

SENATE BILL REPORT

SB 6415

As Reported By Senate Committee On:
Labor, Commerce & Financial Institutions, February 6, 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: Senators Prentice, Winsley, Keiser, Kline, Spanel, Gardner and Rasmussen; by request of Attorney General and Governor Locke.

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 1/24/02, 2/6/02 [DPS].

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: That Substitute Senate Bill No. 6415 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Keiser, Vice Chair; Fairley, Franklin, Gardner, Rasmussen, Regala and Winsley.

Staff: David Cheal (786-7576)

Background: It is not unusual for vital products to become in short supply during periods of significant disruption. During the recent September crisis, gasoline prices spiked to \$5 per gallon in a midwestern state, without any significant market justification. Food, fuel and energy resources are examples of products that could be subjected to price manipulation during temporary periods of abnormal market conditions, brought about by natural disaster, civil disruption, war or terrorist act.

Summary of Substitute Bill: Unjust enrichment from price gouging is prohibited and made subject to civil remedies. Essential consumer goods, emergency supplies and various other vital products and services may not be sold at clearly excessive prices during abnormal market conditions caused by emergency, or disaster as declared by the Governor. It is a defense that unique acquisition or transportation expenses were incurred by the seller. Each prohibited sale is a separate violation.

"Abnormal market conditions" means a significant market disruption caused by war, terrorist act, civil disorder, military action, convulsion of nature, national, statewide or local disaster.

"Essential consumer goods or services" means goods or services that are vital and necessary for the health, safety and welfare of consumers, including food, fuel and medical services.

A price that exceeds the price at which similar goods or services were readily obtainable by consumers immediately before the disruption or disaster by 15 percent and not the result of unusual procurement costs is presumed excessive.

Violations of the act are made violations of the Consumer Protection Act.

Substitute Bill Compared to Original Bill: Several key definitions are added. The triggering events are described. The products covered are listed and defined. A declaration of "abnormal market conditions" must be made by the Governor to initiate the protections in the bill. A price increase in excess of 15 percent not tied to increased expenses and compared to the price immediately before the declaration is presumed to be clearly excessive. Regulated utilities are exempt. It is an affirmative defense that the violation of the price limitation was unintentional, that the defendant voluntarily rolled back prices, and instituted a program of reimbursement.

Appropriation: None.

Fiscal Note: Requested on January 22, 2002.

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

Testimony For: Although price gouging was minimal in Washington following the events of September 11, nearby states experienced significant price gouging. Market forces, particularly with respect to certain products, cannot work during and immediately following a disruption. The bill only applies to critical goods and services that are under great pressure and subject to manipulation during a disruption.

Testimony Against: There is no demonstrated need for this bill. Price gouging following September 11 was almost entirely limited to petroleum products, and was caused by wholesalers. Wholesalers are exempt under this bill. The bill is too vague. There is no clear beginning or end to the application. There is no clear measure of a price increase that would constitute a violation.

Testified: Dick VanWagenen, Governor's Policy Office (pro); Mark Johnson, NFIB (con, concerns); Tonia Neal, Tim Ford, BIAW (con); Greg Hanon, Western States Petroleum Assn. (con); Tim Hamilton, Auto (con); Mellani Hughes, AWB (con); Charlie Brown, WA Oil Marketers Assn. (con); Jan Gee, WA Retail Assn. (con).