

HOUSE BILL NO. 5670

March 17, 2020, Introduced by Reps. Pohutsky, Sowerby, Hood, Rabhi, Stone, Hope, Hammoud, Mueller, Bolden, Koleszar, Gay-Dagnogo, Yaroch and Cherry and referred to the Committee on Regulatory Reform.

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 shall be known and may be cited as the
- 2 "commodities and emergency services and supplies pricing protection



1 act".

2 Sec. 2. As used in this act:

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

6 (b) "Consumer food item" means an item that is used or
7 intended for use as a food, drink, confection, or condiment by a
8 person or animal.

9 (c) "Declaration of emergency" means a declaration of a state
10 of emergency.

11 (d) "Emergency supplies" includes, but is not limited to,
12 water, flashlights, radios, batteries, candles, blankets, soaps,
13 diapers, temporary shelters, tape, toiletries, plywood, nails, and
14 hammers.

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

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



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

4 (h) "Person" means an individual, partnership, corporation,
5 limited liability company, association, trust, estate, or other
6 legal entity.

7 (i) "Services" means any work, labor, or services, including
8 services furnished in connection with the sale or repair of goods
9 or real property or improvements to real property.

10 (j) "State of emergency" means a natural or man-made disaster
11 or emergency resulting from a tornado, earthquake, flood, fire,
12 riot, storm, act of war, threat of war, military action, or period
13 of instability following a terrorist attack, or a threat to the
14 public health, for which a state of emergency is declared by the
15 governor or for which any of the following are in effect:

16 (i) An imminent alert issued in the "National Terrorism
17 Advisory System Bulletin" published by the United States Department
18 of Homeland Security.

19 (ii) A severe weather warning issued by the National Weather
20 Service.

21 (iii) A public emergency as declared by a federal agency.

22 (iv) A state of emergency or state of disaster as declared by
23 the governor under the emergency management act, 1976 PA 390, MCL
24 30.401 to 30.421, or a state of emergency declared by the governor
25 under 1945 PA 302, MCL 10.31 to 10.33.

26 Sec. 3. A person conducting business in any chain of
27 distribution for building materials, consumer food items, goods,
28 services, emergency supplies, or medical supplies shall not do any
29 of the following during or reasonably after a declaration of



1 emergency:

2 (a) Charge a price for those materials, items, goods,
3 services, or supplies that is grossly in excess of the price at
4 which similar materials, items, goods, services, or supplies are
5 sold.

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

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

10 Sec. 4. (1) If the attorney general or a local prosecuting
11 attorney has reasonable cause to believe that an individual has
12 information or is in possession, custody, or control of any
13 document or other tangible object relevant to an investigation for
14 a violation of this act, the attorney general or prosecuting
15 attorney may serve upon the individual a written demand to appear
16 and be examined under oath, and to produce the documents or object
17 for inspection and copying. The demand must meet all of the
18 following:

19 (a) Be served upon the individual in the manner prescribed for
20 service of process under the law of this state.

21 (b) Describe the nature of the conduct constituting the
22 violation under investigation.

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

25 (d) If requested, contain a copy of the written
26 interrogatories.

27 (e) Prescribe a reasonable time at which the individual must
28 appear to testify and within which the individual must answer the
29 written interrogatories and the document or object must be



1 produced.

2 (f) Advise the individual that objections to or reasons for
3 not complying with the demand may be filed with the attorney
4 general or prosecuting attorney on or before the time described in
5 subdivision (e).

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

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

11 (2) If an individual fails to comply with the written demand
12 served under subsection (1), the attorney general or a local
13 prosecuting attorney may file an action to enforce the demand.
14 Notice of hearing and a copy of the pleadings and other relevant
15 papers must be served upon the individual, who may appear in
16 opposition. If the court finds that the demand is proper, the court
17 shall order the individual to comply with the demand, subject to
18 modification as the court may prescribe. Upon motion by the
19 individual and for good cause shown, the court may make any further
20 order in the proceedings that justice requires to protect the
21 individual from unreasonable burden or expense.

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

26 (4) The fact that an investigative demand has been issued is
27 not confidential, but the testimony taken and material produced
28 during the investigation shall be kept confidential unless an
29 enforcement action is brought against a person for violation of



1 this act. Once the action is filed, the investigative material may
2 be disclosed in the course of discovery, pursuant to a protective
3 order if the court deems appropriate, and in support of or
4 opposition to the claims and defenses raised in the action, but in
5 all other respects remains confidential.

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

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

13 (a) Reimburse persons who have suffered damages.

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

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

18 (d) Grant other appropriate relief.

19 (3) The court after a hearing may appoint a receiver or order
20 sequestration of the defendant's assets if it appears to the
21 satisfaction of the court that the defendant threatens or is about
22 to remove, conceal, or dispose of his or her assets to the
23 detriment of members of the class.

24 (4) If at any stage of the proceedings under this section the
25 court requires that notice be sent to the class, the attorney
26 general may petition the court to require the defendant to bear the
27 cost of the notice. In determining whether to impose the cost on
28 the defendant, the court shall consider the probability that the
29 attorney general will succeed on the merits of the action.



1 (5) If the defendant shows by a preponderance of the evidence
2 that a violation of this act resulted from a bona fide error
3 notwithstanding the maintenance of procedures reasonably adopted to
4 avoid the error, the amount of recovery shall be limited to actual
5 damages.

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

12 Sec. 6. (1) The attorney general may bring an action for
13 appropriate injunctive or other equitable relief and civil
14 penalties in the name of the people of this state for a violation
15 of this act. The court may impose a civil fine for each violation
16 of this act. For an individual, the civil fine shall not be more
17 than \$10,000.00 per violation. For a person other than an
18 individual, the civil fine shall not be more than \$1,000,000.00 per
19 violation.

20 (2) The state, a political subdivision, or a public agency
21 injured directly or indirectly by a violation of this act may bring
22 an action for appropriate injunctive or other equitable relief,
23 actual damages sustained by reason of a violation of this act and,
24 as determined by the court, interest on those damages from the date
25 of the complaint, and taxable costs. If the trier of fact finds
26 that the violation is flagrant, it may increase recovery to an
27 amount not to exceed 3 times the actual damages sustained by reason
28 of the violation.

29 Sec. 7. A person that violates section 3 with the intent to



1 accomplish a result prohibited by this act is guilty of a
2 misdemeanor punishable by imprisonment for not more than 2 years or
3 a fine of not more than \$10,000.00, or both, if an individual, or a
4 fine of not more than \$1,000,000.00 if a person other than an
5 individual.

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

7 Sec. 9. If a witness has been or may be called to testify or
8 provide other information at a proceeding under or related to this
9 act, the circuit court for the county in which the proceeding is or
10 may be held may issue, upon application of the attorney general,
11 asserting that in his or her judgment the testimony or other
12 information may be necessary to the public interest and that the
13 witness has refused or is likely to refuse to testify, an order
14 requiring the witness to give testimony or provide other
15 information that the witness refuses to give or provide on the
16 basis of the privilege against self-incrimination, if the court
17 provides in its order that the witness shall not be prosecuted or
18 subjected to any penalty or forfeiture for, or on account of, any
19 transaction, occurrence, matter, or thing to which the witness
20 testifies or provides other information or evidence, documentary or
21 otherwise, and that the testimony, information, or evidence shall
22 not be used against the witness in any criminal investigation,
23 proceeding, or trial, except a prosecution for perjury for giving a
24 false statement or for otherwise failing to comply with the order.

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

29 Enacting section 1. This act does not take effect unless all



1 of the following bills of the 100th Legislature are enacted into
2 law:

3 (a) Senate Bill No. _____ or House Bill No. 5671 (request no.
4 05834'19).

5 (b) Senate Bill No. _____ or House Bill No. 5669 (request no.
6 05837'19).

