Maine Revised Statutes

Title 10: COMMERCE AND TRADE

Chapter 201: MONOPOLIES AND PROFITEERING

§1105. PROFITEERING IN NECESSITIES

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Abnormal market disruption" means a significant disruption to the production, distribution, supply, sale or availability of a commodity or commodities that:

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

(2) Causes ordinary competitive market forces to cease to function normally. [2005, c. 580, §1 (NEW).]

B. "Cost" means the expense associated with the acquisition, production, distribution or sale of necessities and may include, among other things, replacement costs, taxes and transportation costs. [2005, c. 580, §1 (NEW).]

C. "Necessities" includes food for human or animal consumption; pharmaceutical products, including prescription medications; wearing apparel; shoes; building materials; gas and electricity for light, heat and power; ice; fuel of all kinds; and fertilizer and fertilizer ingredients; together with tools, utensils, implements, machinery and equipment required for the actual production or manufacture of the same. "Necessities" includes any other vital or necessary good or service except those:

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

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

(3) Furnished or provided by:

(a) Insurers; or

(b) Nonprofit hospitals, medical service organizations or health maintenance organizations authorized to transact business within the State pursuant to Title 24 and Title 24-A. [2005, c. 580, §1 (NEW).]

D. "Unconscionable price" means a price that is actionable under this section. There is a rebuttable presumption that a price is unconscionable when it exceeds by more than 15% the sum of:

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

(2) The increased cost calculated according to the method used by that person prior to the abnormal market disruption. [2005, c. 580, §1 (NEW).]

[2005, c. 580, §1 (NEW) .]

2. **Declaration.** Whenever it appears upon due inquiry and consultation with the Attorney General that an abnormal market disruption exists or that there is a substantial likelihood that an abnormal market disruption is imminent, the Governor may, in the Governor's sole discretion and after considering whether the declaration of an abnormal market disruption itself will disrupt supplies for affected necessities, declare an abnormal market disruption.

A. A declaration made under this subsection must specify:

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

(2) The particular necessity, necessities or categories of necessities that are affected by the abnormal market disruption and made subject to the provisions of subsections 3 and 4; and

(3) The levels of trade or commerce that are affected by the abnormal market disruption and made subject to the provisions of subsections 3 and 4. [2005, c. 580, §1 (NEW).]

B. A declaration of abnormal market disruption under this subsection expires when the Governor declares it expired or 60 days from the date of its issuance, whichever is sooner. The declaration of abnormal market disruption may be modified by the Governor at any time. [2005, c. 580, §1 (NEW).]

C. The Governor shall publish decisions under this subsection in a manner reasonably calculated to give affected persons adequate notice. [2005, c. 580, §1 (NEW).]

D. Any person may petition the Governor regarding the Governor's decisions under this subsection. [2005, c. 580, §1 (NEW).]

[2005, c. 580, §1 (NEW) .]

3. **Profiteering prohibited.** After the Governor has declared an abnormal market disruption and before the declaration of the abnormal market disruption expires, a person may not sell or offer for sale necessities at an unconscionable price.

[2005, c. 580, §1 (NEW) .]

4. **Civil violation.** A violation of subsection 3 is a civil violation that constitutes and may be prosecuted as an unfair act or practice in the conduct of trade or commerce pursuant to Title 5, section 207, except that the provisions of Title 5, section 213 do not apply. The declaration of an abnormal market disruption creates a rebuttable presumption that the disruption occurred and existed from the beginning date in the declaration to the date of its expiration.

[2005, c. 580, §1 (NEW) .]

SECTION HISTORY
1979, c. 541, §A91 (AMD). 2005, c. 580, §1 (RPR).