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Bill Analysis
Legislative Service Commission

S.B. 181

126th General Assembly
(As Introduced)

**Sens. Padgett, Harris, Clancy, Coughlin, Goodman, Grendell, Jacobson,
Jordan, Mumper, Niehaus, Schuler, Wilson**

BILL SUMMARY

- Includes among the circumstances that must be taken into consideration as to whether an act or practice is unconscionable under the Consumer Sales Practices Act, whether a supplier knowingly transferred or offered to transfer specified goods or services during a federal or state emergency at a price substantially higher than that at which similar goods or services were readily obtainable in the 30 days preceding the emergency.
- Provides that the above-described circumstance does not apply if the entirety of a price increase is attributable to additional, reasonable costs of the supplier in providing the good or service during the emergency period, including the cost of labor or materials.

CONTENT AND OPERATION

Consumer Sales Practices Act

Current law

The Consumer Sales Practices Act, R.C. Chapter 1345., governs a "consumer transaction," which is defined in current law as a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer transaction" does not include transactions between persons, as defined in R.C. 4905.03 (public utilities) and 5725.01 (financial institutions) and their customers; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services. (R.C. 1345.01(A).)

Existing law prohibits a "supplier" from committing an unconscionable act or practice in connection with a consumer transaction (see **COMMENT** for definition of term in quotes). An unconscionable act or practice violates this prohibition whether it occurs before, during, or after the transaction. (R.C. 1345.03(A).) In determining whether an act or practice is unconscionable, the following circumstances must be taken into consideration (R.C. 1345.03(B)):

(1) Whether the supplier has knowingly taken advantage of the inability of the "consumer" reasonably to protect the consumer's interests because of the consumer's physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement (see **COMMENT** for definition of term in quotes);

(2) Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers;

(3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;

(4) Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;

(5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;

(6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment;

(7) Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment at the time of the sale a sign stating the supplier's refund policy.

Operation of the bill

The bill modifies (2) above, by providing that, as a part of the determination as to whether or not an act or practice is unconscionable, one of the circumstances is whether, only during an emergency period beginning on the date of issuance of a declaration of a national emergency by the President or Congress of the United States or any authorized federal agency, or issuance of a declaration

to a state of emergency by the Governor for all or a specified portion of this state, and ending 30 days after the date of expiration of the declaration, and with respect to a transfer of any food; good or service for emergency cleanup; emergency supplies; medical supplies; building material; housing; building repair or reconstruction service; transportation, freight, or storage service; propane or home heating oil; or gasoline or other motor fuel, regardless of whether an actual transfer occurs, the supplier knowingly transferred, or offered to transfer, the good or service for a price that was substantially higher than (R.C. 1345.03(B)(2)(b)):

(1) The price at which similar goods or services were readily obtainable in the emergency area in similar consumer transactions by like consumers during the 30 days immediately preceding the emergency period; or

(2) If the supplier actually transferred similar goods or services in one or more similar consumer transactions with like consumers in the emergency area during that preceding 30-day period, the average price of the goods or services based on those consumer transactions.

However, the above-described provision does not apply if the entirety of a price increase is attributable to additional reasonable costs of the supplier in providing the good or service during the emergency period, including the cost of labor or materials (R.C. 1345.03(B)(2)(b)).

The bill also replaces the term "property" with the term "goods" in (2) above (R.C. 1345.03(B)(2)(a)).

COMMENT

R.C. 1345.01 contains the following definitions regarding the Consumer Sales Practices Act:

(1) "Consumer" means a person who engages in a consumer transaction with a supplier.

(2) "Knowledge" means actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.

(3) "Supplier" means 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.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|------------|----------|---------------|
| Introduced | 09-13-05 | p. 1433 |

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