

MARYLAND

Article - Commercial Law

§14-103.

(a) Except as provided in § 14-102 of this subtitle, each person who sells or offers or displays for sale a consumer commodity at retail shall disclose:

- (1) The total price of the consumer commodity; or
- (2) Except as provided in subsection (c) of this section, the unit price of the consumer commodity if:

- (i) It is sold only by units; or
- (ii) It is a prepackaged or retail-packaged consumer commodity within any of the following categories:

1. Foods, condiments, cooking oils, shortenings, and similar commodities;
2. Paper products, including napkins, towels, and tissues;
3. Wrapping products, including those made of paper, plastic, and aluminum; and
4. Soaps, detergents, cleansing aids, deodorizing aids, and similar commodities.

(b) If a packaged consumer commodity described in subsection (a)(2)(ii) of this section is priced for a multiple-package purchase, the seller shall disclose the unit price of that commodity on the basis of the multiple package.

(c) A person is not required to disclose the unit price of a consumer commodity described in subsection (a)(2) of this section if he then is disclosing unit prices for at least 90 percent of the dollar volume or number of items of all his consumer commodities which are subject to the disclosure requirements of subsection (a)(2) of this section.

Article – Agriculture (law)

§11-309.

(a) If any commodity or service is sold, offered, exposed, or advertised for sale by weight, measure, or count, the price may not be misrepresented or represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser.

(b) If an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, every element of the fraction shall be displayed prominently and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one half the height and width of any numeral representing the whole cents.

The annotated Code of the Public General Laws of Maryland

1982 Cumulative Supplement

Title 14

Miscellaneous Consumer Protection Provisions

Subtitle 1. Unit Pricing

§14-101. Definitions.

(e) *Unit price.* – “Unit Price” means the retail price of an item expressed in dollars and cents per unit. In addition to any units commonly in use in the United States, the following units may be used if appropriate:

- (1) Per pound for an item the net quantity of which is expressed in pounds, ounces, or both;
- (2) Per kilogram (1000 grams) for an item the net quantity of which is expressed in kilograms, grams, or both;
- (3) Per meter (100 centimeters) for an item the net quantity of which is expressed in meters, centimeters, millimeters, or a combination of them;
- (4) Per quart for an item the net quantity of which is expressed in quarts, pints, fluid ounces, or a combination of them;
- (5) Per liter for an item the net quantity of which is expressed in liters and milliliters, or a combination of them;
- (6) Per 100 feet for an item the net quantity of which is expressed in yards, feet, inches, or a combination of them;
- (7) Per 100 square feet for an item the net quantity of which is expressed in square yards, square feet, square inches, or a combination of them;
- (8) Per 100 units for an item the net quantity of which is expressed in terms of a numerical count.

(1978, ch527)

§14-106. Enforcement.

If the Division has reason to believe that a sales agency has violated any provisions of this subtitle or any rule or regulation adopted under §14-105 of this subtitle, the Attorney General or the Division at his direction may institute a proceeding under Title 13 of this article. (An. Code 1957, art. 83, §21E; 1975, ch.49, §3; 1976, ch 607.)

§14-101. Definitions

- a) *In general.* – In this subtitle the following words have the meanings indicated.
- b) *Consumer commodity* – “Consumer commodity” means any food, drug, cosmetic, or other article, product, or commodity of any kind or class which is:
 - (1) Customarily produced for sale at retail for consumption by individuals for purposes of personal care or in the performance of services ordinarily performed in or around the household; and
 - (2) Usually consumed or expended in the course of that use or performance other than by wear or deterioration from use.
- c) *Division.* – “Division” means the Division of Consumer Protection of the office of the Attorney General.

- d) *Person.* – “Person” includes an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.
- e) *Unit Price.* – “Unit price” means the retail price of an item expressed in dollars and cents per unit. In addition to any units commonly in use in the United States, the following units may be used if appropriate:
 - (1) Per pound for an item the net quantity of which is expressed in pounds, ounces, or both;
 - (2) Per kilogram (100 grams) for an item the net quantity of which is expressed in kilograms, grams, or both.
 - (3) Per meter (100 centimeters) for an item the net quantity of which is expressed in meters, centimeters, millimeters, or a combination of them.
 - (4) Per quart for an item the net quantity of which is expressed in quarts, pints, fluid ounces, or a combination of them.
 - (5) Per 100 feet for an item the net quantity of which is expressed in yards, feet, inches, or a combination of them;
 - (6) Per 100 square feet for an item the net quantity of which is expressed in square yards, square feet, square inches, or a combination of them.
 - (7) Per 100 units for an item the net quantity of which is expressed in terms of a numerical count.

¶ 14-102. Exemptions from unit pricing.

- a) *Exemptions.* – This subtitle does not apply to:
 - (1) Prepackaged food which contains separately identifiable items that are separated by physical division within the package.
 - (2) Any item sold only by prescription;
 - (3) Any item subject to the packaging or labeling requirements of the Federal Alcohol Administration Act or to any pricing requirements under federal law;
 - (4) Any item actually being sold through a vending machine.
 - (5) Any item delivered directly to a retail sales agency without passing through warehousing or other inventory facility used by the agency; or
 - (6) Except as provided in subsection (b) of this section, a retail sales agency which:
 - i. During the preceding calendar year, sold a gross volume of consumer commodities of less than \$750,000;
 - ii. Is not part of a company which consists of ten or more sales agencies in or out of the State;
 - iii. Derives less than 15 percent of its total revenues from consumer commodities subject to this subtitle; or
 - iv. Is owned and operated by not more than one individual and the members of his immediate family.
- b) *Exceptions.* – A sales agency which otherwise is exempt under subsection (a) (6) of this section nevertheless is subject to this subtitle if, during the preceding calendar year, the company of which the sales agency is a part has a gross volume of sales of consumer commodities in excess of \$30,000,000. (An. Code 1957, art. 83, ¶ 21 E; 1975, ch. 49, ¶ 3.)

¶ 14-103. Required Disclosures

- (a) *Price information required – In general.* -Except as provided in ¶ 14-102, each person who sells or offers or displays for sale a consumer commodity at retail shall disclose:
 - (1) The total price of the consumer commodity; or
 - (2) Except as provided in subsection (c) of this section, the unit price of the consumer commodity if:
 - i. It is sold only by units; or
 - ii. It is a prepackaged consumer commodity within any of the following categories:
 - 1. Foods, condiments, cooking oils, shortenings, and similar consumer commodities;

2. Paper products, including napkins, towels, and tissues;
 3. Wrapping products, including those made of paper, plastic, and aluminum; and
 4. Soaps, detergents, cleansing aids, deodorizing aids, and similar consumer commodities.
- (b) *Price information required – Multiple packages.* - If a packaged consumer commodity described in subsection (a)(2)(ii) of this section is priced for a multiple-package purchase, the seller shall disclose the unit price of that commodity on the basis of the multiple package.
- (c) *Extent of unit price disclosure* – A person is not required to disclose the unit price of a consumer commodity described in subsection (a)(2) of this section if he then is disclosing unit prices for at least 90 percent of the dollar volume or number of items of all his consumer commodities which are subject to the disclosure requirements of subsection (a)(2) of this section. (An. Code 1957, art. 83, § 21E; 1975, ch.49, § 3.)

§ 14-104. Manner of disclosure.

The seller shall disclose the total price or unit price, as the case may be, for each item in the following manner:

- (1) If the item is visible conspicuously to the consumer, by attachment of a stamp, tag, or label:
 - i. Directly on the item or its package; or
 - ii. Directly adjacent to the item or on the shelf on which the item is displayed; or
- (2) If the item is not visible conspicuously to the consumer or if the stamp, tag, or label would not be visible conspicuously to the consumer, by a sign or list which contains the price information and is visible conspicuously to the consumer. (An. Code 1957, art. 83, § 21E; 1975, ch. 49, § 3.)

§ 14-105. Rules and regulations; grant of exemption.

- (a) *General authority of Division.* – At the direction of the Attorney General, the Division may:
- (1) In accordance with § 13-205 of this article, adopt reasonable rules and regulations appropriate to effectuate any provision of this subtitle, which rules and regulations, however, may not extend, modify, or conflict with this subtitle or its reasonable implications; and
 - (2) Grant to a sales agency an exemption from any requirement of this subtitle if the sales agency uses a program which is approximately as or more comprehensive than the program of unit pricing required by this subtitle.
- (b) *Violation of rules or regulations.* - A person who willfully violates any rule or regulation of the Division, in addition to any other penalty provided, is subject to the same penalty applicable to violation of the provision of this subtitle to which the rule or regulation relates. (An. Code 1957, art. 83, § 21E; 1975, ch. 49, § 3.)

§ 14-106. Compliance.

- (a) *Commencement of proceeding.* – If 25 or more residents of the State, within a 15-day period, state in writing to the Attorney General their belief that the actions of any sales agency constitute a pattern of noncompliance with this subtitle, the Attorney General or the Division at his direction may hold a public hearing.
- (b) *Notice and hearing.* – The sales agency alleged to be in noncompliance with this subtitle shall be given at least 10 days' prior written notice of the public hearing. At the hearing, it shall have an opportunity to;
- (1) Demonstrate compliance; or

- (2) Enter into an agreement to begin to comply within 60 days from the date of the hearing.
- (c) *Costs.* – If, at the conclusion of the hearing, the Attorney General or the Division finds that there was in fact a pattern of noncompliance, the Attorney General may issue an order which requires the person responsible for the noncompliance to pay to the State any part of the direct or indirect cost of the hearing, including the cost of preparing for it.
- (d) *Breach of agreement to comply or failure to pay costs.* –
- (1) The Attorney General may declare that a person is engaged in an unlawful practice if he finds that the person:
 - i. Has breached any agreement entered into under subsection (b) of this section; or
 - ii. Has failed to pay any costs ordered to be paid under subsection (c) of this section.
 - (2) If the unlawful practice is subsequently continued or repeated, it is an unfair or deceptive practice within the meaning of Title 13 of this article and is subject to the enforcement and penalty provisions contained in Title 13. (An. Code 1957, art. 83, \ 21 E; 1975, ch. 49, \ 3.)

Title 02 OFFICE OF THE ATTORNEY GENERAL
Subtitle 01 CONSUMER PROTECTION DIVISION
Chapter 01 Unit Pricing

Authority: Commercial Law Article, §14-105, Annotated Code of Maryland

.01 General.

These regulations are promulgated pursuant to Commercial Law Article, \14-105, Annotated Code of Maryland. They are intended to effectuate the provisions of the Unit Pricing Law, \14-101 et seq., Annotated Code of Maryland, and are not intended to extend, modify, or conflict with the Unit Pricing Law or its reasonable implications.

.02 Findings.

- A. The Consumer Protection Division of the Office of the Attorney General and the Consumer Council find that some of those sales agencies required to unit price have not done so properly or in conformance with the Unit Pricing Law. The increasing costs of consumer commodities mandates the continued attention of the Division to enforce the Unit Pricing Law, as the disclosure of unit pricing information gives consumers a method of price comparisons for similar or identical consumer commodities. Thus, the availability of properly disclosed unit pricing information will provide an effective tool for informed and economical consumer purchasing.
- B. The Division and the Council further find that the General Assembly has authorized the Division to promulgate regulations to effectuate the purpose of the Unit Pricing Law, and has given the Council the role of advising the Division on these regulations. The proposed regulations explain the requirements of the Unit Pricing Law, clarify the method of disclosure, and require meaningful consumer information necessary to effectuate the Law's purpose. Provisions are proposed to set forth the

responsibilities of those sales agencies required to unit price to notify the Division if an exemption from compliance is requested or if non-intentional technical errors are discovered.

.03 Definitions.

- A. "Control" means the possession, direct or indirect, of the power to direct, or cause the direction of, the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise.
- B. "Inventory facility" means a physical location, separate and apart from the physical location of the sales agency, where consumer commodities are stored and subject to inventory accounting, and which thereafter are distributed to the physical location of the sales agency.
- C. "Members of the immediate family" mean the spouse, son, daughter, parent, brother, and sister of the individual owner.
- D. "Multi-unit packages" means packages intended for retail sale containing two or more identically packaged or labeled units of an identical commodity in the same quantity.
- E. "Non-intentional technical errors" means inaccuracies in the unit pricing information reflected upon stamps, tags, labels, signs, or lists where these defects have resulted from a malfunction of a printing press, electronic data processing equipment, or other mechanical equipment used to produce these stamps, tags, labels, signs, or lists, or from the mistake of a computer programmer or machine operator, when this malfunction or mistake was not within the knowledge or control of the owner, operator, or management personnel of the store and when this owner, operator or management personnel could not, with reasonable diligence, have detected and corrected these errors.
- F. "Preceding calendar year" means the immediately preceding period, January 1 through December 31.
- G. "Sales agency" means any proprietorship, partnership, corporation, or other legal or commercial entity which sells or offers for sale at retail, those consumer commodities defined in the Commercial Law Article, §14-101(b), Annotated Code of Maryland (hereinafter, the "Unit Pricing Law")
- H. "Variety packages" means packages intended for retail sale containing two or more identical packages or units or similar but not identical commodities. Commodities which are generally the same, but which differ in weights, volume, appearance, or quality are considered similar but not identical. Not included within this definition are items under Regulation .07A.

.04 Exemptions.

- A. To determine whether it is exempt from compliance with the Unit Pricing Law, a sales agency shall refer to the exemptions found in Commercial Law Article, §14-102(6)(i) – (iv), Annotated code of Maryland.
- B. A sales agency shall be given a reasonable time after the close of its fiscal year to calculate gross annual sales to determine whether it is exempt from the provisions of the Unit Pricing Law pursuant to §14-102(6)(i). For purposes of these regulations, any time in excess of 3 months shall be presumed to be unreasonable. If compliance is mandated, the sales agency shall be given 2 months to implement its unit pricing system.
- C. If the sales agency is found to be required to unit price, it shall comply with the Unit Pricing Law and these regulations no later than June 1 following the close of its fiscal year, if determined on a calendar year basis. If the sales agency's fiscal year is determined by any other method, compliance shall be required by no later than 150 days after the close of this fiscal year.

.05 Direct Delivery

For purposes of \ 14-102(a)(5), items shall be considered to have been directly delivered when the items have not passed through any warehouse or inventory facility which is owned or controlled directly or indirectly by the sales agency.

.06 Consumer Commodities to be Unit Priced

- A. Section 14-103(a)(2)(ii) of the Unit Pricing Law defines the categories of consumer commodities required to be unit priced. Any of these commodities which are priced for multi-unit or variety package purchase shall be unit priced on the basis of the total contents.
- B. The unit price of any consumer commodity sold with a deposit for the container's return, shall be based on the price of the item's contents without regard to the amount of the deposit. The fact that there is a deposit, however shall be clearly and conspicuously displayed on the product or its package or near the product.

.07 Consumer Commodities not Required to be Unit Priced.

The seller is not required to unit price the following:

- A. Those items specifically exempted by \ 14-102(a)(1) – (5);
- B. Items displayed in a non-packaged manner such as loose produce, fresh seafood, meats, and cheeses cut to order;
- C. Durable items, including any item which wears or deteriorates from usage, for example, kitchen utensils, pots and pans, and any other type of cooking or kitchen aids and household goods, such as brooms, fabric cleaning towels, and other durable goods.

.08 Repricing Policy and Discounts from Regular Price.

- A. When the sales agency has established and clearly disclosed a no-repricing policy, whereby items on display are not repriced to reflect a higher price, the applicable unit price stamps, tags, labels, signs, or lists shall display the unit price of the higher price.
- B. When the manufacturer of a consumer commodity has offered a discount or cents off the price of items offered for sale by a sales agency, the unit price stamps, tags, labels, signs, or lists shall display the higher price.

.09 Uniformity.

- A. If different brands of the same consumer commodity are expressed in more than one measuring unit, the sales agency, if it is possible to do so, shall unit price the items consistently within the same product category. The more familiar measuring unit found in the product group is to be used if conversion and uniformity are possible.
- B. When metric units appear on the consumer commodity, in addition to the other units of measure, the sales agency may use both units of measure on any stamps, tags, labels, signs, or lists.

.10 Unit Pricing Information to be Disclosed on Items Conspicuous to the Consumer

- A. Section 14-104(1) of the Unit Pricing Law provides for the method of disclosing the required unit pricing information.
- B. The unit pricing tags, stamps, or labels shall contain in easily readable and understandable print the price of the item, the unit price, the unit of measure, the name and size of the item, and the brand name if there is one.

- C. The tags, stamps, or labels need not be any special size, but shall be conspicuously visible to the consumer.

.11 Unit Pricing Information to be Disclosed on Items Inconspicuous to the Consumer.

- A. Section 14-104(2) of the Unit Pricing Law provides for the method of disclosing the required unit pricing information on items inconspicuous to the consumer.
- B. The signs or lists shall contain in easily readable and understandable print the price of the item, the unit price, the unit of measure, the name and size of the item, and the brand name if there is one.

.12 Additional Methods of Disclosure

If the consumer commodities are refrigerated, and attachment of stamps, tags, or labels is not practical, the sales agency shall disclose the required unit pricing information by signs or lists. These signs or lists shall be clear, conspicuous, and near the consumer commodities, and the information readily available to the consumer without need for the consumer to inquire of, or otherwise contact store personnel.

.13 Additional Pricing Requirements

- A. The unit price may be shown in type which is at least the size of “elite” type. However, this price shall be identified as the “unit price” or “price per (unit of measure)”.
- B. The designation of the unit price per measure of 1 dollar or more shall be expressed in terms of dollars and cents.
- C. If the unit price is under 1 dollar, it shall be listed:
 - (1) To the tenth of a cent (i.e., an item priced at 25.54 cents may read 25.5¢ or 25.5);
 - or
 - (2) To the whole cent. The sales agency shall accurately and consistently use the same method of rounding up or down to compute the price to the whole cent.
- D. The sales agency shall have the option of using (1) or (2) but may not implement both methods.

.14 Non-intentional Technical Errors.

- A. If any errors are alleged by the Division which would subject the sales agency to the enforcement provisions of the Unit Pricing Law, the sales agency shall submit data which shows by the preponderance of the evidence that the errors are non-intentional technical errors.
- B. The data submitted to the Division may contain the following information:
 - (1) Any specific malfunction of the printing press, electronic data processing equipment, or other mechanical equipment used to produce the stamps, tags, labels, signs, or lists;
 - (2) Any specific mistake made by the computer programmer or machine operator;
 - (3) Specific reasons why the malfunction or mistake was not within the knowledge or control of the owner, operator, or management personnel of the store;
 - (4) Specific reasons why the owner, operator, or management personnel could not, within reasonable diligence, have detected or corrected these errors;
 - (5) The name, address, and telephone number of the person or persons responsible for the alleged error;
 - (6) Whether the sales agency had prior similar problems with the printing press, electronic data processing equipment, or other mechanical equipment responsible for the alleged error, and what action was taken by the sales agency to correct the malfunction;

- (7) Whether the sales agency had prior similar problems with the computer programmer or machine operator responsible for the alleged mistake and what action was taken by the sales agency to correct the mistake.
- C. The Division may not consider non-intentional technical errors to be violations of these regulations.

.15 Exemptions from the Operation of the Unit Pricing Law.

- A. Under § 14-105(a)(2), the Attorney General may exempt any sales agency which is using a program of unit pricing which is approximately as or more comprehensive than the program required by the Unit Pricing Law. The following procedures are to be followed by any sales agency requesting an exemption under Maryland law and these regulations:
 - (1) A request shall be made in writing;
 - (2) A request shall be supported by a detailed description of the plan being used;
 - (3) An exemption requested shall be conditioned upon the sales agency agreeing to continue the plan without change, unless prior approval of the Consumer Protection Division is obtained;
 - (4) A request shall be signed by the owner, partners, or corporate officers of the sales agency making the request.
- B. A sales agency which does business in more than one jurisdiction where unit pricing is required by statute, ordinance, rule or regulation, may apply for exemption from Maryland law and these regulations if:
 - (1) The system of unit pricing will be approximately as comprehensive as the program required by Maryland law.
 - (2) The sales agency submits copies of the statute and the regulations of the other jurisdiction and agrees to conduct its unit pricing program in Maryland in the same manner that it conducts unit pricing in the other jurisdiction or jurisdictions;
 - (3) The plan of unit pricing will not be confusing to Maryland consumers; and
 - (4) The request for an exemption complies with conditions in (B)(1) – (4) or (A), above.
- C. No exemption provided for in (A) or (B), above, will be considered to have been granted until the Consumer Protection Division of the Office of the Attorney General has, in writing, advised the sales agency that it is exempt.

.16 Compliance.

- A. The Unit Pricing Law requires 90 percent compliance, which may be based on either of the following, at the option of the sales agency:
 - (1) Dollar volume of items required to be unit priced;
 - (2) Number of items which the store carried which are required to be unit priced.
- B. Every sales agency shall advise the Office of the Attorney General, Division of Consumer Protection, of the option as provided in (A), above, which it has elected to use. A sales agency may not then change its option until it has notified the Division of Consumer Protection of the change and this office has acknowledged receipt of the change.

Administrative History

Effective date: September 1, 1972

Chapter revised effective June 2, 1978 (5:11 Md. R. 880)