

**SUBSTITUTE FOR
HOUSE BILL NO. 5895**

A bill to prohibit excessive pricing for certain commodities and emergency services and supplies during a declared state of emergency; to provide remedies and penalties; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "commodities and
2 emergency services and supplies pricing protection act".

3 Sec. 2. As used in this act:

4 (a) "Building materials" means lumber, construction tools,
5 windows, or other materials used in the construction or
6 reconstruction of a building, structure, or other real property.

7 (b) "Consumer food item" means an item that is used or

1 intended for use as a food, drink, confection, or condiment by a
2 person or animal.

3 (c) "Declaration of emergency" means a declaration of a state
4 of emergency.

5 (d) "Emergency supplies" includes, but is not limited to,
6 water, flashlights, radios, batteries, candles, blankets, soaps,
7 diapers, temporary shelters, tape, toiletries, plywood, nails, and
8 hammers.

9 (e) "Excessively increased price" means a price that
10 demonstrates an unjustified disparity between the price for
11 building materials, consumer food items, goods, services, emergency
12 supplies, or medical supplies sold or offered for sale, in the
13 market where those items or services are sold, immediately before a
14 declaration of emergency and the price of those items or services
15 sold or offered for sale in that market during or reasonably after
16 a declaration of emergency. As used in this subdivision, an
17 unjustified disparity is a disparity of more than 20% unless the
18 person selling or offering the building materials, consumer food
19 items, goods, services, emergency supplies, or medical supplies can
20 demonstrate that the increase in price is attributable to an
21 increase in the cost of bringing those items or services to market,
22 an extraordinary discount in effect before the declaration of
23 emergency, or a markup at or less than the cost to the retailer.

24 (f) "Goods" means any tangible property, coupons, or
25 certificates, whether bought or leased.

26 (g) "Medical supplies" includes, but is not limited to,
27 prescription and nonprescription medications, bandages, gauze,
28 isopropyl alcohol, and antibacterial products.

29 (h) "Person" means an individual, partnership, corporation,

1 limited liability company, association, trust, estate, or other
2 legal entity.

3 (i) "Services" means any work, labor, or services, including,
4 but not limited to, services furnished in connection with the sale
5 or repair of goods or real property or improvements to real
6 property.

7 (j) "State of emergency" means a natural or man-made disaster
8 or emergency resulting from a tornado, earthquake, flood, fire,
9 riot, storm, act of war, threat of war, military action, or period
10 of instability following a terrorist attack, or a threat to the
11 public health, for which a state of emergency is declared by the
12 governor under the laws of this state.

13 Sec. 3. A person conducting business in any chain of
14 distribution for building materials, consumer food items, goods,
15 services, emergency supplies, or medical supplies shall not do any
16 of the following during or reasonably after a declaration of
17 emergency in a county, city, or township subject to the declared
18 state of emergency:

19 (a) Charge a price for those materials, items, goods,
20 services, or supplies that is grossly in excess of the price at
21 which similar materials, items, goods, services, or supplies are
22 sold.

23 (b) Charge an excessively increased price for those materials,
24 items, goods, services, or supplies.

25 (c) Offer those materials, items, goods, services, or supplies
26 at an excessively increased price.

27 Sec. 4. (1) If the attorney general or a local prosecuting
28 attorney has reasonable cause to believe that an individual has
29 information or is in possession, custody, or control of a document

1 or other tangible object relevant to an investigation for a
2 violation of this act, the attorney general or prosecuting attorney
3 may serve on the individual a written demand to appear and be
4 examined under oath, and to produce the documents or object for
5 inspection and copying. The demand must meet all of the following:

6 (a) Be served upon the individual in the manner prescribed for
7 service of process under the laws of this state.

8 (b) Describe the nature of the conduct constituting the
9 violation under investigation.

10 (c) Describe the document or object with sufficient
11 definiteness to permit it to be fairly identified.

12 (d) If requested, contain a copy of the written
13 interrogatories.

14 (e) Prescribe a reasonable time at which the individual shall
15 appear to testify and within which the individual shall answer the
16 written interrogatories and the document or object must be
17 produced.

18 (f) Advise the individual that objections to or reasons for
19 not complying with the demand may be filed with the attorney
20 general or prosecuting attorney on or before the time described in
21 subdivision (e).

22 (g) Specify a place for the taking of testimony, or for
23 production, and designate the individual who is to be the custodian
24 of the document or object.

25 (h) Contain a copy of the language provided in subsection (2)
26 with appropriate citation.

27 (2) If an individual fails to comply with the written demand
28 served under subsection (1), the attorney general or a local
29 prosecuting attorney may file an action to enforce the demand.

1 Notice of hearing and a copy of the pleadings and other relevant
2 papers must be served upon the individual, who may appear in
3 opposition. If the court finds that the demand is proper, the court
4 shall order the individual to comply with the demand, subject to
5 modification as the court may prescribe. Upon motion by the
6 individual and for good cause shown, the court may make any further
7 order in the proceedings that justice requires to protect the
8 individual from unreasonable burden or expense.

9 (3) An action filed under subsection (2) must be filed in the
10 circuit court of the county in which the individual resides or in
11 which the individual maintains a principal place of business within
12 this state, or in the circuit court for the county of Ingham.

13 (4) Any procedure, testimony taken, or material produced must
14 be kept confidential by the attorney general or a local prosecuting
15 attorney before bringing an action against a person under this act
16 for the violation under investigation.

17 Sec. 5. (1) The attorney general may bring a class action on
18 behalf of persons residing in or injured in this state for the
19 actual damages caused by conduct prohibited under section 3 to
20 recover actual damages or \$100.00, whichever is greater.

21 (2) On motion of the attorney general and without bond in an
22 action brought under this section, the court may make an
23 appropriate order to do any of the following:

24 (a) Reimburse persons who have suffered damages.

25 (b) Carry out a transaction in accordance with the aggrieved
26 persons' reasonable expectations.

27 (c) Strike or limit the application of unconscionable clauses
28 of contracts to avoid an unconscionable result.

29 (d) Grant other appropriate relief.

1 (3) The court after a hearing may appoint a receiver or order
2 sequestration of the defendant's assets if it appears to the
3 satisfaction of the court that the defendant threatens or is about
4 to remove, conceal, or dispose of the defendant's assets to the
5 detriment of members of the class.

6 (4) If at any stage of the proceedings under this section the
7 court requires that notice be sent to the class, the attorney
8 general may petition the court to require the defendant to bear the
9 cost of the notice. In determining whether to impose the cost on
10 the defendant, the court shall consider the probability that the
11 attorney general will succeed on the merits of the action.

12 (5) If the defendant shows by a preponderance of the evidence
13 that a violation of this act resulted from a bona fide error
14 notwithstanding the maintenance of procedures reasonably adopted to
15 avoid the error, the amount of recovery must be limited to actual
16 damages.

17 (6) The attorney general shall not bring an action under this
18 section more than 6 years after the occurrence of the method, act,
19 or practice that is the subject of the action and not more than 1
20 year after the last payment in a transaction involving the method,
21 act, or practice that is the subject of the action, whichever
22 period of time ends on a later date.

23 Sec. 6. (1) The attorney general may bring an action for
24 appropriate injunctive or other equitable relief and civil
25 penalties in the name of the people of this state for a violation
26 of this act. The court may impose a civil fine for each violation
27 of this act. For an individual, the civil fine must not be more
28 than \$10,000.00 per violation. For a person other than an
29 individual, the civil fine must not be more than \$1,000,000.00 per

1 violation.

2 (2) This state, a political subdivision, or a public agency
3 injured directly or indirectly by a violation of this act may bring
4 an action for appropriate injunctive or other equitable relief,
5 actual damages sustained by reason of a violation of this act and,
6 as determined by the court, interest on those damages from the date
7 of the complaint, and taxable costs. If the trier of fact finds
8 that the violation is flagrant, it may increase recovery to an
9 amount not to exceed 3 times the actual damages sustained by reason
10 of the violation.

11 Sec. 7. An individual who violates section 3 with the intent
12 to accomplish a result prohibited by this act is guilty of a
13 misdemeanor punishable by imprisonment for not more than 1 year or
14 a fine of not more than \$10,000.00, or both. A person other than an
15 individual that violates section 3 with the intent to accomplish a
16 result prohibited by this act is guilty of a misdemeanor punishable
17 by a fine of not more than \$1,000,000.00.

18 Sec. 8. The remedies provided in this act are cumulative.

19 Sec. 9. If a witness has been or may be called to testify or
20 provide other information at a proceeding under or related to this
21 act, the circuit court for the county in which the proceeding is or
22 may be held may issue, upon application of the attorney general,
23 asserting that in the attorney general's judgment the testimony or
24 other information may be necessary to the public interest and that
25 the witness has refused or is likely to refuse to testify, an order
26 requiring the witness to give testimony or provide other
27 information that the witness refuses to give or provide on the
28 basis of the privilege against self-incrimination, if the court
29 provides in its order that the witness must not be prosecuted or

1 subjected to any penalty or forfeiture for, or on account of, any
2 transaction, occurrence, matter, or thing to which the witness
3 testifies or provides other information or evidence, documentary or
4 otherwise, and that the testimony, information, or evidence must
5 not be used against the witness in any criminal investigation,
6 proceeding, or trial, except a prosecution for perjury for giving a
7 false statement or for otherwise failing to comply with the order.

8 Sec. 10. This act does not exempt, limit, or impair the
9 attorney general's ability to investigate, determine, or impose
10 liability under the Michigan consumer protection act, 1976 PA 331,
11 MCL 445.901 to 445.922, or any other law of this state.

12 Sec. 11. The attorney general may reduce the time period under
13 this section regarding goods and services or any portion of the
14 affected area if conditions in the market where those items or
15 services are sold return to conditions experienced immediately
16 before the declaration of emergency.

17 Enacting section 1. This act does not take effect unless all
18 of the following bills of the 102nd Legislature are enacted into
19 law:

20 (a) Senate Bill No. 954.

21 (b) Senate Bill No. 956.