

Senate Bill 209

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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 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) **"Contractor, merchant or wholesaler" does not include a public body as defined in**
9 **ORS 30.260.**

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

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

13 (a) **Residential construction, including building materials, services and supplies;**

14 (b) **Food; and**

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

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

19 (2) **To prevent contractors, merchants and wholesalers from taking unfair advantage of**
20 **consumers during abnormal disruptions of the market, the Legislative Assembly declares**
21 **that the public interest requires that charging unconscionably excessive prices be prohibited**
22 **and made subject 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**
26 **must specify:**

27 (a) **The geographical area covered by the proclamation and may not specify an area**
28 **larger than necessary to effectively respond to the abnormal disruption of the market.**

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 (b) The date and time at which the abnormal disruption of the market commenced.

2 (3) The Governor's proclamation of an abnormal disruption of the market may be ter-
3 minated:

4 (a) By proclamation of the Governor, when the abnormal disruption of the market no
5 longer exists.

6 (b) By joint resolution of the Legislative Assembly at any time.

7 **SECTION 4.** (1) During an abnormal disruption of the market proclaimed under section
8 3 of this 2005 Act, a contractor, merchant or wholesaler may not sell or offer to sell essential
9 goods or services for an amount that represents an unconscionably excessive price.

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

13 (a) The amount charged for the essential goods or services exceeds by 20 percent or more
14 the price at which the essential goods or services were sold or offered for sale by the con-
15 tractor, merchant or wholesaler in the usual course of business immediately prior to the
16 proclaimed abnormal disruption of the market; or

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

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

23 (a) Attributable to additional costs imposed by the contractor's, merchant's or whole-
24 saler's suppliers or necessarily incurred in procuring the essential goods or services during
25 the proclaimed abnormal disruption of the market; or

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

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

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

31 646.607. A person engages in an unlawful practice when in the course of the person's business,
32 vocation or occupation the person:

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

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

36 (3) Violates section 4 of this 2005 Act; or

37 [(3)] (4) Fails to deliver all or any portion of real estate, goods or services as promised, and upon
38 request of the customer, fails to refund any money that has been received from the customer that
39 was for the purchase of the undelivered real estate, goods or services and that is not retained by
40 the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not
41 create a warranty obligation and does not apply to a dispute over the quality of real estate, goods
42 or services delivered to a customer.

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

45 646.607. A person engages in an unlawful practice when in the course of the person's business,

1 vocation or occupation the person:

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

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

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

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

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

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

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