

Legislative Analysis



UNFAIR TRADE PRACTICES: CLARIFY PROHIBITION ON PRICE GOUGING

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

House Bill 6250

Sponsor: Rep. Robert Dean

Committee: Judiciary

Complete to 9-16-08

A SUMMARY OF HOUSE BILL 6250 AS INTRODUCED 6-18-08

The bill would amend the Consumer Protection Act to specify what elements would be *prima facie* evidence that unlawful price gouging had occurred and to incorporate provisions almost identical to those contained in the Michigan Antitrust Reform Act pertaining to the power of the attorney general in an investigation of a violation of the act to compel the appearance of a person and production of documents prior to filing an action in circuit court.

The Michigan Consumer Protection Act prohibits unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce and lists numerous acts that constitute unlawful conduct. Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold is one such prohibited conduct.

House Bill 6250 would amend the act to further clarify the prohibition on charging a consumer an inflated price for goods or services. Under the bill, it would be *prima facie* evidence that a price violated this prohibition if either of the following applied:

- The amount charged represented a gross disparity between the price of the property or service and the average price at which that property or service had been rented, leased, sold, or provided in the usual course of business during the preceding 30 days, and the price increase was not attributable to additional costs incurred in connection with the rental, lease, or sale of the property or providing the service, or attributable to national or international market trends.
- The amount charged grossly exceeded the average price at which the same or a similar property or service had been readily obtainable in the trade area during the preceding 30 days, and the increase in the amount charged was not attributable to additional costs incurred in connection with the rental, lease, or sale of the property or with providing the service or attributable to national or international market trends.

Further, the bill would revise a provision pertaining to the attorney general's subpoena power. Currently, upon the request of the attorney general, the circuit court could after an *ex parte* hearing, subpoena a person reasonably believed to be engaged in, or about to engage in, unlawful practices; the subpoena may extend to the books, records, and

documents of that person. Documentary material obtained by the attorney general is confidential and may only be disclosed to other law enforcement officials, in the interest of enforcing the act, or to a party in private action upon court order. Persons violating the confidentiality of documentary materials are guilty of a misdemeanor punishable by a maximum \$2,500 fine and/or up to one year imprisonment. The bill would delete this provision.

Instead, similar to the authority granted the attorney general under the Michigan Antitrust Reform Act, if the attorney general had reasonable cause to believe that a person had information or was in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of the act, the attorney general could serve on a person -- before bringing an action in circuit court -- a written demand to appear and be examined under oath, and also to produce the document or object for inspection and copying. The demand would have to meet criteria listed in the bill; the criteria would be virtually identical to criteria listed under the Michigan Antitrust Reform Act.

In addition, the bill would add two provisions virtually identical to those in the Michigan Antitrust Reform Act. The first pertains to the authority of the attorney general to file a petition to enforce the demand if a person failed to comply with the written demand described above; a violation of the court's final order, for instance, for the person to appear and produce the requested documents, would be considered civil contempt.

The other provision added by the bill that would be virtually identical to the antitrust act is a requirement for the attorney general to keep confidential any procedure, testimony taken, or material produced related to a demand before bringing an action against a person for the violation under investigation, unless confidentiality had been waived by the person being investigated and the person who had testified, answered interrogatories, or produced material or disclosure was authorized by the court.

The bill would also make numerous revisions of an editorial nature and conform existing language to the changes proposed by the bill; for example, referring to the "written demand" instead of "the notice." Currently, the act allows the attorney general to file a petition in the circuit court of the county in which the person is established or conducts business in. Under the bill, the petition could also be filed in a county in which the person resided or maintained a principal office.

MCL 445.903, 445.907, and 445.908

FISCAL IMPACT:

House Bill 6250 allows the attorney general to serve upon a person a written demand to appear and be examined under oath -- before bringing an action in a circuit court. The additional administrative responsibility associated with the bill's new provisions may add an indeterminate amount of cost to the Department of Attorney General. Any fiscal

impact would depend on the number of written demands the attorney general issued and the number of enforcement proceedings initiated afterwards.

The bill provides that a person who fails to comply with the attorney general's written demand or with an investigation is subject to a civil fine of up to \$5,000. The bill imposes a civil fine for the stated violation without classifying the violation as civil infraction or directing the fine revenue. In this situation, it is assumed that a provision of the Management and Budget Act would apply and the fines would be deposited into the state General Fund (MCL 18.1443). Thus, House Bill 6250 would increase the state General Fund by an indeterminate amount, depending upon how many new civil fines are collected under the bills' provisions.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Viola Bay Wild

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