

SECOND REGULAR SESSION

HOUSE BILL NO. 1777

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOHNSON (61) AND LEGAN (Co-sponsors).

Read 1st time February 4, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4300L.01I

AN ACT

To repeal section 574.115, RSMo, and to enact in lieu thereof five new sections relating to public order, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 574.115, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 407.721, 407.722, 407.723, 407.724 and 574.115, to read as follows:

407.721. For the purpose of sections 407.721 to 407.724, the definitions set forth in section 407.010 shall apply, and in addition, the following terms shall mean:

(1) "Essential consumer merchandise", merchandise used, bought, or rendered primarily for personal, family, or household purposes and essential to the health, safety, or welfare of consumers;

(2) "Consumer market disruption", an actual or threatened change in the market for essential consumer merchandise due to stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, act of terrorism, military action, any officially declared national or local emergency, or any disaster defined by subdivision (3) of section 44.010, RSMo.

407.722. 1. It shall be unlawful for any person to exercise unfair leverage when selling essential consumer merchandise during a consumer market disruption.

2. Whether a sale constitutes an exercise of unfair leverage is a matter of law for the court to determine.

3. Any of the following shall be prima facie evidence of unfair leverage:

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(1) A gross disparity between the price at which the seller sold the merchandise and the seller's price for any similar sale made in the usual course of business immediately before the onset of the consumer market disruption; or

(2) A gross disparity between the price at which the seller sold the merchandise and the price at which the same or comparable merchandise was readily available to consumers in the trade area at the time of the sale.

4. A seller may rebut a prima facie case with evidence that the seller did not exercise unfair leverage, including but not limited to evidence that any gross disparity in price was justified by a corresponding gross disparity in costs imposed on the seller and not within the seller's control.

5. A person who violates the provisions of this section shall be liable for:

(1) Restitution to any consumer against whom the person exercised unfair leverage in violation of this section; and

(2) A civil penalty to the state of Missouri in an amount not to exceed the greater of five thousand dollars or twice the amount gained unlawfully in violation of this section.

6. The attorney general shall have authority to commence a civil action for a violation of this section.

407.723. 1. The governor, upon determining that a consumer market disruption exists, may proclaim a consumer emergency by executive order. The duration of a consumer emergency may be fixed or may be until terminated by executive order. An executive order proclaiming a consumer emergency shall state:

(1) The date and time of the proclamation;

(2) The geographical scope and the duration of the consumer emergency;

(3) The cause of the consumer market disruption and the date and time of the onset of the cause.

407.724. 1. A person commits the crime of criminal profiteering if, within the scope and duration of a consumer emergency, such person knowingly or recklessly sells any essential consumer merchandise at a profit margin more than ten percent greater than the seller's profit margin on any similar sale made in the usual course of business immediately before the onset of the consumer market disruption.

2. Criminal profiteering is a class D felony.

3. The attorney general may prosecute any violation of this section.

574.115. 1. A person commits the crime of making a [terroristic] **terrorist** threat if such person communicates a threat to [commit a felony] **cause an incident or condition involving danger to life**, a knowingly false report [concerning the commission of any felony] **of an incident or condition involving danger to life**, or knowingly **causes** a false [report concerning

5 the occurrence of any catastrophe] **belief or fear that an incident has occurred or that a**
6 **condition exists involving danger to life:**

7 (1) [For] **With** the purpose of frightening [or disturbing] ten or more people;

8 (2) [For] **With** the purpose of causing the evacuation, **quarantine**, or closure of any
9 **portion of a** building, inhabitable structure, place of assembly, or facility of transportation; or
10 (3) With reckless disregard of the risk of causing the evacuation, **quarantine**, or closure
11 of any **portion of a** building, inhabitable structure, place of assembly, or facility of
12 transportation.

13 2. **For the purpose of this section, "threat" includes an express or implied threat.**

14 3. **A person who acts in good faith with the purpose to prevent harm does not**
15 **commit a crime pursuant to this section.**

16 4. Making a [terroristic] **terrorist** threat is a class C felony unless committed under
17 subdivision (3) of subsection 1 of this section in which case it is a class D felony.

18 [3. As used in this section:

19 (1) The term "threat" means an express or implied threat but does not include a report
20 made in good faith for the purpose of preventing harm; and

21 (2) The term "catastrophe" is defined by section 569.070, RSMo.]