

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – The bill creates penalties for offering goods and services for sale without an occupational license.

Provide limited government – The bill grants the Governor increased emergency management powers during a declared emergency.

B. EFFECT OF PROPOSED CHANGES:

Present situation: Florida prohibits the rental or sale of essential commodities for unconscionable prices during a declared state of emergency.¹ A commodity is defined as goods, services, materials, merchandise, supplies, equipment, resources, or other articles of commerce which includes food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency.² A price is unconscionable if there is a gross disparity between the price charged for the commodity and the average price of that commodity during the 30 days prior to a declaration of a state of emergency, with exceptions.³ A price is also unconscionable if the amount charged “grossly exceeds” the average price during the 30 days prior to a declaration of a state of emergency.⁴ Penalties that may be assessed include a civil penalty of not more than \$1,000 per violation with an aggregate total not to exceed \$25,000 for any 24-hour period.⁵

Additionally, current law makes unlawful all unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.⁶ The civil penalty for willfully violating this section is a penalty of not more than \$10,000 for each violation and \$15,000 for each violation that victimizes a senior citizen or handicapped person.⁷

During 2004, the Florida Attorney General’s Economic Crimes Division handled over 8,700 complaints as a result of the four hurricanes that struck the state. Thirteen lawsuits were filed in Florida courts alleging price gouging and Unfair and Deceptive Trade Practice violations. Of those thirteen, seven were against hotels, two against tree trimming services, three against generator sales, and one against a carpet cleaning and restoration service. Two of the thirteen cases have settled.

The Florida Department of Agriculture and Consumer Services’ Division of Consumer Services, Division of Standards and Office of Agricultural Law Enforcement received and investigated many potential price gouging complaints following the 2004 hurricanes. The Division of Consumer Services received approximately 6,535 calls to its hotline and 3,034 complaints were investigated. The Division of Standards received 900 complaints and took enforcement action against 66 retail gasoline outlets and 21 terminals. The Office of Agricultural Law Enforcement has investigated 260 complaints and taken six actions.

Effect of proposed changes: The bill makes it a second-degree misdemeanor for a person to offer goods and services for sale to the public during a declared state of emergency, unless the person possesses an occupational license pursuant to ss. 205.032 (counties) or 205.042 (municipalities), F.S.

¹ Section 501.160(2), F.S.

² Section 501.160(1)(a), F.S.

³ Section 501.160(1)(b), F.S.

⁴ *Id.*

⁵ Section 501.164, F.S.

⁶ Section 501.204, F.S.

⁷ Section 501.2075, F.S.

Commission of a misdemeanor of the second degree is punishable by imprisonment for up to 60 days or a fine up to \$500. This provision does not apply to religious, charitable, fraternal, civic, education and social organizations.

During a declared emergency, when there is an allegation of price gouging, failure to possess an occupational license constitutes reasonable cause to detain the person, provided that the detention is in a reasonable manner and only for a reasonable period of time sufficient for an inquiry into the circumstances surrounding the failure to possess a license.

Chapter 252 provides for the Governor's powers and duties during an emergency. Section 252.36(2), F.S., provides that the Governor must issue an executive order or proclamation if an emergency has occurred or is imminent. The Governor's powers during an emergency are broad. HB 347 allows the Governor, in the emergency declaration, to exempt businesses who sell essential commodities from curfew restrictions. In addition, the Governor, in the emergency declaration, may allow local governments and private landfill operators to operate with extended hours to enable reasonable and timely disposal of contaminated or spoiled goods.

C. SECTION DIRECTORY:

Section 1. Amends s. 501.160, F.S., providing criminal penalties for failure to possess an occupation license during a declared state of emergency.

Section 2. Amends s. 252.36, F.S., providing additional emergency management powers.

Section 3 Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Increased fines may generate additional revenues for the clerks of court and, indirectly, state government; however, the amount is indeterminate.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

2. Revenues:

Local clerks of court will collect fines from violators. These funds are retained by the clerks with surplus funds according to the state. The amount of increased fine collections is indeterminate.

3. Expenditures:

Increasing the maximum sentence for certain violations to a maximum term of up to 1 year may impact current jail capacity; however, the fiscal impact on local governments is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Increased minimum fines and potential forfeitures will have an indeterminate fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill would require counties to expend funds associated with enforcing new misdemeanor offenses. Even if the required expenditures were to exceed the threshold used by the Legislature to determine significance, the bill would appear to be exempt since it is a criminal law.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill contains no grant of rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Please see the preceding section 1. Applicability of Municipality/County Mandates Provision.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 23, 2005, the Agriculture Committee adopted a strike-all amendment to:

- Provide law enforcement reasonable cause to detain a person accused of price gouging;
- Exempt certain groups/organizations from the requirement to have an occupational license;
- Allow the Governor, in the emergency declaration, to make accommodations for essential employees providing essential goods and services to exceed curfews so that retailers may remain open through all non-curfew hours; and
- Allow the Governor, in the emergency declaration, to direct local governments to open landfills and operate with extended hours for disposal of contaminated or spoiled goods in a reasonable or timely manner.

On April 11, 2005, the Justice Appropriations Committee adopted an amendment that gives the Governor the authority to allow city, county and private landfill operators the ability to extend normal operating hours to enable the disposal of spoiled or contaminated goods in a reasonable and timely manner.

The bill was then reported favorably with a committee substitute.

This analysis is drawn to the committee substitute.