

SENATE BILL NO. 955

June 26, 2024, Introduced by Senators MOSS and CAVANAGH and referred to the Committee on Finance, Insurance, and Consumer Protection.

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".

1 Sec. 2. As used in this act:

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

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

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

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

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

29 (f) "Goods" means any tangible property, coupons, or

1 certificates, whether bought or leased.

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

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

8 (i) "Services" means any work, labor, or services, including,
9 but not limited to, services furnished in connection with the sale
10 or repair of goods or real property or improvements to real
11 property.

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

18 Sec. 3. A person conducting business in any chain of
19 distribution for building materials, consumer food items, goods,
20 services, emergency supplies, or medical supplies shall not do any
21 of the following during or reasonably after a declaration of
22 emergency:

23 (a) Charge a price for those materials, items, goods,
24 services, or supplies that is grossly in excess of the price at
25 which similar materials, items, goods, services, or supplies are
26 sold.

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

29 (c) Offer those materials, items, goods, services, or supplies

1 at an excessively increased price.

2 Sec. 4. (1) If the attorney general or a local prosecuting
3 attorney has reasonable cause to believe that an individual has
4 information or is in possession, custody, or control of a document
5 or other tangible object relevant to an investigation for a
6 violation of this act, the attorney general or prosecuting attorney
7 may serve on the individual a written demand to appear and be
8 examined under oath, and to produce the documents or object for
9 inspection and copying. The demand must meet all of the following:

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

12 (b) Describe the nature of the conduct constituting the
13 violation under investigation.

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

16 (d) If requested, contain a copy of the written
17 interrogatories.

18 (e) Prescribe a reasonable time at which the individual shall
19 appear to testify and within which the individual shall answer the
20 written interrogatories and the document or object must be
21 produced.

22 (f) Advise the individual that objections to or reasons for
23 not complying with the demand may be filed with the attorney
24 general or prosecuting attorney on or before the time described in
25 subdivision (e).

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

29 (h) Contain a copy of the language provided in subsection (2)

1 with appropriate citation.

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

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

17 (4) The fact that an investigative demand has been issued is
18 not confidential, but the testimony taken and material produced
19 during the investigation must be kept confidential unless an
20 enforcement action is brought against a person for violation of
21 this act. Once the action is filed, the investigative material may
22 be disclosed in the course of discovery, pursuant to a protective
23 order if the court deems appropriate, and in support of or
24 opposition to the claims and defenses raised in the action, but in
25 all other respects remains confidential.

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

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

4 (a) Reimburse persons who have suffered damages.

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

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

9 (d) Grant other appropriate relief.

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

15 (4) If at any stage of the proceedings under this section the
16 court requires that notice be sent to the class, the attorney
17 general may petition the court to require the defendant to bear the
18 cost of the notice. In determining whether to impose the cost on
19 the defendant, the court shall consider the probability that the
20 attorney general will succeed on the merits of the action.

21 (5) If the defendant shows by a preponderance of the evidence
22 that a violation of this act resulted from a bona fide error
23 notwithstanding the maintenance of procedures reasonably adopted to
24 avoid the error, the amount of recovery must be limited to actual
25 damages.

26 (6) The attorney general shall not bring an action under this
27 section more than 6 years after the occurrence of the method, act,
28 or practice that is the subject of the action and not more than 1
29 year after the last payment in a transaction involving the method,

1 act, or practice that is the subject of the action, whichever
2 period of time ends on a later date.

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

11 (2) The state, a political subdivision, or a public agency
12 injured directly or indirectly by a violation of this act may bring
13 an action for appropriate injunctive or other equitable relief,
14 actual damages sustained by reason of a violation of this act and,
15 as determined by the court, interest on those damages from the date
16 of the complaint, and taxable costs. If the trier of fact finds
17 that the violation is flagrant, it may increase recovery to an
18 amount not to exceed 3 times the actual damages sustained by reason
19 of the violation.

20 Sec. 7. An individual who violates section 3 with the intent
21 to accomplish a result prohibited by this act is guilty of a
22 misdemeanor punishable by imprisonment for not more than 1 year or
23 a fine of not more than \$10,000.00, or both. A person other than an
24 individual that violates section 3 with the intent to accomplish a
25 result prohibited by this act is guilty of a misdemeanor punishable
26 by a fine of not more than \$1,000,000.00.

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

28 Sec. 9. If a witness has been or may be called to testify or
29 provide other information at a proceeding under or related to this

1 act, the circuit court for the county in which the proceeding is or
2 may be held may issue, upon application of the attorney general,
3 asserting that in the attorney general's judgment the testimony or
4 other information may be necessary to the public interest and that
5 the witness has refused or is likely to refuse to testify, an order
6 requiring the witness to give testimony or provide other
7 information that the witness refuses to give or provide on the
8 basis of the privilege against self-incrimination, if the court
9 provides in its order that the witness must not be prosecuted or
10 subjected to any penalty or forfeiture for, or on account of, any
11 transaction, occurrence, matter, or thing to which the witness
12 testifies or provides other information or evidence, documentary or
13 otherwise, and that the testimony, information, or evidence must
14 not be used against the witness in any criminal investigation,
15 proceeding, or trial, except a prosecution for perjury for giving a
16 false statement or for otherwise failing to comply with the order.

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

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

24 (a) Senate Bill No. 954.

25

26 (b) Senate Bill No. 956.