HB 332

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 332 (Delegate Pena-Melnyk, *et al.*)
Economic Matters Finance

Public Safety - Emergency Management - Essential Goods and Services

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This bill prohibits specified types of pricing for essential goods and services during a declared 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 $45,500 in FY 2014 to account for a full-time contractual employee in that year only to assist the Secretary of State with the creation and implementation of the bill's required electronic notification system. General fund expenditures may increase in subsequent years to reflect temporary contractual assistance for ongoing maintenance and updating of the system. The bill's imposition of existing civil penalty provisions does not have a material impact on State finances or operations. 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.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	$0	$0	$0	$0	$0
GF Expenditure	45,500	-	-	-	-
Net Effect	($45,500)	$0	$0	$0	$0

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

Local Effect: The bill's imposition of existing civil penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill prohibits a person from selling or offering to sell essential goods and services, as defined by the bill, for a price greater than 20% above the highest sales or rental price charged by the person between 4 and 60 days before the state of emergency. The prohibition lasts the duration of the state of emergency and covers the geographic area of the state of emergency.

The bill authorizes a person to charge a price increase of greater than 20% if the person can prove that the price increase was directly attributable to (1) additional costs imposed on the person by the supplier of the goods or (2) additional labor or material costs necessary to provide the services or to produce the goods.

The Office of the Attorney General must provide notice to a person whose actions may be in violation of the bill's provisions at least 20 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.

The bill requires the Secretary of State to adopt regulations to establish a system by which a person may register to receive electronic notification (1) stating that a state of emergency has been declared and an executive order has been issued; (2) stating that the bill's provisions are in effect; and (3) listing the categories or individual essential goods and services covered in the executive order. The definition of "emergency" is expanded, for purposes of the bill, to also mean a critical shortage in the State of essential goods and services.

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.

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, among other acts, 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 services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

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. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

Background: In calendar 2012 the Governor declared a state of emergency on two occasions: (1) in June during a "derecho," a type of sudden, violent storm; and (2) in October during hurricane "Sandy."

In Virginia, a supplier is prohibited from selling, leasing, or licensing or offering to sell, lease, or license any necessary good or service at an unconscionable price within the geographic area of a state of emergency. Several factors are to be considered in determining whether a price increase is unconscionable, including whether the price charged by the supplier grossly exceeded the price charged during the 10 days prior to the declaration of the state of emergency. The determination of whether the price increase was attributable solely to additional costs incurred by the supplier is a mitigating factor.

The District of Columbia also has a statute that prevents price increases of a certain amount during a state of emergency. A person is prohibited from charging more than the normal average retail price for any merchandise or service sold during an emergency that resulted from a natural disaster and has been declared by the mayor. The amount of price increase that is prohibited is different depending on whether the person is selling goods or services.

State Expenditures: General fund expenditures increase by $45,462 in fiscal 2014 to account for a full-time contractual employee to assist the Secretary of State with the creation and implementation of the bill's required electronic notification system in that year only. General fund expenditures may increase in subsequent years to reflect the occasional hiring of a temporary contractual employee to assist in the ongoing maintenance and any updating of the system. The amount of increase in subsequent years is not able to be estimated as the schedule for necessary system maintenance and updates is unknown; however, any such expenditures are assumed to be minimal.

Contractual Position	1
Salary and Fringe Benefits	$40,416
Operating Expenses	5,046
Total FY 2014 State Expenditures	**$45,462**

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.

Additional Information

Prior Introductions: Similar bills were introduced in the 2005 through 2009 sessions. SB 707 of 2009 received a hearing before the Senate Finance Committee but received no further action. Its cross file, HB 416, was heard in the House Economic Matters Committee but received no further action. HB 1487 of 2008 received a hearing before the House Economic Matters Committee but received no further action. HB 927 of 2007 received an unfavorable report from the House Economic Matters Committee. HB 580 of 2006 received a hearing before the House Economic Matters Committee but received no further action. Its cross file, SB 320 of 2006, passed as amended by the Senate and was then referred to the House Economic Matters Committee but received no further action. HB 556 of 2005 received an unfavorable report from the House Economic Matters Committee. SB 353 of 2005 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 185 (Senator Pugh, *et al.*) - Finance.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Governor's Office; Department of Labor, Licensing, and Regulation; Secretary of State; Code of Virginia; Washington, DC Official Code; Department of Legislative Services

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