

Senate Bill 825

Sponsored by Senator WALKER; Representative MERKLEY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes Governor to declare abnormal disruption of market by proclamation. Prohibits merchants and wholesalers from charging unconscionably excessive prices for essential consumer goods and services during abnormal disruption of market. Punishes violation as unlawful trade practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to protection of consumers from unconscionably excessive prices; creating new provisions; amending ORS 401.025, 453.307 and 646.607; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. To prevent merchants and wholesalers from taking unfair advantage of consumers during abnormal disruptions of the market, the Legislative Assembly declares that the public interest requires that charging unconscionably excessive prices be prohibited and made subject to regulation as an unlawful trade practice.

SECTION 2. Sections 3 and 4 of this 2003 Act are added to and made a part of ORS 401.015 to 401.105.

SECTION 3. (1) The Governor may declare an abnormal disruption of the market by proclamation after determining that an abnormal disruption of the market has occurred.

(2) Section 4 of this 2003 Act applies if the Governor's proclamation of an abnormal disruption of the market:

(a) Specifies the geographical area covered by the proclamation. The area may be no larger than necessary to effectively respond to the abnormal disruption of the market.

(b) Specifies the date and time at which the abnormal disruption of the market commenced. The date of commencement of the abnormal disruption of the market may precede the date on which the proclamation is made.

(3) The Governor's proclamation of an abnormal disruption of the market:

(a) Is subject to termination by the Governor when the abnormal disruption of the market no longer exists.

(b) Is subject to termination at any time by joint resolution of the Legislative Assembly.

SECTION 4. (1) During an abnormal disruption of the market declared under section 3 of this 2003 Act, a merchant or wholesaler may not sell or offer to sell any essential consumer goods or services for an amount that represents an unconscionably excessive price.

(2) Whether a price is unconscionably excessive is a question of law to be determined by the court and not by a jury. Proof that a price is unconscionably excessive may be shown by evidence that:

(a) The amount charged for the essential consumer goods or services exceeds by 20 per-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

cent or more the price at which the goods or services were sold or offered for sale by the merchant or wholesaler in the usual course of business immediately prior to the abnormal disruption of the market; or

(b) The amount charged for the essential consumer goods or services exceeds by 20 percent or more the price at which the same or similar goods or services were readily obtainable by other consumers in the trade area immediately prior to the abnormal disruption of the market.

(3) Evidence described in subsection (2) of this section constitutes prima facie proof of a violation of this section. It is an affirmative defense to any claim of a violation of this section that the amount charged by the merchant or wholesaler is:

(a) Attributable to additional costs imposed by the merchant's or wholesaler's suppliers or necessarily incurred in procuring the essential consumer goods or services during the abnormal disruption of the market; or

(b) The result of increased costs unrelated to the abnormal disruption of the market.

SECTION 5. ORS 401.025 is amended to read:

401.025. As used in ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580, unless the context requires otherwise:

(1) **"Abnormal disruption of the market" means any created or natural event or circumstance that causes essential consumer goods or services not to be readily available.**

[(1)] (2) "Beneficiary" has the meaning given that term in ORS 656.005.

[(2)] (3) "Commission" means the Seismic Safety Policy Advisory Commission established under ORS 401.337.

(4) **"Created or natural event or circumstance" means:**

(a) **Fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spill or release of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergency, disease, blight, infestation, civil disturbance or riot; or**

(b) **An act of sabotage, terrorism or war that results in death or physical injury to numerous individuals or massive destruction of property.**

[(3)] (5) "Director" means the Director of the Office of Emergency Management.

[(4)] (6) "Emergency" includes any [*man-made*] **created** or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss[,] and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, [*spills or releases*] **spill or release** of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation [*emergencies*] **emergency**, disease, blight, infestation, [*crisis influx of migrants unmanageable by the county,*] civil disturbance, riot, sabotage, **act of terrorism** and war.

[(5)] (7) "Emergency management agency" means an organization created and authorized under ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580 by the state, county or city to provide for and assure the conduct and coordination of functions for comprehensive emergency program management.

[(6)] (8) "Emergency program management" includes all the tasks and activities necessary to provide, support and maintain the ability of the emergency services system to prevent or reduce the impact of emergency or disaster conditions which includes, but is not limited to, coordinating development of plans, procedures, policies, fiscal management, coordination with nongovernmental agencies and organizations, providing for a coordinated communications and alert and notification

network and a public information system, personnel training and development and implementation of exercises to routinely test the emergency services system.

[(7)] (9) “Emergency program manager” means the person administering the emergency management agency of a county or city.

[(8)] (10) “Emergency service agency” means an organization within a local government which performs essential services for the public’s benefit prior to, during or following an emergency. This includes, but is not limited to, organizational units within local governments, such as law enforcement, fire control, health, medical and sanitation services, public works and engineering, public information and communications.

[(9)] (11) “Emergency service worker” means an individual who, under the direction of an emergency service agency or emergency management agency, performs emergency services and:

(a) Is a registered volunteer or independently volunteers to serve without compensation and is accepted by the office or the emergency management agency of a county or city; or

(b) Is a member of the Oregon State Defense Force acting in support of the emergency services system.

[(10)] (12) “Emergency services” includes those activities provided by state and local government agencies with emergency operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. These activities include, without limitation, coordination, preparedness planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as “civil defense” in section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 2252).

[(11)] (13) “Emergency services system” means that system composed of all agencies and organizations involved in the coordinated delivery of emergency services.

(14) “Essential consumer goods or services” means goods or services that:

(a) Are or may be bought or rendered primarily for personal, family or household purposes, including but not limited to residential construction; and

(b) Are necessary for the health, safety or welfare of consumers.

[(12)] (15) “Injury” means any personal injury sustained by an emergency service worker by accident, disease or infection arising out of and in the course of emergency services or death resulting proximately from the performance of emergency services.

[(13)] (16) “Local government” means any governmental entity authorized by the laws of this state.

[(14)] (17) “Major disaster” means any event defined as a “major disaster” by the Act of May 22, 1974, P.L. 93-288.

(18) “Merchant” and “wholesaler” do not include a public body as defined in ORS 30.260.

[(15)] (19) “Office” means the Office of Emergency Management of the Department of State Police.

[(16)] (20) “Oregon emergency management plan” means the state emergency preparedness operations and management plan. The Office of Emergency Management is responsible for coordinating emergency planning with government agencies and private organizations, preparing the plan for the Governor’s signature, and maintaining and updating the plan as necessary.

[(17)] (21) “Search and rescue” means the acts of searching for, rescuing or recovering, by

means of ground or marine activity, any person who is lost, injured or killed while out of doors. However, “search and rescue” does not include air activity in conflict with the activities carried out by the Oregon Department of Aviation.

[(18)] (22) “Sheriff” means the chief law enforcement officer of a county.

SECTION 6. ORS 453.307 is amended to read:

453.307. As used in ORS 453.307 to 453.414:

(1) “Community right to know regulatory program” or “local program” means any law, rule, ordinance, regulation or charter amendment established, enforced or enacted by a local government that requires an employer to collect or report information relating to the use, storage, release, possession or composition of hazardous substances and toxic substances if a primary intent of the law, rule, ordinance, regulation or charter amendment is the public distribution of the information.

(2) “Emergency service personnel” includes those entities providing emergency services as defined in ORS 401.025 [(8) and (10)].

(3) “Employer” means:

(a) Any person operating a facility that is included in one or more of the 21 standard industrial classification categories in Appendix B of the Natural Resources Defense Council v. Train Consent Decree of June 8, 1976 (8 E.R.C. 2120); or

(b) Any person operating a facility designated by the State Fire Marshal.

(4) “Fire district” means any agency having responsibility for providing fire protection services.

(5) “Hazardous substance” means:

(a) Any substance designated as hazardous by the Director of the Department of Consumer and Business Services or by the State Fire Marshal;

(b) Any substance for which a material safety data sheet is required by the Director of the Department of Consumer and Business Services under ORS 654.035 and which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment by the American Conference of Governmental Industrial Hygienists; or

(c) Radioactive waste and material as defined in ORS 469.300 and radioactive substance as defined in ORS 453.005.

(6) “Health professional” means a physician as defined in ORS 677.010, registered nurse, industrial hygienist, toxicologist, epidemiologist or emergency medical technician.

(7) “Law enforcement agency” has the meaning given that term in ORS 181.010.

(8) “Local government” means a city, town, county, regional authority or other political subdivision of this state.

(9) “Person” includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agency thereof, and the federal government and any agency thereof.

(10) “Trade secret” has the meaning given that term in ORS 192.501 (2).

SECTION 7. ORS 646.607 is amended to read:

646.607. A person engages in an unlawful practice when in the course of the person’s business, vocation or occupation the person:

(1) Employs any unconscionable tactic in connection with **the** sale, rental or other disposition of real estate, goods or services, or collection or enforcement of an obligation; [or]

(2) Fails to deliver all or any portion of real estate, goods or services as promised, and upon request of the customer, fails to refund any money which has been received from the customer which was for the purchase of the undelivered real estate, goods or services and which is not retained by

the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not create a warranty obligation and shall not apply to a dispute over the quality of real estate, goods or services delivered to a customer; **or**

(3) Violates section 4 of this 2003 Act.

SECTION 8. (1) Section 3 of this 2003 Act applies to events or circumstances occurring on or after the effective date of this 2003 Act.

(2) Section 4 of this 2003 Act and the amendments to ORS 646.607 by section 7 of this 2003 Act apply to sales or offers to sell that are made on or after the effective date of this 2003 Act.

(3) The remedies provided in section 4 of this 2003 Act and the amendments to ORS 646.607 by section 7 of this 2003 Act are in addition to any other remedies that may already exist under the law.

SECTION 9. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.
