

AN ACT to prohibit excessive energy prices during times of market disruption, to prescribe certain powers and duties, to provide for certain investigations, and to provide for certain remedies, damages, and penalties

Sec. 1 Short Title

This act shall be known as the “Energy Pricing Protection Act.”

Sec. 2 Definitions

As used in this part:

“Energy product” includes gasoline, propane, and other essential energy-based products that are vital and necessary for the health, safety, and welfare of Michigan citizens.

“Market disruption” means any change in the market, whether actual or imminently threatened, resulting from weather or other force of nature, failure, shortage, or disruption of energy production or distribution, strike, civil disorder, military action, national or local emergency, or other abnormal market condition.

“Excessively increased price” means a price that demonstrates an unjustified disparity between the price of an energy product or service sold, or offered for sale, in the relevant market immediately before a market disruption and the price of the energy product or service sold, or offered for sale, in the same relevant market during or reasonably after a market disruption. A disparity of more than 10% is presumed to be an unjustified disparity unless the person selling or offering the energy product or service for sale can show that the increase in price is attributable to an increase in the cost of bringing the energy product or service to market.

Sec 3. Prohibited conduct

A person conducting business within the chain of distribution of energy products must not charge a price that is grossly in excess of the price at which similar products or services are sold or charge an excessively increased price for energy products or services, or offer for sale an energy product or service at an excessively increased price, during or reasonably after a market disruption.

Sec. 4. Investigative demand, contents, noncompliance, action to enforce demand, confidentiality and waiver.

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

- (a) be served upon the person in the manner required for service of process in 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 demanded, contain a copy of the written interrogatories;
- (e) prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general on or before that time;
- (f) specify a place for the taking of testimony or for production and designate the person who shall be custodian of the document or object; and
- (g) contain a copy of subsection (2).

(2) If a person 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 shall be served upon the person, who may appear in opposition. If the court finds that the demand is proper, the court shall order the person to comply with the demand, subject to modification as the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable burden, or expense.

(3) An action filed under subsection (2) shall be filed in the circuit court of the county in which the person resides or in which the person 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, material produced, or other information gathered 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. Civil enforcement, remedies.

(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 the state for a violation of this act. The court may assess for the benefit of the state a civil penalty for each violation of this

act. For an individual, the penalty shall not be more than \$10,000 per violation. For a person other than an individual, the fine shall not be more than \$1,000,000 per violation.

- (2) The state, a political subdivision, or any 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 the 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 in excess of 3 times the actual damages sustained by reason of a violation of this act

Sec. 6. Violation as misdemeanor; penalty; criminal prosecution

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

Sec. 7. Remedies Cumulative

The remedies provided in this act are cumulative.

Sec. 8. Order requiring witness to give testimony or other information; immunity.

If a witness has been or may be called to testify or provide other information at any proceeding relating to or under 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 which asserts that in his or her judgment the testimony or other information may be necessary to the public interest and the witness has or is likely to refuse to testify, an order requiring the witness to give testimony or provide other information which 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.