

SENATE BILL NO. 846

March 17, 2020, Introduced by Senators MOSS, JOHNSON, SANTANA, WOJNO, CHANG, POLEHANKI, BAYER, GEISS, MCMORROW, IRWIN, LUCIDO, 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 lodgings 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 "hotel
2 and lodging pricing protection act".

3 Sec. 2. As used in this act:

1 (a) "Declaration of emergency" means a declaration of a state
2 of emergency.

3 (b) "Excessively increased price" means a price that
4 demonstrates an unjustified disparity between the price of lodging
5 advertised, or offered for sale or rent, for the market where the
6 lodging is located, immediately before a declaration of emergency
7 and the price of lodging advertised, or offered for sale or rent,
8 in that market during or reasonably after a declaration of
9 emergency. As used in this subdivision, an unjustified disparity is
10 a disparity of more than 10% unless the person offering, selling,
11 or renting lodging can demonstrate that the increase in price is
12 attributable to an increase in the cost of the goods or labor used
13 in its business or to a seasonal adjustment in rates that is
14 regularly scheduled.

15 (c) "Lodging" means a building or structure kept, used,
16 maintained as, or held out to the public to be an inn, hotel, or
17 public lodging house. Lodging includes, but is not limited to, all
18 of the following:

19 (i) A full-service hotel, limited-service hotel, resort,
20 conference center, extended-stay hotel, vacation ownership, or
21 convention hotel offering permanent or temporary stays.

22 (ii) A bed and breakfast.

23 (iii) Rental housing not rented or advertised for rent prior to
24 a declaration of emergency.

25 (iv) A space rented in a mobile home park or campground.

26 (d) "Rental price" means any of the following:

27 (i) For housing with a rental period that began not more than 1
28 year prior to a declaration of emergency, and that is being rented
29 by a tenant at the time of the declaration, the current rental

1 price paid by the tenant. Rental price under this subparagraph
2 includes the rental price for housing advertised, offered, or
3 charged, at a daily rate at the time of a declaration of emergency,
4 if the housing continues to be advertised, offered, or charged, at
5 a daily rate.

6 (ii) For housing with a rental period that began, or was
7 offered for rent, not more than 1 year prior to a declaration of
8 emergency, and that is not being rented by a tenant at the time of
9 the declaration, the most recent rental price offered before the
10 declaration of emergency. Rental price under this subparagraph
11 includes the rental price for housing advertised, offered, or
12 charged on a daily basis at the time of the declaration of
13 emergency, if the housing is advertised, offered, or charged on a
14 periodic lease agreement after the declaration of emergency.

15 (iii) For housing that is being rented by a tenant at the time
16 of a declaration of emergency but that becomes vacant while the
17 declaration remains in effect and that is subject to any ordinance,
18 rule, regulation, or initiative measure adopted by a local
19 governmental entity that establishes a maximum amount that a
20 landlord may charge a tenant for rent, the actual rental price paid
21 by the previous tenant or the amount specified in subparagraph (iv),
22 whichever is greater. This amount may be increased by 5% if the
23 housing was previously rented or offered for rent unfurnished and
24 it is being offered for rent fully furnished. This amount shall not
25 be adjusted for any other good or service, including, but not
26 limited to, gardening or utilities currently or formerly provided
27 in connection with the lease.

28 (iv) For housing that is not being rented by a tenant and has
29 not been offered for rent within the 1-year period immediately

1 preceding a declaration of emergency, 160% of the fair market rent
2 for the market where the housing is located as established by the
3 United States Department of Housing and Urban Development. This
4 amount may be increased by 5% if the housing is offered for rent
5 fully furnished. This amount shall not be adjusted for any other
6 good or service, including, but not limited to, gardening or
7 utilities currently or formerly provided in connection with the
8 lease.

9 (v) For mobile home spaces rented to existing tenants at the
10 time of a declaration of emergency and subject to a local rent
11 control ordinance, the amount authorized under the local rent
12 control ordinance. For new tenants who enter into a rental
13 agreement for a mobile home space that is subject to rent control
14 but was not rented at the time of a declaration of emergency, the
15 amount of rent last charged for a space in the same mobile home
16 park. For mobile home spaces not subject to a local rent control
17 ordinance and not rented at the time of a declaration of emergency,
18 the amount of rent last charged for the space.

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

25 (i) An imminent alert issued in the "National Terrorism
26 Advisory System Bulletin" published by the United States Department
27 of Homeland Security.

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

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

2 (iv) A state of emergency or state of disaster as declared by
3 the governor under the emergency management act, 1976 PA 390, MCL
4 30.401 to 30.421, or a state of emergency declared by the governor
5 under 1945 PA 302, MCL 10.31 to 10.33.

6 Sec. 3. (1) During or reasonably after a declaration of
7 emergency, a person engaged in the business of offering, selling,
8 or renting lodging shall not do any of the following:

9 (a) Charge a price that is grossly in excess of the price at
10 which similar lodging is advertised, offered, or sold.

11 (b) Charge an excessively increased price for lodging.

12 (c) Offer lodging for sale or rent at an excessively increased
13 price.

14 (2) In the event of a declaration of emergency and for a
15 period of 30 days following the termination of the declaration, a
16 person shall not increase a rental price that was advertised,
17 offered, or charged for housing to an existing or prospective
18 tenant before the declaration of emergency, by more than 10%,
19 unless that person can demonstrate that the increase is directly
20 attributable to additional costs for repairs or additions beyond
21 normal maintenance that have been amortized over the rental term,
22 causing the rent to be increased by greater than 5%, or that an
23 increase was contractually agreed to by the tenant prior to the
24 declaration of emergency. It is not a defense to a prosecution
25 under this subsection that an increase in rental price was based on
26 the length of the rental term, the inclusion of additional goods or
27 services, except as provided in section 2(d) with respect to
28 furniture, or the rent being offered by, or paid by, an insurance
29 company, or other third party, on behalf of a tenant. This

1 subsection does not authorize a landlord to charge a price greater
2 than the amount authorized by a local rent control ordinance.

3 (3) Following a declaration of emergency, and for a period of
4 30 days following the termination of that declaration, or any
5 period by which the emergency declaration is extended by the
6 applicable authority, a person shall not evict a residential tenant
7 of residential housing and rent or offer to rent to another
8 prospective tenant the housing from which the previous tenant was
9 evicted at a rental price greater than the price that the evicted
10 tenant could be charged under this section. It is not a violation
11 of this subsection for a person to do either of the following:

12 (a) Continue an eviction process that was lawfully started
13 prior to the declaration of emergency.

14 (b) Commence an eviction process if the lodging has become
15 uninhabitable due to the conditions leading to the declaration of
16 emergency or as a consequence of the state of emergency.

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

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

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

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

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

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

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

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

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

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

29 (3) An action filed under subsection (2) must be filed in the

1 circuit court of the county in which the individual resides or in
2 which the individual maintains a principal place of business within
3 this state, or in the circuit court for the county of Ingham.

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

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

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

20 (a) Reimburse persons who have suffered damages.

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

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

25 (d) Grant other appropriate relief.

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

1 detriment of members of the class.

2 (4) If at any stage of the proceedings under this section the
3 court requires that notice be sent to the class, the attorney
4 general may petition the court to require the defendant to bear the
5 cost of the notice. In determining whether to impose the cost on
6 the defendant, the court shall consider the probability that the
7 attorney general will succeed on the merits of the action.

8 (5) If the defendant shows by a preponderance of the evidence
9 that a violation of this act resulted from a bona fide error
10 notwithstanding the maintenance of procedures reasonably adopted to
11 avoid the error, the amount of recovery shall be limited to actual
12 damages.

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

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

27 (2) The state, a political subdivision, or a public agency
28 injured directly or indirectly by a violation of this act may bring
29 an action for appropriate injunctive or other equitable relief,

1 actual damages sustained by reason of a violation of this act and,
2 as determined by the court, interest on those damages from the date
3 of the complaint, and taxable costs. If the trier of fact finds
4 that the violation is flagrant, it may increase recovery to an
5 amount not to exceed 3 times the actual damages sustained by reason
6 of the violation.

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

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

14 Sec. 9. If a witness has been or may be called to testify or
15 provide other information at a proceeding under or related to this
16 act, the circuit court for the county in which the proceeding is or
17 may be held may issue, upon application of the attorney general,
18 asserting that in his or her judgment the testimony or other
19 information may be necessary to the public interest and that the
20 witness has refused or is likely to refuse to testify, an order
21 requiring the witness to give testimony or provide other
22 information that the witness refuses to give or provide on the
23 basis of the privilege against self-incrimination, if the court
24 provides in its order that the witness shall not be prosecuted or
25 subjected to any penalty or forfeiture for, or on account of, any
26 transaction, occurrence, matter, or thing to which the witness
27 testifies or provides other information or evidence, documentary or
28 otherwise, and that the testimony, information, or evidence shall
29 not be used against the witness in any criminal investigation,

1 proceeding, or trial, except a prosecution for perjury for giving a
2 false statement or for otherwise failing to comply with the order.

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

7 Sec. 11. This act does not prohibit an owner from evicting a
8 tenant for a lawful reason.

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

12 (a) Senate Bill No. 847.

13

14 (b) Senate Bill No. 848.

15