2) Enjoin, by temporary or permanent injunction, a  
15 person who is engaging or is about to engage in a practice in  
16 violation of this act.

17 (b) Action for loss.--A person who suffers a loss as a  
18 result of a violation of this act may bring an individual or  
19 class action to recover actual damages or \$200, whichever is  
20 greater, for each day on which violations of this act have been  
21 found, together with reasonable attorney fees not to exceed \$100  
22 in an individual action.

23 Section 13. Effective date.

24 This act shall take effect in 60 days.