

SENATE BILL NO. 67

INTRODUCED BY D. WANZENRIED

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING UNCONSCIONABLE PRICING OF AN ESSENTIAL GOOD OR SERVICE DURING A STATE OF EMERGENCY OR ABNORMAL MARKET DISRUPTION; PROVIDING DEFINITIONS; PROVIDING FOR THE DECLARATION OF AN EMERGENCY OR ABNORMAL MARKET DISRUPTION BY THE PRESIDENT OF THE UNITED STATES OR THE GOVERNOR OR UPON A FINDING BY A DISTRICT COURT; PROHIBITING HOARDING; AND PROVIDING FOR ENFORCEMENT AND PENALTIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 8 7], the following definitions apply:

(1) "Abnormal market disruption" means a significant disruption to the production, distribution, or sale of a good or service essential to the health, safety, or welfare of the public, ~~including food, water, fuel, shelter, transportation, and medical supplies,~~ in a specific geographic area that is caused by an activating event, such as a natural or human-caused emergency or disaster occurring within ~~or outside~~ the affected area.

(2) "Affected area" means:

~~—— (a) the specific county mentioned or the county of a mentioned city in any declaration, finding, or court order under [section 2]; or~~

~~—— (b) if there is not a county or city mentioned, the entire state~~ THE STATE OF MONTANA.

(3) "ESSENTIAL GOOD OR SERVICE" MEANS FOOD, WATER, FUEL, SHELTER, TRANSPORTATION, OR MEDICAL SUPPLIES.

~~(3)(4)~~ (4) "Hoarding" means THE INTENTIONAL withholding, obstructing, interfering with, or placing unreasonable restrictions or conditions on the prompt delivery, transportation, or sale, at retail or wholesale, of an essential ~~product~~ GOOD or service during a declaration of a state of emergency or a finding of an abnormal market disruption in the affected area covered by the declaration or finding.

~~(4)(5)~~ (5) "Incident" means any of the following:

(a) each sale, at retail or wholesale, of essential goods or services at prices in violation of [sections 1 through 8 7]; OR

~~—— (b) each day that essential goods or services are offered for sale, at retail or wholesale, at prices in violation of [sections 1 through 8]; or~~

~~(c)~~(B) each act of hoarding in violation of [sections 1 through 8 7].

NEW SECTION. Section 2. Executive declaration or finding -- court finding -- notice. (1) Except as provided in subsection (2), [sections 1 through 8 7] apply if any of the following occurs:

(a) the president of the United States or the governor of this state declares a state of emergency;

(b) the president of the United States or the governor of this state makes a finding of an abnormal market disruption; or

(c) a state district court, on a petition by the attorney general ~~or a county attorney~~, makes a finding BASED ON CLEAR AND CONVINCING EVIDENCE of an abnormal market disruption within 48 hours after receipt of the petition. The court shall rule on the petition within 48 hours after receipt of the petition.

(2) (a) On a declaration of a state of emergency by the president of the United States or the governor of this state or on a finding of an abnormal market disruption, [sections 1 through 8 7] may not be applied for more than 10 consecutive days.

(b) (i) If the declaration or the finding is renewed, [sections 1 through 8 7] are applicable for an additional 10 days. The declaration or the finding may be renewed only two times for the purposes of applying [sections 1 through 8 7].

(ii) The president or governor may declare the abnormal market disruption over at any time, and the declaration ends the application of [sections 1 through 8 7] unless the finding was made by a court pursuant to this section.

(c) If a finding of an abnormal market disruption is made by the president of the United States, the governor of this state, or a court pursuant to subsection (1), the attorney general shall publish a notice for 5 days in the newspaper of largest circulation in the affected area. The costs of the notice must be paid from the state special revenue account established in 30-14-143.

~~**NEW SECTION. Section 3. Notice of court petition -- stay prohibited.** (1) If a county attorney petitions a court pursuant to [section 2], the county attorney shall immediately notify the attorney general of the~~

~~petition and the determination of the court.~~

~~———— (2) A court finding of an abnormal market disruption may not be stayed.~~

NEW SECTION. Section 3. Unconscionable pricing prohibited PRESUMED ILLEGAL. (1) During a declaration of a state of emergency or a finding of an abnormal market disruption, THE SALE BY a person may not offer for sale at an unconscionable price AT PRICES IN EXCESS OF THOSE SPECIFIED IN SUBSECTION (2) WITHIN THE AFFECTED AREA OF an essential good or service, at retail or wholesale, within the affected area IS PRESUMED TO BE ILLEGAL SUBJECT TO THE DEFENSES SET FORTH IN [SECTION 5].

(2) A price is prima facie unconscionable if it is ~~10% EXCEEDS BY 20% or more above~~ the average price charged by a person for the essential good or service during the 30 days before the declaration of a state of emergency or the finding of an abnormal market disruption OTHER PERSONS WITHIN A 50-MILE RADIUS OF THE LOCATION OF THE ALLEGED OFFENSE FOR THE SAME ESSENTIAL GOOD OR SERVICE DURING THE 7 DAYS PRIOR TO THE ALLEGED OFFENSE.

(3) If a person did not offer for sale an essential good or service, at retail or wholesale, within an affected area during the 30 days before the declaration of the state of emergency or the finding of an abnormal market disruption, it is a prima facie violation of subsection (1) to charge a price that represents a gross disparity from the price at which the good or service was readily obtainable in the affected area during the 30 days immediately before the declaration or finding.

NEW SECTION. Section 4. Hoarding prohibited. During a declaration of a state of emergency or a finding of an abnormal market disruption, a person may not engage in hoarding an essential good or service. HOWEVER, [SECTIONS 1 THROUGH 7] DO NOT PREVENT A BUSINESS FROM CLOSING DURING THE PERIOD OF EMERGENCY OR ABNORMAL MARKET DISRUPTION IF LEGITIMATE BUSINESS REASONS WARRANT THAT ACTION.

NEW SECTION. Section 5. Defenses. A defendant in an action brought to enforce the provisions of [sections 1 through 8 ~~7~~] may prove that the defendant did not violate the provisions of [sections 1 through 8] by producing evidence of either of the following:

~~———— (1) The defendant's net profits in the affected area during the declaration or finding did not increase more than 10% above the defendant's average profits during the 30 days before the declaration of the state of emergency or the finding of an abnormal market disruption.~~

1 ~~_____ (2) The~~ ASSERT AS A DEFENSE THE FACT THAT THE increase in the price of a AN ESSENTIAL good or service
2 during the declaration or finding was attributable to increased production, distribution, or sale costs because of
3 the emergency or abnormal market disruption or other demonstrable reason for an increase in acquisition costs.
4

5 NEW SECTION. Section 6. Enforcement. (1) [Sections 1 through 8 7] may be enforced by the attorney
6 general ~~or a county attorney of the county in which the violation occurs.~~

7 (2) If the attorney general ~~or a county attorney~~ has a reason to believe that a violation of [sections 1
8 through 8 7] has occurred, based on consumer complaints or other market references, the attorney general ~~or~~
9 ~~county attorney may obtain a search warrant or issue subpoenas for~~ MAY REQUEST AND OBTAIN relevant books and
10 records DIRECTLY RELATED TO AN ALLEGED VIOLATION.
11

12 NEW SECTION. Section 7. Penalties. (1) A person who knowingly violates a provision of [sections
13 1 through 8] ~~is guilty of a misdemeanor punishable by up to 6 months incarceration and a fine of up to \$2,500 for~~
14 ~~each incident for an individual and a fine of up to \$20,000 for each incident for an enterprise. A violation of~~
15 ~~[sections 1 through 8] also constitutes a violation of 30-14-103 7] IS SUBJECT TO A CIVIL PENALTY OF UP TO \$1,000~~
16 FOR EACH INCIDENT, WITH A MAXIMUM PENALTY OF \$25,000 FOR THE DURATION OF THE EMERGENCY OR ABNORMAL
17 MARKET DISRUPTION.

18 (2) Fines for cases prosecuted by the attorney general must be deposited in the state special revenue
19 account established in 30-14-143. ~~In cases prosecuted by a county attorney, 10% of the fines collected must be~~
20 ~~deposited in the state special revenue account established in 30-14-143, and the court may order the balance~~
21 ~~of the fines to be returned to the prosecuting agency.~~

22 (3) (a) A person who has violated a provision of [sections 1 through 8 7] shall return profits from the
23 violation as restitution to victims, if practicable, as determined by a court.

24 (b) If restitution to victims is not practicable,÷

25 (i) ~~the returned profits for cases prosecuted by the attorney general~~ must be deposited in the state
26 special revenue account established in 30-14-143; and

27 ~~_____ (ii) in cases prosecuted by a county attorney, 10% of the returned profits must be deposited in the state~~
28 ~~special revenue account established in 30-14-143, and the court shall order the balance of the returned profits~~
29 ~~to be paid to the prosecuting agency.~~
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