SENATE BILL NO. 847

March 17, 2020, Introduced by Senators JOHNSON, MOSS, WOJNO, POLEHANKI, CHANG, SANTANA, BAYER, GEISS, MCMORROW, IRWIN, LUCIDO, RUNESTAD, MACDONALD, BRINKS, BULLOCK, LASATA, VANDERWALL, HORN and HOLLIER and referred to the Committee on Economic and Small Business Development.

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 shall be known and may be cited as the "commodities and emergency services and supplies pricing protection
Sec. 2. As used in this act:

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

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

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

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

(e) "Excessively increased price" means a price that demonstrates an unjustified disparity between the price for building materials, consumer food items, goods, services, emergency supplies, or medical supplies sold or offered for sale, in the market where those items or services are sold, immediately before a declaration of emergency and the price of those items or services sold or offered for sale in that market during or reasonably after a declaration of emergency. As used in this subdivision, an unjustified disparity is a disparity of more than 10% unless the person selling or offering the building materials, consumer food items, goods, services, emergency supplies, or medical supplies can demonstrate that the increase in price is attributable to an increase in the cost of bringing those items or services to market.

(f) "Goods" means any tangible property, coupons, or certificates, whether bought or leased.
(g) "Medical supplies" includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

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

(i) "Services" means any work, labor, or services, including services furnished in connection with the sale or repair of goods or real property or improvements to real property.

(j) "State of emergency" means a natural or man-made disaster or emergency resulting from a tornado, earthquake, flood, fire, riot, storm, act of war, threat of war, military action, or period of instability following a terrorist attack, or a threat to the public health, for which a state of emergency is declared by the governor or for which any of the following are in effect:


(ii) A severe weather warning issued by the National Weather Service.

(iii) A public emergency as declared by a federal agency.

(iv) A state of emergency or state of disaster as declared by the governor under the emergency management act, 1976 PA 390, MCL 30.401 to 30.421, or a state of emergency declared by the governor under 1945 PA 302, MCL 10.31 to 10.33.

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

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

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

(c) Offer those materials, items, goods, services, or supplies at an excessively increased price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Reimburse persons who have suffered damages.

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

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

(d) Grant other appropriate relief.

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

(4) If at any stage of the proceedings under this section the court requires that notice be sent to the class, the attorney general may petition the court to require the defendant to bear the cost of the notice. In determining whether to impose the cost on the defendant, the court shall consider the probability that the attorney general will succeed on the merits of the action.
(5) If the defendant shows by a preponderance of the evidence that a violation of this act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, the amount of recovery shall be limited to actual damages.

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

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

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

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

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

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

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

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

(a) Senate Bill No. 846.

(b) Senate Bill No. 848.