

UNOFFICIAL COPY OF SENATE BILL 320
EMERGENCY BILL

E4
HB 556/05 - ECM

6lr2003
CF 6lr1781

By: **Senators Green, Britt, Conway, Della, Exum, Forehand, Frosh,
Garagiola, Gladden, Grosfeld, Hogan, Hollinger, Hughes, Jimeno, Jones,
Kasemeyer, Kelley, Klausmeier, Pinsky, Stone, and Teitelbaum**

Introduced and read first time: January 27, 2006

Assigned to: Education, Health, and Environmental Affairs

Re-referred to: Judicial Proceedings and Finance, February 14, 2006

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: April 2, 2006

CHAPTER _____

1 AN ACT concerning

2 **Public Safety - Emergency Management - Essential Goods and Services**

3 FOR the purpose of prohibiting a person from selling or offering to sell certain goods
4 or services for a certain price during a state of emergency; prohibiting a person
5 from selling or offering to sell certain services for a certain price during a state
6 of emergency and for a certain amount of time following a state of emergency;
7 creating a certain exception; ~~providing for certain criminal penalties; providing~~
8 ~~that certain provisions may be extended by certain officials for certain time~~
9 ~~periods under certain circumstances; requiring the Office of the Attorney~~
10 ~~General to provide a certain notice to a certain person under certain~~
11 ~~circumstances within a certain time period; providing that certain remedies are~~
12 cumulative to certain remedies or penalties; providing that a certain sale or offer
13 for sale is an unfair or deceptive trade practice; ~~providing that nothing in this~~
14 ~~subtitle shall preempt a certain ordinance; defining certain terms; making this~~
15 Act an emergency measure; and generally relating to the sale of goods or
16 services during or following a state of emergency.

17 BY adding to

18 Article - Public Safety

19 Section 14-1101 through ~~14-1105~~ 14-1104, inclusive, to be under the new
20 subtitle "Subtitle 11. Essential Goods and Services"

21 Annotated Code of Maryland

22 (2003 Volume and 2005 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Public Safety**

4 SUBTITLE 11. ESSENTIAL GOODS AND SERVICES.

5 14-1101.

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) "BUILDING MATERIALS" MEANS ANY ITEM, OBJECT, OR OTHER THING
9 USED IN THE BUILDING OR REBUILDING OF REAL PROPERTY, INCLUDING LUMBER,
10 CONSTRUCTION TOOLS, AND WINDOWS.

11 ~~(C) "CATASTROPHIC HEALTH EMERGENCY" HAS THE MEANING STATED IN §~~
12 ~~14-3A-01(B) OF THIS TITLE.~~

13 ~~(D)~~ (C) "CONSUMER GOODS OR SERVICES" HAS THE MEANING STATED IN §
14 13-101(D) OF THE COMMERCIAL LAW ARTICLE.

15 ~~(E)~~ (D) "EMERGENCY SUPPLIES" INCLUDES WATER, FLASHLIGHTS, RADIOS,
16 BATTERIES, CANDLES, BLANKETS, SOAP, DIAPERS, TEMPORARY SHELTERS, TAPE,
17 TOILETRIES, PLYWOOD, NAILS, AND HAMMERS.

18 ~~(F)~~ (E) "ESSENTIAL GOODS OR SERVICES" MEANS ANY OF THE FOLLOWING
19 UNLESS EXCLUDED BY AN EXECUTIVE ORDER OF THE GOVERNOR IN CONNECTION
20 WITH A STATE OF EMERGENCY:

- 21 (1) FOOD ITEMS;
- 22 (2) CONSUMER GOODS OR SERVICES;
- 23 (3) GOODS OR SERVICES USED FOR EMERGENCY CLEANUP;
- 24 (4) EMERGENCY SUPPLIES;
- 25 (5) MEDICAL SUPPLIES OR EQUIPMENT;
- 26 (6) HOME HEATING OIL;
- 27 (7) BUILDING MATERIALS;
- 28 (8) HOUSING;
- 29 (9) TRANSPORTATION, FREIGHT, AND STORAGE SERVICES;
- 30 (10) GASOLINE; OR

1 (11) ~~OTHER COMMODITIES IMPORTANT TO THE~~ GOODS AND SERVICES
2 NECESSARY FOR THE PRESERVATION OF THE HEALTH, SAFETY, OR WELFARE OF THE
3 PUBLIC.

4 ~~(G)~~ (F) "FOOD ITEM" MEANS ANY ARTICLE THAT IS USED OR INTENDED FOR
5 USE FOR FOOD; OR DRINK; ~~CONFECTION, OR CONDIMENT.~~

6 ~~(H)~~ (G) "FUEL" MEANS GASOLINE, DIESEL, OR OTHER FUEL USED TO POWER
7 A MOTOR VEHICLE OR POWER TOOL.

8 ~~(I)~~ (H) "HOUSING" MEANS RENTAL HOUSING AND INCLUDES HOUSING
9 PROVIDED BY A HOTEL OR MOTEL.

10 ~~(J)~~ "LOCAL STATE OF EMERGENCY" ~~MEANS A LOCAL STATE OF EMERGENCY~~
11 ~~DECLARED UNDER § 14-111 OF THIS TITLE.~~

12 ~~(K)~~ (I) "MEDICAL SUPPLIES OR EQUIPMENT" INCLUDES PRESCRIPTION AND
13 NONPRESCRIPTION MEDICATIONS, VACCINES, BANDAGES, GAUZE, ISOPROPYL
14 ALCOHOL, MEDICAL EQUIPMENT, ANTIVIRAL PRODUCTS, AND ANTIBACTERIAL
15 PRODUCTS.

16 ~~(L)~~ (J) "REPAIR OR RECONSTRUCTION SERVICES" MEANS SERVICES
17 PERFORMED BY A PERSON FOR REPAIRS TO RESIDENTIAL OR COMMERCIAL
18 PROPERTY THAT IS DAMAGED AS A RESULT OF A DISASTER OR TERRORIST ATTACK.

19 ~~(M)~~ (K) "STATE OF EMERGENCY" ~~INCLUDES~~ MEANS:

20 ~~(1)~~ (+) A STATE OF EMERGENCY DECLARED BY THE GOVERNOR UNDER §
21 14-107 OF THIS TITLE;

22 ~~(2)~~ (2) ~~A STATE OF EMERGENCY DECLARED BY THE PRESIDENT OF THE~~
23 ~~UNITED STATES;~~

24 ~~(3)~~ (3) ~~A RED CONDITION IN THE HOMELAND SECURITY ADVISORY SYSTEM~~
25 ~~OF EITHER THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY OR THE~~
26 ~~MARYLAND EMERGENCY MANAGEMENT AGENCY;~~

27 ~~(4)~~ (4) ~~A CATASTROPHIC HEALTH EMERGENCY PROCLAIMED BY THE~~
28 ~~GOVERNOR UNDER § 14-3A-02 OF THIS TITLE; OR~~

29 ~~(5)~~ (5) ~~A DECLARATION BY AN AGENCY OF THE UNITED STATES~~
30 ~~GOVERNMENT, THE GOVERNOR, THE SECRETARY OF HEALTH AND MENTAL~~
31 ~~HYGIENE, OR THE PRINCIPAL EXECUTIVE OFFICER OF A POLITICAL SUBDIVISION~~
32 ~~THAT THERE IS A SHORTAGE OF OR INCREASED DEMAND FOR ESSENTIAL GOODS OR~~
33 ~~SERVICES.~~

34 ~~(N)~~ (L) "TRANSPORTATION, FREIGHT, AND STORAGE SERVICES" MEANS
35 SERVICES PERFORMED BY ANY PERSON UNDER A CONTRACT TO MOVE, STORE, OR
36 TRANSPORT PERSONAL OR BUSINESS PROPERTY OR RENT EQUIPMENT FOR THOSE
37 PURPOSES.

1 14-1102.

2 (A) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, DURING A
3 STATE OF EMERGENCY, A PERSON MAY NOT SELL OR OFFER TO SELL ANY ESSENTIAL
4 GOODS OR SERVICES ~~NOT EXCLUDED BY SPECIFIED BY AN~~ EXECUTIVE ORDER OF
5 THE GOVERNOR, OTHER THAN SERVICES USED FOR EMERGENCY CLEANUP, FOR A
6 PRICE OF MORE THAN ~~40%~~ 20% ABOVE THE HIGHEST PRICE AT WHICH THAT PERSON
7 MADE ACTUAL SALES OR RENTALS OF THOSE GOODS OR SERVICES NOT MORE THAN
8 60 DAYS OR LESS THAN 14 DAYS PRIOR TO THE STATE OF EMERGENCY.

9 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, DURING A
10 STATE OF EMERGENCY, AND FOR THE FOLLOWING ~~480~~ 90 DAYS, A PERSON MAY NOT
11 SELL OR OFFER TO SELL REPAIR OR RECONSTRUCTION SERVICES OR SERVICES USED
12 FOR EMERGENCY CLEANUP FOR A PRICE OF MORE THAN ~~40%~~ 20% ABOVE THE PRICE
13 CHARGED BY THAT PERSON FOR THOSE SERVICES IMMEDIATELY PRIOR TO THE
14 STATE OF EMERGENCY.

15 (C) A PERSON MAY CHARGE A RETAIL OR WHOLESALE PRICE INCREASE OF
16 MORE THAN ~~40%~~ 20% ~~IF THE PERSON CAN PROVE THAT:~~

17 (1) THE INCREASE IN PRICE WAS DIRECTLY ATTRIBUTABLE TO
18 ADDITIONAL COSTS IMPOSED ON THE PERSON BY THE SUPPLIER OF THE GOODS,
19 INCLUDING REPLACEMENT COSTS; OR

20 (2) THE INCREASE IN PRICE WAS DIRECTLY ATTRIBUTABLE TO
21 ADDITIONAL COSTS FOR LABOR OR MATERIALS USED TO PROVIDE THE SERVICES OR
22 TO PRODUCE THE GOODS, INCLUDING COSTS TO REPAIR ANY DAMAGE RELATING TO
23 THE STATE OF EMERGENCY; ~~AND~~

24 (3) ~~THE PRICE REPRESENTS NO MORE THAN 10% ABOVE THE TOTAL~~
25 ~~COST TO THE SELLER PLUS THE MARKUP CUSTOMARILY APPLIED BY THE SELLER~~
26 ~~FOR THAT GOOD OR SERVICE IN THE USUAL COURSE OF BUSINESS IMMEDIATELY~~
27 ~~PRIOR TO THE ONSET OF THE STATE OF EMERGENCY.~~

28 (D) AT LEAST 10 DAYS BEFORE AN ACTION IS FILED UNDER § 14-1103 OF THIS
29 SUBTITLE, THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE A PERSON
30 WHOSE ACTIONS MAY BE IN VIOLATION OF THIS SECTION NOTICE OF THE GENERAL
31 RELIEF SOUGHT BY THE OFFICE TO PROVIDE THE PERSON AN OPPORTUNITY TO
32 PRESENT EVIDENCE THAT THE PRICE INCREASE WAS IN ACCORDANCE WITH
33 SUBSECTION (C) OF THIS SECTION.

34 ~~(D)~~ (E) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
35 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO ~~IMPRISONMENT NOT~~
36 ~~EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$1,000 OR BOTH.~~

37 ~~(E)~~ THE PROVISIONS OF THIS SECTION MAY BE EXTENDED FOR ADDITIONAL
38 30-DAY PERIODS BY THE PRINCIPAL EXECUTIVE OFFICER OF A POLITICAL
39 SUBDIVISION OR THE GOVERNOR IF DETERMINED TO BE NECESSARY TO PROTECT
40 THE LIVES, PROPERTY, OR WELFARE OF THE CITIZENS.

1 14-1103.

2 A SALE OR OFFER FOR SALE OF ~~CONSUMER~~ ESSENTIAL GOODS OR SERVICES
3 THAT VIOLATES THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE
4 IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE UNDER TITLE 13 OF THE
5 COMMERCIAL LAW ARTICLE.

6 14-1104.

7 THE REMEDIES PROVIDED IN THIS SUBTITLE ARE CUMULATIVE TO EACH
8 OTHER AND TO THE REMEDIES OR PENALTIES AVAILABLE UNDER ~~ALL OTHER LAWS~~
9 TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

10 ~~14-1105.~~

11 ~~THIS SUBTITLE DOES NOT PREEMPT ANY LOCAL ORDINANCE PROHIBITING OR~~
12 ~~IMPOSING A MORE SEVERE PENALTY FOR THE SAME OR SIMILAR CONDUCT AS~~
13 ~~PROHIBITED IN THIS ARTICLE.~~

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an
15 emergency measure, is necessary for the immediate preservation of the public health
16 or safety, has been passed by a yea and nay vote supported by three-fifths of all the
17 members elected to each of the two Houses of the General Assembly, and shall take
18 effect from the date it is enacted.