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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

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Office

**S.B. 301**  
**133<sup>rd</sup> General Assembly**

## **Fiscal Note & Local Impact Statement**

[Click here for S.B. 301's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Sens. Manning and Wilson

**Local Impact Statement Procedure Required:** No

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### **Highlights**

- The Attorney General may incur additional costs to investigate and enforce additional civil violations, the extent of which will depend on the volume of panic buying and price gouging complaints that otherwise may not have been reported or pursued. Any increase in court actions brought by the Attorney General are expected to be relatively small in the context of a given court's caseload.
- The potential state and local fiscal effects are limited to situations involving a declared state of emergency. During any such period, the Attorney General and common pleas courts should be able to absorb the work and related costs noted above utilizing existing personnel and appropriated resources.
- The bill's emergency clause means that its provisions become effective immediately.

### **Detailed Analysis**

The bill applies the Ohio Consumer Sales Practices Act (CSPA) to the practices of panic buying and price gouging during a declared state of emergency. The consumer goods and services that are covered by the bill's prohibitions are those that (1) relate to the state of emergency (directly or indirectly), or (2) are necessary to preserve, protect, or sustain the life, health, or safety of persons or their property during the period of emergency.

The CSPA prohibits a supplier from engaging in unfair or deceptive acts or practices or unconscionable acts or practices in connection with consumer transactions. The prohibitions apply to acts occurring before, during, or after a transaction. Typically, there are two civil remedies available for handling violations of the CSPA. However, for the circumstances addressed by the bill, only the Attorney General-initiated remedy is available – there is no private cause of action.

## **Panic buying**

The bill allows the Attorney General to issue a written directive establishing per-consumer, per transaction quantity limitations on the sale of specified consumer goods and services upon the declaration of an emergency. In addition to consumer limitations, the directive must specify the time and date it is to go into effect, and be publicly available on the official website of the Attorney General. A directive, unless renewed or revoked, generally lasts for 90 days. It cannot exceed the duration of the emergency. It appears that some stores statewide have elected to establish internal quantity-limiting policies to prevent shortages of essential items during the COVID-19 emergency.

## **Price gouging**

The bill prohibits the sale of certain goods or services at a price grossly in excess of that at which they were sold or offered immediately prior to the state of emergency. Since the beginning of the COVID-19 state of emergency in March 2020, the Attorney General has received more than 900 complaints of price gouging. The bill provides an affirmative defense for a supplier if they can establish that their price increase is related to reasonable but unforeseen circumstances. The number of cases likely to benefit from this affirmative defense would be small statewide.

It appears that the Attorney General can already pursue CSPA cases involving price gouging under current law and practice. While Ohio does not have a statute that deals directly with price gouging, the practice could be considered unconscionable if the supplier knew at the time of the transaction that the price was substantially higher than the price at which similar goods or services could be readily obtained. The Attorney General indicates that a prohibition specific to price gouging after an emergency would make the avenue to pursue a civil action easier and more straightforward.

## **Enforcement**

By the Attorney General's own inquiries or as a result of complaints, the Attorney General may bring several types of actions to enforce the CSPA if there is reasonable cause to believe that a supplier has engaged or is engaging in the practices, as described above, and that bringing an action would be in the public interest. Civil actions that may be brought include the following: (1) an action to obtain a declaratory judgment, (2) an action to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice, and (3) a class action on behalf of consumers.

As result of a violation of a temporary restraining order, preliminary injunction, or permanent injunction, the court may impose a civil penalty of up to \$5,000 for each day of the violation, if the supplier received notice of the lawsuit. In addition, if the court finds that the supplier's practice is unfair, deceptive, or unconscionable, the court may impose a civil penalty of up to \$25,000 against the supplier. Pursuant to current law, the civil penalties are distributed as follows: three-fourths, or 75%, to the state's Fund 6310 (the Consumer Protection Enforcement Fund) and one-fourth, or 25%, to the treasury of the county where the Attorney General's action is brought. The timing and magnitude of this potential revenue stream is uncertain.

It is possible that the Attorney General would try to settle the issues surrounding violations of the bill's provisions prior to initiating any formal legal action. For example, if appropriate during an investigation, the Attorney General may give the violator the opportunity to cease their conduct, and assuming they do so, the Attorney General would stop incurring any related investigative and legal expenses. Generally, the Attorney General would seek court action in response to the most serious violations or as a last resort. As such, it is unlikely that the bill will generate a costly new burden for common pleas courts to adjudicate additional CSPA cases. Any costs for the Attorney General or courts of common pleas generally are likely to be minimal at most and limited to a period of emergency.