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Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Manning and Wilson

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SUMMARY

- Declares sales of essential goods in excess of limits prescribed by the Attorney General during a declared state of emergency to be an unfair and deceptive practice under the Consumer Sales Practices Act (CSPA).
- Declares selling essential goods during a declared state of emergency at a price substantially higher than the price prior to the state of emergency to be an unconscionable act under the CSPA.
- Prohibits violations of the bill's requirements to be addressed by a private lawsuit.
- Declares an emergency.

DETAILED ANALYSIS

Overview

The bill imposes restrictions related to the purchase and sale of certain goods during a declared state of emergency. Under the bill, a state of emergency is any of the following:

- A state of emergency declared by the Governor;
- A public health emergency declared through an order by the Department of Health;
- A federal disaster or emergency declared by the President of the United States, an agency of the federal government, or Congress.¹

¹ R.C. 1345.023(A).

Purchase limitations

The bill authorizes the Attorney General to issue a written directive establishing purchase limitations on the sale of specified goods or services during a declared state of emergency. Such goods would be those directly or indirectly related to the state of emergency or those necessary to preserve, protect, or sustain the life, health, or safety of persons or their property during the state of emergency.²

The directive must specifically describe the purchase limitations and must be announced publicly, including posting a copy to the Attorney General's website. The directive must state the date and time it goes into effect. The default duration for the purchasing limitations is 90 days, unless renewed or revoked by the Attorney General. Any such limitation is expressly prohibited from extending beyond the declared emergency.³

Price gouging

The bill also effectively prohibits price gouging by prohibiting suppliers from selling essential goods at a price that is grossly in excess of the price at which such goods were sold or offered for sale immediately prior to the state of emergency. A "supplier" is a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer. This prohibition automatically lasts for the duration of the declared emergency. A supplier may raise an affirmative defense against allegations of price gouging by demonstrating with reasonable certainty that a price increase is attributable to any of the following:

- An increase in cost through their supply chain;
- An increase in cost due to an action taken by local, state, or the federal government that is otherwise legal;
- An intentional effort by the supplier that has added value to the item in question;
- Another reasonable, but unforeseen circumstance.⁴

Enforcement

A failure on the part of a supplier to comply with the purchase limitation requirement is considered an unfair or deceptive practice under the Consumer Sales Practices Act (CSPA).⁵ A violation of the price gouging prohibition is considered an unconscionable act under the CSPA.

Both unfair and deceptive practices and unconscionable acts under the CSPA are subject to lawsuit brought by the Attorney General. If a supplier is found to have violated the bill's

² R.C. 1345.023(B).

³ R.C. 1345.023(C) and (D).

⁴ R.C. 1345.033(A) and (B) and R.C. 1345.01(C), not in the bill.

⁵ R.C. 1345.023(E).

requirements, the court may issue a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent the act or practice. Suppliers that fail to comply with such an order could be subject to a penalty of up to \$5,000 per day. Furthermore, suppliers that commit an action that has already been determined to be an unfair and deceptive practice or an unconscionable act, either through adopted rule or court decision, are subject to a penalty of up to \$25,000.⁶ Finally, if a sufficient number of consumers have been impacted, the Attorney General is authorized to bring a class action lawsuit against an employer found to be in violation of the CSPA.⁷

There are a few things to note with regard to violations. First, violations of the bill's requirements are only enforced with regard to suppliers and not consumers. In other words, the bill does not authorize the Attorney General to bring suit against a consumer who merely makes a purchase in excess of the purchase limitations, unless that consumer then turned around and tried to resell those items at a substantially higher price, in which case the seller would be considered a supplier. Second, generally, for unfair and deceptive practices and unconscionable acts, the CSPA authorizes a private cause of action, i.e., a consumer can directly sue a supplier.⁸ The bill, however, expressly prohibits private causes of actions with regard to violations of its requirements.⁹

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 04-08-20 |

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⁶ R.C. 1345.07(A)(2) and (D), not in the bill.

⁷ R.C. 1345.07(A)(3), not in the bill.

⁸ R.C. 1345.09, not in the bill.

⁹ R.C. 1345.023(G) and 1345.033(C).