LEGISLATIVE SUMMARY SHEET
Tracking No. 0113-20

DATE: April 30, 2020

TITLE OF RESOLUTION: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACT RELATING TO LAW AND ORDER COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; ENACTING 17 N.N.C. § 338 EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY

PURPOSE: The purpose of this legislation is to enact 17 N.N.C. § Excessive Pricing During a Declared State of Emergency. The description of the offense is stated as:

> Upon declaration of a state of emergency by the President of the Navajo Nation, and for 30 days after the cessation of the state of emergency, it is unlawful for any person to intentionally, knowingly or recklessly sell or rent any commodity or rental facility to any person at a price greater than ten percent (10%) above the average price of the same commodity or rental facility for the thirty days immediately preceding the declaration of a state of emergency.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: _____
Website Posting Time/Date: 5:05pm 05-07-20
Posting End Date: 05-12-20
Eligible for Action: 05-13-20

Law & Order Committee
Thence
Naabik'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY

_____

(Prime Sponsor)

TRACKING NO. 0113-20

AN ACT

RELATING TO LAW AND ORDER COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; ENACTING 17 N.N.C. § 338 EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY

BE IT ENACTED:

Section One. Authority

A. The Navajo Nation Council is the governing of body of the Navajo Nation. 2 N.N.C. § 102(A).

B. The Navajo Nation Council approves enactments or amendments of positive law. 2 N.N.C. § 164 (A).

C. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600 (A).

D. Pursuant to 2 N.N.C. §164(A)(9), "a proposed resolution that requires final action by the Navajo Nation Council [must] be assigned to standing committee(s) having authority over the subject matter at issue and the Naabik'íyáti Committee."

Section Two. Findings

A. The Navajo Nation President issued Executive Order 001-20 declaring a state of emergency due to COVID-19 on March 13, 2020.

B. On March 11, 2020, the Emergency Management Commission declared a state of emergency due to COVID-19. CEM-20-03-11.

C. The Navajo Nation Council finds that price gouging at a time of the declared COVID-19 emergency excessively burdens the public in obtaining needed disaster relief necessities such as food, protective personal equipment, disinfectant supplies and other supplies.

Section Three. Enacting Title 17 Section 338, The Excessive Pricing During A Declared State Of Emergency

The Navajo Nation enacts 17 N.N.C. § 338 as follows:

NAVAJO NATION CODE ANNOTATED

TITLE 17. LAW AND ORDER

CHAPTER 3. OFFENSES

SUBCHAPTER 4. THEFT AND RELATED OFFENSES

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§338. Excessive pricing during a declared state of emergency

A. Definitions. The following definitions are applicable in this Section.

1. "Average Price" means the average price at which the same or similar commodity was obtainable within the Navajo Nation and border towns during the last 30 days immediately prior to the declared state of emergency.

2. "Commodity" means any goods, services, materials, merchandise, supplies, equipment, resources, or other articles of commerce, and includes without imitation all services offered or provided or work performed or offered to be performed as an occupation or business to consumers and food, water, ice, pharmaceuticals, emergency supplies, chemicals, household building materials, and fuel necessary for consumption or use as a direct result of the emergency.

3. "Excessive price" means a price for a commodity or rental facility that exceeds by more than 10% the average price charged for that commodity or rental facility in the 30-day period immediately preceding declaration of a state of emergency.
4. "Person" shall include, but not be limited to, natural persons, corporations, partnerships, incorporated or unincorporated associations, and any other legal entity.
5. "Rental Facility" shall include, but not be limited to, any hotel, motel, boarding house, dwelling house, and self-storage facility offered for rent or lease.

B. Offense

1. Upon declaration of a state of emergency by the President of the Navajo Nation, and for 30 days after the cessation of the state of emergency, it is unlawful for any person to intentionally, knowingly or recklessly sell or rent any commodity or rental facility to any person at a price greater than ten percent (10%) above the average price of the same commodity or rental facility for the thirty days immediately preceding the declaration of a state of emergency.
2. Each instance of charging an excessive price under this Section constitutes a separate violation. Lack of notice or failure to receive notice of the declaration of a state of emergency shall not be a defense with respect to any violation of this Section.

C. Defenses

It is a defense if the increase in price is substantially attributable to additional costs that arose within the chain of distribution in connection with the sale of the commodity or rental facility, and:

1. The price for the commodity or rental facility does not exceed 10% above the cost of obtaining the commodity or rental facility; and,
2. The price for the commodity or rental facility does not exceed 10% above the person's customary markup.

D. Penalties

1. Any person convicted of violating this Section shall be ordered to pay a fine of not less than five hundred ($500.00) dollars per offense.

2. Upon a showing of continuous and knowing or intentional violations, the Court shall sentence the offender:
   a. To serve a term of not less than 30 days in jail. A court shall not grant probation, pardon, parole, commutation, or suspension of sentence or release on any other basis; and
   b. To pay a fine of not less than two thousand five hundred ($2,500) nor more than five thousand ($5,000.00) dollars; and
   c. Order the revocation of any license or certificate authorizing the offender to engage in business within the Navajo Nation.

E. Restitution

For any violation of this Section, and in addition to the sentence, the Court shall require the offender to pay actual damages or nályéél to the injured party.

Section Four. Codification

The amendments which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section Five. Savings Clause

Should any provision of the amendments enacted herein be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the amendments shall remain the law of the Navajo Nation.

Section Six. Effective Date

Amendments enacted herein shall be effective pursuant to 2 N.N.C. § 221 (B).

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576



Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

TO: Honorable Thomas Walker, Jr.
Cameron, Coalmine Canyon, Birdsprings, Leupp, Tolani Lake Chapters

FROM: Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: April 30, 2020

SUBJECT: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACT RELATING TO LAW AND ORDER COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; ENACTING 17 N.N.C. § 338 EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting.

Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0113-20__ **SPONSOR:** Thomas Walker, Jr.

TITLE: An Act Relating to Law and Order Committee, Naabik'íyáti' Committee and the Navajo Nation Council; Enacting 17 N.N.C. § 338 Excessive Pricing during a Declared State of Emergency

Date posted: May 7, 2020 at 5:05PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. *§374 et. seq.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0113-20

SPONSOR: Honorable Thomas Walker, Jr.

TITLE: An Act Relating to Law and Order Committee, Naabik'íyáti' Committee and the Navajo Nation Council; Enacting 17 N.N.C. § 338 Excessive Pricing during a Declared State of Emergency

Posted: May 07, 2020 at 5:05 PM

5 DAY Comment Period Ended: May 12, 2020

Digital Comments received:

Comments Supporting	*None*
Comments Opposing	*None*
Inconclusive Comments	*None*

Legislative Tracking Secretary
Office of Legislative Services

05/13/20 8:30 AM

Date/Time