

# HOUSE BILL NO. 5669

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 energy products and services during a period of market disruption; 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 "energy pricing protection act".

3           Sec. 2. As used in this act:



1 (a) "Energy product or service" includes gasoline, propane,  
2 home heating oil, and other essential energy-based products, or any  
3 service necessary to the provision of those products, that are  
4 vital and necessary for the health, safety, and welfare of the  
5 residents of this state.

6 (b) "Excessively increased price" means a price that  
7 demonstrates an unjustified disparity between the price of an  
8 energy product or service sold or offered for sale, in the market  
9 where that product or service is sold, immediately before a market  
10 disruption and the price of the product or service sold or offered  
11 for sale in that market during or reasonably after a market  
12 disruption. As used in this subdivision, an unjustified disparity  
13 is a disparity of more than 10% unless the person selling or  
14 offering the energy product or service can demonstrate that the  
15 increase in price is attributable to an increase in the cost of  
16 bringing the product or service to market.

17 (c) "Market disruption" means a change in the market, whether  
18 actual or imminently threatened, resulting from weather or other  
19 force of nature, failure, shortage or disruption of energy  
20 production or distribution, strike, civil disorder, military  
21 action, act of war, threat of war, national or local emergency, or  
22 other abnormal market condition.

23 Sec. 3. A person conducting business in any chain of  
24 distribution for energy products or services shall not do any of  
25 the following during or reasonably after a market disruption:

26 (a) Charge a price for energy products or services that is  
27 grossly in excess of the price at which similar energy products or  
28 services are sold.

29 (b) Charge an excessively increased price for energy products



1 or services.

2 (c) Offer for sale an energy product or service at an  
3 excessively increased price.

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

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

15 (b) Describe the nature of the conduct constituting the  
16 violation under investigation.

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

19 (d) If requested, contain a copy of the written  
20 interrogatories.

21 (e) Prescribe a reasonable time at which the individual must  
22 appear to testify and within which the individual must answer the  
23 written interrogatories and the document or object must be  
24 produced.

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

29 (g) Specify a place for the taking of testimony, or for



1 production, and designate the individual who is to be the custodian  
2 of the document or object.

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

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

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

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

29 Sec. 5. (1) The attorney general may bring a class action on



1 behalf of persons residing in or injured in this state for the  
2 actual damages caused by conduct prohibited under section 3 to  
3 recover actual damages or \$100.00, whichever is greater.

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

7 (a) Reimburse persons who have suffered damages.

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

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

12 (d) Grant other appropriate relief.

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

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

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

29 (6) The attorney general shall not bring an action under this



1 section more than 6 years after the occurrence of the method, act,  
2 or practice that is the subject of the action and not more than 1  
3 year after the last payment in a transaction involving the method,  
4 act, or practice that is the subject of the action, whichever  
5 period of time ends on a later date.

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

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

23       Sec. 7. A person that violates section 3 with the intent to  
24 accomplish a result prohibited by this act is guilty of a  
25 misdemeanor punishable by imprisonment for not more than 2 years or  
26 a fine of not more than \$10,000.00, or both, if an individual, or a  
27 fine of not more than \$1,000,000.00 if a person other than an  
28 individual.

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



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

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

23           Enacting section 1. This act does not take effect unless all  
24 of the following bills of the 100th Legislature are enacted into  
25 law:

26           (a) Senate Bill No. \_\_\_\_ or House Bill No. 5671 (request no.  
27 05834'19).

28           (b) Senate Bill No. \_\_\_\_ or House Bill No. 5670 (request no.  
29 05835'19).

