Michigan® Retailers Association BuyNearby

MEMORANDUM

To:	Members of the House Economic Development and Small Business Committee
From:	Michigan Retailers Association
Date:	December 4, 2024
Subject:	Questions and concerns remaining on substitute version of HB 5895

Michigan Retailers Association (MRA) never condones price gouging. MRA regularly reminds our members to follow the Michigan Consumer Protection Act's current safeguard against pricing that grossly exceeds other similar goods in the marketplace. We appreciate the House and Senate sponsors' willingness to make changes to better align the bills with the executive orders on price gouging in place during 2020.

The examples highlighted by sponsors of 800% increases are egregious and clearly constitute price gouging, but we disagree that a 10% increase on low-cost items meets that same standard. As noted below, MRA has several requests for additional changes focused on implementation of the law and adjustments to the proposed penalties that substantially deviate from similar laws across the U.S.

Price threshold is too low, deviates from 2020 executive orders

Most states define price gouging as an increase in the price of goods or services by a certain percentage (between 10-25%) above the average price in the period leading up to the emergency. Defining a 10% increase as excessive when talking about low-cost consumer goods, such as certain grocery or hardware items is fundamentally unfair. By this definition, a 10-cent increase on a $1.00 item may result in both a significant civil penalty and a criminal conviction. This strict threshold also disregards a store's normal margin and pre-programmed price changes that may be pushed from a central office to all locations. Stores may have a hard time overriding programmed changes and doing independent calculations to adhere to a 10% increase or less.

> *Our ask:* Return to the 20% threshold used in the 2020 executive orders or add language allowing the percentage or a demonstrated increase in the cost to bring goods to market, an extraordinary discount in effect prior to the emergency, "or a markup at or less the cost to the retailer."

Penalties far exceed those in other state price gouging laws

The penalties imposed of up to $10,000 for an individual or up to $1M for a business per violation are excessive and unnecessarily harsh for even the most minor of violations or mistakes. Even the most aggressive state laws limit penalties to $25,000. The language is vague around what exactly constitutes a violation – a single product priced over 10% or each sale of that product. Most states, outside of California and New York (NY is only for extreme cases), do not include misdemeanor or criminal charges.

> *Our ask:* Remove criminal penalties and mirror the current civil fine of not more than $25,000 under the Consumer Protection Act.

Limit recovery to actual damages

HB 5895 would allow individuals to recover actual damages (presuming a business is found guilty of price gouging) or $100 – *whichever is greater.* This inherently provides an incentive for bad actors to accuse retailers of price gouging to seek a $100 windfall.

> *Our ask:* Limit recovery to actual damages to avoid unnecessary investigations.

Retailers are often the first to help communities when disaster strikes, many donating supplies, and serving as a resource for community members. They do not seek to engage in price gouging or deceive their customers. They will follow the law but need laws to include reasonable standards. We ask that you treat businesses as the good actors they are by instituting fair laws that clearly go after limited bad actors who intend to deceive consumers and engage in price gouging instead of applying sweeping standards that would penalize an 11-cent increase on a $1 item.

Thank you for your consideration of these requests. MRA appreciates the work the sponsor has already done in the substitute version of HB 5895 (that mirrors the S-1 version of SB 955) and the willingness to discuss additional changes.

We look forward to working together to further improve these three remaining concerns before the legislation is finalized.