

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

Senate Bill 707 (Senator Pugh, *et al.*)
 Finance

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.” Violation of the bill’s provisions is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil penalties.

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$62,900 in FY 2010 for additional staff to assist the Secretary of State with implementation of the bill. Future year expenditure estimates reflect annualization and inflation. Potential increase in general fund revenues due to the bill’s imposition of existing civil penalty provisions. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. The extent to which this bill affects purchases of goods or services by the State during a state of emergency cannot be readily predicted or quantified.

| (in dollars) | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
|----------------|------------|------------|------------|------------|------------|
| GF Revenue | - | - | - | - | - |
| GF Expenditure | \$62,900 | \$79,300 | \$83,000 | \$86,800 | \$90,900 |
| GF/SF/FF Exp. | - | - | - | - | - |
| Net Effect | (\$62,900) | (\$79,300) | (\$83,000) | (\$86,800) | (\$90,900) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential increase in revenues due to the bill’s imposition of existing civil penalty provisions. The extent to which this bill affects 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: The bill prohibits a person, during a state of emergency, from selling or offering to sell essential goods or services specified by executive order of the Governor (other than services used for emergency clean up) for more than 20% above the highest price charged by the person charged for those goods and services not more than 60 days or less than 4 days prior to the state of emergency. During a state of emergency, and for the next 90 days, a person may not sell or offer to sell repair or reconstruction services (or services used for emergency clean up) for more than 20% over the highest price charged by the person charged immediately prior to the state of emergency.

A price increase of more than 20% may be charged if the person can prove that the increase was directly attributable to (1) additional costs imposed by the supplier of the goods, including replacement costs; or (2) additional costs for labor or materials used to provide the services or produce the goods, including costs to repair any damage related to the emergency.

The bill requires the Office of the Attorney General to provide notice to a person whose actions may be in violation of the bill's provisions at least 10 days before an action is filed. This notice must state the general relief sought by the office and provide the person with an opportunity to present evidence that the price increase was not unlawful. A critical shortage of essential goods or services, as defined by the bill, may constitute a state of emergency.

The bill requires the Secretary of State to adopt regulations to establish a system by which a person may register to receive electronic notification stating that a state of emergency has been declared and an executive order has been issued; stating that the provisions of the bill are in effect; and listing the categories or individual essential goods and services that are covered by the executive order of the Governor.

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 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 then 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 authorize use of State or local government (with consent) personnel, equipment, supplies, or materials in another state. Likewise, the Governor may suspend the effect of any statute or rule or regulation of a State agency or, after consulting with the executive officer or governing body of a political subdivision, suspend a local rule or regulation 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.

An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation.

State Expenditures: General fund expenditures increase by an estimated \$62,869 in fiscal 2010, which accounts for the bill's October 1 effective date. This estimate reflects the cost of hiring one information technology professional to assist the Secretary of State with implementation and maintenance of the bill's electronic notification process. This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---|-----------------|
| Positions | 1 |
| Salary and Fringe Benefits | \$54,611 |
| Start-up Costs | 4,065 |
| Operating Expenses | 4,193 |
| Total Fiscal 2010 State Expenditures | \$62,869 |

Future year expenditures reflect a full salary with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

Small Business Effect: Almost any emergency raises costs to a retailer, who does not operate on fixed margins. In addition, the asking price for a product 4 days prior to a state of emergency (or not more than 60 days prior) 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 20% over any given 4- to 60-day period, the bill may negatively impact a seller by more than can be recouped under the bill's pricing limits – this may be especially true during the 90 days following the state of emergency.

Additional Information

Prior Introductions: Similar bills were introduced in the 2008, 2007, 2006, and 2005 sessions. HB 1487 of 2008 received a hearing before the House Economic Matters Committee, but no further action was taken. HB 927 of 2007 received an unfavorable report from Economic Matters. HB 580 of 2006 received a hearing before Economic Matters, but no further action was taken. SB 320 of 2006 was amended by the Senate and referred to Economic Matters, but no further action was taken. HB 556 of 2005 received an unfavorable report from Economic Matters.

Cross File: HB 416 (Delegate Rudolph, *et al.*) - Economic Matters.

Information Source(s): Secretary of State, Department of Legislative Services

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ncs/ljm

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