

ESSB 5191 - H COMM AMD

By Committee on Consumer Protection & Business

ADOPTED 04/10/2021

1 Strike everything after the enacting clause and insert the  
2 following:

3 NEW SECTION. **Sec. 1.** The legislature recognizes the need to  
4 protect Washingtonians from excessive and unjustified price increases  
5 implemented during or shortly after a declared state of emergency for  
6 essential goods and services that are vital and necessary for the  
7 health, safety, and welfare of consumers.

8 The legislature also recognizes the need to support businesses  
9 providing these goods in understanding their obligations to consumers  
10 during times of potential chaos and uncertainty in the marketplace.

11 NEW SECTION. **Sec. 2.** The definitions in this section apply  
12 throughout this chapter unless the context clearly requires  
13 otherwise.

14 (1) "Building materials" means lumber, construction tools,  
15 windows, and anything else used in the building or rebuilding of  
16 property.

17 (2) "Consumer food item" means any article used or intended for  
18 use for food, drink, confection, or condiment by a person or animal.

19 (3) "Emergency supplies" includes, but is not limited to, water,  
20 flashlights, radios, batteries, candles, heating and cooking fuel,  
21 blankets, soap, diapers, temporary shelters, tape, toiletries,  
22 personal hygiene products, plywood, nails, and hammers.

23 (4) "Excessive price" means a price more than 15 percent greater  
24 than the price at which the person sold, rented, or offered for sale  
25 or rent the same product or service immediately prior to the state of  
26 emergency defined in subsection (13) of this section. If the seller  
27 did not sell, rent, or offer for sale or rent the product or service  
28 immediately prior to the onset of the state of emergency defined in  
29 subsection (13) of this section, or if the price charged by the  
30 person for the product or service prior to the onset of the state of  
31 emergency cannot be determined, an excessive price shall be presumed

1 where the price is more than 15 percent greater than the price of the  
2 same product or service offered for sale or rent by other similarly  
3 situated sellers prior to the state of emergency defined in  
4 subsection (13) of this section. If a state of emergency as defined  
5 in subsection (13) of this section continues for more than one year,  
6 the price of the product or service on the anniversary of the state  
7 of emergency as defined in subsection (13) of this section must be  
8 the new baseline price for determining whether a price is excessive.

9 (5) "Gasoline" means any fuel used to power any motor vehicle or  
10 power tool.

11 (6) "Health care services" means services necessary to provide  
12 medical care that are provided or arranged by a temporary staffing  
13 services company including, but not limited to, services provided by  
14 physicians, physician assistants, nurses, and nursing assistants.

15 (7) "Housing" means a short-term stay commercial enterprise  
16 including, but not limited to, a hotel or motel. Housing does not  
17 mean any residence governed by the residential landlord-tenant act,  
18 chapter 59.18 RCW, or the manufactured/mobile home landlord-tenant  
19 act, chapter 59.20 RCW.

20 (8) "Medical supplies" includes, but is not limited to,  
21 prescription and nonprescription medications, pain relievers,  
22 infection control and prevention products, bandages, gauze, isopropyl  
23 alcohol, and antibacterial products.

24 (9) "Person" means any natural person, proprietorship, company,  
25 firm, corporation, limited liability company, partnership,  
26 independent contractor, group, unincorporated association, trust,  
27 estate, community, agency, institution, joint venture, other business  
28 or government organization, or any other legal entity.

29 (10) "Personal protective equipment" means any protective  
30 equipment that protects against physical, electrical, heat,  
31 chemicals, biohazards, and airborne particulate matter including, but  
32 not limited to, clothing, helmets, goggles, or other garments or  
33 equipment designed to protect the wearer's body from injury or  
34 infection.

35 (11) "Repair or reconstruction services" means work, labor, or  
36 services performed by any person for repairs to residential or  
37 commercial property of any type that is damaged as a result of a  
38 natural or human-induced disaster or emergency resulting from an  
39 event described in subsection (13) of this section.

1 (12) "Seller" includes any person within the chain of  
2 distribution with authority or permission to adjust, set, or regulate  
3 a price of any product or service offered for sale or rent subject to  
4 section 3 of this act.

5 (13) "State of emergency" means an event for which a state of  
6 emergency has been declared by the governor of the state of  
7 Washington.

8 (14) "Temporary staffing services company" has the same meaning  
9 as set forth in RCW 50.04.245.

10 (15) "Transportation, freight, and storage services" means any  
11 service that is performed by a person that contracts to move, store,  
12 or transport personal or business property, or rents equipment for  
13 those purposes.

14 NEW SECTION. **Sec. 3.** (1) This section shall be automatically  
15 implemented when the governor declares a state of emergency pursuant  
16 to RCW 43.06.010 and 43.06.200 through 43.06.220. In the event of a  
17 state of emergency as defined in section 2 of this act, no person in  
18 the county or counties for which an emergency has been declared shall  
19 sell, rent, or offer to sell or rent, regardless of whether an actual  
20 sale or rental occurs, a good or service listed in this section at an  
21 excessive price. Goods and services to which this section applies  
22 are:

- 23 (a) Building materials;
- 24 (b) Consumer food items;
- 25 (c) Goods or services used for emergency cleanup, regardless of  
26 whether the goods or services are listed in this subsection;
- 27 (d) Emergency supplies;
- 28 (e) Gasoline;
- 29 (f) Health care services;
- 30 (g) Housing;
- 31 (h) Medical supplies;
- 32 (i) Repair or reconstruction services;
- 33 (j) Transportation, freight, and storage services; and
- 34 (k) Personal protective equipment.

35 (2) The governor shall have the authority to modify the list of  
36 goods and services under subsection (1) of this section in an  
37 executive order pursuant to RCW 43.06.220 where appropriate in the  
38 context of a particular emergency.

1 (3) A person who increases a price does not violate this section  
2 if the price increase is attributable to an additional cost imposed  
3 by a supplier of a good or service, or other costs of providing the  
4 good or service, including an additional cost for labor or materials  
5 used to provide a product or service.

6 (4) A person with authority or permission to adjust or regulate a  
7 price does not violate this section if that person undertakes  
8 commercially reasonable efforts to prevent or remove offers to sell  
9 or rent a good or service listed in this section at an excessive  
10 price.

11 (5) If, in the 60 days prior to the governor's implementation of  
12 this section, a person sold, rented, or offered for sale or rent a  
13 good or service listed in subsection (3) of this section at a reduced  
14 price which was lower than the price at which the person ordinarily  
15 sells, rents, or offers for sale or rent the good or service in the  
16 area for which the declaration was issued, then the price at which  
17 that person ordinarily sells, rents, or offers for sale or rent the  
18 good or service in the area for which the declaration was issued  
19 shall be used in determining if the person is in violation of this  
20 section.

21 (6) If the 60 days prior to the governor's implementation  
22 reflects quarter 4, November through January, holiday pricing, then  
23 the price at which the person ordinarily sells, rents, or offers for  
24 sale or rent the good or service in the area in which the declaration  
25 was issued shall be based on quarter 3, August through October.

26 (7)(a) The restrictions imposed by this chapter expire upon  
27 termination of the state of emergency or 60 days after the state of  
28 emergency is declared, whichever comes first.

29 (b) Once restrictions are imposed under this chapter to respond  
30 to a specific emergency, the restrictions may only be extended,  
31 renewed, or reimposed with legislative approval through concurrent  
32 resolution. If the legislature is not in session, restrictions  
33 imposed under this chapter may be extended, renewed, or reimposed in  
34 writing by the leadership of the senate and the house of  
35 representatives until the legislature can extend the restrictions  
36 through concurrent resolution. For purposes of this section,  
37 "leadership of the senate and the house of representatives" means the  
38 majority and minority leaders of the senate and the speaker and the  
39 minority leader of the house of representatives.

1 (c) If restrictions imposed under this chapter expire and are not  
2 extended, renewed, or reimposed, this section does not affect any  
3 rights or remedies provided in the consumer protection act, chapter  
4 19.86 RCW.

5 NEW SECTION. **Sec. 4.** (1) The attorney general may investigate  
6 violations of this chapter. The attorney general may issue subpoenas  
7 or civil investigative demands pursuant to RCW 19.86.110 to any  
8 person that the attorney general has reason to believe has violated  
9 this chapter or has information or knowledge pertaining to a  
10 violation of this chapter.

11 (2) The attorney general may issue a cease and desist letter to  
12 any person to restrain and prevent violations of this chapter. If the  
13 recipient of a cease and desist letter does not comply within five  
14 calendar days of receipt of the letter, the attorney general may file  
15 an action in superior court at any time thereafter to enforce the  
16 cease and desist letter. If the court finds that the person violated  
17 this chapter and failed to comply with a cease and desist letter, the  
18 court shall enjoin the person from engaging in conduct that violates  
19 this chapter and shall impose a civil penalty of not more than  
20 \$10,000 per violation of the cease and desist letter. In any  
21 successful action to enforce a cease and desist letter under this  
22 chapter, the court shall award the attorney general the costs of  
23 bringing the action, including reasonable investigative costs and  
24 reasonable attorneys' fees. The remedies under this subsection are in  
25 addition to any other remedies a court may order under subsection (3)  
26 of this section.

27 (3) Every person who violates this chapter shall forfeit and pay  
28 a civil penalty of no more than \$25,000 per violation. No additional  
29 civil penalty shall be assessed for the same violation under the  
30 consumer protection act pursuant to RCW 19.86.140.

31 (4) The legislature finds that the practices covered by this  
32 chapter are matters vitally affecting the public interest. A  
33 violation of this chapter, including, but not limited to, a violation  
34 of a cease and desist letter issued pursuant to subsection (2) of  
35 this section, is not reasonable in relation to the development and  
36 preservation of business, and is an unfair or deceptive act in trade  
37 or commerce and an unfair method of competition for the purpose of  
38 applying the consumer protection act.

1 (5) The remedies provided by this chapter are in addition to any  
2 other remedies provided by law.

3 NEW SECTION. **Sec. 5.** Upon application of this act, the office  
4 of the attorney general shall produce and maintain on its website  
5 translated versions of this act in the top 10 languages spoken in  
6 Washington state and, at the discretion of the office of the attorney  
7 general, other languages as requested or needed to support small  
8 businesses that are either owned or operated, or both, by individuals  
9 who have limited English language proficiency. The notice must be  
10 made available upon request in printed form on one letter size paper,  
11 eight and one-half by 11 inches, and in an easily readable font size.

12 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act  
13 constitute a new chapter in Title 19 RCW.

14 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of  
16 the state government and its existing public institutions, and takes  
17 effect immediately."

18 Correct the title.

EFFECT: Retains the underlying bill with the following changes:

(1) Limits the definition of housing to a short-term stay commercial enterprise including, but not limited to, a hotel or motel. Excludes property governed by the Residential Landlord-Tenant Act or the Manufactured/Mobile Home Landlord-Tenant Act from the definition of housing.

(2) Establishes that persons with authority to adjust or regulate prices do not violate the act if they make commercially reasonable efforts to prevent or remove offers to sell or rent a covered good or service at an excessive price.

(3) Ends the restriction on price increases upon termination of the state of emergency or 60 days after the state of emergency is declared, whichever comes first. Provides the restrictions may only be extended, renewed, or reimposed with legislative approval. Establishes that the expiration of restrictions does not impact rights or remedies under the Consumer Protection Act.

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