

Floor Amendment to SB 138

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to consumer protections against profiteering in necessities and relative to the
4 definition of an "investment metal contract."
5

6 Amend the bill by replacing all after the enacting clause with the following:

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8 1 New Section; Consumer Protection; Profiteering in Necessities. Amend RSA 358-A by
9 inserting after section 2 the following new section:

10 358-A:2-a Profiteering in Necessities.

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

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

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

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

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

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

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

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

29 (3) Furnished or provided by:

30 A. Insurers; or

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

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1 (d) "Unconscionable price" means a price that is actionable under this section. There is
2 a rebuttable presumption that a price is unconscionable when it exceeds by more than 20 percent the
3 sum of:

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

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

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

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

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

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

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

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

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

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

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

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

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1 2 New Subparagraph; Uniform Securities Act; Definitions; Investment Metal Contract;
2 Exemptions. Amend RSA 421-B:1-102, (32)(B) by inserting after subparagraph (iv) the following
3 new subparagraph:

4 (v) A commodity contract for the purchase of one or more investment metals
5 and investment gems which requires, and under which the purchaser receives, within 7 calendar
6 days from the payment in good funds of any portion of the purchase price, physical delivery of the
7 quantity of the investment metals and investment gems purchased by such payment, provided that,
8 for purposes of this paragraph, physical delivery shall be deemed to have occurred if, within that 7-
9 day period, the quantity of investment metals and investment gems purchased by the payment is
10 delivered, whether in specifically segregated or fungible bulk form, into the possession of a
11 depository, other than the seller, which is either:

12 (a) A bank;

13 (b) A depository, the warehouse receipts of which are recognized for delivery purposes
14 for any commodity on a contract market designated by the Commodity Futures Trading Commission;

15 (c) A storage facility licensed or regulated by the United States or any agency of the
16 United States; or

17 (d) A depository designated by the department, and such depository, or other person
18 which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a
19 certificate, document of title, confirmation or other instrument evidencing that such quantity of
20 investment metals and investment gems has been delivered to the depository and is being and will
21 continue to be held by the depository on the purchaser's behalf, free and clear of all liens and
22 encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens
23 of the depository for fees and expenses, which have previously been disclosed to the purchaser.

24 3 Effective Date. This act shall take effect January 1, 2022.

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2021-1061s

AMENDED ANALYSIS

This bill prohibits profiteering in necessities during a declared abnormal market disruption. This bill also exempts certain contracts from the definition of "investment metal contract".