

By: Lozano

H.B. No. 765

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. Subtitle C, Title 5, Business & Commerce Code, as effective April 1, 2009, is amended by adding Chapter 106 to read as follows:

CHAPTER 106. RESTRICTED PRICING DURING ABNORMAL DISRUPTION OF MARKET

Sec. 106.001. DEFINITIONS. In this chapter:

(1) "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 residential construction.

(2) "Merchant" or "wholesaler" does not include a governmental entity.

Sec. 106.002. UNCONSCIONABLE PRICES PROHIBITED; DETERMINATION OF UNCONSCIONABLE PRICE. (a) If an abnormal disruption of the market for any consumer good or service occurs in an area, a merchant or wholesaler may not sell or offer for sale an essential consumer good or service in the area for a price that is unconscionably excessive.

(b) A price charged by a merchant or wholesaler for an

1 essential consumer good or service is unconscionably excessive as a
2 matter of law if the price exceeds by 20 percent or more the price at
3 which the good or service was sold or offered for sale by the
4 merchant or wholesaler in the usual course of business, or was
5 readily obtainable by consumers in the trade area, immediately
6 before the abnormal disruption of the market that prevents
7 essential consumer goods or services from being readily available.

8 (c) A price charged by a merchant or wholesaler for an
9 essential consumer good or service is not considered unconscionably
10 excessive as a matter of law if the price is attributable to and
11 consistent with the price charged for the good or service during a
12 special event or traditional high demand period that is unrelated
13 to the abnormal disruption of the market.

14 (d) A violation of this section is considered a false,
15 misleading, or deceptive act or practice for purposes of Section
16 17.46(a), and is subject to action only by the consumer protection
17 division of the attorney general's office as provided by Section
18 17.46(a).

19 (e) It is an affirmative defense to liability under this
20 section that the price charged by the merchant or wholesaler is:

21 (1) attributable to additional costs imposed by the
22 merchant's or wholesaler's suppliers or otherwise necessarily
23 incurred in procuring the goods or providing the services during
24 the abnormal disruption of the market; or

25 (2) the result of increased costs unrelated to the
26 abnormal disruption of the market.

27 (f) This chapter does not apply to a service that is:

1 (1) monitored by the Public Utility Commission of
2 Texas under Section 39.157, Utilities Code;

3 (2) provided by a retail electric provider as defined
4 by Section 31.002, Utilities Code;

5 (3) provided by an electric utility as defined by
6 Section 31.002, Utilities Code; or

7 (4) provided by a gas utility whose rates are
8 established under Subchapter B, Chapter 104, Utilities Code.

9 SECTION 2. This Act takes effect September 1, 2011.