

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



April 23, 2020

Hon. Seth Damon
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CAP-17-20, *An Action Relating to an Emergency: Enacting 17 N.N.C. § 338 Excessive Pricing During a Declared State of Emergency*

Dear Speaker Damon,

Pursuant to the authority vested in the Navajo Nation President, I am vetoing CAP-17-20; not for the reason of potential excessive pricing but to protect and encourage the application of laws of the Navajo Nation. If we are to protect the consumer we must follow our laws and to enact laws that are clear and can withstand challenges. We believe the purpose of this resolution has good intentions of protecting our people consumers on Navajoland during this time of emergency. As leaders, we should work tirelessly to find every possible means to help our people during this pandemic but within the law.

As we have raised concerns before regarding the legislative process, this Resolution was passed under the Consent Agenda with no debate to explain the urgency of the legislation. Our courts have required that our legislators to strictly comply with Navajo Nation statutory enactment procedures. We have reminded legislators that our courts also emphasized the need for a legislative record in determining what is an emergency legislation according to the requirements listed in 2 N.N.C. § 164(A)(16). The mere fact that Council deemed the proposal an emergency legislation should require some explanation and not simply be put on a consent agenda. As our courts have also explained, it is imperative that the Council make any efforts to establish a public record showing the existence of a genuine emergency threat to our Navajo Nation sovereignty. In attempting to do good for our people, we cannot forget we hold a great responsibility to abide by the current laws and to ensure all citizens of the Navajo Nation are afforded due process and equal protection under the law. We cannot condone the non-compliance with Navajo law or circumventing a statutory requirement that may create litigation chaos with no protection for the Navajo Nation.

There are many questions raised by the passing of CAP-17-20 and if the Council were allowed a debate many of these questions would have been answered. During this pandemic we see the effects it has had on our lives, on the lives of our emergency workers, on the lives of our health care workers, on the lives of our elders, and on the lives of those we love. All these lives deserve our best effort to not rush to vote on matters that are too important to all of us and an expansive

enactment of a law like CAP-17-20. What's more, our seasoned Delegates know what it means to ask questions on legislation, to open the debate to everyone, and to find the answers to hard questions. We look to those with leadership qualities to ensure our laws are followed and not look to the quick answers or quick solutions for the sake of time or to shy away from transparency and good law-making.

There are many unanswered questions issues surrounding CAP-17-20. We are concerned, in the rush of emergency legislation, that Navajo business owners, Navajo entrepreneurs, and other business persons did not have the opportunity to give input on this important matter. The Navajo Nation is composed of rural communities and there are circumstances that we often deal with for that rural lifestyle. We should learn what a business owner pays for bringing needed items to the Navajo Nation, what is the cost to ship items to the Nation, what are the limits on storage of certain items, and how this impacts a business owner's ordering, how does future pricing work and what does that mean for a business owner on the Nation, and what can the Nation expect in the future for pricing of basic food items, paper products, meat, eggs, and dairy products? We realize that the Council and the President and Vice President strive to bring businesses to the Nation so our people do not have to travel long distances for daily needs. We cannot potentially cripple the fragile economy on Navajoland by rushed legislation, but we must work, as partners, with our business owners to find reasonable solutions.

The Navajo Nation Human Rights Commission report on Border Town Recommendations issued several suggestions for the Nation's relationship with border towns. One recommendation we will begin developing is a Navajo Better Business Bureau. This entity would help our Navajo consumers with business issues and offer business owners on the Nation an avenue for improving services to Navajo people. This recommendation by the Navajo Human Rights Commission could be the answer to addressing our needs for today and for the future as we grow our economy. We welcome a partnership with the Council in developing the framework for a Navajo Better Business Bureau.

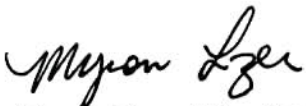
As a Nation we have to understand the needs of our people as consumers, while balancing the need for improving our economy in a working partnership with business owners. We should have a discussion on potential unintended consequences of laws like CAP-17-20 and improve on the idea of consumer protection. With the potential of being fined \$500, or \$2,500 and up to \$5,000 with 30 days in jail, will a business owner keep an item off the shelf to avoid a citation under this new criminal law? If a business owner has little control of the cost of a product will a business owner make a decision not to continue service or furnish supplies on the Nation in light of stiff fines for a violation? Decisions such as this have impact on our Navajo people and while we protect our citizens, we must balance the services they need. We all understand our economic situation, the reasons for shopping in border towns, the need to improve our economy, the work we have to do for a simpler business licensing process, but we cannot move forward by creating a business environment that does not help our people.

We know firsthand the struggle of our elders, parents who support their children, those who are unemployed, our veterans and retirees who live on fixed incomes, and we are doing our utmost to provide relief during this time. The Nez-Lizer Administration is not opposed to good, well-thought-out consumer laws; and we look forward to working with the Council to create such laws.

At this time, we cannot support CAP-17-20 and we have our reasons as described above. CAP-17-20 is hereby vetoed.

Sincerely,


Jonathan Nez, President
THE NAVAJO NATION


Myron Lizer, Vice President
THE NAVAJO NATION

**RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - SECOND YEAR, 2020**

**AN ACTION
RELATING TO AN EMERGENCY; 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 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. Pursuant to 2 N.N.C. §164 (A)(16) "[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council."

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. It is the sovereign authority of the Navajo Nation government to protect its people from predatory practices through the enactment of this resolution. Enactment of a criminal statute to address this conduct is a pressing public need and is a matter requiring final action by the Navajo Nation Council.

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

§ 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 nályééh 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

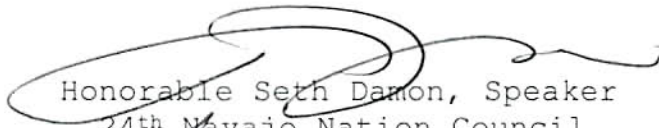
Should any provision of the amendments enacted herein be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the amendments shall remain the law of the Navajo Nation.

SECTION SIX. EFFECTIVE DATE

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

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 23 in Favor, and 00 Opposed, on this 10th day of April 2020.


Honorable Seth Damon, Speaker
24th Navajo Nation Council
April 13, 2020
DATE

Motion: Honorable Daniel E. Tso
Second: Honorable Nathaniel Brown

Speaker Seth Damon not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this _____ day of _____, 2020.

Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this 23rd day of April, 2020 for the reason(s) expressed in the attached letter to the Speaker.

J-N Nez Muyon Lger
Jonathan Nez, President
Navajo Nation

NAVAJO NATION

269

Navajo Nation Council Special Session

4/10/2020

02:25:47 PM

Amd# to Amd#

Consent Motion

PASSED

MOT Tso, D

Legislation 0076-20; Legislation

SEC Brown

0077-20; Legislation 0082-20;
and Legislation 0083-20

Yeas : 23

Nays : 0

Excused : 0

Not Voting : 0

Yea : 23

Begay, E

Daniels

Slater, C

Tso, E

Begay, K

Freeland, M

Smith

Walker, T

Begay, P

Halona, P

Stewart, W

Wauneka, E

Brown

Henio, J

Tso

Yazzie

Charles-Newton

James, V

Tso, C

Yellowhair

Crotty

Nez, R

Tso, D

Nay : 0

Excused : 0

Not Voting : 0

Presiding Speaker: Damon