

PROHIBIT PRICE GOUGING DURING EMERGENCY

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5727 as introduced
Sponsor: Rep. Brandt Iden
Committee: Government Operations
Complete to 4-29-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5727 would amend the Michigan Consumer Protection Act to prohibit certain activities and to specify that they are an unfair trade practice under the act. The bill would largely codify into law the provisions of Executive Order 200-53.

On March 10, 2020, Michigan's first patient tested positive for COVID-19, at which time Governor Whitmer declared a statewide state of emergency.¹ On March 23, the governor signed a "Stay Home, Stay Safe" executive order directing all state businesses and operations to temporarily suspend in-person operations not necessary to sustain or protect life.²

Executive Order 2020-53,³ issued April 17 and effective through May 15, imposes enhanced restrictions to prevent price gouging during the response to the COVID-19 pandemic. The order prohibits a person from reselling a **product** for a price that grossly exceeds the price the reseller paid to obtain it. A person is also prohibited from selling or offering for sale a **product** for a price that is more than 20% higher than the price the person charged for that product as of March 9. However, this prohibition does not apply if the person demonstrates that the price increase reflects an increase in the cost of bringing the product to market or if the March 9 price reflected an extraordinary discount.

For purposes of the order, **product** means a good, material, or consumer food item with a fair market value of less than \$1,000 or any emergency supply.

The order also stipulates that it does not limit or impair the ability of the attorney general to investigate, determine, or impose liability under the Consumer Protection Act or any other law.

A willful violation of the order is a misdemeanor.

¹ Executive Order 2020-04, issued March 10, 2020 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-04.pdf>); rescinded and replaced on April 1 with Executive Order 2020-33 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-33.pdf>).

² Executive Order 2020-21, issued March 23, 2020 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-21.pdf>); extended through April 30, 2020 on April 9, 2020 by Executive Order 2020-42 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-42.pdf>).

³ Executive Order 2020-53: <https://www.legislature.mi.gov/documents/2019-2020/executiveorder/PDF/2020-EO-53.PDF>

House Bill 5727 would amend the Michigan Consumer Protection Act to incorporate the above provisions of EO 2020-53 into that act. The bill would provide that a violation of its prohibitions is a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$500, or both. The bill would also designate the prohibited actions as an unfair trade practice under the act, which would, among other things, allow the attorney general to bring an action to seek an injunction restraining the prohibited activity under the provisions of the act. The bill's substantive provisions would be repealed June 1, 2020.

MCL 445.903 and proposed MCL 445.903j

FISCAL IMPACT:

House Bill 5727 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how the bill affected caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

Legislative Analyst: Rick Yuille
Fiscal Analysts: Robin Risko
Michael Cnossen

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