

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 353 (Senator Green, *et al.*)
Judicial Proceedings

Public Safety - Emergency Management - Essential Goods and Services

This bill prohibits specified types of pricing for certain goods and services during or subsequent to a “state of emergency.”

Fiscal Summary

State Effect: The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations. Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload could be handled with existing resources. The extent to which this bill could affect purchases of goods or services by the State during a state of emergency cannot be readily predicted or quantified.

Local Effect: The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations. The extent to which this bill could affect purchases of goods or services by a local government during a state of emergency cannot be readily predicted or quantified.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: This bill prohibits a person, during a state of emergency, from selling or offering to sell essential goods or services (other than services used for emergency cleanup) for a price of more than 10% above what the person charged for those goods and services 14 days prior to the state of emergency. During a state of emergency, and for the

next 180 days, a person may not sell or offer to sell repair or reconstruction services (or services used for emergency cleanup) for more than 10% over what the person charged immediately prior to the state of emergency.

A charge of more than 10% may be made if the person can prove that: (1) the increase was directly attributable to additional costs imposed by the supplier of the goods, or to additional costs for labor or materials used to provide the services; and (2) the price represents no more than 10% above the total cost to the seller plus the markup customarily applied by the seller in the usual course of business immediately prior to the onset of the state of emergency.

These provisions may be extended for additional 30-day periods by the principal executive officer of a political subdivision, or the Governor, if determined to be necessary to protect the lives, property, or welfare of citizens.

A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000. A sale or offer for sale in violation of these provisions, or of a regulation adopted under these provisions, is an unfair and deceptive trade practice. The remedies provided under these provisions are cumulative to each other and to the remedies available under all other laws. These provisions do not preempt any local ordinance prohibiting or imposing a more severe penalty for the same or similar conduct as permitted in the Public Safety Article.

Current Law: If the Governor finds that an emergency has developed or is impending due to any cause, the Governor must declare a state of emergency by executive order or proclamation. The state of emergency continues until the Governor: (1) finds that the threat or danger has passed or the emergency has been dealt with to the extent that emergency conditions no longer exist; and (2) terminates the state of emergency by executive order or proclamation.

A state of emergency may not continue for longer than 30 days unless renewed by the Governor. The General Assembly by joint resolution may terminate a state of emergency at any time.

The Governor may: (1) authorize use in another state of personnel, equipment, supplies, or materials of this State, or of a political subdivision with the consent of the executive officer or governing body of the political subdivision; and (2) suspend the effect of any statute or rule or regulation of an agency of the State or, after consulting with the executive officer or governing body of a political subdivision, suspend a rule or regulation of an agency of a political subdivision if the Governor finds that the suspension is necessary to aid the State with its emergency management functions.

Only the principal executive officer of a political subdivision may declare a local state of emergency. A local state of emergency may not continue or be renewed for longer than seven days without the consent of its governing body.

Small Business Effect: Potential meaningful. Almost any emergency will raise costs to a retailer, who does not operate on fixed margins. In addition, the asking price for a product 14 days prior to a state of emergency may not represent a true margin for any seller for that month or year. Because all costs for a seller of goods or services, including costs for heating oil and gasoline, can fluctuate by more than 10% over any given 10-14 day period, this bill could negatively impact a seller by more than can be recouped under the bill's pricing limits – this may be especially true during the 180 days following the state of emergency.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Department of State Police, Maryland Emergency Management Agency, Baltimore City, Office of the Attorney General (Consumer Protection Division), Department of Public Safety and Correctional Services, Maryland Retailers Association, Department of Legislative Services

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