



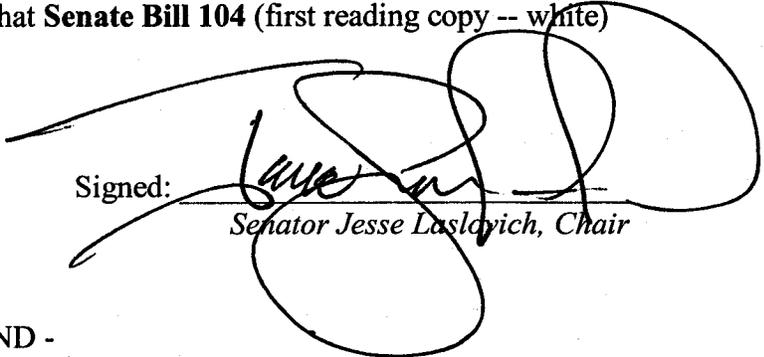
SENATE STANDING COMMITTEE REPORT

January 12, 2007

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 104** (first reading copy -- white) **do pass.**

Signed: 

Senator Jesse Laslovich, Chair

- END -

Committee Vote:

Yes 10, No 2

Fiscal Note Required

081223SC.ssc

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE H12 BILL NO. SB 15 NUMBER _____

MOTION: amendment Do Pass

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)		✓
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)		✓
SEN. AUBYN CURTISS (R)		✓
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)		✓
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
VALENCIA LANE, LCD		
CAROL ANDERSEN, COMMITTEE SECRETARY	5	7

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 1-12-07 BILL NO. 15 NUMBER _____

MOTION: Do Pass

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)		✓
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)		✓
SEN. LARRY JENT (D)	✓	
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
VALENCIA LANE, LCD		
CAROL ANDERSEN, COMMITTEE SECRETARY	9	23

SB 104-4

SB 154

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator MOSS

to vote my proxy on any issue before the Senate JUDICIARY COMMITTEE

_____ Committee

held on _____, 2007.

yes to table
yes confirmed

UNZINIFIED
SENATOR
STATE OF MONTANA

SB104-4

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f), a committee member may vote by proxy using a standard form.

PROXY VOTE

1/12/07

I, the undersigned, hereby authorize Senator Moss

to vote my proxy on any issue before the Senate _____

_____ Committee

held on _____, 2007.

No on SB5
yes to table

Carl Jewea
SENATOR
STATE OF MONTANA

SB104 Y

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator Mrs.

to vote my proxy on any issue before the Senate Jud.

_____ Committee

held on 1/12 , 2007.

yes to table

 Carol Muller

SENATOR
STATE OF MONTANA



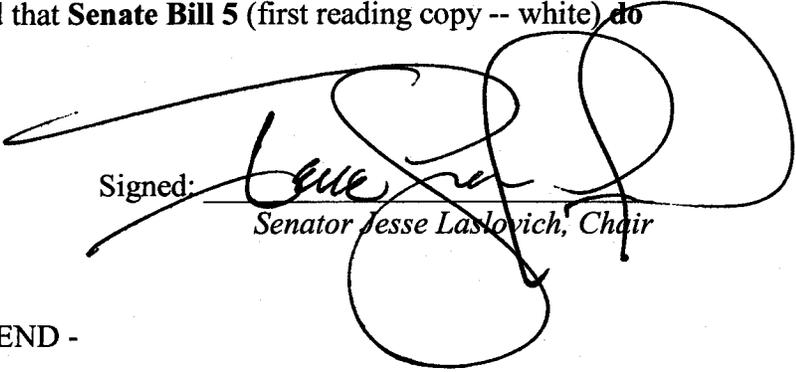
SENATE STANDING COMMITTEE REPORT

January 12, 2007

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 5** (first reading copy -- white) **do**
pass.

Signed: 

Senator Jesse Laslovich, Chair

- END -

Committee Vote:

Yes 12, No 0

Fiscal Note Required

081227SC.ssc



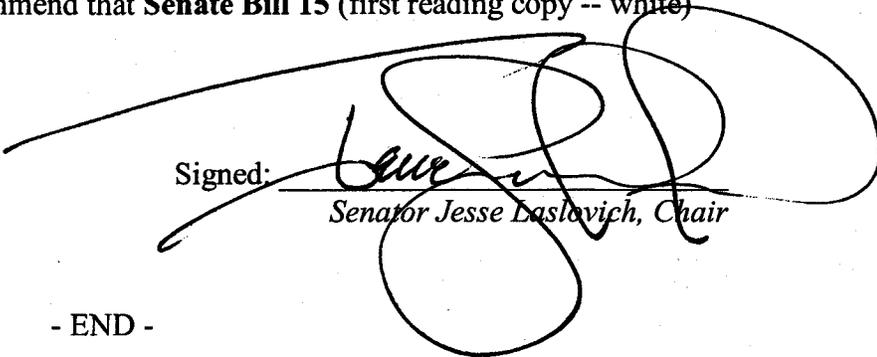
SENATE STANDING COMMITTEE REPORT

January 12, 2007

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 15** (first reading copy -- white) **do pass.**

Signed: 

Senator Jesse Daslovich, Chair

- END -

Committee Vote:

Yes 9, No 3

Fiscal Note Required

081230SC.ssc

**MONTANA STATE SENATE
2007 LEGISLATURE**

JUDICIARY

ROLL CALL VOTE

DATE 1-12-07 BILL NO. SB 5 NUMBER _____

MOTION: Do Pass

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)	✓	
SEN. GARY PERRY (R)		✓
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
VALENCIA LANE, LEB		
CAROL ANDERSEN, COMMITTEE SECRETARY	10	2

T

NW
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**MONTANA STATE SENATE
2007 LEGISLATURE**

VISITOR REGISTER

JUDICIARY

DATE January 12, 2007

BILLS BEING HEARD TODAY SB 125, 141, 146

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
El Arleg	693-7010	DPHHS / MSH	SB 125	✓	
Ginny Hill	693-7000	MSH	SB 125	✓	
LOIS MENZIES	841-2957	OFFICE OF CRT ADMIN	SB 146	X	
John V Loman	258-4973	District Judge	SB 125/46	X	
Jim Kemmel	439-6791	MACOP	SB 141	X	
Al Bouington	444-9734	AG's Office	SB 141	X	
Sheryl Wood	444-4300	MAC	SB 146	X	
Kathy McJannet	443-1570	MCAA (infor.)	SB 125		
Daffi Jacques	431-3245	Mypet	SB 125		
Mike Ferriter	444-4913	Corrections	SB 146	✓	
Beth Breuneman	749-2344	MT Advocacy Program	SB 125 + SB 146		✓
Beda Kovitt	481-4937	MT Psychiatric Assn	SB 125	✓	
Anne Arrington	721-0691	UM/MSW Program	SB 146	✓	

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

ATTORNEY GENERAL

STATE OF MONTANA

Mike McGrath
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

Members of the Senate Judiciary Committee:

Attached are amendments to SB 67. The amendments harmonize the language between the "abnormal marked disruption" definition and the "hoarding" definition. They specifically define an essential good or service as food, water, fuel, shelter, transportation, or medical supplies. Also, we have removed the reference to enterprise and after hearing the concerns on the penalty structure, we have just removed the more substantial penalty altogether.

Further, specifically limiting essential good or service to water, fuel, shelter, transportation, or medical supplies should address the concerns of the energy and telecom lobby. Clearly they do not fit within this limited definition. Further, as the codification instruction indicates, this bill is to be codified as an integral part of Title 30. The insurance industry is exempted from Title 30 thus no definitions contained in the bill could be read to include an insurance product.

In addition, the Department would be amenable to an amendment expanding the prima facie unconscionability definition to address some of the concerns of the petroleum industry. As is evidenced by the spreadsheet provided, 10% over the prior 30 days is the most common measurement throughout the country. However, if it would assist the committee members in supporting the bill, we would agree to expanding that up to 20% above the average price over a 90 day period.

Finally, I attach a summary of other state legislation on the area of price gouging. As you can see, the Montana proposal is either in-line with other states or less restrictive. I also attach a copy of our correspondence with the petroleum industry in which we address their concerns with the bill and today's Independent Record Editorial on this bill.

I hope this is helpful in your consideration of this important legislation. We believe this bill is critical to providing consumers confidence that price gouging is not occurring in Montana.

Sincerely,

A handwritten signature in cursive script that reads "Pamela D. Bucy".

Pamela D. Bucy
Assistant Attorney General

Senate Bill 67
Amendments

1. Page 1, line 17:
After: "public"
Delete: ", including food, water, fuel, shelter, transportation, and medical supplies,"
2. Page 1, line 24:
Insert: "(3) 'Essential good or service'" means food, water, fuel, shelter, transportation, or medical supplies."
Re-number: subsequent subsections.
3. Page 1, line 25:
After : "essential"
Delete: "product"
Insert: "good"
4. Page 4, line 5:
After: "incident"
Delete: "for an individual and a fine of up to \$20,000 for each incident for an enterprise"

END

State Laws and Regulations: Price Gouging

As of October 2005

	State	Covered	Authority	Triggering Event/ Prohibited Acts	Civil Penalties	Criminal Penalties	Enforced by:
1.	ALABAMA	Sale or rental of any commodity or rental facility	UDAP Statute Ala. Code § 8-31-3	Upon proclamation of a state of emergency, no seller may sell for an amount which represents an unconscionably reasonable price.	\$1,000 per violation, not to exceed \$25,000 per 24 hour period	None	State Attorney General or District Attorney
2.	ARKANSAS	Vital and necessary goods or services, including housing, transportation	UDAP Statute A.C.A. 4-88-301 et seq.	Upon proclamation of a state of emergency by the President, Governor, or local official, no price may be raised more than 10% above the price charged immediately prior to the proclamation unless directly attributable to increased costs. Any period of time during which a red condition under the Homeland Security Advisory System has been declared by either the U.S. Dept. Of Homeland Security or the AR Dept. of Emergency Services	A per se UDAP violation	A per se UDAP violation. Criminal penalties are available.	State Attorney General and/or Private Individual
3.	CALIFORNIA	Goods and services vital and necessary for the health, safety, and welfare of consumers	Cal. Penal Code § 396	Upon proclamation of a state of emergency by President, Governor, or County or City Executive Officer, no price may be raised more than 10% above the price charged immediately prior to the proclamation unless directly attributable to increased costs. (30 days for goods). Similar prohibition for repair and reconstruction services. (180 days for repairs).	\$2,500 per violation when brought by district attorneys or city prosecutors, plus injunction and restitution.	Misdemeanor - up to one year in jail or \$10,000 or both.	State Attorney General, District Attorney, City Attorney, or City Prosecutors. Private Privates can get injunctions and restitution, but no civil penalties.
4.	CONNECTICUT	Goods and Services Petroleum Products	Conn. Gen. Stat. 42-230 Regulation Conn. Agencies Reg. 42-110b-29	In the course of an abnormal market disruption, no seller may sell for an amount which represents an unconscionably excessive price.	Up to \$5,000 per violation. Violation of statute is a violation of UDAP.	None	State Attorney General

	State	Covered	Authority	Triggering Event/ Prohibited Acts	Civil Penalties	Criminal Penalties	Enforced by:
5.	DISTRICT OF COLUMBIA	Any merchandise or service sold during a state of emergency.	D.C. Code, Ann. § 28-4101 to 4103	After the mayor declares a state of emergency, it is unlawful to charge more than the normal average retail price (10%) for any merchandise or service sold during the emergency.	Maximum fine of \$1,000, revocation of license or permit.	None	DC Attorney General
6.	FLORIDA	Rental or Sale of Essential Commodities	UDAP Statute Fla. Stat. Ann. 501.160	During a declared state of emergency, prohibition of unconscionable prices.	\$1,000 per violation, up to \$25,000 for multiple violations within 24 hour period.	None	State Attorney General, local state attorneys, Dept. of Agriculture and Consumer Services
7.	GEORGIA	Goods or Services Necessary to Preserve, Protect, or Sustain the Life, Health, or Safety of Persons or Property. Sale or offer for sale of supplies for use in the salvage, repair, or rebuilding of a structure damaged as a result of a natural disaster	OCGA 10-1-393, 4, OCGA 10-1-438	Upon declaration of a state of emergency by the Governor, it is an unlawful, unfair, and deceptive trade practice for any person, firm, or corp to sell or offer for sale any goods or services necessary to preserve, protect, or sustain the life, health or safety of persons or property at a price higher than the price at which the goods were sold or offered for sale immediately prior to the declaration of emergency.	\$5,000 per violation, except when the price gouging involves salvage, repair, or rebuilding of a structure damaged as a result of a natural disaster, when damages go up to a total of \$15,000 per violation.	None	Governor's Office of Consumer Affairs
8.	HAWAII	Sale or rental of essential commodities	HRS 209-9.	When the Governor declares a state of disaster, or when the state is the subject of a "severe weather warning,"	Violation is a UDAP subject to penalties of \$500 - \$10,000 per violation.	None	Hawaii Office of Consumer Protection

	State	Covered	Authority	Triggering Event/ Prohibited Acts	Civil Penalties	Criminal Penalties	Enforced by:
9.	IDAHO	Water, Food, Fuel, or Pharmaceuticals	ID.A.C. § 48-603(19)	After a declaration of an emergency by the Governor or President, a seller of the four items mentioned cannot charge exorbitant or excessive prices. (Comparison of the prices of goods immediately before and after the disaster.)	\$5,000 per violation, restitution, and injunctive relief	None	State Attorney General
10.	INDIANA	Sale of Fuel	IC 4-6-9.1	The period during which an emergency is declared and 24 hours before the declaration by the governor. Fuel charges cannot exceed the average price at which fuel was readily available during the 7 days immediately before the declaration of emergency.	Injunctive relief, restitution, and civil penalties of \$1,000 per violation.	None	State Attorney General
11.	IOWA	Merchandise Needed by Disaster Victims	Regulation I AC 61-31.1(714) IC 714.16(2)a	During time of disaster and subsequent recovery period (60 day max.), in declared disaster zone, period declared to be disaster, charging unjustified prices.	\$40,000 per violation, additional \$5,000 on top of the \$40,000 if elderly was defrauded, restitution, injunctive relief.	none	State Attorney General
12.	KANSAS	Merchandise Needed by Disaster Victims	KSA 50-6-106 KSA 50-6-27	50-6-106 Declaration of a state of emergency by either the US President or Governor, during the time such state is in effect, or thirty days after the occurrence of the event that triggered the declaration. 50-6-27 does not require emergency but relates to market price at any time	\$10,000 per violation, additional \$10,000 if elderly or disabled was defrauded, restitution, injunctive relief.	None	State Attorney General or District/County Attorney

	State	Covered	Authority	Triggering Event/ Prohibited Acts	Civil Penalties	Criminal Penalties	Enforced by:
13.	KENTUCKY	any repair or reconstruction service; consumer food items; emergency cleanup goods or services; emergency supplies; medical supplies; home heating oil; building materials; housing; transportation, freight and storage services; gasoline and motor fuels	Ky Rev. Stat. 367.372 through 367.378	Triggers: Governor declares state of emergency or Condition Red declared by U.S. Dept. of Homeland Security. Prohibition on changing a price grossly in excess of price before triggering event and unrelated to increased cost to seller.	\$5,000 for first offense; \$10,000 for subsequent offenses; additional remedies under state UDAP statute such as injunctive relief and restitution	None	State Attorney General
14.	LOUISIANA	Goods and Services	LSA-R.S. 29:732; LSA-R.S. 29:734; LSA-R.S. 14:329.6 and 14:329.7	During state of emergency declared by Governor or Parish President, value for goods or services may not exceed prices ordinarily charged (w/allowance for increased costs). Must prove a gross disparity between the price of the goods or services prior to the event or that the amount charged grossly exceed the price at which the same or similar goods or services were readily obtainable in the trade area.	Injunctive action, with possible civil penalties and restitution to aggrieved consumers. Violation of R.S. 29:732 is deemed a violation of R.S. 14:329.6	Violation which results in serious bodily injury or any property damage in excess of \$5,000, such offender shall be imprisoned at hard labor for not more than 5 years. Violations resulting in death - imprisonment at hard labor to not exceed 21 years.	Attorney General, District Attorney, or Parish Attorney
15.	MAINE	Necessities of Life (food, clothing, building materials, fuel, ice, fertilizer, tools, machinery, equipment) under the profiteering statute. All goods or services under UTPA.	10 M.R.S.A. § 1105 (profiteering) 5 M.R.S.A. § 207 (UTPA)	No triggering event needed. Prohibits unjust or unreasonable profits in the sale, exchange or handling of necessities. Case law suggest a market disruption may be a prerequisite.	\$10,000 under UTPA	\$1,000 or 3 years imprisonment under profiteering statute.	Maine Attorney General. Private enforcement available under the UTPA.
16.	MASSACHUSETTS	Petroleum Products	Regulation 940 CMR 3.18	During any market emergency, it is unfair and deceptive to sell at an unconscionably high price (gross disparity not attributable to increased wholesale costs).	\$5,000 per violation.	None	State Attorney General. Private Enforcement Available.

	State	Covered	Authority	Triggering Event/ Prohibited Acts	Civil Penalties	Criminal Penalties	Enforced by:
17.	MICHIGAN	Property or Services	UDAP Statute MCL 445.903(1)(2)	Not specifically targeted at disaster/gouging. Prohibits changing a price in gross excess of the price for which similar products or services are sold.	Up to \$25,000	None	State Attorney General
18.	MISSISSIPPI	Any goods and services sold within the designated emergency area	MRS § 75-24-25	During course of disaster declared by the Governor, it is a crime (misdemeanor or felony) to price gouge.	Up to \$10,000 per violation plus costs of investigation and prosecution	Misdemeanor: Up to \$1,000 and 6 months Felony: 1 to 5 years and up to \$5,000	State Attorney General
19.	MISSOURI	Any necessity including those likely to be provided w/in area	Regulation 15 CSR 60-8.010 et seq.	Within a disaster area declared by Governor, it is an unfair practice to take advantage of a person's impairment or hardship or charge an excessive price.	\$1,000 per violation, injunctive relief, restitution.	Knowing violation - Class D Felony 1 to 5 years and up to \$5,000	State Attorney General, Local Prosecutor, Private Cause of Action.
20.	NEW JERSEY	Sales of any merchandise used or consumed as a direct result of emergency or used to preserve, protect or sustain life, health, safety or comfort.	N.J.S.A. 56:8-107 to 8:109	an "excessive price increase" during or within 30 days of the termination of a declared "state of emergency"	Up to \$10,000 for first violation; up to \$20,000 for subsequent violations.	None	State Attorney General, Private Right of Action.
21.	NEW YORK	Consumer goods and services vital for health safety and welfare of consumers	Statute NY Gen Bus 396-R	During market disruptions, unconscionably excessive prices are prohibited.	Up to \$10,000. Restitution	None	State Attorney General
22.	NORTH CAROLINA	Any merchandise or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or comfort of persons or their property	UDAP Statute; NCGS Section 75-36.1	Upon declaration of state of disaster in the area for which state of disaster has been declared, violation to charge a price that is unreasonably excessive.	\$5,000 per violation	None	State Attorney General and/or Private Individuals

	State	Covered	Authority	Triggering Event/ Prohibited Acts	Civil Penalties	Criminal Penalties	Enforced by:
23.	COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS	Any Consumer Good	4 N. Mar. I. Code § 5105(Y)	Increasing the price of goods, solely on the basis of a shortage of supply caused by natural disaster or any other emergency situation.	Violation of the price gouging statute is a UDAP violation. Injunctive relief and civil penalties are available.	Misdemeanor - up to one year imprisonment	State Attorney General
24.	OKLAHOMA	Goods, service dwelling or storage space	Statute 15 OK Code 777.1	During an emergency declared by the President or Governor, no sale lease or rental at more than 10% above the price charged immediately prior, unless increase in price is due to unrelated factors and does not increase seller's profit.	Up to \$10,000 per violation plus reasonable costs	Misdemeanor: up to \$1,000 and/or 1 year in jail Felony: up to \$5,000 and/or 10 years in jail	Attorney General or District Attorney as violation of the Consumer Protection Act (15 O.S. 751)
25.	RHODE ISLAND	Food, fuel, clothing, antitoxins, serums, immunizing agents or any other pharmaceutical agents or medical supplies, or any other necessity of life or defense	R.I. Gen.Law. § 30-15-9	During an emergency declared by the Governor, no person, firm, or corporation shall increase the price of any item it sells or offers for sale at retail immediately prior to the proclamation of emergency or during the proclaimed state of emergency.		Any person, firm or corporation who violates any provision of this subsection shall be fined not more than one hundred dollars	Governor, State Enforcement

	State	Covered	Authority	Triggering Event/ Prohibited Acts	Civil Penalties	Criminal Penalties	Enforced by:
26.	SOUTH CAROLINA	Goods, services, materials, merchandise, supplies, equipment, resources, or other articles of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber essential for consumption or use as a direct result of a declared state of emergency.	S.C. Code Ann. § 39-5-145	Declaration of state of emergency by the Governor, or declaration of disaster by the President concerning all or a portion of the state. May not sell at a price that is grossly disparate or grossly exceeds the average cost of the commodity during the 30-day period preceding the emergency.	Violation of § 39-5-145 is an unfair trade practice subject to civil penalties of \$5,000 for each willful violation. If an injunction is issued under the Unfair Trade Practices Act, a violator is subject to a fine of \$15,000 for each violation of the injunction.	Misdemeanor with fine of \$1,000, imprisonment up to 30 days, or both.	Local solicitor (district attorney) or Attorney General.
27.	TENNESSEE	Any consumer food item; repair or construction services; emergency supplies; medical supplies; building materials; gasoline; transportation; freight and storage; or housing.	TCA 47-18-5101 et seq.	Upon the proclamation of a state of emergency it is unlawful to charge any other person a price that is grossly in excess of the price charged for the same or similar goods or services in the usual course of business immediately prior to the events giving rise to the state of emergency.	Violation of the Consumer Protection Act. \$1,000 per violation	None	State Attorney General
28.	TEXAS	Food, Fuel, Medicine, or other Necessities	Statute Tex. Bus. & Com. Code Ann. 17.46(b)(27)	In event of disaster declared by Governor, it is a UDAP violation to charge exorbitant or excessive prices.	Up to \$20,000 per violation.	Not per se; however, price gouging is arguably a violation of Texas Penal Code Deceptive Business Practice provisions	State Attorney General, District Attorney, or County Attorney

	State	Covered	Authority	Triggering Event/ Prohibited Acts	Civil Penalties	Criminal Penalties	Enforced by:
29.	VIRGINIA	Sale, lease or license of necessary goods or services.	Va. Code §§ 59.1-525 et seq	Upon declaration of state of emergency, no supplier can sell, lease or license necessary goods or services at an unconscionable price. The basic test for determining whether price is unconscionable is whether the post-disaster price charged by supplier grossly exceeds price charged for same or similar goods during the ten (10) days immediately prior to the disaster.	\$2,500 per willful violation. Violation of Virginia Consumer Protection Act.	None	State Attorney General, Commonwealth's Attorneys, City, Town, and County Attorneys
30.	WEST VIRGINIA	Goods or Services that are vital and necessary for the health, safety, and welfare of consumers	W.V. Code 46A-6J-1	State of Emergency declared, it is unlawful to sell items at a 10% increase over the price 10 days before the declaration of a state of emergency.	Violation of the price gouging statute is a UDAP violation. Injunctive relief and civil penalties are available.	Misdemeanor - up to one year imprisonment	State Attorney General

January 8, 2007

Buck Pandis, President
Ronna Alexander, Executive Director
MPMCSA
P.O. Box 306
Helena, MT 59624

Re: Comments Montana's Proposed Gas Gouging Legislation

Dear Mr. Pandis and Ms. Alexander:

I am responding to your letter of November 2, 2006, providing comments to our proposed price gouging legislation. I will address your comments in the order in which they were raised.

1. In drafting our proposed legislation, the Attorney General's Office looked at other States with laws that only referred to retail sales. After reviewing those laws and speaking with the State's who enforce them, Montana determined that the new model of price gouging law should include wholesalers as well. Our research indicated in times of crises that some of the abusive pricing was coming from the wholesalers as well as the retailers. Because manufactures often are unable to respond quickly enough to a crisis to engage in price gouging, we have not included them in this legislation.

2. County attorneys and the attorney general must have the power to seek declarations of market disruption. In this way, market disruptions will be identified and dealt with sooner and more effectively. Under the proposed legislation, county attorneys and the attorney general will be required to get a judicial approval for the declaration. Thus, the system provides safeguards before a declaration of market disruption may be made. While your argument is based upon the fact that Montana currently has a single pipeline distribution system, the law must allow for flexibility and be able to work for different products and different scenarios.

Mr. Pandis
Ms. Alexander
December 15, 2006
Page 2 of 2

3. Montana's legislation is based upon the Arizona model. That model has become the standard and the 10 percent rule is accepted as a standard for determining if a price increase is unconscionable. Montana believes this standard is supported by the research and is enforceable. The concerns you raise regarding the situation in Hawaii and a rapid increase in costs is addressed by the defenses offered in the proposed legislation. The law would allow a 10 percent rise in profits in times of crises above your **actual** costs. Thus in the scenario you describe, where rack prices increase by greater than 10 percent in a given day, the law would still allow a 10 percent increase in profits over whatever those actual costs may be.

4. You point out that acquisition costs are different for different industries. It is for this reason that Montana has declined to specifically define the term acquisition cost. We believe that a plain meaning reading of the term will allow for the most flexibility in application of the law to various products and industries.

5. The definition for the term incident derives from Montana's consumer protection act and has a per sale meaning. You are correct that a business could be fined \$20,000 for each customer sale. The policy behind this legislation is to prevent gas gouging and the potential of a large fine for violation of the law serves that policy goal. Under this legislation, price gouging would be a crime. If the law is enacted, that would constitute notice to industries regulated by the law. No additional notification process is required or contemplated.

6. No comment 6 to respond to.

7. As noted above, if this legislation is passed gas gouging would become a crime in Montana. Thus, information and investigation related to a declaration would be considered criminal justice information pursuant to Mont. Code Ann. 44-5-101, et seq. Accordingly, such information would be treated in a manner consistent with Montana law and given any and all protections set forth in the criminal justice information act.

Thank you for your comments. I hope this letter addresses your concerns. Feel free to call me with any further questions.

Sincerely,

PAMELA D. BUCY
Assistant Attorney General

pdb/ble



MONTANA PETROLEUM MARKETERS
& CONVENIENCE STORE ASSOCIATION

RECEIVED

November 2, 2006

NOV 08 2006

Honorable Mike McGrath
Attorney General
P.O. 201401
Helena, MT 59620-1401

ATTORNEY GENERAL'S OFFICE
HELENA, MONTANA

Re: Draft legislation/Price Gouging
Attn: Pam Bucy

Dear Attorney General McGrath,

Thank you for the opportunity to offer comments regarding price gouging legislation for the State of Montana. The MPMCSA is representative of the distribution and retail levels of the petroleum marketing industry. As an industry we support remedies for price gouging and hoarding during emergency or disaster situations and hope to be of assistance in clarifying the characteristics of such activities. The Association has watched closely both the national and state remedies proposed across the country. Considering that, we do have concerns about certain aspects of the draft legislation.

1. First, Section 1 Definitions(3) defines "incident" as being a sale at retail or wholesale. Our research shows that most other states' statutes for price gouging discuss retail sales only. If the legislation is going to include two tiers of pricing, we believe in the case of petroleum products, a third tier should be added that would include the refiner or "rack" pricing level. In the petroleum industry the wholesale price is derived in large part from the refiner or rack price; an upper level of pricing which may not necessarily be true for other industries affected by the draft legislation. It does not seem equitable or accurate that two tiers of the industry be targeted; the wholesale level which is one pricing structure, and the retail level which is another pricing structure, while the upper tier determines much of the pricing for the other two levels.

We understand the bill is written to several industries so we would suggest adding language that says for example, "in the case of petroleum products, "incident" means each sale at rack, wholesale or retail." In the same vein, in Section 4(a), unconscionable pricing, should be prohibited (in the case of petroleum products) by the refiner as well as the wholesaler and retailer.

Gouging bill can be good for all

By IR Staff - 01/11/07

Gasoline station operators and other retailers are understandably spooked by an anti-gouging bill introduced in the Legislature. But, properly applied, such a law actually should protect them from the ire of a public that doesn't always understand why the price at the pump goes up.

The proposed law, requested by the state Department of Justice, would ban hoarding and prevent price hikes of more than 10 percent after the declaration of a state or federal emergency. Prices of fuel, food, transportation and medical supplies would be protected, and violators could face stiff penalties.

At a hearing this week, convenience store owners and others expressed fears that the measure could put them out of business by restricting their ability to respond to changing market conditions.

That price at the pump provides a simple example. It drives motorists nuts to see gas prices rise immediately after a disaster such as Hurricane Katrina, because they know that the same fuel being pumped from the same underground tank had been purchased by the retailer at a lower price prior to the disaster. Now that identical fuel suddenly costs more. What could this be but gouging?

Actually, it isn't gouging at all. The folks who sell gasoline use most of the income from one delivery of gasoline to pay for the next delivery. If the price they pay starts heading up (a function of worldwide market factors out of local dealers' control), then the local dealers have to increase their prices immediately in order to have enough money on hand to pay for their next, more expensive shipment.

The current legislation may or may not need some more tweaking, but ideally, having a fairly administered anti-gouging law in place would give consumers confidence that somebody's keeping an eye on these things - and that real cases of gouging will be prosecuted.

Amendments to Senate Bill No. 104
1st Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
January 12, 2007 (2:45pm)

1. Title, line 5.

Following: "SPECIFYING"

Strike: "THAT"

Following: "WHICH"

Strike: "TO BEGIN"

2. Title, line 6.

Following: "OFFENSES"

Strike: "INCLUDES"

Insert: "MAY BE COMMENCED"

3. Page 1, line 12 through page 3, line 4.

Strike: everything after the enacting clause

Insert: "Section 1. Section 45-1-205, MCA, is amended to read:

"45-1-205. **General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A Except as provided in subsection (9), a prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) A Except as provided in subsection (9), a prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or (5), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended

in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

(9) If after a time period prescribed in subsection (1)(b) or (1)(c) has expired a suspect is conclusively identified by DNA testing, a prosecution may be commenced within 1 year after a suspect is conclusively identified by DNA testing."

{ Internal References to 45-1-205:

1-29

Amendments to Senate Bill No. 125
1st Reading Copy

Requested by Senator David Wanzenried

For the Senate Judiciary Committee

Prepared by Valencia Lane
January 25, 2007 (7:20am)

1. Title, line 9.

Strike: "PROVIDING SENTENCING ALTERNATIVES;"

2. Title, line 10 through line 12.

Following: "CIRCUMSTANCES;" on line 10

Strike: remainder of line 10 through "SERVICES;" on line 12

3. Title, line 12.

Strike: "3-5-901, 46-14-202,"

4. Title, line 13.

Following: "AND"

Strike: "46-14-312,"

Insert: "53-21-127,"

5. Page 1, line 17 through page 4, line 22.

Strike: section 1 through section 2 in their entirety

Renumber: subsequent sections

6. Page 7, line 9 through line 20.

Following: "medication." on line 9

Strike: remainder of line 9 through "administered." on line 20

7. Page 7, line 21.

Strike: "(c)"

Insert: "(b)"

8. Page 8, line 29 through line 30.

Following: "medication" on line 29

Strike: remainder of line 29 through "treatment" on line 30

Insert: "facilitates effective treatment and, considering less intrusive alternatives, is necessary to protect the safety of the defendant or others"

9. Page 10, line 13 through line 14.

Following: "medication" on line 13

Strike: remainder of line 13 through "treatment" on line 14

Insert: "facilitates effective treatment and, considering less intrusive alternatives, is necessary to protect the safety of the defendant or others"