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Senate Bills 846 through 848 (as introduced 3-17-20)
Sponsor: Senator Jeremy Moss (S.B. 846 & 848)
Senator Ruth Johnson (S.B. 847)
Committee: Economic and Small Business Development

Date Completed: 10-1-20

CONTENT

Senate Bill 846 would enact the "Hotel and Lodging Pricing Protection Act" to do the following:

- During or reasonably after a declaration of emergency, prohibit a person engaged in the business of offering, selling, or renting lodging from charging a price that was grossly in excess of the price at which similar lodging was advertised, offered, or sold, among other things.
- During a declaration of emergency and for 30 days after the termination of the declaration, prohibit a person from increasing a rental price that was advertised, offered, or charged for housing to an existing or prospective tenant before the declaration by more than 10% unless certain circumstances applied.
- Following a declaration of emergency, and for 30 days after its termination, prohibit a person from evicting a tenant of residential housing and renting or offering to rent to another prospective tenant the housing from which the previous tenant was evicted at a rental price greater than the price that the evicted tenant could be charged.
- Allow the Attorney General or prosecuting attorney to serve upon an individual a written demand to appear and be examined under oath if he or she had reasonable cause to believe that the individual had certain information related to an investigation under the Act.
- Allow the Attorney General to bring a class action on behalf of entities residing in or injured in the State for the actual damages caused by conduct prohibited under the Act.
- Allow the Attorney General to 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 the Act.
- Prescribe penalties and fines for violations of the Act.

Senate Bill 847 would enact the "Commodities and Emergency Services and Supplies Pricing Protection Act" to do the following:

- During or reasonably after a declaration of emergency, prohibit a person conducting business in any chain of distribution for building materials, consumer food items, goods, services, emergency supplies, or medical supplies from charging a price that was grossly in excess of the price at which similar goods were sold, among other things.

- **Allow the Attorney General or prosecuting attorney to serve upon an individual a written demand to appear and be examined under oath if he or she had reasonable cause to believe that the individual had certain information related to an investigation under the Act.**
- **Allow the Attorney General to bring a class action on behalf of entities residing in or injured in the State for the actual damages caused by conduct prohibited under the Act.**
- **Allow the Attorney General to 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 the Act.**
- **Prescribe penalties and fines for violations of the Act.**

Senate Bill 848 would enact the "Energy Pricing Protection Act" to do the following:

- **During or reasonably after a market disruption, prohibit a person conducting business in any chain of distribution for energy products or services from charging a price for energy products or services that was grossly in excess of the price at which similar energy products or services were sold, among other things.**
- **Allow the Attorney General or prosecuting attorney to serve upon an individual a written demand to appear and be examined under oath if he or she had reasonable cause to believe that the individual had certain information related to an investigation under the Act.**
- **Allow the Attorney General to bring a class action on behalf of entities residing in or injured in the State for the actual damages caused by conduct prohibited under the Act.**
- **Allow the Attorney General to 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 the Act.**
- **Prescribe penalties and fines for violations of the Act.**

The bills are tie-barred.

Senate Bill 846

Definitions

Under the proposed Hotel and Lodging Pricing Protection Act, "excessively increased price" would mean a price that demonstrates an unjustified disparity between the price of lodging advertised, or offered for sale or rent, for the market where the lodging is located, immediately before a declaration of emergency and the price of lodging advertised, or offered for sale or rent, in that market during or reasonably after a declaration of emergency. An unjustified disparity would be a disparity of more than 10% unless the person offering, selling, or renting lodging could demonstrate that the increase in price was attributable to an increase in the cost of the goods or labor used in its business or to a seasonal adjustment in rates that was regularly scheduled.

"Lodging" would mean a building or structure kept, used, maintained as, or held out to the public to be an inn, hotel, or public lodging house, including all the following:

- A full-service hotel, limited service hotel, resort, conference center, extended-stay hotel, vacation ownership, or conventional hotel offering permanent or temporary stays.
- Bed and breakfast.
- Rental housing not rented or advertised for rent prior to a declaration of emergency,
- A space rented in a mobile home park or campground.

"Rental price" would mean any of the following:

For housing with a rental period that began not more than one year before a declaration of emergency, and that is being rented by a tenant at the time of the declaration, rental price would mean the current rental price paid by the tenant. Rental price as described in this provision would include the rental price for housing advertised, offered, or charged, at a daily rate at the time of the declaration of emergency if the housing continued to be advertised, offered, or charged at a daily rate.

For housing with a rental period that began, or was offered for rent, not more than one year before a declaration of emergency, and that is not being rented by a tenant at the time of the declaration, rental price would mean the most recent rental price offered before the declaration of emergency. Rental price as described in this provision would include the rental price for housing advertised, offered, or charged on a daily basis at the time of the declaration of emergency, if the housing were advertised, offered, or charged on a periodic lease agreement after the declaration of emergency.

For housing that is being rented by a tenant at the time of a declaration of emergency but that becomes vacant while the declaration remains in effect and that is subject to any ordinance, rule, regulation, or initiative measure adopted by a local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, rental price would mean the actual rental price paid by the previous tenant or the fair market rent amount specified below, whichever is greater. Under this provision, the amount could be increased by 5% if the housing were previously rented or offered for rent unfurnished and it was being offered for rent fully furnished, but the amount could not be adjusted for any other good or service, including gardening or utilities currently or formerly provided in connection with the lease.

For housing that is not being rented by a tenant and has not been offered for rent within the one-year period immediately preceding a declaration of emergency, rental price would mean 160% of the fair market rent for the market where the housing is located as established by the United States Department of Housing and Urban Development. The amount could be increased by 5% if the housing were offered for rent fully furnished, but the amount could not be adjusted for any other good or service, including gardening or utilities currently or formerly provided in connection with the lease.

For mobile home spaces rented to existing tenants at the time of a declaration of emergency and subject to a local rent control ordinance, rental price would mean the amount authorized under the local rent control ordinance. Under this provision, for new tenants who entered into an agreement for a mobile home space that was subject to rent control but was not rented at the time of a declaration of emergency, rental price would mean the amount of rent last charged for a space in the same mobile home park, and for mobile home spaces not subject to a local rent control ordinance and not rented at the time of a declaration of emergency, it would mean the amount of rent last charged for the space.

"State of emergency" would mean 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:

- An imminent alert issued in the "National Terrorism Advisory System Bulletin" published by the United States Department of Homeland Security.
- A severe weather warning issued by the National Weather Service.

- A public emergency as declared by a Federal agency.
- A state of emergency or state of disaster as declared by the Governor under the Emergency Management Act, or a state of emergency as declared by the Governor under Public Act 302 of 1945.

(Generally, the EMA grants the Governor authority to issue executive orders, proclamations, and directives that have the force and effect of law to implement a declared state of emergency if he or she finds that an emergency has occurred or that the threat of an emergency exists. The EMA requires the state of emergency to continue until the Governor finds that the threat or danger has passed, the emergency has been dealt with to the extent that emergency conditions no longer exist, or until the declared state of emergency has been in effect for 28 days.

Public Act 302 of 1945 also allows the Governor to declare a state of emergency during times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the State.)

Prohibited Conduct

Under the proposed Act, during or reasonably after a declaration of emergency, a person engaged in the business of offering, selling, or renting lodging could not do any of the following:

- Charge a price that was grossly in excess of the price at which similar lodging was advertised, offered, or sold.
- Charge an excessively increased price for lodging.
- Offer lodging for sale or rent at an excessively increased price.

In the event of a declaration of emergency and for a period of 30 days following the termination of the declaration, the Act would prohibit a person from increasing a rental price that was advertised, offered, or charge for housing to an existing or prospective tenant before the declaration of emergency by more than 10% unless that person could demonstrate that the increase was attributable directly to additional costs for repairs or additions beyond normal maintenance that have been amortized over the rental term, causing the rent to be increased by greater than 5%, or that an increase was contractually agreed to by the tenant prior to the declaration of emergency.

The Act specifies that it would not be a defense to a prosecution that an increase in rental price was based on the length of a rental term, the inclusion of additional goods or services, except as provided in the definition for rental price with respect to furniture, or the rent being offered by, or paid by, an insurance company, or other third party, on behalf of a tenant. The Act also specifies that this provision would not authorize a landlord to charge a price greater than the amount authorized by a local rent control ordinance.

Following a declaration of emergency, and for a period of 30 days following its termination, or any period by which it was extended by the applicable authority, a person could not evict a residential tenant of residential housing and renting or offering to rent to another prospective tenant the housing from which the previous tenant was evicted at a rental price greater than the price that the evicted tenant could be charged under the Act. The Act specifies that a person could do either of the following without violating this provision:

- Continue an eviction process that was started before the declaration of emergency.

- Commence an eviction process if the lodging had become uninhabitable because of the conditions leading to the declaration of emergency or as a consequence of the state of emergency.

Investigative Demand

Under the proposed Act, if the Attorney General or a local prosecuting attorney had reasonable cause to believe that an individual had information or was in possession, custody, or control of any document or other tangible object relevant to an investigation for a violation of the Act, the Attorney General or prosecuting attorney could 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 would have to meet the following:

- Be served upon the individual in the manner prescribed for service of process under the law of the State.
- Describe the nature of the conduct constituting the violation under investigation.
- Describe the document or object with sufficient definiteness to permit it to be fairly identified.
- If requested, contain a copy of the written interrogatories.
- Prescribe a reasonable time at which the individual would have to appear to testify and the time within which the individual would have to answer the written interrogatories and the document or object would have to be produced.
- Advise the individual that objections to or reasons for not complying with the demand could be filed with the Attorney General or prosecuting attorney on or before the time described above.
- Specify a place for the taking of testimony, or for production, and designate the individual who would be the custodian of the document or object.
- Contain a copy of the language described below with appropriate citation.

If an individual failed to comply with the written demand, the Attorney General or a local prosecuting attorney could file an action to enforce it. Notice of hearing and a copy of the pleadings and other relevant papers would have to be served upon the individual, who could appear in opposition.

If the court found that the demand was proper, it would have to order the individual to comply with it, subject to modification as the court could prescribe. Upon motion by the individual and for good cause shown, the court could make a further order in the proceedings that justice required to protect the individual from unreasonable burden or expense. An action filed in this manner would have to be filed in the circuit court of the county in which the individual resided or in which the individual maintained a principal place of business within the State, or in the circuit court for Ingham County.

The Act specifies that the fact that an investigate demand had been issued would not be confidential, but the testimony taken and material produced during the investigation would have to be kept confidential unless an enforcement action was brought against a person for violation of the Act. Once the action was filed, the investigative material could be disclosed in the course of discovery, and in support of or opposition to the claims and defenses raised in the action, but in all other respects it would have to remain confidential.

Class Action

Under the Act, the Attorney General could bring a class action on behalf of entities residing in or injured in the State for the actual damages caused by conduct prohibited under the Act to recover actual damages or \$100 whichever was greater. On motion of the Attorney General

and without bond in an action brought under the Act, the court could make an appropriate order to do any of the following:

- Reimburse individuals who had suffered damages.
- Carry out a transaction in accordance with the aggrieved individuals' reasonable expectations.
- Strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result.
- Grant other appropriate relief.

After a hearing, a court could appoint a receiver or order sequestration of the defendant's assets if it appeared to the satisfaction of the court that the defendant threatened or was about to remove, conceal, or dispose of his or her assets to the detriment of members of the class.

The Act would allow the Attorney General, if at any stage of the proceedings the court required that notice be sent to the class, to 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 would have to consider the probability that the Attorney General would succeed on the merits of the action.

If the defendant showed by a preponderance of the evidence that a violation of the Act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, the amount of recovery would have to be limited to actual damages.

The Attorney General could not bring a class action more than six years after the occurrence of the method, act, or practice that was the subject of the action and not more than one year after the last payment in a transaction involving the method, act, or practice that was the subject of the action, whichever period of time ended on a later date.

Prosecution of Witnesses

The Act specifies that if a witness had been or could be called to testify or provide other information at a proceeding under or related to the Act, the circuit court for the county in which the proceeding was or could be held could issue, upon application of the Attorney General, asserting that in his or her judgment the testimony or other information could be necessary to the public interest and that the witness had refused or was likely to refuse to testify, an order requiring the witness to give testimony or provide other information that the witness refused to give or provide on the basis of the privilege of self-incrimination, if the court provided in the order that the witness could 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 testified or provided other information or evidence, documentary or otherwise, and that the testimony, information, or evidence could not be used against the witness in any criminal investigation, proceeding, or trial, except a prosecution for perjury for giving false statement or for otherwise failing to comply with the order.

Fines & Penalties

The Act would allow the Attorney General to 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 the Act. The court could impose a civil fine for each violation of the Act. For an individual, the civil fine could not be more than \$10,000 per violation and for a person other than an individual, the civil fine could not be more than \$1.0 million per violation.

The Act also would allow the State, a political subdivision, or a public agency injured directly or indirectly by a violation of the Act to bring an action for appropriate injunctive or other equitable relief, actual damages sustained by reason of a violation of the 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 found that the violation was flagrant, it could increase recovery to an amount not to exceed three times the actual damages sustained by reason of the violation.

A person who violated the Act with the intent to accomplish a result prohibited by it would be guilty of a misdemeanor punishable by up to two years' imprisonment or a fine of not more than \$10,000 or both, if an individual, or a fine of not more than \$1.0 million if a person other than an individual.

The remedies provided in the Act would be cumulative.

The Act specifies that it would not exempt, limit, or impair the Attorney General's ability to investigate, determine, or impose liability under the Michigan Consumer Protection Act or any other law of the State. The Act also specifies that it would not prohibit an owner from evicting a tenant for a lawful reason.

Senate Bill 847

Definitions

Under the proposed Commodities and Emergency Services and Supplies Pricing Protection Act, "excessively increased price" would mean a price that demonstrated 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.

The Act specifies that unjustified disparity, as used above, would be 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 could demonstrate that the increase in price was attributable to an increase in the cost of bringing those items or services to market.

"Building materials" would mean lumber, construction tools, windows, or other materials used in the construction or reconstruction of a building, structure, or other real property. "Consumer food item" would mean an item that is used or intended for use as a food, drink, confection, or condiment by a person or animal. "Emergency supplies" would include water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers. "Goods" would mean any tangible property, coupons, or certificates, whether bought or leased. "Medical supplies" would include prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products. "Services" would mean 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.

"State of emergency" would mean 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:

- An imminent alert issued in the "National Terrorism Advisory System Bulletin" published by the United States Department of Homeland Security.
- A severe weather warning issued by the National Weather Service.
- A public emergency declared by a Federal agency.
- A state of emergency or state of disaster as declared by the governor under the Emergency Manager Act or a state of emergency declared by the governor under Public Act 302 of 1945.

Prohibited Conduct

Under the Act, a person conducting business in any chain of distribution for building materials, consumer food items, goods, services, emergency supplies, or medical supplies could not do any of the following during or reasonably after a declaration of emergency:

- Charge a price for those materials, items, goods, services, or supplies that was grossly in excess of the price at which similar materials, items, goods, services, or supplies were sold.
- Charge an excessively increased price for those materials, goods, services, or supplies.
- Offer those materials, items, goods, services, or supplies at an excessively increased price.

Investigative Demand, Class Action, & Fines

The proposed Commodities and Emergency Services and Supplies Pricing Protection Act would include provisions pertaining to investigative demands by a prosecuting attorney or the Attorney General, class actions on behalf of individuals injured by conduct prohibited by the Act, and fines and penalties similar to those specified under the proposed Hotel and Lodging Pricing Protection Act.

Senate Bill 848

Definitions

Under the proposed Energy Pricing Protection Act, "energy product or service" would include gasoline, propane, home heating oil, and other essential energy-based products, or any service necessary to the provision of those products, that were vital and necessary for health, safety, and welfare of the residents of the State.

"Excessively increased price" would mean a price that demonstrated an unjustified disparity between the price of an energy product or service sold or offered for sale, in the market where the product or service was sold, immediately before a market disruption and the price of the product or service sold or offered for sale in that market during or reasonably after market disruption.

As used above, an unjustified disparity would be a disparity of more than 10% unless the person selling or offering the energy product or service could demonstrate that the increase in price was attributable to an increase in the cost of bringing the product or service to market.

"Market disruption" would mean a 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, act of war, threat of war, national or local emergency, or other abnormal market condition.

Prohibited Conduct

Under the Act, a person conducting business in any chain of distribution for energy products or services could not do any of the following during or reasonably after a market disruption:

- Charge a price for energy products or services that was grossly in excess of the price at which similar energy products or services were sold.
- Charge an excessively increased price for energy products or services.
- Offer for sale an energy product or service at an excessively increased price.

Investigative Demand, Class Action, & Fines & Penalties

The proposed Energy Pricing Protection Act would include provisions pertaining to investigative demands by a prosecuting attorney or the Attorney General, class actions on behalf of individuals injured by conduct prohibited by the Act, and fines and penalties similar to those specified under the proposed Hotel and Lodging Pricing Protection Act.

Legislative Analyst: Tyler VanHuysse

FISCAL IMPACT

The bills would have a negative fiscal impact on the State and local government, as new misdemeanor arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people would be prosecuted under bills' provisions. Any additional revenue from imposed fines would go to local libraries.

The bills would prescribe civil fines for violations. Revenue from civil fines is deposited into the State Justice System Fund. The Fund supports justice-related activities across State government in the Departments of Corrections, Health and Human Services, State Police, and Treasury. The Fund also supports justice-related issues in the Legislative Retirement System and the Judiciary.

The Department of the Attorney General likely would incur some costs for possible investigations and prosecutions related to violations of the proposed Acts. During the COVID-19 pandemic, the Department has indicated an increase in the call volume to its hotline, creating unbudgeted overtime costs. To date, the Department has not hired any additional attorneys or staff to work on cases involving excessive pricing of goods and materials related to the COVID-19 pandemic. Should that become necessary, however, the estimated average annual cost for an attorney at the Department of Attorney General is \$185,000 in salary and benefits. The actual cost to the Department is indeterminate and would depend on the number of investigations and any prosecutions that resulted.

The bill would have an indeterminate fiscal impact on local courts. The impact would be determined by the number of hearings requested as a result of the bills and by the amount of price gouging that occurred under a declaration of emergency or disaster.

Fiscal Analyst: Joe Carrasco
Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.