

# HOUSE BILL No. 5714

March 13, 2018, Introduced by Reps. Moss, Elder, Sowerby, Chang, Lucido, Geiss, Hertel  
and Faris and referred to the Committee on Commerce and Trade.

A bill to amend 1984 PA 274, entitled  
"Michigan antitrust reform act,"  
by amending section 7 (MCL 445.777) and by adding sections 3a and  
3b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3A. AS USED IN THIS SECTION AND SECTIONS 3B AND 3C:

2 (A) "BUILDING MATERIALS" MEANS LUMBER, CONSTRUCTION TOOLS,  
3 WINDOWS, AND ANYTHING ELSE USED IN THE BUILDING OR REBUILDING OF  
4 PROPERTY.

5 (B) "CONSUMER FOOD ITEM" MEANS ANY ARTICLE THAT IS USED OR  
6 INTENDED FOR USE FOR FOOD, DRINK, CONFECTION, OR CONDIMENT BY AN  
7 INDIVIDUAL OR ANIMAL.

8 (C) "EMERGENCY SUPPLIES" INCLUDES, BUT IS NOT LIMITED TO,  
9 WATER, FLASHLIGHTS, RADIOS, BATTERIES, CANDLES, BLANKETS, SOAP,

1 DIAPERS, TEMPORARY SHELTERS, TAPE, TOILETRIES, PLYWOOD, NAILS, AND  
2 HAMMERS.

3 (D) "GASOLINE" MEANS ANY FUEL USED TO POWER ANY MOTOR VEHICLE  
4 OR POWER TOOL.

5 (E) "GOODS" MEANS ANY TANGIBLE PROPERTY, COUPONS, OR  
6 CERTIFICATES, WHETHER BOUGHT OR LEASED.

7 (F) "HOUSING" MEANS ANY RENTAL HOUSING AND INCLUDES ANY  
8 HOUSING PROVIDED BY A HOTEL OR MOTEL.

9 (G) "LOCAL EMERGENCY" MEANS A NATURAL OR MAN-MADE DISASTER OR  
10 EMERGENCY RESULTING FROM A TORNADO, EARTHQUAKE, FLOOD, FIRE, RIOT,  
11 OR STORM FOR WHICH A LOCAL EMERGENCY IS DECLARED BY THE EXECUTIVE  
12 OFFICER OR GOVERNING BODY OF ANY CITY OR COUNTY IN THIS STATE.

13 (H) "MEDICAL SUPPLIES" INCLUDES, BUT IS NOT LIMITED TO,  
14 PRESCRIPTION AND NONPRESCRIPTION MEDICATIONS, BANDAGES, GAUZE,  
15 ISOPROPYL ALCOHOL, AND ANTIBACTERIAL PRODUCTS.

16 (I) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,  
17 LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, ESTATE, OR OTHER  
18 LEGAL ENTITY.

19 (J) "SERVICES" MEANS ANY WORK, LABOR, OR SERVICES INCLUDING  
20 SERVICES FURNISHED IN CONNECTION WITH THE SALE OR REPAIR OF GOODS  
21 OR REAL PROPERTY OR IMPROVEMENTS TO REAL PROPERTY.

22 (K) "STATE OF EMERGENCY" MEANS A NATURAL OR MAN-MADE DISASTER  
23 OR EMERGENCY RESULTING FROM A TORNADO, EARTHQUAKE, FLOOD, FIRE,  
24 RIOT, STORM, ACT OF WAR, THREAT OF WAR, MILITARY ACTION, OR THE  
25 TIME OF INSTABILITY FOLLOWING A TERRORIST ATTACK FOR WHICH A STATE  
26 OF EMERGENCY IS DECLARED BY THE PRESIDENT OF THE UNITED STATES OR  
27 THE GOVERNOR. THE TERM INCLUDES THE TIME PERIOD OF ANY OF THE

1 FOLLOWING:

2 (i) AN IMMINENT ALERT ISSUED IN THE NATIONAL TERRORISM  
3 ADVISORY SYSTEM BY THE UNITED STATES DEPARTMENT OF HOMELAND  
4 SECURITY.

5 (ii) A SEVERE WEATHER WARNING ISSUED BY THE NATIONAL WEATHER  
6 SERVICE.

7 (iii) A STATE OF EMERGENCY OR STATE OF DISASTER DECLARED BY  
8 THE GOVERNOR UNDER THE EMERGENCY MANAGEMENT ACT, 1976 PA 390, MCL  
9 30.401 TO 30.421; A STATE OF EMERGENCY DECLARED BY THE GOVERNOR  
10 UNDER 1945 PA 302, MCL 10.31 TO 10.33; OR A STATE OF ENERGY  
11 EMERGENCY DECLARED BY THE GOVERNOR UNDER 1982 PA 191, MCL 10.81 TO  
12 10.89.

13 (l) "TRANSPORTATION, FREIGHT, AND STORAGE SERVICES" MEANS ANY  
14 SERVICE THAT IS PERFORMED BY ANY PERSON THAT CONTRACTS TO MOVE,  
15 STORE, OR TRANSPORT PERSONAL OR BUSINESS PROPERTY OR RENTS  
16 EQUIPMENT FOR THOSE PURPOSES.

17 SEC. 3B. (1) SUBJECT TO SUBSECTION (2), DURING THE TIME PERIOD  
18 OF A DECLARED STATE OF EMERGENCY OR A LOCAL EMERGENCY, AND FOR 30  
19 DAYS AFTER THAT TIME PERIOD, A CONTRACTOR, BUSINESS, OR OTHER  
20 PERSON SHALL NOT SELL OR OFFER TO SELL ANY CONSUMER FOOD ITEMS OR  
21 GOODS, GOODS OR SERVICES USED FOR EMERGENCY CLEANUP, EMERGENCY  
22 SUPPLIES, MEDICAL SUPPLIES, HOME HEATING OIL, BUILDING MATERIALS,  
23 HOUSING, TRANSPORTATION, FREIGHT, AND STORAGE SERVICES, OR GASOLINE  
24 OR OTHER MOTOR FUELS FOR A PRICE THAT EXCEEDS THE HIGHEST PRICE  
25 CHARGED BY THAT PERSON FOR THOSE GOODS OR SERVICES IN THE 180-DAY  
26 PERIOD PRECEDING THE DECLARATION OF THE STATE OF EMERGENCY OR LOCAL  
27 EMERGENCY.

(2) SUBSECTION (1) DOES NOT APPLY TO A PRICE INCREASE BY A PERSON SELLING OR OFFERING TO SELL GOODS AND SERVICES THAT IS OTHERWISE PROHIBITED UNDER SUBSECTION (1) IF BOTH OF THE FOLLOWING ARE MET:

(A) THE PERSON CAN PROVE THAT THE INCREASE IN PRICE WAS DIRECTLY ATTRIBUTABLE TO ADDITIONAL COSTS IMPOSED ON IT BY THE SUPPLIER OF THE GOODS OR DIRECTLY ATTRIBUTABLE TO ADDITIONAL COSTS FOR LABOR OR MATERIALS USED TO PROVIDE THE SERVICES.

(B) IF THE INCREASE IN PRICE IS ATTRIBUTABLE TO ADDITIONAL COSTS IMPOSED BY THE PERSON'S SUPPLIER OR ADDITIONAL COSTS OF PROVIDING THE GOOD OR SERVICE DURING THE STATE OF EMERGENCY OR LOCAL EMERGENCY, THE PRICE REPRESENTS NOT MORE THAN 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 OR LOCAL EMERGENCY.

Sec. 7. The attorney general or a prosecuting attorney, with the permission of, or at the request of, the attorney general, may bring an action for appropriate injunctive or other equitable relief and civil ~~penalties~~**FINES** in the name of the state for a violation of this act. The court may assess for benefit of the state a civil ~~penalty~~**FINE IN 1 OF THE FOLLOWING AMOUNTS FOR A VIOLATION OF THIS ACT:**

(A) EXCEPT AS PROVIDED IN SUBDIVISION (B), A CIVIL FINE of not more than \$50,000.00 for each violation of this act.

(B) FOR VIOLATIONS OF SECTION 3B OR 3C, A CIVIL FINE OF NOT MORE THAN \$25,000.00 FOR EACH VIOLATION.

1           Enacting section 1. This amendatory act takes effect 90 days  
2 after the date it is enacted into law.

3           Enacting section 2. This amendatory act does not take effect  
4 unless Senate Bill No.\_\_\_\_ or House Bill No. 5715 (request no.  
5 03420'17) of the 99th Legislature is enacted into law.