

Enrolled
Senate Bill 118

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)

CHAPTER

AN ACT

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

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

SECTION 1. (1) The Legislative Assembly finds that during an abnormal disruption of the market, some merchants and wholesalers have taken unconscionable advantage of consumers by charging grossly excessive prices for essential consumer goods and services.

(2) To prevent merchants and wholesalers from taking unconscionable advantage of consumers during an abnormal disruption 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 2007 Act are added to and made a part of ORS 401.015 to 401.105.

SECTION 3. (1) If the Governor determines that an abnormal disruption of the market has occurred, the Governor may declare an abnormal disruption of the market by a proclamation, as part of a state of emergency declared under ORS 401.055, or both.

(2) The Governor’s declaration of an abnormal disruption of the market under subsection (1) of this section shall specify:

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

(b) 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 declaration is made.

(c) That the declaration will terminate automatically 30 days after the date on which the Governor makes the declaration unless the Governor extends the declaration in accordance with paragraph (d) of this subsection or unless the Governor or the Legislative Assembly terminates the declaration sooner.

(d) That the Governor may extend the declaration for additional 30-day periods by subsequent declarations that the abnormal disruption of the market continues to exist.

(3) The Governor’s declaration of an abnormal disruption of the market is subject to termination:

(a) By the Governor when the Governor determines that an abnormal disruption of the market no longer exists.

(b) At any time by joint resolution of the Legislative Assembly.

(c) Automatically 30 days after the date on which the Governor makes the declaration unless the Governor or the Legislative Assembly terminates the declaration sooner. The Governor may extend the declaration for subsequent 30-day periods by declaring for each such extension that the abnormal disruption of the market continues to exist. An extension the Governor declares in accordance with this paragraph also terminates 30 days after the date on which the Governor declared the extension unless the Governor declares another extension or unless the Governor or the Legislative Assembly terminates the extension sooner.

SECTION 4. (1) As used in this section, the terms “merchant” and “wholesaler” do not include a public body as that term is defined in ORS 174.109, a public utility as defined in ORS 757.005 (1)(a)(A) or an electric utility as defined in ORS 757.600.

(2) A merchant or wholesaler may not sell or offer to sell essential consumer goods or services for an amount that represents an unconscionably excessive price during a declaration of an abnormal disruption of the market under section 3 of this 2007 Act.

(3) It is a question of law whether a price is unconscionably excessive. Proof that a price is unconscionably excessive may be shown by evidence that:

(a) The amount charged for essential consumer goods or services exceeds by 15 percent 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 or during a declaration of an abnormal disruption of the market; or

(b) The amount charged for the essential consumer goods or services exceeds by 15 percent or more the price at which the same or similar consumer goods or services were readily obtainable by other consumers in or near the geographical area covered by the declaration of an abnormal disruption of the market.

(4) Evidence described in subsection (3) of this section constitutes prima facie proof of a violation of this section. Evidence described in subsection (3) of this section is not prima facie evidence of a violation of this section if 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 immediately prior to or during the declaration of an abnormal disruption of the market; or

(b) The result of increased internal costs or expenses related to the declaration of an abnormal disruption of the market or the result of increased costs unrelated to the declaration of an 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 human created or natural event or circumstance that causes essential consumer goods or services to be not 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.

[(3)] (4) “Emergency” includes any [*human caused*] **human 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 of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war*] **a crisis influx of migrants unmanageable by a county.**

[(4)] (5) “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.

[(5)] (6) "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.

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

[(7)] (8) "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.

[(8)] (9) "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 of Emergency Management 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.

[(9)] (10) "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)] **50 U.S.C. app. 2252.**

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

(12) **"Essential consumer goods or services" means goods or services that:**

(a) **Are or may be bought or acquired primarily for personal, family or household purposes, including but not limited to residential construction materials or labor, shelter for payment such as a hotel room, food, water or petroleum products such as gasoline or diesel fuel; and**

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

(13) **"Human created or natural event or circumstance" includes, but is not limited to, fire, explosion, flood, severe weather, landslides or mud slides, drought, earthquake, volcanic activity, tsunamis or other oceanic phenomena, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, sabotage, acts of terrorism or war.**

[(11)] (14) "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.

[(12)] (15) "Local government" means any governmental entity authorized by the laws of this state.

[(13)] (16) "Major disaster" means any event defined as a "major disaster" under 42 U.S.C. 5122(2).

[(14)] (17) "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.

[(15)] (18) "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.

[(16)] (19) "Sheriff" means the chief law enforcement officer of a county.

SECTION 6. 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 that has been received from the customer that was for the purchase of the undelivered real estate, goods or services and that 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 does 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 2007 Act.**

SECTION 7. (1) **Section 3 of this 2007 Act applies to events or circumstances that occur on or after the effective date of this 2007 Act.**

(2) **Section 4 of this 2007 Act and the amendments to ORS 646.607 by section 6 of this 2007 Act apply to sales or offers to sell essential consumer goods or services that are made on or after the effective date of this 2007 Act.**

(3) **The remedies provided in section 4 of this 2007 Act and in the amendments to ORS 646.607 by section 6 of this 2007 Act are in addition to any other remedies that may exist under the law.**

SECTION 8. **This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.**

Passed by Senate March 29, 2007

.....
Secretary of Senate

.....
President of Senate

Passed by House May 17, 2007

.....
Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Secretary of State