

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 542

(The President)(By Request - Office of the Attorney
General)

Finance

Economic Matters

**Public Safety - Emergency Management - Consumer Protections Against Price
Gouging**

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 establish a system by which a person may register to receive electronic 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 of (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.

Fiscal Summary

State Effect: General fund expenditures for SOS increase by \$25,000 in FY 2024 for vendor services and by minimal amounts in subsequent years for ongoing licensing fees. 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 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	25,000	-	-	-	-
Net Effect	(\$25,000)	-	-	-	-

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) goods and services designated as essential by the Governor for a price of 15% 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.

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 15% or more than the average price charged during the 30 days before the state of emergency.

Exceptions

A person *may* charge a price increase of 15% or more for goods and services if the person can prove that the price increase is (1) directly attributable to additional costs imposed on the person by the supplier of the goods (including replacement costs, costs of credit, and credit card processing costs); (2) directly attributable to 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); or (3) consistent with seasonal prices charged by the person based on historical data showing prices charged during the season over the past three years.

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.

Current Law/Background: 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 during the State of Emergency declared for the COVID-19 pandemic (*i.e.*, prohibiting a retailer from increasing sales of goods and services by more than 10%). However, that authorization terminated April 30, 2021. In testimony submitted for similar legislation introduced during the 2022 legislative session, OAG indicated that it received hundreds of complaints about price gouging on essential goods such as food and cleaning supplies during the pandemic.

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: Under the bill, SOS must establish and maintain a new electronic notifications system. SOS advises the development of such a system likely has a significant fiscal and operational impact on the agency. (For example, SOS notes that the cost of a separate notary database system it operates totaled more than \$400,000.)

While the Department of Legislative Services (DLS) agrees that the bill results in additional costs associated with the requirement to develop the new notification system, DLS disagrees that the fiscal and operational impact on SOS is significant. The Department of Information Technology advises that the system can be implemented at a cost of approximately \$25,000 (including setup and training), with ongoing costs totaling \$350 per license annually. This estimate is based on an existing program that is already used to handle similar activities for other State agencies. Thus, based on this information, DLS assumes general fund expenditures increase by \$25,000 in fiscal 2024 and by minimal amounts in subsequent years, depending on the number of licenses SOS requires.

While SOS also advises that it may require additional, dedicated personnel to understand and identify the information required to be included in any electronic notification, DLS notes the bill only requires SOS to *state* the categories of (or individual) essential goods and services that are covered by the executive order. DLS assumes SOS can convey that information without additional personnel.

SOS also advises it may receive complaints under the bill. However, DLS assumes that SOS can indicate in the electronic notification that complaints are handled exclusively by OAG and that individuals should contact OAG (rather than SOS) in the event that an individual needs to file a complaint.

Small Business Effect: Because the bill establishes a price ceiling for 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: Similar legislation has been introduced within the last three years. See SB 565 and HB 800 of 2022.

Designated Cross File: HB 775 (The Speaker)(By Request - Office of the Attorney General) - Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Secretary of State; Department of Information Technology; Department of Legislative Services

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