

By: West

S.B. No. 487

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on the prices of certain consumer goods and services during an abnormal disruption of the market.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 99, Business & Commerce Code, as effective April 1, 2009, is amended by adding Chapter 2003 to read as follows:

CHAPTER 2003. RESTRICTED PRICING DURING ABNORMAL MARKET

DISRUPTION

Sec. 2003.001. DEFINITION. In this chapter, "essential consumer good or service" means a good or service that is purchased or provided primarily for personal, family, or household purposes and that is necessary for the health, safety, or welfare of a consumer. The term includes:

(1) pharmaceutical products, including prescription medications;

(2) residential construction materials;

(3) gas and electric services;

(4) ice; and

(5) motor fuel.

Sec. 2003.002. GOVERNOR'S DECLARATION OF ABNORMAL DISRUPTION OF MARKET. (a) The governor may declare an abnormal disruption of the market by proclamation if the governor, after consulting with the attorney general, determines that essential goods or services are not readily available, or that a substantial

1 likelihood exists that essential goods or services will not be  
2 readily available, as a result of an emergency or disaster such as:

3 (1) a fire, explosion, flood, hurricane, tornado,  
4 drought, or earthquake; or

5 (2) an act of terrorism or war that results in:

6 (A) the death of or physical injury to numerous  
7 individuals; or

8 (B) massive destruction of property.

9 (b) The governor's authority to declare an abnormal  
10 disruption of the market under this section is in addition to the  
11 governor's authority to declare a state of disaster under Chapter  
12 418, Government Code.

13 Sec. 2003.003. PUBLICATION OF PROCLAMATION. The governor  
14 shall publish the proclamation of an abnormal disruption of the  
15 market:

16 (1) in the Texas Register;

17 (2) on the office of the governor's Internet website;

18 and

19 (3) in any other manner the governor considers  
20 adequate to give notice to persons in the geographical area covered  
21 by the proclamation.

22 Sec. 2003.004. PROCLAMATION SPECIFICATIONS. (a) The  
23 governor's proclamation of an abnormal disruption of the market  
24 must specify:

25 (1) the geographical area covered by the proclamation;

26 and

27 (2) the date and time at which the abnormal disruption

1 of the market began.

2 (b) The geographical area covered by the governor's  
3 proclamation may not be larger than necessary to effectively  
4 respond to the disruption of the market.

5 (c) The date and time specified by the proclamation under  
6 Subsection (a)(2) may precede the date of the proclamation.

7 Sec. 2003.005. EXPIRATION OF PROCLAMATION. The  
8 proclamation of an abnormal market disruption expires on the  
9 earlier of:

10 (1) the date on which the governor declares it  
11 expired; or

12 (2) the 60th day after the date the proclamation is  
13 issued.

14 Sec. 2003.006. UNCONSCIONABLE PRICES PROHIBITED;  
15 DETERMINATION OF UNCONSCIONABLE PRICE. (a) If a proclamation of an  
16 abnormal disruption of the market is in effect for an area, a  
17 person, including a merchant or wholesaler, may not sell or offer  
18 for sale an essential consumer good or service in the area for a  
19 price that is unconscionably excessive.

20 (b) A price charged by a person for an essential consumer  
21 good or service is unconscionably excessive as a matter of law if  
22 the price exceeds by 15 percent or more the price at which the good  
23 or service was sold or offered for sale by the person in the usual  
24 course of business, or was readily obtainable by consumers in the  
25 trade area, immediately before the occurrence of the event or  
26 circumstance identified by the governor's proclamation as  
27 preventing essential consumer goods or services from being readily

1 available.

2 (c) A violation of this section is a deceptive trade  
3 practice under Subchapter E, Chapter 17, and constitutes a separate  
4 violation from any violation of Section 17.46(b)(27).

5 (d) It is an affirmative defense to liability under this  
6 section that the price charged by the person is:

7 (1) attributable to additional costs imposed by the  
8 person's suppliers or otherwise necessarily incurred in procuring  
9 the goods or providing the services during the abnormal disruption  
10 of the market; or

11 (2) the result of increased costs unrelated to the  
12 abnormal disruption of the market.

13 (e) As used in this section, "person" does not include a  
14 governmental entity.

15 SECTION 2. This Act takes effect September 1, 2009.