

HOUSE BILL REPORT

ESHB 2419

As Passed House:

February 16, 2002

Title: An act relating to price gouging during significant disruption, emergency, or disaster.

Brief Description: Prohibiting price gouging during significant disruption, emergency, or disaster.

Sponsors: By House Committee on Select Committee on Community Security (originally sponsored by Representatives Simpson, Conway, Morris, Cooper, Schmidt, Kirby, Lovick, Wood, Haigh, Kenney, Chase, Schual-Berke and Jackley; by request of Governor Locke and Attorney General).

Brief History:

Committee Activity:

Select Committee on Community Security: 1/22/02, 2/6/02 [DPS].

Floor Activity:

Passed House: 2/16/02, 65-33.

Brief Summary of Engrossed Substitute Bill

- Prohibits the sale of essential consumer goods or services or cleanup, repair, or reconstruction services at clearly excessive prices during a period proclaimed by the Governor as an abnormal market condition.
- Establishes remedies under the Consumer Protection Act.

HOUSE COMMITTEE ON SELECT COMMITTEE ON COMMUNITY SECURITY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hurst, Chair; Simpson, Vice Chair; Haigh, Jackley, Kessler, Morris, O'Brien and Schual-Berke.

Minority Report: Do not pass. Signed by 5 members: Representatives Lisk, Ranking Minority Member; Ballasiotes, Barlean, Benson and Campbell.

Staff: Caroleen Dineen (786-7156).

Background:

The Washington Emergency Management Act was enacted in 1951 to ensure the adequacy of state disaster preparations, provide for administration of disaster relief programs, ensure adequate support for search and rescue operations, and preserve lives and property of the people of the state. The Washington Emergency Management Act includes provisions for a state comprehensive emergency management plan, local emergency management planning, emergency preparedness education and training, cooperation among governmental units within the state and with other state governments, and emergency powers.

The state's Consumer Protection Act (CPA) was enacted in 1961 to provide civil remedies for damages related to unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade and commerce. The CPA allows an injured party to file a civil claim to prevent further violations and to recover actual damages, costs, and attorney fees. The court has discretion to increase an award of damages up to an amount three times the actual damages sustained. The Attorney General also may bring an action to enjoin an activity prohibited under the CPA.

Summary of Engrossed Substitute Bill:

The Preventing Price Gouging During Emergencies and Disasters Act is enacted. Provisions related to clearly excessive price increases during periods proclaimed by the Governor to be an abnormal market condition are added to the state's Consumer Protection Act (CPA) and declared to be not reasonable in relation to the development and preservation of business, an unfair or deceptive practice in trade or commerce, and an unfair method of competition. Remedies available for violations of the clearly excessive price increase provisions are included within the CPA.

In addition to other emergency proclamation powers in state law, the Governor is authorized to make and to rescind a proclamation of an abnormal market condition. "Abnormal market conditions" are those instances of significant disruption to the marketplace caused by terrorist acts, civil disorder, war or military action.

For 30 days after the Governor's proclamation of an abnormal market condition, it is unlawful for any person to sell or offer to sell at retail any essential consumer good or service within the area designated in the proclamation at a clearly excessive increase in price above the price charged by that person immediately prior to the proclamation. A "person" is defined for purposes of these provisions in the same manner as in the CPA to include natural persons, trusts, unincorporated associations, and partnerships. An "essential consumer good or service" is defined as a retail good or service used, bought, or rendered primarily for personal, family, or household purposes, and is necessary for consumption or use during a period of abnormal market condition. Included within this term are food items, emergency supplies, medical supplies, building materials, fuel, transportation services, storage services, and temporary housing as defined for these

purposes.

For 90 days following a Governor's proclamation, it is unlawful for any person to sell or offer to sell at retail any emergency cleanup, repair, or reconstruction service within the area designated in the proclamation at a clearly excessive increase in price above the price charged by that person for such goods or services immediately prior to the proclamation.

Provisions are included to specify how price increases are treated. First, a price increase in excess of 15 percent not tied to reasonable expenses necessarily incurred in procuring or delivering an essential consumer good or service during the proclamation period is prima facie evidence of a clearly excessive price increase. Second, a price increase is not unlawful if the higher price charged reflected reasonable expenses in addition to the prior price of the goods or services. Reasonable expenses are limited to those necessarily incurred in procuring or delivering such goods and services during the proclamation period. Third, if the price of any essential consumer good or service, or emergency cleanup, repair, or reconstruction service was temporarily discounted or reduced immediately prior to the proclamation, the price at which the person normally or usually sold the good or service is the price for purposes of determining whether a price increase violates these provisions.

The Governor may extend the proclamation periods for additional 30-day periods by issuing a renewed proclamation. Renewed proclamations must be based upon a finding the abnormal market condition continues and any such extension is deemed necessary to protect citizens' health, safety, or welfare. The Governor may rescind an proclamation upon a finding that no abnormal market conditions exist. The CPA price increase provisions last only during the proclamation period.

Persons whose activities or transactions as to prices for goods or services are subject to regulation by the Washington Utilities and Transportation Commission or the Federal Energy Regulatory Commission are exempt from the CPA price increase provisions. In addition, persons who merely provide advertising and related services for persons engaged in making offers to sell goods or perform services are not deemed to be making any offer to sell any goods or perform any services for purposes of the CPA price increase provisions.

Remedial provisions are included. A person will be deemed not to have violated the CPA price increase provisions if the:

- violation of the price limitation was unintentional;
- defendant voluntarily rolled back prices to a level permitted upon discovering that the provisions were or may have been violated; and
- defendant has instituted a restitution program for all consumers who may have paid excessive prices.

Subsequent remedial measures are not admissible as evidence of a violation.

Legislative findings specify that consumers are vulnerable to price gouging or clearly excessive pricing during times of abnormal market conditions. Legislative intent is included to state excessive and unjustified increases in retail prices during abnormal market conditions should be prohibited and made subject to civil remedies.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) Luckily, Washington only had two incidents of price gouging after the September 11, 2001, terrorist attacks. There were incidents of consumers being charged \$5 per gallon of gas here and in other states.

There currently is no remedy in state law for instances of price gouging. Other states that deal with large natural disasters already have these laws. This bill gives consumers a way to protect themselves.

Testimony Against: (Original bill) There is no need for this type of legislation. The law protects against this already, and the market takes care of itself. The worst sanction of all is loss of business.

There is no definition of "price gouging," and no time periods are specified for an emergency. The "event" that triggers these provisions need to be defined. Concern exists regarding lack of standards and third party lawsuits. Newspapers could be impacted merely by publishing advertisements.

Testified: (In support) Representative Simpson, prime sponsor; Christine Gregoire, Washington State Attorney General; Dick Van Wagenen, Governor's Policy Office; and Robert Pregulinan, Washington Public Interest Research Group.

(Opposed) Tonia Neal, Building Industry Association of Washington; Tim Ford, Building Industry Association of Washington; Mark Johnson, National Federation of Independent Business; Charlie Brown, Washington Oil Marketers Association; Rowland Thompson, Allied Daily Newspapers of Washington; Jan Gee, Washington Retail Association; Mellani Hughes, Association of Washington Business; Tim Hamilton, Automotive United Trades Organization; and Greg Hanon, Western States Petroleum Association.