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Senate Bills 954 through 956 (as introduced 6-26-24)  
Sponsor: Senator Jeremy Moss (S.B. 954 & 955)  
Senator Mary Cavanagh (S.B. 956)  
Committee: Finance, Insurance, and Consumer Protection

Date Completed: 10-8-24

## **CONTENT**

**Senate Bill 954 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 more than the price at which similar lodging was advertised, offered, or sold.
- Allow the Attorney General (AG) or a local prosecuting attorney to serve upon an individual a written demand to appear and be examined under oath if the AG or prosecuting attorney had reasonable cause to believe that the individual had certain information related to an investigation under the Act.
- Allow the AG to bring a class action on behalf of persons residing in or injured in the State for the actual damages caused by conduct prohibited under the Act.
- Allow the AG 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 955 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 more than the price at which similar goods were sold.
- Allow the AG to bring a class action on behalf of persons residing in or injured in the State for the actual damages caused by conduct prohibited under the Act.
- Allow the AG 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 956 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 more than the price at which similar energy products or services were sold.

- **Allow the AG 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 AG 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 954**

The bill would prohibit a person engaged in the business of offering, selling, or renting out lodging from doing any of following during or reasonably after a declaration of a state of emergency:

- Charging a price that was grossly more than the price at which similar lodging was advertised, offered, or sold.
- Offering lodging for sale or rent at an excessively increased price.
- Charging an excessively increased price for lodging.

"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. The term would include a hotel, resort, conference center, vacation ownership, convention hall, bed and breakfast and a space rented in a mobile home park or campground.

"Excessively increased price" would mean a price that demonstrates an unjustified disparity between the price of lodging advertised, offered, or sold for the market where the lodging is located immediately before a declaration of emergency and the price of lodging 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, an extraordinary discount in effect before the declaration of emergency, or a seasonal adjustment in rates that was regularly scheduled.

"State of emergency" would mean a natural or manmade 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 under laws of the State.

The Act would not prohibit an owner from evicting a tenant for a lawful reason.

#### **Investigation of Violations**

If the AG or a local prosecuting attorney had reasonable cause to believe that an individual had information or was in possession of any document or other tangible object relevant to an investigation for a violation of the Act, the AG or prosecuting attorney could serve the individual with a written demand to appear and be examined under oath and to produce the documents or other object for inspection and copying. The demand would have to meet the following requirements:

- Be served upon the individual in the manner prescribed for service of process under State law.<sup>1</sup>
- Describe the nature of the conduct constituting the violation under investigation and contain a copy of this language with appropriate citation.
- 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, within that testimony, answer the written interrogatories and produce the document or object.
- Advise the individual that objections to or reasons for not complying with the demand could be filed with the AG or prosecuting attorney.
- 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.

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, the court would have to order the individual to comply with the demand, subject to modification as the court prescribed. Upon motion by the individual and for good cause shown, the court could make any further order in the proceedings to protect the individual from unreasonable burden or expense.

The bill would require testimony taken and material produced during an investigation to be kept confidential, but the fact that an investigative demand was issued would not be confidential.

If an individual failed to comply with a written demand, the AG or a local prosecuting attorney could file an action to enforce the demand. Such an action 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 Ingham County Circuit Court. Once the action was filed, the investigative material could be disclosed during discovery (under a protective order if the court were to deem it appropriate), and in support of or opposition to the claims and defenses raised in the action; however, in all other respects it would remain confidential.

### Litigation

The AG could bring a class action on behalf of persons residing in or injured in the State for the actual damages caused by a violation of the Act to recover actual damages or \$100, whichever was greater; however, the AG could not bring an action under the Act more than six years after the occurrence of a violation and not more than one year after the last payment in a transaction involving a violation, whichever period ended on a later date.

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

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

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<sup>1</sup> For more information, see the Michigan Judicial Institute's *Civil Proceedings Benchbook* (2<sup>nd</sup> Edition), Chapter 3 Section 4, which can be found online at <https://www.courts.michigan.gov/>.

-- Grant other appropriate relief.

If the defendant showed by a preponderance of the evidence that the defendant's violation of the Act resulted from a genuine error, the amount of recovery would have to be limited to actual damages.

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

If at any stage of the proceedings the court required that notice be sent to the class, the AG could petition 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 AG would succeed on the merits of the action.

Additionally, the AG could 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. For a person other than an individual, the civil fine could not be more than \$1.0 million per violation.

The State, a political subdivision, or a public agency injured directly or indirectly by a violation of the Act could bring an action for appropriate injunctive or other equitable relief; actual damages sustained by reason of a violation of the Act, 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 up to three times the actual damages sustained by reason of the violation.

A person that violated the Act with the *intention* to accomplish a result prohibited by the Act would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$10,000, or both. A person other than an individual<sup>2</sup> that violated the Act with the intention to accomplish a result prohibited by the Act would be guilty of a misdemeanor punishable by a fine of up to \$1.0 million.

If a witness had been or were to 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, upon application of the AG asserting that the testimony or other information was necessary to the public interest and that the witness had refused or was likely to refuse to testify, could issue 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 against self-incrimination, if the court provided in its order that the witness would not be prosecuted or subjected to any penalty or forfeiture for, or on account of, any matter 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 proceeding except a prosecution for perjury for giving a false statement or for otherwise failing to comply with the order.

The remedies provided in the Act would be cumulative.

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<sup>2</sup> Generally, the term "person" in Michigan statute refers to an individual *as well as* a legal entity, such as a partnership, corporation, limited liability company, association, trust, or estate.

### **Senate Bill 955**

The Act would prohibit a person conducting business in any chain of distribution for building materials, consumer food items (including animal food), goods, services, emergency supplies (such as water, flashlights, candles, and diapers), or medical supplies from doing any of the following during or reasonably after a declaration of emergency:

- Charging a price for those materials, items, goods, services, or supplies that was grossly more than the price at which similar materials, items, goods, services, or supplies were sold.
- Offering those materials, items, goods, services, or supplies at an excessively increased price.
- Charging an excessively increased price for those materials, items, goods, services, or supplies.

The bill prescribes the investigation and litigation processes for a violation of this prohibition. For specifics, see those processes described in **Senate Bill 954**.

### **Senate Bill 956**

The Act would prohibit a person conducting business in any chain of distribution for energy products or services from doing 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.
- Offer for sale an energy product or service at an excessively increased price.
- Charge an excessively increased price for energy products or services.

"Energy product or service" would mean gasoline, propane, or home heating oil, or a service necessary to the provision of those products, that is vital and necessary for the health, safety, and welfare of the residents of this state. The term would not include a product or service regulated by the Michigan Public Service Commission.

"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.

The bill prescribes the investigation and litigation processes for a violation of this prohibition. For specifics, see those processes described in **Senate Bill 954**.

### **PREVIOUS LEGISLATION**

*(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)*

Senate Bill 954, 955, and 956 are reintroductions of Senate Bills 846, 847, and 948 of the 2019-2020 Legislative Session. Similar versions of the bill have been introduced during several sessions since the 2001-2002 Legislative Session.

Legislative Analyst: Nathan Leaman

## **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on the State and local governments. While they provide pathways for increased enforcement for price gouging in the areas of housing, consumer products, and energy costs, the bills are permissive, meaning they would not require the AG or local prosecutors to increase criminal complaints or file demands for appearances under oath. If State and local law enforcement were to increase criminal prosecutions under the measures provided by the language of the bills, they would likely increase litigation costs. At the same time, increased convictions under the language of the bills likely would result in substantial fine revenue for the State and local governments. It is not clear from the language of the bills where such revenue would be deposited, at either the State or local level. Any increased costs or revenue would depend on the number of emergencies in the State, how much price gouging was going on, and the degree to which State and local law enforcement pursued such activity.

The bill could have both an indeterminate negative fiscal impact and an indeterminate positive fiscal impact on the State and local government. New misdemeanor arrests and convictions under the proposed bill could increase resource demands on law enforcement, court systems, community supervision, and jails; however, it is unknown how many people would be prosecuted under provisions of the bill. Local jail costs vary by jurisdiction and thus costs for local governments would vary. Local revenue to local libraries could increase under the bill as any additional revenue from imposed fines would go to local and county law libraries.

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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.