

Regular Session, 2009

SENATE BILL NO. 272

BY SENATORS HEITMEIER AND WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMERGENCY PREPAREDNESS. Prohibits certain practices regarding fuel during a declared state of emergency. (8/15/09)

1 AN ACT

2 To amend and reenact R.S. 14:329.6(A)(9) and to enact R.S. 29:732(E) and (F) and R.S.
3 51:422.1(C)(5), relative to fuel; to prohibit excessive fuel pricing during a declared
4 state of emergency; to allow sales below costs during such time; to provide for
5 definitions; to provide for civil and criminal penalties; to provide for exceptions; and
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:329.6(A)(9) is hereby amended and reenacted to read as follows:

9 §329.6. Proclamation of state of emergency; conditions therefor; effect thereof

10 A. During times of great public crisis, disaster, rioting, catastrophe, or similar
11 public emergency within the territorial limits of any municipality or parish, or in the
12 event of reasonable apprehension of immediate danger thereof, and upon a finding
13 that the public safety is imperiled thereby, the chief executive officer of any political
14 subdivision or the district judge, district attorney, or the sheriff of any parish of this
15 state, or the public safety director of a municipality, may request the governor to
16 proclaim a state of emergency within any part or all of the territorial limits of such
17 local government. Following such proclamation by the governor, and during the

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C. The provisions of Subsection B shall not apply in any of the following situations:

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(5) When gasoline of any type is sold or offered for sale at retail or wholesale for ultimate use in the operation of motor vehicles, generators, power tools, or small engines during a time period in which R.S. 29:732 applies.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Dawn Romero Watson.

DIGEST

Heitmeier (SB 272)

Present law (R.S. 29:732, Price Gouging Statute) provides that during a state of emergency, or during a named tropical storm or hurricane in or threatening the Gulf of Mexico, the price charged or value received for goods and services sold within the designated emergency area may not exceed the prices ordinarily charged for comparable goods and services in the same market area at or immediately before the time of the state of emergency. Provides an exception in instances when the price by the seller is attributable to fluctuations in applicable commodity markets, fluctuations in applicable regional or national market trends, or to reasonable expense and charges for attendant business risk incurred in procuring or selling the goods or services during the state of emergency.

Proposed law retains present law and adds special provisions regarding gasoline sales. Provides that present law will apply to gasoline of any grade or formula sold or offered for sale for ultimate use in the operation of motor vehicles, generators, power tools or small engines. Provides that "sale" shall include any transaction involving the transfer of title of gasoline at the terminal until purchase by the ultimate consumer.

Proposed law provides that nothing in present law or proposed law shall be construed to create a private cause of action in favor of any person damaged by price gouging.

Present law (R.S. 14:329.6 and 329.7) also provides that a violation of present law is a criminal act and provides criminal penalties. Provides that during a declared emergency, the chief law enforcement officer of a political subdivision may promulgate orders prohibiting the sale of goods or services within the designated emergency area in violation of the Price Gouging Statute. Provides that such orders shall be in effect for five days or until state of emergency no longer exists, whichever occurs sooner. Allows such order to be extended for successive periods of five days with the consent of the governor. Provides that penalties for a violation shall be a fine of not more than \$500 or imprisonment of not more than six months, or both. Provides that if there is a willful violation that causes serious bodily injury or property damage in excess of \$5000, the offender shall be imprisoned at hard labor for not more than five years. Provides that if there is a willful violation that causes a death of a person, the offender shall be imprisoned at hard labor for not more than 20 years.

Proposed law retains present law and corrects cross reference to statutes in Louisiana Homeland Security and Emergency Assistance and Disaster Act.

Present law (R.S. 51:422.1, Unfair Sales Law) provides that it shall be an unfair trade practice and unlawful for any person who is a retailer to sell, at retail, motor fuel (defined as gasoline and diesel fuel) at a price which is below the retailer's cost plus taxes, applicable fees, and transportation charges when the intent or effect is to impair or injure competition. Present law provides several exceptions when such prohibitions shall not apply.

Proposed law adds an exception for gasoline of any type sold or offered for sale at retail or wholesale for ultimate use in the operation of motor vehicles, generators, power tools or small engines during a time period in which the Price Gouging Statute applies.

Effective August 15, 2009.

(Amends R.S. 14:329.6(A)(9); adds R.S. 29:732(E) and (F) and R.S. 51:422.1(C)(5))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill.

1. Limits proposed law to a state of emergency declared by the governor.
2. Changes application from the area designated within the state of emergency to the state.

Senate Floor Amendments to engrossed bill.

1. Changes from a specific proposed statute relative to prohibiting price gouging on fuel to expanding the present price gouging statute to all sales of gasoline from the terminal to the ultimate consumer.
2. Deletes proposed provision regarding price cap for prima facie case of violations of proposed gasoline price gouging provision.
3. Adds that the price gouging statute shall not create a private cause of action.
4. Changes proposed Unfair Sales Law exception from motor fuel sold during a specific period of time in a specific area to gasoline sold or offered for sale at retail or wholesale during the time the price gouging statute applies.