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ENGROSSED SUBSTITUTE HOUSE BILL 2419

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State of Washington

57th Legislature

2002 Regular Session

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)

Read first time 02/08/2002. Referred to Committee on .

1 AN ACT Relating to price gouging during significant disruption,  
2 emergency, or disaster; adding new sections to chapter 19.86 RCW; and  
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 19.86 RCW  
6 to read as follows:

7 The legislature finds that consumers are vulnerable to price  
8 gouging or clearly excessive pricing during times of abnormal market  
9 conditions caused by significant disruptions, emergencies, or  
10 disasters. The legislature declares that excessive and unjustified  
11 increases in retail prices charged during abnormal market conditions as  
12 defined in section 2 of this act should be prohibited and made subject  
13 to civil remedies.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.86 RCW  
15 to read as follows:

16 The definitions in this section apply throughout sections 1 through  
17 4 of this act unless the context clearly requires otherwise.

1 (1) "Abnormal market conditions" means those instances of  
2 significant disruption to the marketplace caused by terrorist acts,  
3 civil disorder, war, or military action.

4 (2) "Person" has the same meaning as provided under RCW 19.86.010.

5 (3) "Essential consumer good or service" means a retail good or  
6 service that is used, bought, or rendered primarily for personal,  
7 family, or household purposes, and is necessary for consumption or use  
8 during a period of abnormal market condition, including food items;  
9 emergency supplies; medical supplies; building materials; fuel;  
10 transportation services; storage services; and temporary housing.

11 (4) "Food item" means any article that is used or intended for use  
12 for food or drink by a person or animal.

13 (5) "Emergency supplies" includes but is not limited to water,  
14 flashlights, fire extinguishers, radios, batteries, candles, blankets,  
15 soaps, diapers, temporary shelters, tape, toiletries, and portable  
16 fossil-fueled electric generators.

17 (6) "Medical supplies" includes but is not limited to prescription  
18 and nonprescription medications, bandages, gauze, isopropyl alcohol,  
19 and antibacterial products.

20 (7) "Building materials" includes lumber, construction tools,  
21 nails, windows, and other products used to protect, repair, build, or  
22 rebuild property.

23 (8) "Fuel" includes oil or propane used for home heating, or any  
24 fuel used to power any motor vehicle, portable electric generator, or  
25 power tool.

26 (9) "Transportation services" includes any service that is  
27 performed by any person who contracts to move or transport persons or  
28 personal or business property, or rents equipment for such purposes.

29 (10) "Storage services" includes any service that is performed by  
30 any person who contracts to store personal or business property or  
31 rents equipment for such purposes.

32 (11) "Temporary housing" includes any rental housing or office  
33 space leased on a temporary or short-term basis to a person who has  
34 been displaced from his or her dwelling, housing, or office space  
35 because of a significant disruption, emergency, or disaster.

36 (12) "Emergency cleanup, repair, or reconstruction services" means  
37 services provided and equipment used to clear or remove debris or other  
38 material that poses a public safety or health hazard and to repair

1 residential or commercial property of any type to a safe and habitable  
2 condition.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.86 RCW  
4 to read as follows:

5 (1) In addition to the powers in chapters 43.06 and 38.52 RCW for  
6 the governor to make disaster or emergency proclamations, for purposes  
7 of triggering the provisions in sections 1 through 4 of this act, the  
8 governor is also hereby empowered to make and to rescind a proclamation  
9 of an abnormal market condition as defined in section 2 of this act.

10 (2) Upon the proclamation by the governor under sections 1 through  
11 4 of this act of an abnormal market condition, and for a period of  
12 thirty days following the proclamation, or a lesser time period if the  
13 proclamation is rescinded, it is unlawful for any person to sell or  
14 offer to sell at retail any essential consumer good or service within  
15 the area designated in the proclamation at a clearly excessive increase  
16 in price above the price charged by that person for such goods or  
17 services immediately prior to the proclamation as specified in section  
18 4 of this act.

19 (3) Upon the proclamation by the governor under sections 1 through  
20 4 of this act of an abnormal market condition, and for a period of  
21 ninety days following the proclamation, or a lesser time period if the  
22 proclamation is rescinded, it is unlawful for any person to sell or  
23 offer to sell at retail any emergency cleanup, repair, or  
24 reconstruction service within the area designated in the proclamation  
25 at a clearly excessive increase in price above the price charged by  
26 that person for such goods or services immediately prior to the  
27 proclamation as defined in section 4 of this act.

28 (4) An increase in price is not unlawful if the higher price  
29 charged reflected reasonable expenses in addition to the prior price of  
30 the goods or services but such reasonable expenses are limited to those  
31 which are necessarily incurred in procuring or delivering such goods  
32 and services during the period of time set forth in subsections (2) and  
33 (3) of this section. A price increase in excess of fifteen percent not  
34 tied to the reasonable expenses necessarily incurred in procuring or  
35 delivering an essential consumer good or service during the period of  
36 time set forth in subsections (2) and (3) of this section is prima  
37 facie evidence of a clearly excessive price increase.

1 (5) Any person who sold or had offered to sell an essential  
2 consumer good or service, or emergency cleanup, repair, or  
3 reconstruction service at a temporarily discounted or reduced price  
4 immediately prior to the proclamation as set forth in this section may  
5 use the price at which the person normally or usually sold the good or  
6 service for purposes of determining whether a price increase violates  
7 sections 1 through 4 of this act.

8 (6) The governor may extend the time periods set forth in  
9 subsections (2) and (3) of this section for additional thirty-day  
10 periods by issuing a renewed proclamation, upon a finding that the  
11 abnormal market condition continues and that any such extension is  
12 deemed necessary to protect the health, safety, or welfare of the  
13 citizens of the state.

14 (7) The governor may rescind an emergency proclamation made in  
15 accordance with subsection (1) of this section upon a finding that no  
16 abnormal market conditions exist.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.86 RCW  
18 to read as follows:

19 (1) The legislature finds that the practices covered by sections 1  
20 through 4 of this act are matters vitally affecting the public  
21 interest. A violation of sections 1 through 4 of this act is not  
22 reasonable in relation to the development and preservation of business  
23 and is an unfair or deceptive practice in trade or commerce and an  
24 unfair method of competition.

25 (2) The provisions of sections 1 through 4 of this act do not apply  
26 to persons whose activities or transactions as to prices for goods or  
27 services are subject to regulation by the Washington utilities and  
28 transportation commission or the federal energy regulatory commission.

29 (3) Persons who merely provide advertising and related services for  
30 persons engaged in making offers to sell goods or perform services  
31 shall not be deemed to be making any offer to sell any goods or perform  
32 any services for purposes of sections 1 through 4 of this act.

33 (4) In any action against a person under the provisions of sections  
34 1 through 4 of this act, the defendant shall be deemed not to have  
35 violated sections 1 through 4 of this act if the defendant proves all  
36 of the following:

37 (a) The violation of the price limitation was unintentional;

1 (b) The defendant voluntarily rolled back prices to a level  
2 permitted under sections 1 through 4 of this act upon discovering that  
3 this section was or may have been violated; and

4 (c) The defendant has instituted a restitution program for all  
5 consumers who may have paid excessive prices.

6 (5) Subsequent remedial measures are not admissible as evidence of  
7 a violation of sections 1 through 4 of this act.

8 NEW SECTION. **Sec. 5.** This act shall be known as the "Preventing  
9 Price Gouging During Emergencies and Disasters Act."

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