HB 800

Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 800 (Delegate Queen)
Economic Matters

Public Safety – Emergency Management – Price Gouging Consumer Protections

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This bill generally prohibits a person from selling an essential good or service (including a repair or reconstruction service) for a price that exceeds a specified threshold during and, in some circumstances, after a state of emergency. The Secretary of State (SOS) must adopt regulations to establish an electronic notifications system by which a person may register to receive notifications stating (1) that a state of emergency has been declared and an executive order issued; (2) that the consumer protections established by the bill are in effect; and (3) the categories (or individual) goods and services that are covered by the executive order. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil penalty provisions. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures for SOS increase by $80,000 for computer programming; despite the bill's June 1, 2022 effective date, it is assumed these costs are incurred in FY 2023, as discussed below. The Office of the Attorney General (OAG), Consumer Protection Division, can handle the bill's requirements with existing resources. No material effect on revenues.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	$0	$0	$0	$0	$0
GF Expenditure	0	80,000	0	0	0
Net Effect	$0	($80,000)	$0	$0	$0

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

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: During a state of emergency, the bill generally prohibits a person from selling (or offering to sell) essential goods and services for a price of 10% or more above the highest price at which the person made actual sales or rentals between (1) 60 days before the emergency declaration and (2) 4 days before the state of emergency. The bill specifies the essential goods and services categories to which its requirements apply (*e.g.*, food, fuel, water, medicine, *etc.*) and authorizes the Governor to designate any other goods or services as essential. These requirements only apply to the geographic area covered by the emergency declaration.

Further, during a state of emergency and for the 90 days following the end of the state of emergency, a person is prohibited from selling (or offering to sell) repair or reconstruction services used for emergency cleanup for a price that is 10% or more than the price charged immediately before the state of emergency.

Exceptions

A person *may* charge a price increase of 10% or more for goods and services if the person can prove that the price increase is directly attributable to (1) additional costs imposed on the person by the supplier of the goods (including replacement costs, costs of credit, and credit card processing costs) or (2) additional costs for labor or materials used to provide the service or produce the goods (including costs to repair any damage relating to the state of emergency).

Enforcement and Action for Damages

At least 20 days prior to filing an action to enforce the bill's requirements, OAG must provide a person who is potentially in violation of the bill's requirements an opportunity to present evidence that the price increase was in accordance with the exceptions specified by the bill.

A person who suffers any injury or loss due to a violation of the bill is authorized to bring an action pursuant to MCPA, regardless of whether the person is a consumer as defined by MCPA. (MCPA defines "consumer" as an actual or prospective purchaser, lessee, or recipient of consumer goods, services, realty, or credit.)

Current Law: Although State law does not currently regulate price increases in the manner specified by the bill, Chapters 13 and 14 of 2020 authorized the Governor to take similar actions (*i.e.*, prohibiting a retailer from increasing sales of goods and services by more than 10%). However, that authorization terminated April 30, 2021.

Maryland Consumer Protection Act

An unfair, abusive, 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 that has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, 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, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to $10,000 for each violation and up to $25,000 for each repetition of the same 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.

State Expenditures: SOS advises the bill has an operational and fiscal impact on the agency. Under the bill, SOS must establish and maintain a new electronic notifications system. As a result, SOS anticipates hiring a long-term contractual employee to assist with implementation.

While the Department of Legislative Services (DLS) agrees that the bill results in additional costs, these additional expenditures stem primarily from the requirement to develop the new notification system. DLS anticipates those costs are incurred primarily in the first year of implementation and, consequently, disagrees that a long-term contractual employee is necessary.

Accordingly, based on an estimate provided by SOS, general fund expenditures increase by $80,000 in the first year of implementation for one-time contractual services (*i.e.*, information technology services for establishing the system). Although the bill takes effect in late fiscal 2022, the notification system must be established through regulation. DLS anticipates the development and promulgation process likely pushes the first year of implementation into fiscal 2023. In subsequent years, DLS advises that any ongoing costs are likely minimal and absorbable within existing budgeted resources.

Small Business Effect: Because the bill establishes a price ceiling for specified categories of essential goods and services, small businesses in the State may be affected during declared states of emergency (and for 90 days after for businesses engaged in repair or reconstruction services). Under the bill, businesses are prohibited from raising prices for essential goods and services beyond a certain threshold. As a result, any small businesses that would otherwise raise prices beyond that threshold are likely affected. Conversely, small businesses that purchase essential goods or services may benefit from the protections established by the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 565 (Senators Lam and Beidle) - Finance.

Information Source(s): Governor's Office; Secretary of State; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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