

MAINE STATE LEGISLATURE

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L.D. 1892

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JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1333, L.D. 1892, Bill, "An Act To Prevent Price Gouging"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 10 MRSA §1105, as amended by PL 1979, c. 541, Pt. A, §91, is repealed and the following enacted in its place:

§1105. Profiteering in necessities

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Abnormal market disruption" means a significant disruption to the production, distribution, supply, sale or availability of a commodity or commodities that:

(1) Is caused by an event such as a natural or man-made emergency or disaster, whether local or remote; and

(2) Causes ordinary competitive market forces to cease to function normally.

B. "Cost" means the expense associated with the acquisition, production, distribution or sale of necessities and may include, among other things, replacement costs, taxes and transportation costs.

2 C. "Necessities" includes food for human or animal
3 consumption; pharmaceutical products, including prescription
4 medications; wearing apparel; shoes; building materials; gas
5 and electricity for light, heat and power; ice; fuel of all
6 kinds; and fertilizer and fertilizer ingredients; together
7 with tools, utensils, implements, machinery and equipment
8 required for the actual production or manufacture of the
9 same. "Necessities" includes any other vital or necessary
10 good or service except those:

12 (1) Subject to continuous maximum price regulation
13 under the provisions of any state or federal law;

14 (2) As to which the State's authority is preempted; or

15 (3) Furnished or provided by:

16 (a) Insurers; or

17 (b) Nonprofit hospitals, medical service
18 organizations or health maintenance organizations
19 authorized to transact business within the State
20 pursuant to Title 24 and Title 24-A.

21 D. "Unconscionable price" means a price that is actionable
22 under this section. There is a rebuttable presumption that
23 a price is unconscionable when it exceeds by more than 15%
24 the sum of:

25 (1) The price at which similar goods or services were
26 offered for sale or sold by that person or another
27 person similarly situated immediately prior to the
28 beginning date of the abnormal market disruption; and

29 (2) The increased cost calculated according to the
30 method used by that person prior to the abnormal market
31 disruption.

32 2. Declaration. Whenever it appears upon due inquiry and
33 consultation with the Attorney General that an abnormal market
34 disruption exists or that there is a substantial likelihood that
35 an abnormal market disruption is imminent, the Governor may, in
36 the Governor's sole discretion and after considering whether the
37 declaration of an abnormal market disruption itself will disrupt
38 supplies for affected necessities, declare an abnormal market
39 disruption.

40 A. A declaration made under this subsection must specify:

41

2 This amendment establishes the authority of the Governor to
3 declare the existence of an abnormal market disruption in one or
4 more necessities or categories of necessities. During a declared
5 abnormal market disruption, profiteering in necessities is a
6 civil violation and may be prosecuted as a violation of the Maine
7 Unfair Trade Practices Act, except that private remedies are not
8 available. Profiteering in necessities means selling or offering
9 to sell necessities at an unconscionable price.

10
11 The Governor has sole discretion as to whether to declare an
12 abnormal market disruption, although it must be preceded by due
13 inquiry and consultation with the Attorney General. The Governor
14 must also consider whether the declaration of an abnormal market
15 disruption itself will disrupt supplies for affected necessities.

16
17 The declaration must state the beginning date for the
18 abnormal market disruption, the necessities or categories of
19 necessities covered by the declaration and the levels of trade or
20 commerce affected by the declaration. An abnormal market
21 disruption ends when the Governor so declares or at the end of 60
22 days, whichever is sooner. The Governor may modify a declaration
23 at any time.

24
25 The Governor must publish decisions made regarding abnormal
26 market disruptions in a manner reasonably calculated to give
27 adequate notice to affected persons.

28
29 Any person may petition the Governor regarding decisions
30 about the declaration of an abnormal market disruption.

31
32 The declaration of an abnormal market disruption creates a
33 rebuttable presumption that the abnormal market disruption
34 occurred and existed for the duration of the declaration.

35
36 An abnormal market disruption is a significant disruption to
37 the production, distribution, supply, sale or availability of a
38 commodity or commodities that is caused by an event such as a
39 natural or man-made emergency or disaster, whether local or
40 remote, and that causes ordinary competitive market forces to
41 cease to function normally.

42
43 "Cost" means the expense associated with the acquisition,
44 production, distribution or sale of necessities and may include,
45 among other things, replacement costs, taxes and transportation
46 costs.

47
48 "Necessities" is defined to include food for human or animal
49 consumption; pharmaceutical products, including prescription
50 medications; wearing apparel; shoes; building materials; gas and

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2 electricity for light, heat and power; ice; fuel of all kinds;
and fertilizer and fertilizer ingredients; together with tools,
4 utensils, implements, machinery and equipment required for the
actual production or manufacture of the listed goods.
6 "Necessities" includes any other vital or necessary good or
service except those goods or services that are subject to
continuous maximum price regulation under the provisions of any
8 state or federal law; those goods or services as to which the
State's authority is preempted; or goods or services furnished or
10 provided by insurers or nonprofit hospitals, medical service
organizations or health maintenance organizations authorized to
12 transact business within the State pursuant to Title 24 and Title
24-A.

14
16 This amendment provides that a price is rebuttably presumed
to be unconscionable when it exceeds by more than 15% the sum of
18 the price at which similar goods or services were offered for
sale or sold by that person or another person similarly situated
20 immediately prior to the beginning date of the abnormal market
disruption and the increased cost calculated according to the
22 method used by that person prior to the abnormal market
disruption.