

PRICE GOUGING

House Bill 5155

Sponsor: Rep. Michael Bishop

House Bill 5156

Sponsor: Rep. Mike Kowall

Committee: Criminal Justice

Complete to 10-14-02

A SUMMARY OF HOUSE BILLS 5155 AND 5156 AS INTRODUCED 10-9-01

House Bill 5155 would amend the Code of Criminal Procedure (MCL 777.16z) to specify that price gouging on the sale of an essential commodity during a state of emergency or price gouging on the sale of a repair or reconstruction service during a state of emergency would be a Class E felony against the public order with a statutory maximum term of imprisonment of five years.

House Bill 5156 would amend the Michigan Penal Code (MCL 750.553) to make it a felony offense to price, within 180 days of a declared emergency or disaster, certain goods or services above ten percent of the ordinary price. Under the bill, it would be a felony punishable by imprisonment for not more than five years or a fine of not more than \$20,000, or both, for a person to sell or offer to sell an essential commodity at a price of more than ten percent above the price ordinarily charged for comparable goods or services immediately before the declared state of emergency. The prohibition would apply to the time period during or within 180 days following a declaration of an emergency or major disaster in this state by the president of the United States, a declaration of a state of disaster or state of emergency by the governor, or a declaration of a local state of emergency by a chief executive official of a county or municipality. Each sale or offer to sell would be a separate offense.

It would be an affirmative defense to a prosecution for price gouging that the increase in price of an essential commodity was directly attributable to additional costs imposed on the seller by the supplier of the commodity, or that the increase in price of an essential commodity that is a service was attributable to additional costs for labor or materials used to provide the service. This would apply if the price of that good or service was not more than ten percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately before the onset of the state of emergency.

Similarly, a contractor that sells or offers to sell any repair or reconstruction service or any service used in emergency cleanup could not charge more than ten percent above the price ordinarily charged by that person for that service immediately before the declared emergency. An affirmative defense would also be available to a contractor charged with price gouging. As with a person selling an essential commodity or service, a contractor could avail himself or herself of the affirmative defense if the increase in price was directly attributable to additional costs imposed on the contractor by the supplier of goods included in the service or directly

attributable to additional costs for labor or materials used to provide the service – as long as the price of the service was not more than ten percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that service in the days immediately preceding the state of emergency.

“Essential commodity” would mean any of the following:

- Items of food or drink for humans or animals;
- goods or services used for emergency cleanup;
- water, flashlights, radios, batteries, candles, diapers, toiletries, temporary shelters, hammers and nails, etc.;
- first aid items and prescription and over-the-counter medications;
- home heating fuel, gasoline, or other motor fuel;
- lumber, windows, construction tools, or materials used in building or rebuilding properties; and,
- services such as moving companies, rental moving vans, or storage facilities.

The terms “chief executive official”, “local state of emergency”, “municipality”, “state of disaster”, and “state of emergency” are defined in Section 2 of the Emergency Management Act (MCL 30.402).

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.