

BILL ANALYSIS

Senate Research Center

H.B. 695
By: Leibowitz et al. (Averitt)
State Affairs
5/16/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Current Texas law makes post-disaster price gouging a violation of the Deceptive Trade Act. However, the statute sets no threshold or definition for what constitutes price gouging, nor does it prohibit it in circumstances other than a disaster declared by the governor.

H.B. 695 prohibits taking advantage of an abnormal disruption of the market by charging an unconscionably excessive price for essential consumer goods and services. It provides an affirmative defense to allow for increased wholesale costs and increased costs unrelated to the market disruption.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Business & Commerce Code, by adding Chapter 48, as follows:

CHAPTER 48. RESTRICTED PRICING DURING ABNORMAL DISRUPTION OF MARKET

Sec. 48.001. DEFINITION. Defines "essential consumer good or service."

Sec. 48.002. UNCONSCIONABLE PRICES PROHIBITED; DETERMINATION OF UNCONSCIONABLE PRICE. (a) Prohibits a merchant or wholesaler from selling or offering for sale an essential consumer good or service in the area for a price that is unconscionably excessive, if an abnormal disruption of the market for any consumer good or service occurs in an area.

(b) Provides that except as otherwise provided by this subsection, a price charged by a merchant or wholesaler for an essential consumer good or service is unconscionably excessive as a matter of law if the price exceeds by 20 percent or more the price at which the good or service was sold or offered for sale by the merchant or wholesaler in the usual course of business, or was readily obtainable by consumers in the trade area, immediately before the abnormal disruption of the market that prevents essential consumer goods or services from being readily available. Provides that the price for a room in a hotel, as defined by Section 156.001 (Definition), Tax Code, is unconscionably excessive as a matter of law if the price exceeds the daily room rate posted as provided under Section 2155.001 (Room Rate Information), Occupations Code.

(c) Provides that a violation of this section is considered a false, misleading, or deceptive act or practice for purposes of Section 17.46(a), and is subject to action only by the consumer protection division of the attorney general's office as provided by Section 17.46(a).

(d) Sets forth situations in which it is an affirmative defense to liability under this section if the price charged by the merchant or wholesaler reached a certain amount.

(e) Provides that as used in this section, "merchant" or "wholesaler" does not include a governmental entity.

SECTION 2. Effective date: September 1, 2005.