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**ENGROSSED SUBSTITUTE SENATE BILL 5191**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Darneille, King, Billig, Carlyle, Conway, Das, Hasegawa, Hunt, Kuderer, Lias, Lovelett, Nguyen, Nobles, Randall, Salomon, Stanford, and Wilson, C.; by request of Attorney General)

READ FIRST TIME 02/12/21.

1       AN ACT Relating to regulating unfair business practices and  
2 prohibiting predatory price increases during states of emergency;  
3 adding a new chapter to Title 19 RCW; prescribing penalties; and  
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

14       NEW SECTION.   **Sec. 2.**   The definitions in this section apply  
15 throughout this chapter unless the context clearly requires  
16 otherwise.

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

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

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

7 (4) "Excessive price" means a price more than 15 percent greater  
8 than the price at which the person sold, rented, or offered for sale  
9 or rent the same product or service immediately prior to the state of  
10 emergency defined in subsection (13) of this section. If the seller  
11 did not sell, rent, or offer for sale or rent the product or service  
12 immediately prior to the onset of the state of emergency defined in  
13 subsection (13) of this section, or if the price charged by the  
14 person for the product or service prior to the onset of the state of  
15 emergency cannot be determined, an excessive price shall be presumed  
16 where the price is more than 15 percent greater than the price of the  
17 same product or service offered for sale or rent by other similarly  
18 situated sellers prior to the state of emergency defined in  
19 subsection (13) of this section. If a state of emergency as defined  
20 in subsection (13) of this section continues for more than one year,  
21 the price of the product or service on the anniversary of the state  
22 of emergency as defined in subsection (13) of this section must be  
23 the new baseline price for determining whether a price is excessive.

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

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

30 (7) "Housing" means any dwelling or living space offered for  
31 rental to a nonowner in exchange for payment to the owner. This  
32 definition includes, but is not limited to, housing provided by a  
33 hotel or motel and residence at institutions that provide health  
34 care, education, or other services in exchange for payment. The  
35 exclusion of a form of housing from the residential landlord tenant  
36 act, chapter 59.18 RCW, does not exclude it from coverage by this  
37 chapter.

38 (8) "Medical supplies" includes, but is not limited to,  
39 prescription and nonprescription medications, pain relievers,

1 infection control and prevention products, bandages, gauze, isopropyl  
2 alcohol, and antibacterial products.

3 (9) "Person" means any natural person, proprietorship, company,  
4 firm, corporation, limited liability company, partnership,  
5 independent contractor, group, unincorporated association, trust,  
6 estate, community, agency, institution, joint venture, other business  
7 or government organization, or any other legal entity.

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

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

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

23 (13) "State of emergency" means an event for which a state of  
24 emergency has been declared by the governor of the state of  
25 Washington.

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

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

32 NEW SECTION. **Sec. 3.** (1) This section shall be automatically  
33 implemented when the governor declares a state of emergency pursuant  
34 to RCW 43.06.010 and 43.06.200 through 43.06.220. In the event of a  
35 state of emergency as defined in section 2 of this act, no person in  
36 the county or counties for which an emergency has been declared shall  
37 sell, rent, or offer to sell or rent, regardless of whether an actual  
38 sale or rental occurs, a good or service listed in this section at an

1 excessive price. Goods and services to which this section applies  
2 are:

- 3 (a) Building materials;
- 4 (b) Consumer food items;
- 5 (c) Goods or services used for emergency cleanup, regardless of  
6 whether the goods or services are listed in this subsection;
- 7 (d) Emergency supplies;
- 8 (e) Gasoline;
- 9 (f) Health care services;
- 10 (g) Housing;
- 11 (h) Medical supplies;
- 12 (i) Repair or reconstruction services;
- 13 (j) Transportation, freight, and storage services; and
- 14 (k) Personal protective equipment.

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

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

24 (4) If, in the 60 days prior to the governor's implementation of  
25 this section, a person sold, rented, or offered for sale or rent a  
26 good or service listed in subsection (3) of this section at a reduced  
27 price which was lower than the price at which the person ordinarily  
28 sells, rents, or offers for sale or rent the good or service in the  
29 area for which the declaration was issued, then the price at which  
30 that person ordinarily sells, rents, or offers for sale or rent the  
31 good or service in the area for which the declaration was issued  
32 shall be used in determining if the person is in violation of this  
33 section.

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

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

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

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

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

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

37        NEW SECTION.    **Sec. 5.**    Upon application of this act, the office  
38 of the attorney general shall produce and maintain on its website  
39 translated versions of this act in the top 10 languages spoken in

1 Washington state and, at the discretion of the office of the attorney  
2 general, other languages as requested or needed to support small  
3 businesses that are either owned or operated, or both, by individuals  
4 who have limited English language proficiency. The notice must be  
5 made available upon request in printed form on one letter size paper,  
6 eight and one-half by 11 inches, and in an easily readable font size.

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

9 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of  
11 the state government and its existing public institutions, and takes  
12 effect immediately.

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