

HOUSE BILL NO. 5897

July 30, 2024, Introduced by Reps. Pohutsky and Hoskins and referred to the Committee on Economic Development and Small Business.

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 may be cited as the "energy pricing
2 protection act".

3 Sec. 2. As used in this act:

1 (a) "Energy product or service" means gasoline, propane, or
2 home heating oil, or a service necessary to the provision of those
3 products, that is vital and necessary for the health, safety, and
4 welfare of the residents of this state. Energy product or service
5 does not include a product or service regulated by the Michigan
6 public service commission.

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

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

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

28 (a) Charge a price for energy products or services that is
29 grossly in excess of the price at which similar energy products or

1 services are sold.

2 (b) Charge an excessively increased price for energy products
3 or services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (a) Reimburse persons who have suffered damages.

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

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

13 (d) Grant other appropriate relief.

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

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

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

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

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

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

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

1 by a fine of not more than \$1,000,000.00.

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

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

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

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

28 (a) Senate Bill No. ____ or House Bill No. 5896 (request no.
29 00341'23 *).

1 (b) Senate Bill No. _____ or House Bill No. 5895 (request no.
2 00342'23 *).