

SB 138 - AS INTRODUCED

2021 SESSION

21-1077

11/10

SENATE BILL **138**

AN ACT relative to consumer protections against profiteering in necessities.

SPONSORS: Sen. Sherman, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Gannon, Dist 23; Sen. Carson, Dist 14; Sen. Perkins Kwoka, Dist 21; Sen. Rosenwald, Dist 13; Sen. Watters, Dist 4; Sen. Bradley, Dist 3; Sen. Giuda, Dist 2; Sen. Hennessey, Dist 1; Rep. Knirk, Carr. 3; Rep. Grote, Rock. 24; Rep. M. Pearson, Rock. 34

COMMITTEE: Commerce

ANALYSIS

This bill prohibits profiteering in necessities during a declared abnormal market disruption.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to consumer protections against profiteering in necessities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Consumer Protection; Profiteering in Necessities. Amend RSA 358-A by
2 inserting after section 2 the following new section:

3 358-A:2-a Profiteering in Necessities.

4 I. For purposes of this section, the following terms shall have the following meaning:

5 (a) "Abnormal market disruption" means a significant disruption to the production,
6 distribution, supply, sale, or availability of a commodity or commodities that:

7 (1) Is caused by an event such as a natural or man-made emergency or disaster,
8 whether local or remote; and

9 (2) Causes ordinary competitive market forces to cease to function normally.

10 (b) "Cost" means the expense associated with the acquisition, production, distribution, or
11 sale of necessities and may include, among other things, replacement costs, taxes, and
12 transportation costs.

13 (c) "Necessities" means food for human or animal consumption, potable water,
14 pharmaceutical products including prescription medications, wearing apparel, shoes, building
15 materials, gas and electricity for light, heat, and power, ice, fuel of all kinds, and fertilizer and
16 fertilizer ingredients, together with tools, utensils, implements, machinery, and equipment required
17 for the actual production or manufacture of the same. "Necessities" shall include any other vital or
18 necessary good or service except those:

19 (1) Subject to continuous maximum price regulation under the provisions of any
20 state or federal law;

21 (2) As to which the state's authority is preempted; or

22 (3) Furnished or provided by:

23 A. Insurers; or

24 B. Nonprofit hospitals, medical service organizations, or health maintenance
25 organizations authorized to transact business within the state.

26 (d) "Unconscionable price" means a price that is actionable under this section. There is
27 a rebuttable presumption that a price is unconscionable when it exceeds by more than 15 percent the
28 sum of:

29 (1) The price at which similar goods or services were offered for sale or sold by that
30 person immediately prior to the beginning date of the abnormal market disruption. If that person
31 did not offer such goods or services immediately prior to the abnormal market disruption, then the

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1 prices is the price at which similar goods or services were offered for sale or sold by another person
2 similarly situated prior to the abnormal market disruption; and

3 (2) The increased cost to the person of providing the goods or services following the
4 abnormal market disruption, calculated according to the method used by that person prior to the
5 abnormal market disruption.

6 II.(a) Whenever it appears upon due inquiry and consultation with the attorney general that
7 an abnormal market disruption exists or that there is a substantial likelihood that an abnormal
8 market disruption is imminent, the governor may, in the governor's sole discretion and after
9 considering whether the declaration of an abnormal market disruption itself will disrupt supplies for
10 affected necessities, declare an abnormal market disruption.

11 (b) A declaration made pursuant to this paragraph section shall specify:

12 (1) The beginning date of the abnormal market disruption;

13 (2) The particular necessity, necessities, or categories of necessities that are affected
14 by the abnormal market disruption and made subject to the provisions of paragraphs III and IV; and

15 (3) The levels of trade or commerce that are affected by the abnormal market
16 disruption and made subject to the provisions of paragraphs III and IV.

17 (c) A declaration of abnormal market disruption made pursuant to this section expires
18 when the governor declares it expired or 60 days from the date of its issuance, which ever is sooner.
19 The declaration of abnormal market disruption may be modified by the governor at any time.

20 (d) The governor shall publish decisions made pursuant to this section in a manner
21 reasonably calculated to give affected persons adequate notice.

22 (e) Any person may petition the governor regarding the governor's decisions under this
23 section.

24 III. After the governor has declared an abnormal market disruption and before the
25 declaration of the abnormal market disruption expires, a person may not sell or offer for sale
26 necessities at an unconscionable price.

27 IV. Any violation of this section shall constitute an unfair or deceptive act or practice within
28 the meaning of RSA 358-A:2. Any right, remedy, or power set forth in RSA 358-A may be used to
29 enforce the provisions of this section.

30 2 Effective Date. This act shall take effect January 1, 2022.