

**A-Engrossed**  
**Senate Bill 209**

Ordered by the Senate April 15  
Including Senate Amendments dated April 15

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Attorney General Hardy Myers for Department of Justice)

**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.

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

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to protection of consumers from unconscionably excessive prices; creating new provisions;  
3 amending ORS 646.607; and declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 4 of this 2005 Act:**

6 (1) **"Abnormal disruption of the market" means a created or natural event or circum-**  
7 **stance that causes essential goods or services not to be readily available.**

8 (2) **"Merchant or wholesaler" does not include a public body as defined in ORS 30.260.**

9 (3) **"Created or natural event or circumstance" means a fire, a flood, an earthquake,**  
10 **volcanic activity, sabotage, an act of terrorism or war.**

11 (4) **"Essential goods or services" means:**

12 (a) **Residential building materials and supplies;**

13 (b) **Food;**

14 (c) **Motor vehicle fuel; and**

15 (d) **Medical services and supplies.**

16 **SECTION 2. (1) The Legislative Assembly finds that during an abnormal disruption of the**  
17 **market, some merchants and wholesalers have taken unfair advantage of consumers by**  
18 **charging unconscionably excessive prices for essential goods and services.**

19 (2) **To prevent merchants and wholesalers from taking unfair advantage of consumers**  
20 **during abnormal disruptions of the market, the Legislative Assembly declares that the public**  
21 **interest requires that charging unconscionably excessive prices be prohibited and made sub-**  
22 **ject to regulation as an unlawful trade practice.**

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

25 (2) **A proclamation of an abnormal disruption of the market pursuant to this section:**

**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.

1 (a) Must specify, by county, the geographical area affected by the abnormal disruption  
2 of the market.

3 (b) May not specify an area larger than necessary to respond effectively to the abnormal  
4 disruption of the market.

5 (c) Must specify the date and time at which the abnormal disruption of the market  
6 commenced.

7 (d) Terminates 30 days after the date on which the Governor issues the proclamation.

8 (e) May be extended for an additional 30 days by a declaration of the Governor that the  
9 abnormal disruption of the market still exists.

10 (3) The Legislative Assembly may extend or terminate a proclamation declaring an ab-  
11 normal disruption of the market by joint resolution.

12 **SECTION 4. (1) During an abnormal disruption of the market proclaimed under section**  
13 **3 of this 2005 Act, a merchant or wholesaler may not sell or offer to sell essential goods or**  
14 **services for an amount that represents an unconscionably excessive price.**

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

18 (a) The amount charged for the essential goods or services exceeds by 20 percent or more  
19 the price at which the essential goods or services were sold or offered for sale by the mer-  
20 chant or wholesaler in the usual course of business immediately prior to the proclaimed ab-  
21 normal disruption of the market; or

22 (b) The amount charged for the essential goods or services exceeds by 20 percent or more  
23 the price at which the same or similar essential goods or services were readily obtainable  
24 by other consumers in the trade area.

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

28 (a) Attributable to additional costs imposed by the merchant's or wholesaler's suppliers,  
29 necessarily incurred in procuring the essential goods or services during the proclaimed ab-  
30 normal disruption of the market or due to additional labor costs; or

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

33 (4) In advance of an anticipated price increase in excess of 20 percent over current  
34 prices, a merchant or wholesaler may request that the Attorney General review the basis for  
35 the proposed price increase and submit evidence to establish that the proposed price increase  
36 is attributable to one or more of the circumstances described in subsection (3) of this sec-  
37 tion.

38 (5) Upon receipt of a request for review under subsection (4) of this section, the Attorney  
39 General may evaluate the evidence and determine whether it is sufficient to establish that  
40 the proposed price increase is attributable to one or more of the circumstances described in  
41 subsection (3) of this section.

42 (6) If the Attorney General does not respond within four calendar days after receipt of  
43 a request for review under subsection (4) of this section, a subsequent price increase by a  
44 merchant or wholesaler in excess of 20 percent over current prices does not constitute prima  
45 facie proof of a violation of this section.

1       **SECTION 5. The remedy provided in ORS 646.607 (3) is in addition to and not in lieu of**  
2 **other remedies available under the law.**

3       **SECTION 6.** ORS 646.607 is amended to read:

4       646.607. A person engages in an unlawful practice when in the course of the person's business,  
5 vocation or occupation the person:

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

8       (2) Violates section 3, chapter 759, Oregon Laws 2003;

9       **(3) Violates section 4 (1) of this 2005 Act;** or

10       [(3)] **(4) Fails to deliver all or any portion of real estate, goods or services as promised, and upon**  
11 **request of the customer, fails to refund any money that has been received from the customer that**  
12 **was for the purchase of the undelivered real estate, goods or services and that is not retained by**  
13 **the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not**  
14 **create a warranty obligation and does not apply to a dispute over the quality of real estate, goods**  
15 **or services delivered to a customer.**

16       **SECTION 7.** ORS 646.607, as amended by section 10, chapter 759, Oregon Laws 2003, is  
17 amended to read:

18       646.607. A person engages in an unlawful practice when in the course of the person's business,  
19 vocation or occupation the person:

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

22       (2) Fails to deliver all or any portion of real estate, goods or services as promised, and upon  
23 request of the customer, fails to refund any money that has been received from the customer that  
24 was for the purchase of the undelivered real estate, goods or services and that is not retained by  
25 the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not  
26 create a warranty obligation and does not apply to a dispute over the quality of real estate, goods  
27 or services delivered to a customer; **or**

28       **(3) Violates section 4 (1) of this 2005 Act.**

29       **SECTION 8. (1) Section 3 of this 2005 Act applies to events or circumstances occurring**  
30 **on or after the effective date of this 2005 Act.**

31       **(2) Section 4 of this 2005 Act and the amendments to ORS 646.607 by sections 6 and 7 of**  
32 **this 2005 Act apply to sales or offers for sale that are made on or after the effective date**  
33 **of this 2005 Act.**

34       **SECTION 9. This 2005 Act being necessary for the immediate preservation of the public**  
35 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
36 **on its passage.**

37