

**SUBSTITUTE FOR
HOUSE BILL NO. 5897**

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:

4 (a) "Energy product or service" means gasoline, propane, or
5 home heating oil, or a service necessary to the provision of those
6 products, that is vital and necessary for the health, safety, and
7 welfare of the residents of this state. Energy product or service



1 does not include a product or service regulated by the Michigan
2 public service commission, the Federal Energy Regulatory
3 Commission, a cooperative electric utility that is member-regulated
4 under the electric cooperative member-regulation act, 2008 PA 167,
5 MCL 460.31 to 460.39, a joint-action agency utility system owned by
6 2 or more municipalities to furnish heat, power, and light, or a
7 governing body of a municipally owned utility.

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

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

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

29 (a) Charge a price for energy products or services that is



1 grossly in excess of the price at which similar energy products or
2 services are sold.

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

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

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

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

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

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

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

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

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



1 subdivision (e).

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

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

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

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

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



1 all other respects remains confidential.

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

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

9 (a) Reimburse persons who have suffered damages.

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

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

14 (d) Grant other appropriate relief.

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

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

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



1 damages.

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

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

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

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



1 result prohibited by this act is guilty of a misdemeanor punishable
2 by a fine of not more than \$1,000,000.00.

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

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

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

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

29 (a) House Bill No. 5895.



1 (b) House Bill No. 5896.

