

**Department of Legislative Services**  
 Maryland General Assembly  
 2013 Session

**FISCAL AND POLICY NOTE**

Senate Bill 185 (Senator Pugh, *et al.*)  
 Finance

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

This bill prohibits specified types of pricing for emergency goods and services, repair or reconstruction services, or services used for emergency cleanup during or subsequent to 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 approximately \$51,100 in FY 2014 for additional staff to assist the Secretary of State with implementation of the bill. Future year expenditures reflect elimination of one-time-only costs, annualization, and inflation. 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	51,100	64,200	67,300	70,500	73,800
Net Effect	(\$51,100)	(\$64,200)	(\$67,300)	(\$70,500)	(\$73,800)

*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 15% 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 also prohibits a person from selling or offering to sell repair or reconstruction services or services used for emergency cleanup for a price greater than 15% above the highest price charged by the person immediately before the state of emergency. The prohibition lasts the duration of the state of emergency and for the following 90 days.

The bill authorizes a person to charge a price increase of greater than 15% 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 \$51,069 in fiscal 2014, which accounts for the bill's October 1, 2013 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. The estimate accounts for the bill's effective date and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salary and Fringe Benefits	\$45,753
Operating Expenses	<u>5,316</u>
<b>Total FY 2014 State Expenditures</b>	<b>\$51,069</b>

Future year expenditures reflect a full salary with annual increases and employee turnover as well as 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 15% 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.

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### **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:** HB 332 (Delegate Pena-Melnyk, *et al.*) - Health and Government Operations.

**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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Analysis by: Michael F. Bender

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510