

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/21/07

SPONSOR Grubestic LAST UPDATED _____ HB _____

SHORT TITLE Anti-Profiteering Act SB 466

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Responses Received From

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 466 enacts the "Anti-Profiteering Act" to prohibit and provide penalties for profiteering during an emergency or disaster.

Section 2: Defines "abnormal market disruption," "disaster," "necessary property or service," "profiteer during the time of a state of emergency or disaster," and "time of a state of emergency or disaster."

Section 3: Specifies that it is an unconscionable trade practice to profiteer during a state of emergency or disaster as declared by the president of the United States or the governor. Section 3 further specifies information the governor, or upon a petition by the attorney general, the district court in a county affected by an emergency or disaster, should include in an order declaring an abnormal market condition, including the cause of the disruption, the geographic area affected, and those categories of necessary property or services to which the restrictions apply.

Section 4: Specifies that such an order issued by the governor or district court shall then be communicated to the public by any means available.

Section 5: Provides a procedure by which a person subject to the restrictions of Section 3 can file for an exemption in the first district court or in any district court in a county included within the identified geographic area of the abnormal market disruption. The court may grant an exemption if the restriction(s) could result in catastrophic loss of life or property; or if the petitioner would suffer undue hardship.

Section 6: Defines penalties, remedies, and enforcement, such that upon an action brought by the attorney general's office, the court may impose a civil penalty from \$1,000 to \$25,000 for any twenty-four-hour period, and may suspend or revoke any business license or certification of the offender.

Section 8: Establishes an Emergency for immediate implementation of this act upon passage.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

Profiteering can occur and injure the economy even in the absence of a provable violation of the antitrust or unfair trade practice laws.

Currently, in any action brought under Section 57-12-8 NMSA 1978, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Unfair Practices Act [Chapter 57, Article 12 NMSA 1978], the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty of not exceeding five thousand dollars (\$5,000) per violation.

OTHER SUBSTANTIVE ISSUES

Some suppliers of these essential commodities can use abnormal market disruptions, including unexpected changes in weather conditions, acts of nature, civil disorders, war or other military actions, catastrophic loss of an energy source or other extraordinary adverse circumstances, to profiteer in these essential products, even when these actions may undermine the economy or otherwise threaten public health, safety and welfare.

POSSIBLE QUESTIONS

Do existing New Mexico laws as presently enforced sufficiently control such profiteering in emergency situations?