

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1892

H.P. 1333

House of Representatives, January 4, 2006

An Act To Prevent Price Gouging

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLS of Farmington.
Cosponsored by President EDMONDS of Cumberland and
Representatives: BRYANT of Windham, CUMMINGS of Portland, MOODY of Manchester,
PELLETIER-SIMPSON of Auburn, SCHATZ of Blue Hill, Senators: BARTLETT of
Cumberland, BROMLEY of Cumberland, BRYANT of Oxford.

Be it enacted by the People of the State of Maine as follows:

2 **Sec. 1. 10 MRSA §1105**, as amended by PL 1979, c. 541, Pt. A,
4 §91, is repealed and the following enacted in its place:

6 **§1105. Profiteering in necessities**

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

12 A. "Abnormal market disruption" means a change in the
14 market, actual or imminently threatened, such that the
competitive market for any necessity or necessities in any
16 section of the State has ceased to function normally in any
respect as a result of the impact of a natural disaster,
18 stress of weather, failure or shortage of electric power or
other source of energy, strike, civil disorder, war, terror
20 or a national or local emergency or another precipitating
event occurring in any location, local or remote.

22 B. "Necessities" includes food for human or animal
24 consumption; pharmaceutical products, including prescription
medications; wearing apparel; shoes; building materials; gas
26 and electricity for light, heat and power; ice; fuel of all
kinds; and fertilizer and fertilizer ingredients; together
28 with tools, utensils, implements, machinery and equipment
required for the actual production or manufacture of the
30 same. "Necessities" includes any other vital or necessary
good or service except those:

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

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

38 (3) Furnished or provided by:

40 (a) Insurers; or

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

46 **2. Profiteering prohibited.** During an abnormal market
48 disruption, a person may not sell or offer for sale necessities
at a price that exceeds by more than 15% the price at which
similar goods or services were offered for sale or sold by that

2 person immediately prior to the abnormal market disruption unless
3 the price increase is attributable to increased cost.

4 3. Attorney General declaration. Whenever it appears upon
5 due inquiry that an abnormal market disruption exists, or that
6 there is a substantial likelihood that an abnormal market
7 disruption is imminent, the Attorney General may, in the Attorney
8 General's sole discretion, declare an abnormal market
9 disruption. The Attorney General's declaration must specify the
10 particular necessity, necessities or categories of necessities
11 that are subject to the abnormal market disruption. The Attorney
12 General shall cause the declaration to be published in a manner
13 reasonably calculated to give affected persons adequate notice.
14 The declaration expires when the Attorney General declares it
15 expired or 60 days from the date of its issuance, whichever is
16 sooner.

17 4. Civil violation. Profiteering in necessities during an
18 abnormal market disruption is a civil violation that constitutes,
19 and may be prosecuted as, an unfair act or practice in the
20 conduct of trade or commerce pursuant to Title 5, section 207,
21 except that the provisions of Title 5, section 213 do not apply
22 to profiteering in necessities. The existence of an abnormal
23 market disruption constitutes an element of the violation that
24 must be affirmatively proven, except that when the Attorney
25 General has declared an abnormal market disruption, the
26 declaration creates a rebuttable presumption that the disruption
27 occurred and existed from the date of the declaration to the date
28 of its expiration.

29 5. Rulemaking. The Attorney General may adopt rules
30 implementing this section, including, but not limited to, rules
31 governing required methods of publication and notice under
32 subsection 3. Rules adopted pursuant to this section are routine
33 technical rules as defined in Title 5, chapter 375, subchapter
34 2-A.

40 SUMMARY

41 This bill amends the law that prohibits profiteering in
42 necessities. It establishes a ceiling of 15% plus costs on
43 increases in prices for necessities of life affected by an
44 abnormal market disruption due to natural disaster, stress of
45 weather, failure or shortage of electric power or other source of
46 energy, strike, civil disorder, war, terror or a national or
local emergency or another precipitating event.