

SB 565 Price Gouging- Support.pdf

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Position: FAV



Maryland
Hospital Association

Senate Bill 565 – Public Safety – Emergency Management – Price Gouging Consumer Protections

Position: *Support*

February 24, 2022

Senate Finance Committee

MHA Position

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment in support of Senate Bill 565.

Our hospital heroes have been there for Marylanders, battling more than 700 days on the front lines of the COVID-19 pandemic. Hospitals confronted a significant range of pressures in the past two years, with workforce shortages among the most critical.

Hospitals and other health facilities faced staffing shortages before the pandemic, but these challenges have reached crisis proportions. The incredible physical and emotional toll health care workers have endured caring for patients during the pandemic exacerbated the shortage.

Hospitals have fought to recruit and retain staff, offering wage increases, benefit package enhancements, overtime pay, bonus pay, loan repayment, and other incentives. Yet, the shortages persist. Some 27% of nursing and related positions in Maryland hospitals are now vacant due to attrition and overwhelming demand for hospital services. Overall hospital employee vacancies rose by one-third statewide during 2021.

The national pattern is similar. The American Hospital Association reports job postings for nurses are up 45% nationwide since January 2020 and 41% for other clinical staff.¹

To meet patients' needs, many hospitals and providers across the continuum have been forced to rely on temporary staffing agencies to fill vacancies to deliver critical care.

In normal times, agency rates are modestly higher than the hourly cost for a staff nurse. Now, the typical hourly rate is approximately 2.5 times hourly wages and benefits for nurses on payroll. Startlingly, rates continued to rise to levels we have never seen. Providers have no choice but to pay continuously escalating rates—sometimes three to four times higher than pre-pandemic rates. This experience, paired with staffing agencies' limited transparency and troubling recruitment tactics, caused providers nationally to question if staffing agencies were engaging in unfair and anticompetitive practices.

¹ American Hospital Association. (January, 2022). "[Data Brief: Workforce Issues Remain at the Forefront of Pandemic-related Challenges for Hospitals.](#)"

In September, we asked the Attorney General to look into our serious concerns that certain nurse staffing agencies take advantage of these difficult circumstances to boost their profits at the expense of patients and the hospitals that treat them. As noted in the attached letter, we urged the state to enlist federal agencies having competition and consumer protection authority to investigate whether this conduct is anticompetitive and/or violates consumer protection laws.

In a meeting in response to our letter, we urged the Attorney General to include health staffing services as part what could be reviewed under price gouging. SB 565 fulfills that request.

Please know that our concerns focus solely on the agencies and not the personnel they represent. We understand the variants of the COVID-19 virus and the length of this ongoing pandemic put a tremendous strain on health care personnel, and we commend them for their dedication to their patients and their communities in the face of these challenges.

The nature of the agencies' activities and the threat they pose to quality care and patient safety demand attention. The Attorney General should have the tools to investigate improper behavior to protect access to care in our hospitals and post-acute settings throughout this pandemic and future emergencies.

We request the favorable report on Senate Bill 565.

For more information, please contact:

Nicole Stallings, Chief External Affairs Officer and SVP, Government Affairs & Policy
Nstallings@mhaonline.org



Maryland
Hospital Association

September 23, 2021

The Honorable Brian E. Frosh
Maryland Attorney General
200 Saint Paul St.
Baltimore, MD 21202

Dear Attorney General Frosh:

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we implore you to address the serious concerns impacting Maryland's health care workforce. Throughout the pandemic we've encountered challenges with price gouging. You will recall the national news stories of hospitals and nursing homes paying exorbitant prices for personal protective equipment like face masks, gowns, and gloves—including in Maryland. Staffing costs continue to follow this unsustainable trend.

Maryland's hospitals are facing the worst staffing shortage since the beginning of the pandemic. We have fewer people working in our hospitals today than we had 18 months ago, as COVID-19 has taken a devastating physical and emotional toll on our health care workforce. Many nurses and other health care workers have reached their breaking point and are leaving hospital employment, retiring early, or leaving their profession altogether.

Here in Maryland, demand for health care workers, especially nurses and allied health personnel, continues to surpass prior record levels. Under normal circumstances, hospitals turn to staffing agencies to help fill temporary gaps. But in recent weeks it has become next to impossible for many Maryland hospitals to get staff from contracted agencies due to higher nationwide demand. Data from Qualivis show **regional demand has jumped 62% for ICU nurses, 151% for medical/surgical nurses, and 500% for labor and delivery nurses, from a year ago.**ⁱ¹

These agencies are offering hourly rates and sign-on bonuses that hospitals cannot match. As a result, qualified health care providers are leaving hospitals at a time when we need them most—as the Delta variant spreads, the pediatric surge worsens, and cold and flu season approaches.

Our hospitals have no choice but to pay the continuously escalating rates and refrain from complaining publicly for fear of being cut off from the supply by the staffing agencies setting the prices. **From September 2020 to September 2021, the average rates have climbed across nursing positions—an increase of 63% for ICU nurses up to 98% for labor and delivery nurses.**ⁱⁱ To be clear, we recognize that travel nurses are in high demand and are caring for unusually complex patients suffering an infectious disease. However, we are troubled by the fact that rates have risen so steeply and to levels never before seen.

As Maryland's chief legal officer, we need your help. We ask that you engage your peers through the National Association of Attorneys General to help resolve these issues. We ask you to request that the Department of Justice investigate these unprecedented rates and take appropriate action to protect hospitals and the patients they serve. On a similar path, the American Hospital Association is advocating for the Federal Trade Commission to use its authority to "investigate reports of anticompetitive pricing by nurse staffing agencies."ⁱⁱⁱ

Throughout this pandemic, you have successfully fought to protect the most vulnerable Marylanders by keeping them housed, fed, safe, secure, and connected. You used the authority granted by the General Assembly to investigate cases of price gouging that hurt consumers. Now, we need your support to ensure we have a robust health care workforce that can continue to care for Marylanders in need, day in and day out.

Respectfully,



Bob Atlas
President & CEO

ⁱ Qualivis. (September 15, 2021). "Regional Travel Rate Trends, September 2020 – September 2021." Regional data from Delaware, Maryland, Virginia, Washington DC and West Virginia.

ⁱⁱ Ibid.

ⁱⁱⁱ American Hospital Association Letter to Acting Chairwoman Rebecca Slaughter. (February 4, 2021).

SB0565_Price_Gouging_MLC_FAV.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0565

Public Safety – Emergency Management – Price Gouging Consumer Protections

Bill Sponsor: Senator Lam

Committee: Finance

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0565 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

Our members applaud this bill. We are living in challenging times, with a pandemic that seems to have become entrenched in our society that has caused so many people to lose their jobs, family members, and security. We have experienced scarcity of goods and have had to get used to delays in shipping. The prices of many goods have increased due to the increase in shipping costs and the lack of raw materials.

However, there are many firms that have taken advantage of this situation to make as much profit as possible by artificially increasing the prices of their goods and services. This has caused inflation to spiral and has made many families in Maryland struggle to put food on the table and even get to work.

This bill takes aim at those companies by limiting them from raising the prices of their goods or services during a state of emergency by more than 10% of pre-emergency prices unless they can prove that the price increase is directly attributable to the additional cost imposed upon them by the supplier of those goods or services. This limitation will be in effect until 90 days after the state of emergency.

The bill allows for people who have been harmed to bring suit, which we feel is beneficial, although we would like to see penalties imposed upon the violators that cannot be passed to consumers. We recognize that this is an additional, and costly layer, so while we would like to see it, we are happy to support the bill as written.

We support this bill and recommend a **FAVORABLE** report in committee.

LAM_SB565_FAV.pdf

Uploaded by: Clarence Lam

Position: FAV

CLARENCE K. LAM, M.D., M.P.H.
Legislative District 12
Baltimore and Howard Counties

Education, Health, and Environmental Affairs
Committee
Chair, Environment Subcommittee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Senate Chair

Joint Audit and Evaluation Committee

Joint Committee on Fair Practices and
State Personnel Oversight

Vice Chair

Baltimore County Senate Delegation

Chair

Howard County Senate Delegation

Chair

Asian-American & Pacific-Islander Caucus



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Clarence.Lam@senate.state.md.us

THE SENATE OF MARYLAND

ANNAPOLIS, MARYLAND 21401

Support SB 565:

Public Safety - Emergency Management - Price Gouging Consumer Protections

Background:

- During the COVID-19 Pandemic, many sellers have increased prices for essential goods and services without evidence that the price increases were needed to offset additional costs.
- At the beginning of the crisis, the Governor implemented an emergency order that prohibited price gouging of essential goods and services, including food, medical supplies, and fuel.
- Thirty-one other states and the District of Columbia have laws against price gouging during emergency situations.

Why SB 565 is Needed:

- During an emergency, consumers need consistent and affordable access to essential goods and services, like groceries, healthcare staffing services, and medical supplies.
- Current Maryland law does not protect consumers from price gouging during a state of emergency. The pandemic-related emergency authority prohibiting price gouging has expired, leaving consumers vulnerable to price gouging in future emergencies.
- Under the current law, the Consumer Protection Division of the Office of the Attorney General cannot address complaints about price gouging from Maryland residents during a state of emergency.

What SB 565 Does:

- SB 565 prohibits all businesses, including both manufacturers and sellers, from increasing the price of essential goods and services by more than ten percent from the price that was charged before the declaration of a state of emergency, unless they can prove that additional costs are being incurred during an emergency.
- SB 565 not only protects consumers, but protects Maryland businesses, who are also the victims of price gouging.

- SB 565 makes the temporary price gouging law enacted during the pandemic by the General Assembly against price gouging a permanent law, effective during a state of emergency.
- SB 565 requires that the Secretary of State establish an electronic notification system where people could register to be informed that a state of emergency has been declared and that the provisions of this bill are in effect.

What SB 565 Accomplishes:

- SB 565 ensures that Maryland residents are permanently protected from price gouging of essential goods and services when a state of emergency is declared.
- SB 565 allows the Consumer Protection Division to address price gouging complaints in an emergency situation.
- SB 565 permits businesses to increase prices by more than 10% on essential goods and services if they can verify that they are incurring additional costs during a state of emergency.
- SB 565 helps Maryland join the 32 other jurisdictions, including all of Maryland's neighboring states, that have clear consumer protections against price gouging during a state of emergency.

Sponsor Amendment:

- **SB0565/213521/01:** At the request of the Deputy Secretary of State, the bill language has been changed to indicate that this requirement does not have to be done through regulations.

SB0565-213521-01.pdf

Uploaded by: Clarence Lam

Position: FAV



SB0565/213521/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

14 FEB 22
15:53:04

BY: Senator Lam
(To be offered in the Finance Committee)

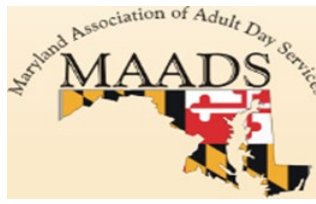
AMENDMENT TO SENATE BILL 565
(First Reading File Bill)

On page 4, in line 11, strike “ADOPT REGULATIONS TO”.

SB0565_FAV_LifeSpan, MAADS, MNCHA_Emer. Management

Uploaded by: Danna Kauffman

Position: FAV



Managed by LifeSpan



TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Clarence K. Lam

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer

DATE: February 24, 2022

RE: **SUPPORT** – Senate Bill 565 – *Public Safety – Emergency Management – Price Gouging Consumer Protections*

On behalf of the LifeSpan Network, the Maryland Association of Adult Day Services, and the Maryland-National Capital Homecare Association, we respectfully **support** Senate Bill 565. Among other provisions, Senate Bill 565 states that, during a State of Emergency, a person may not sell or offer 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 of those essential goods or services between sixty days before the State of Emergency declaration and four days before the State of Emergency. The above-referenced organizations are particularly supportive of the inclusion of health staffing services as part of the definition of essential goods and services.

During the COVID-19 pandemic, especially during the latest omicron surge, health care providers relied more heavily on the use of health care staffing agencies to meet mandatory regulatory staffing requirements. This was in part because of employees testing positive for the virus or being subject to quarantine policies. In an informal survey, many nursing facilities reported paying up to 30% higher for nursing staffing agencies during this time than they paid pre-pandemic, further straining operations. In a related twist, staffing agencies were also in the practice of recruiting current facility employees who then went “contract,” causing the facility to pay more for the same service.

For these reasons, we request a favorable vote on Senate Bill 565.

For more information call:

Danna L. Kauffman
Pamela Metz Kasemeyer
410-244-7000

testimony2022sb565ltr.pdf

Uploaded by: Franz Schneiderman

Position: FAV



Auto Consumer Alliance

13900 Laurel Lakes Avenue, Suite 100
Laurel, MD 20707

**Testimony to the Senate Finance Committee
SB 565 – Public Safety – Emergency Management –
Price Gouging Consumer Protections
Position: Favorable**

The Honorable Delores G. Kelley
Senate Finance Committee
3 East, Miller Senate Building
Annapolis, MD 21401
cc: Members, Senate Finance Committee

Feb. 24, 2022

Honorable Chair Kelley and Members of the Committee:

I'm a consumer advocate and Executive Director of Consumer Auto, a non-profit group that works to foster safety, transparency, and fair treatment for Maryland drivers and car buyers.

Consumer Auto supports **SB 565** because it will give consumers some protection against the kind of price gouging we saw during the early months of the pandemic – and which we seem to see regularly when our area suffers a significant set of emergency conditions.

In the early months of the pandemic in 2020, consumers suffered from sharp – and sometimes predatory – run-ups in prices for basic goods and pandemic necessities like hand sanitizer, cleaning supplies, and toilet paper. The Attorney General's Office received hundreds of complaints about such practices. After the legislature acted to grant it emergency authority to do so, the Attorney General's Office moved to warn more than 100 businesses to stop price-gouging.

Reports of price gouging were also widespread following the cyber-attack on the Colonial Pipeline last June, after the disruptions caused by SuperStorm Sandy in Oct. 2012 and when gas prices soared after Hurricane Katrina hit the Gulf Coast in August 2005, among other cases.

Yet while at least 29 states have laws limiting price gouging in an emergency, Maryland still does not. And since the emergency authority to limit price gouging the legislature authorized in 2020 has lapsed, Maryland consumers may have few legal protections when the next emergency strikes.

By limiting price hikes for basic goods and services to 10% (in most cases) during and for 90 days after a state of emergency, this legislation would set reasonable limits on predatory pricing practices that can hurt and exploit vulnerable people in times of trouble. Of course there may be circumstances when shortages of labor, materials, or other issues caused by an emergency may justify larger price hikes. This legislation does permit larger price hikes in those situations – and mandates that businesses will have at least 20 days to respond to a price-gouging complaint.

That's a fair way to protect consumers against exploitive pricing during an emergency situation. We support **SB 565** and ask you to give it a **FAVORABLE report**.

Sincerely,
Franz Schneiderman
Consumer Auto

HFAM Testimony SB 565.pdf

Uploaded by: Joseph DeMattos

Position: FAV



**TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE**

February 24, 2022

Senate Bill 565: Public Safety – Emergency Management – Price Gouging Consumer Protections
Written Testimony Only

POSITION: FAVORABLE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our support for Senate Bill 565. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to healthcare providers. Our members provide services and employ individuals in nearly every jurisdiction in the state.

Senate Bill 565 would prohibit a person from selling an essential good or service during a state of emergency and for the 90 days following the end of the state of emergency for a price of 10% or more of the price charged before the state of emergency. This legislation also requires the Secretary of State to establish an electronic notification system by which a person may register to receive a notification when these provisions go into effect and the categories of essential goods and services that are covered.

This legislation applies to a range of essential goods and services including food, fuel, water, building supplies, energy sources, lodging, and more. Relevant to the long-term and post-acute care sector, we are highly appreciative that Senate Bill 565 includes medicine, medical supplies and equipment, and health staffing services. Our testimony highlights the importance of including these goods and services in this legislation.

The COVID-19 pandemic has resulted in historically high workforce costs and skyrocketing operational expenses that have left Maryland nursing homes severely underfunded. Costs have risen dramatically due to extremely inflated costs for personal protective equipment (PPE) and staffing shortages that have resulted in extremely high rates for temporary staff through staffing agencies.

During the height of the pandemic in March 2020, one long-term care provider spent \$4 million to purchase necessary supplies. For example, thermometers were going for \$50.59 each. N95 masks were purchased for \$8.50 or more per mask and surgical masks were \$2.70 per mask.

Another provider noted that before the COVID-19 pandemic, they were paying about 40-70 cents per disposable gown. During the pandemic, they paid anywhere from \$3 to \$15 per disposable gown. They were also paying at least five times more than normal for gloves. Yet another provider shared that a case of 1,000 gloves cost \$15 pre-COVID and up to \$60 during COVID.

(more)

Amid these inflated operational expenses, workforce shortages have been exacerbated by the pandemic and direct care staffing agencies have been charging exorbitant prices to long-term care facilities that need workers. These agencies have been charging more than double and – in some cases – as much as quadruple the amount operators are able to pay their staff.

Based on samples of Medicare cost reports and federal payroll-based journal data from 2020 and 2021, skilled nursing and rehabilitation centers direct employee compensation has increased significantly, hourly wages for agency staff have increased by forty to fifty percent, and reliance on agency staff has gone up more than two and a half times.

In an HFAM survey of members, with respondents representing more than twenty-five percent of the sector, we found that the percentage of agency staffing had increased from 4.8 percent in December 2019 to 24.33 percent in September 2021. Among these same centers, the average base hourly wage for RNs, LPNs, and CNAs increased.

To ensure continued quality care for Marylanders in skilled nursing and rehabilitation centers, we must find solutions to price gouging of healthcare staffing, supplies, and equipment. We must also ensure adequate Medicaid rates to continue providing quality care for Marylanders in need and to pay the highest possible wages supported by the rates.

While we are navigating out of the pandemic towards a new normal, we must learn from our collective experience and prepare for future challenges we may face. This legislation helps protect all consumers against price gouging of essential goods and services during a state of emergency and will help safeguard access to these essential goods and services for the benefit of all Marylanders.

For these reasons, we request a favorable report from the Committee on Senate Bill 565.

Submitted by:

Joseph DeMattos, Jr.
President and CEO
(410) 290-5132

Final SB 565- Public Safety – Emergency Management

Uploaded by: Justin Hayes

Position: FAV



Peter Franchot
Comptroller

TESTIMONY OF COMPTROLLER PETER FRANCHOT

Support - Senate Bill 565 - Public Safety - Emergency Management - Price Gouging Consumer Protections

Finance Committee

February 24, 2022

Chair Kelley, Vice Chair Feldman, and members of the Committee, it is my pleasure to provide testimony in **support** of **Senate Bill 565 - Public Safety - Emergency Management - Price Gouging Consumer Protections**. I would like to thank Senator Lam for sponsoring this important legislation, and the Committee for providing the opportunity for my testimony to be heard.

The COVID-19 pandemic produced many challenges for everyday consumers. Initially, some began purchasing more essential products than usual in anticipation of an extended stay at home and the inability to make frequent trips to the store for supplies. This led to retailers selling through their stock, and eventually some steep increases in the price of goods, and even exploitative reselling at a large markup. Senate Bill 565 is designed to prevent price gouging when a state of emergency is in effect by restricting price increases on essential goods to less than ten percent of pre-emergency prices.

Senate Bill 565 would work to keep prices reasonable for the most necessary goods and services such as food, medicine, and cleaning supplies. It is critical to the well-being and independence of everyday Marylanders that this commonsense restriction is put in place during extreme circumstances.

For the reasons stated above, and the protection of all Marylanders, I respectfully request a favorable report for Senate Bill 565. Thank you for your time and consideration.

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SB565_fav_AARP.pdf

Uploaded by: Karen Kalla

Position: FAV



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facebook.com/aarpmc

**SB565 Public Safety – Emergency Management – Price Gouging
Consumer Protections
Senate Finance Committee
FAVORABLE
February 24, 2022**

Good afternoon Chair Kelley and members of the Senate Finance Committee. My name is Karen Kalla, member of the AARP Maryland Executive Council and resident of Anne Arundel County. AARP Maryland is one of the largest membership-based organizations in Maryland, encompassing more than 850,000 members. Key priorities of our organization include protecting consumers, elder abuse, and exploitation. AARP Maryland is proud to support SB565. We thank you for this opportunity to provide testimony. We also thank Senators Lam and Biedle for sponsoring this important piece of legislation.

AARP is a non-partisan, non-profit nationwide organization that strengthens communities and advocates on those issues that most matter to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

We are pleased to support Senate Bill 565 that would prohibit a person during and in the ninety days following the end of a State of Emergency, from selling or offering to sell essential goods and services for a price of 10% or more than what they cost between 60 and 4 days prior to that State of Emergency. Senate Bill 565 identifies how to claim exceptions to this rule; the kinds of goods and services covered; and provides a process both to notify the person who may be in violation of this bill and to bring action by an individual who suffered injury or loss due to a violation.

A State of Emergency is an urgent call to action, a social responsibility to work together in unique ways and help the affected community address the complications of the day. The COVID pandemic has challenged the world in ways that have impacted most aspects of Maryland life. Maryland has in the past and continues to be vulnerable to a full range of decidedly problematic weather conditions; from the east Atlantic coastline, to the shores of the Chesapeake Bay, through its metropolitan cities to its Western mountains and Potomac River. And hackers for whatever reasons can threaten the continuity of our fuel, communications, banking, and other systems.

Unfortunately, some sellers are taking advantage of the confusion, uncertainty, and increased demands associated with States of Emergency. They are increasing the cost of essential goods and services when and where they are most critically needed; often for those who can least afford to pay. Examples include: the increase in the cost of food, cleaning supplies, hand sanitizer, and toilet paper in the early stages of COVID; wide swings in the cost for a COVID Home Test Kit later; and the higher price of fuel in the wake of the Colonial pipeline hacking.

Preparing for emergencies must include consumer protections against those who would exploit a catastrophic event for their own gain. Ensuring consumer protections is essential in our economy which relies on consumer spending—spending largely driven by older adults. This spending must take place in a healthy and honest marketplace. In such a fair and vibrant marketplace, older adults have the power to make informed choices about the options that best serve their needs at an affordable price. They should also have the knowledge that if a company or individual violates their trust or attempts to unfairly dominate the market, there will be pathways to effective redress for them and their communities.

Senate Bill 565 will protect consumers against unfair, deceptive, or abusive practices. It includes an option for individuals to be notified about the State of Emergency and informed about state provisions against price gouging.

For these reasons AARP Maryland supports SB565 Public Safety – Emergency Management – Price Gouging Consumer Protections and respectfully requests the Senate Finance Committee to issue a favorable report. For questions, please contact Tammy Bresnahan, Director of Advocacy for AARP Maryland at tbresnahan@aarp.org or by calling 410-302-8451.

SB565 - Price Gouging - CPD- Support.pdf

Uploaded by: Steven M. Sakamoto-Wengel

Position: FAV

BRIAN E. FROSH
Attorney General

WILLIAM D. GRUHN
Chief
Consumer Protection Division

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

Writer's Fax No.

Writer's Direct Dial No.
410-576-6307

February 24, 2022

To: The Honorable Delores Kelley, Chair
Finance Committee

From: Steven M. Sakamoto-Wengel
Shelly Marie Martin
Assistant Attorneys General

**Re: Senate Bill 565 – Public Safety – Emergency Management – Price Gouging
Consumer Protections (SUPPORT)**

We are writing to express the support of the Consumer Protection Division of the Office of the Attorney General for Senate Bill 565, sponsored by Senator Lam. Currently, 31 states and the District of Columbia have some form of price gouging law, including neighboring states Delaware, Pennsylvania, Virginia and West Virginia. However, when the Consumer Protection Division receives complaints from Maryland residents about price gouging during the pandemic or following a storm or other emergency, we are unable to assist them because Maryland does not have a law against price gouging. The Division received 736 price gouging complaints in 2020 and 107 in 2021.

During the pandemic, the General Assembly gave the Consumer Protection Division temporary authority to address price gouging, however, that authority has since expired. Chapters 13 and 14 (2020). The Division received hundreds of complaints about price gouging on essential goods like food and cleaning supplies. Although not required by the law, the Division established an informal process to address the complaints received that allowed the retailers to respond to the price gouging allegations. The informal process allowed the substantial majority of complaints to be resolved without the need for enforcement action by the Division. The emergency price gouging authority, however, applied only to price increases charged by the retailer of the good or service. It did not apply to manufacturers, wholesalers, or others further back in the supply chain. The result of this limitation was that while in many cases, complainants were correct that the prices of goods had increased, the end retailer had itself experienced increased costs and the Division lacked the authority to take action against the person who actually engaged in

The Honorable Delores Kelley, Chair
Senate Bill 565
February 24, 2022
Page 2

price gouging. By comparison, SB 565 would allow a business that has incurred damages as a result of a violation to bring an action against the violator.

Senate Bill 565 would apply only during a State of Emergency and would prohibit any business,¹ not just retailers, from raising their prices for what are considered essential goods and services by more than 10% above what they charged immediately before the State of Emergency, which is consistent with the threshold in most states that use a numerical standard. The Division believes that using an objective standard like 10% makes application of the statute clearer for businesses subject to the law as opposed to a vague standard such as “unconscionable” or “excessive.” Additionally, Senate Bill 565 allows a business to raise its prices by more than 10% if the business’ costs rose by more than 10%. Additionally, SB 565 requires the Consumer Protection Division to provide a business with 20 days’ notice prior to filing an enforcement action to allow the business to document that its price increases were due to increased costs, which is similar to the voluntary process described above.

Accordingly, the Consumer Protection Division requests that the Finance Committee provide Maryland consumers with the same protection against price gouging during a State of Emergency that they briefly had during the pandemic and that consumers currently have in 31 states and the District of Columbia by giving Senate Bill 565 a favorable report.

cc: Members, Senate Finance Committee
The Honorable Clarence Lam

¹ The Division has received inquiries as to whether Senate Bill 565 would apply to regulated businesses whose prices are approved by their primary regulators. The Division does not believe such approved price increases would constitute price gouging for purposes of SB 565.

2022 MNA SB 565 Senate Side.pdf

Uploaded by: Scott Tiffin

Position: FWA



Committee: Finance Committee

Bill Number: Senate Bill 565

Title: Public Safety – Emergency Management – Price Gouging Consumer Protections

Hearing Date: February 24, 2022

Position: Support with Amendment

The Maryland Nurses Association (MNA) has strong concerns about the current version of Senate Bill 565 – Public Safety – Emergency Management – Price Gouging Consumer Protections but supports with amendment. This bill seeks to prohibit price gouging during a state of emergency. Nurses recognize the importance of limiting gouging the price of commodities and even specialized goods such as masks and medication, but we have serious concerns about the inclusion of health staffing services in this bill.

For the past two years, nurses have been on the front lines of the COVID-19 pandemic. Nurses have had to work seemingly endless overtime hours in understaffed and unsafe conditions to keep Marylanders healthy. Nurses have also been one of the primary recipients of the increased threats and violence against healthcare workers during the pandemic. Throughout the pandemic, nurses have felt underappreciated, and that their compensation did not match the service they were providing to the state, but they have continued to work tirelessly because they want to help keep our state healthy. Because of the experiences of the last two years, we were initially very concerned when we saw that the services of nurses, and other health professionals, was included in a list made up primarily of goods such as cleaning supplies, building supplies, and food. **We would prefer that “health staffing services” be entirely removed from the bill, but if the Maryland General Assembly is intent on keeping this provision in the bill, the following amendment would be necessary or the Maryland Nurses Association would oppose the bill:**

To provide more targeting of this bill, we ask for the following amendment:

On Page 1, line 21 after “(A)” insert “**(1)**”; after “PRICE.” insert “**(2) When calculating the price of health staffing services, the portion of the price that goes to pay an individual providing patient care is not included.**”

This amendment strikes an essential balance by not capping the salaries of essential health care professionals but still preventing staffing agencies from profiteering by charging unreasonable premiums on top of the wages that go to individuals providing patient care. Although the bill currently allows for increased labor costs, it is very unclear how that provision works and how it would be applied to health care staffing. There are many reasons it would make sense to pay nurses more during an emergency such as compensating for increased risk, increased hours or attracting experienced or specialized staff. We believe that it must be clear that salary increases for direct care health professionals are permitted even if the state wants to prevent profiteering on the part of the staffing agencies themselves

We also see this amendment as important to preventing a further reduction in staffing during a pandemic. During the pandemic, we have seen countless experienced nurses give up the profession due to burn out, and even potential downward pressure of salaries could exacerbate this trend. Additionally, we are very concerned that this bill, without our amendment, may result in contract nurses moving to other states during the next crisis. This is particularly concerning because the price gouging statutes in several of our neighboring states do not include health care staffing or do not have hard price caps:

- West Virginia’s statute only applies to “essential consumer items, goods used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight and storage services, or gasoline”ⁱ
- Pennsylvania’s statute applies goods and services “bought or rendered primarily for personal, family or household purposes”ⁱⁱ
- Delaware had a COVID-19 specific price gouging statute, which did not expressly include health services.ⁱⁱⁱ Delaware recently passed a permanent price gouging statute but it also did not explicitly include health services.^{iv}
- Virginia’s price gouging law does include “medical services” but the statute does not include an explicit cap in the way SB 565 does.^v

We understand the importance of protecting Marylanders from price gouging during an emergency, but we also believe that there needs to be careful consideration before potentially capping compensation for services provided by nurses and other health care professionals. Thank you for your consideration of our testimony, and we ask a favorable report including our suggested amendments. If we can provide any further information, please contact Scott Tiffin at stiffin@policypartners.net.

ⁱ <https://law.justia.com/codes/west-virginia/2017/chapter-46a/article-6j/section-46a-6j-2/>

ⁱⁱ <https://casetext.com/statute/pennsylvania-statutes/statutes-unconsolidated/title-73-ps-trade-and-commerce/chapter-5a-price-gouging-act/section-2323-definitions>

ⁱⁱⁱ <https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=48165&docTypeId=55&sessionLawName=chp267.html>

^{iv} <https://legis.delaware.gov/BillDetail?LegislationId=48352>

^v <https://law.lis.virginia.gov/vacode/title59.1/chapter46/>

SB565 testimony.pdf

Uploaded by: Kirk McCauley

Position: UNF



WMDA/CAR Service Station
and Automotive Repair Association

February 24, 2022

Chair: Delores G. Kelley
Members of Senate Finance Committee

RE: SB 565 - Price Gouging Consumer Protection
Position: - oppose

HB 800 could actually hand cuff a governor when using executive order to declare emergency, depending on what the emergency is and where it is located.

All the items listed in this bill (13) might not need to be under a declaration in a state of emergency, but the bill leaves a governor no choice.

Example would be Executive Order declaring a State of Emergency on March 1, 2017, because of heroin and opioid crisis. This bill would require him to put 13 items under price control and keep some in place for 90 days after emergency is has ended.

Intent is good, but each incident will have its own needs. Any governor should have leeway to decide this, on a case by case basis.

Please give SB 565 an unfavorable Report

WMDA/CAR is a trade association that has represented service stations, convenience stores and independent repair shops since 1937. Any questions can be addressed to Kirk McCauley, 301-775-0221 or kmccauley@wmda.ne

SB565 - Maryland Motor Truck Association - Oppose.

Uploaded by: Louis Campion

Position: UNF



Maryland Motor Truck Association

9256 Bendix Road, Suite 203, Columbia, MD 21045

Phone: 410-644-4600

Fax: 410-644-2537



HEARING DATE: February 24, 2022

BILL NO/TITLE: SB565 – Public Safety – Emergency Management – Price Gouging Consumer Protections

COMMITTEE: Senate Finance Committee

POSITION: Oppose

Although Maryland Motor Truck Association appreciates the intent to prevent excessive charges by unscrupulous actors who might take advantage of emergency situations, our organization opposes this legislation due to the complexity of compliance, and multitude of factors that impact charges for transportation services.

Although not specifically designated as “essential goods and services” in the legislation, SB565 includes a provision for “any other goods or services designated as essential by the Governor.” During any emergency declaration, transportation is always included as essential because trucks are needed to deliver food, fuel, medicine, and other supplies as part of any relief efforts. The provisions of this bill are virtually impossible for a trucking company to comply with because, during a state of emergency, companies are frequently running irregular routes and providing spot transportation services as opposed to normal contracted deliveries. Pricing in the spot delivery market fluctuates greatly based on a variety of factors. These include:

- How quickly the delivery needs to be made.
- Current supply of drivers.
- Additional miles driven – many geographic areas under a state of emergency are difficult to access using normal routes.
- Costs that fluctuate daily (e.g. fuel).

Based on the 60-day lookback period and extension for 90 days beyond the end of the emergency, the passage of this bill essentially hamstring a company by preventing it from changing its pricing by more than 10% for at least five months, unless it can demonstrate its own cost increases. Last year many trucking companies were forced to increase driver salaries three times to keep pace with demand. Tires experienced a sizeable increase as oil prices continued to rise, and fuel is now more than \$1 per gallon higher than it was one year ago. Unless a company can demonstrate these increases, it may be subjected to an unfair or deceptive trade practice violation.

The legislation also opens up questions about normal transportation deliveries that may occur in an area under a state of emergency declaration. Are those covered under the legislation or is transportation only included when delivering an essential good?

For the reasons noted above, MMTA respectfully asks for an unfavorable report.

About Maryland Motor Truck Association: Maryland Motor Truck Association is a non-profit trade association representing the trucking industry since 1935. In service to its 1,000 members, MMTA is committed to supporting and advocating for a safe, efficient, and profitable trucking industry across all sectors and industry types, regardless of size, domicile, or type of operation.

For further information, contact: Louis Campion, (c) 443-623-4223

SB 565_MDCC_Public Safety-Price Gouging Consumer P

Uploaded by: Maddy Voytek

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 565

Public Safety – Emergency Management – Price Gouging Consumer Protections

Senate Finance Committee

Thursday, February 24, 2022

Dear Chairwoman Kelley and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,500 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

SB 565 places in statute a list of goods and services deemed essential for the purpose of preventing a price increase of 10% or greater in those goods or services during a declared state of emergency.

Throughout the height of the COVID-19 pandemic and now the public has become increasingly aware of the many factors influencing the State's economy and the prices of goods. As introduced, SB 565 fails to account for this variety of factors and therefore eliminates the flexibility needed by business and government to supply goods and services during critical times. The Chamber's items of concern with SB 565 are:

- This legislation fails to recognize the *many* factors influencing the prices of goods and services set by normal market fluctuations like production of goods, supply chain function, inflation, government demand or restrictions, etc. This same thought process applies to the 10% threshold outlined in the legislation. All these factors would determine what is or isn't an appropriate level used to determine price gouging.
- SB 565 lists out specific goods and services considered essential and then leaves up to the Governor the authority to identify more. As learned during the debate surrounding the Essential Workers' Protection Act, this list should be tied to not just the Governor, but consultation with federal and state emergency management agencies and experts. We do not support specific goods or services being named in statute.
- The timeframe used to determine the base prices appears arbitrary and again ignores the many factors influencing the price of goods and services. How does this base timeframe

consider varying periods of inflation, recession, economic expansion, rising wages, or normal business activity such as sale prices?

Targeting and eliminating price gouging during times of uncertainty is a necessary function of government. However, an effective response requires flexibility and targeted enforcement, SB 565 does not provide either. The reporting and enforcement mechanisms deployed during the Governor's State of Emergency at the height of the COVID-19 pandemic seemed to provide a balanced approach to combating this problem.

As such, the Maryland Chamber of Commerce respectfully requests an unfavorable report on SB 565.



SB565_MRA_UNF.pdf

Uploaded by: Sarah Price

Position: UNF



**SB565 – Public Safety – Emergency Management – Price Gouging Consumer
Protections
Finance Committee
February 24, 2022**

Position: Unfavorable

Background: SB565 would impose regulations and restrictions on price increases for certain goods and services during a State of Emergency.

Comments: The Maryland Retailers Association (MRA) recognizes the seriousness of price gouging and its impact on consumers. In fact, several of our retail members have indicated that they already implement price freezing policies on certain essential goods during States of Emergency. We agree that bad actors who seek to take advantage of consumers during a time of need should be addressed, but we have concerns about the potential impact of SB565 when prices rise for reasons outside of a retailer's control.

1. The bill does not indicate if or how possible infractions are to be reported to and/or investigated by the Office of the Attorney General. Our members have expressed concerns about the impact that this could have on their day-to-day operations, with no details included in the bill regarding the full process that would follow the report of an alleged violation.
2. Though we appreciate that the bill includes clear language regarding the time frame that a business has to respond to an alleged violation, we have concerns about the method for notice and response, particularly as the bill does not indicate how the Office of the Attorney General must notify businesses. Given the impact that the COVID-19 pandemic had on the operations of the United States Postal Service during Maryland's State of Emergency, we are concerned that businesses may not have an appropriate amount of time to respond to a notice if communications are similarly impacted during future States of Emergency.
3. The burden of proof rests with the businesses, but the bill does not detail the process for providing proof of increased costs, nor does it indicate if there will be different expectations for independent vs. chain stores or stores of different sizes.
4. The bill authorizes a private right of action for anyone impacted by a violation of the proposed regulation. Given the scope of items and services included in the proposal and the potential number of individuals who could be impacted if a violation were to occur, we believe that this is inappropriate and that any action should be limited to the Office of the Attorney General.

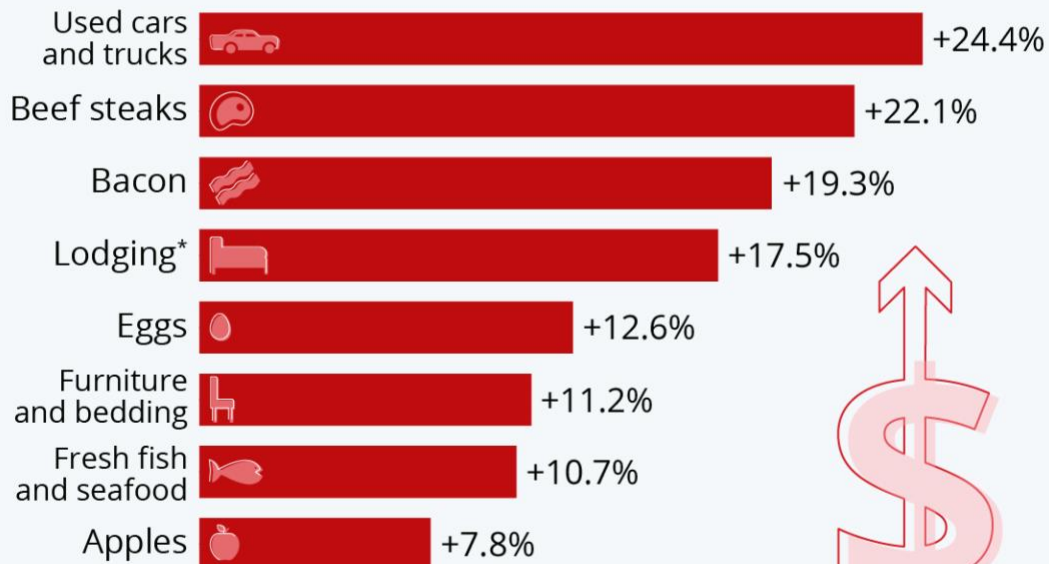
5. The time frame for restricting prices (limiting the top end of pricing based on the prices during the period of 60 to 4 days before the start of the State of Emergency) is confusing, and does not take into account the possibility of extended States of Emergency such as what Maryland has experienced during the COVID-19 pandemic. The United States is currently experiencing record-high inflation rates, and the price of goods and services in late 2021 are not comparable to those of early 2020. This is of particular concern for fuel pricing, which as we know can fluctuate very quickly in a short amount of time based on the global economy and natural disasters. We do not believe that this is an appropriate method for determining limits for price caps.

The overwhelming majority of increased prices that consumers are experiencing now can be attributed to supply chain issues, product and labor shortages, shipping delays, and increased inflation. In a survey conducted by the National Retail Federation in 2021, all retail respondents reported that their supply chain costs have increased at every level. These increases and high inflation rates have caused prices to go up on everyday goods such as meat, eggs, produce, furniture and bedding (examples available in graphic below). If another extended State of Emergency were to occur, a 10% cap on price increases may not be feasible.

It is difficult for us to fully weigh in on the potential impact of the bill as it does not include many regulatory details that could affect retailers' regular operations. Based on this lack of detail included in the bill and the rate at which product costs have continued to rise, we would respectfully urge an unfavorable report on SB565. Thank you for your consideration.

U.S. Inflation Hits Cars, Meats, Lodging

Year-over-year change in the price of selected items on the Consumer Price Index (Sept 2020-Sept 2021)



Urban consumers
* away from home

Source: Bureau of Labor Statistics



statista

(Source: Buchholz, K. October 25, 2021. *Apples, beef and cars: This is how inflation is impacting prices in the U.S.* World Economic Forum.

<https://www.weforum.org/agenda/2021/10/us-inflation-hits-cars-meats-lodging/>)

What's Causing a Jam In My PB&J?

A complex mix of global supply chain challenges — from weather to shipping to labor — has resulted in some of your favorite products either costing a bit more or being harder to find on grocery store shelves, including some everyday staples, like the ingredients in a classic peanut butter and jelly sandwich.

Jelly/Jam

Citric Acid:

A preservative that keeps jarred items shelf-stable is in short supply amid soaring demand and global logistics disruption.



Sugar:

Domestic sugar prices are at a 10-year high, fueled by a lack of domestic raw sugar cane supply combined with transportation and labor challenges.



Peanut Butter

Transportation:

Many peanuts are transported domestically by rail and trucks, which has been delayed by supply chain disruptions and labor shortages that have also increased costs.



Vegetable Oils:

Oils used to make peanut butter have suffered from shortages, poor harvests, and a 70% increase in soybean oil costs.



Whole Wheat Bread

Packaging:

Supplies of cardboard boxes are low due to a number of factors, including increased demand for online shopping and higher costs for freight and raw materials. The box shortage has made it difficult to ship and stock bread in some parts of the country.



Wheat:

Weather-related crop losses in major wheat-producing countries and a smaller U.S. crop have strained supplies and increased costs.



Workforce Challenges

Labor shortages at every stage of the food industry supply chain, including producers, truck drivers, distributors, and retailers, are affecting grocers' ability to bring some products to the shelves; 80% of food retailers say workforce challenges are negatively impacting business.



FMI.org

