

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0076-20_____

SPONSOR: Thomas Walker, Jr.

TITLE: An Action Relating to an Emergency; Enacting 17 N.N.C. § 337 Excessive Pricing During a Declared State of Emergency

Date posted: April 9, 2020 at 8:35am

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0076-20

DATE: April 7, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY;
ENACTING 17 N.N.C. § 337 EXCESSIVE PRICING DURING A DECLARED STATE OF
EMERGENCY

PURPOSE: The purpose of this legislation is to enact a statute to be placed in Title 17 of the Navajo Nation Code which will be called 17 N.N.C. § 337 Excessive Pricing During a Declared State of Emergency. The Offense will state:

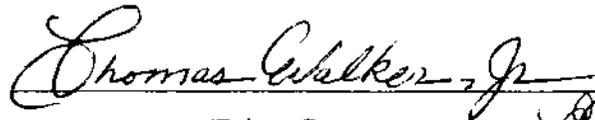
Upon declaration of a state of emergency by the President of the Navajo Nation, and for 30 days after the cessation of the state of emergency, it is unlawful for any person to intentionally, knowingly or recklessly sell or rent any commodity or rental facility to any person at a price greater than ten 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.

OLC No. 20-128-1

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

INTRODUCED BY


(Prime Sponsor) 

TRACKING NO. 0076-20

AN ACTION
RELATING TO AN EMERGENCY; ENACTING 17 N.N.C. § 337 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. 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

- 1 A. The Navajo Nation President issued Executive Order 001-20 declaring a state of
2 emergency due to COVID-19 on March 13, 2020.
- 3 B. On March 11, 2020, the Emergency Management Commission declared a state of
4 emergency due to an COVID-19. CEM-20-03-11
- 5 C. The Navajo Nation Council finds that price gouging at a time of the declared
6 COVID-19 emergency excessively burdens the public in obtaining needed
7 disaster relief necessities such as food, protective personal equipment,
8 disinfectant supplies and other supplies. It is the sovereign authority of the
9 Navajo Nation government to protect its people from predatory practices through
10 the enactment of this resolution. Enactment of a criminal statute to address this
11 conduct is a pressing public need and is a matter requiring final action by the
12 Navajo Nation Council.

13
14 **Section Three. Enacting Title 17 Section 337, The Excessive Pricing During A**
15 **Declared State Of Emergency**

16 The Navajo Nation enacts 17 N.N.C. § 337 as follows:

17
18 **NAVAJO NATION CODE ANNOTATED**
19 **TITLE 17. LAW AND ORDER**
20 **CHAPTER 3. OFFENSES**
21 **SUBCHAPTER 4. THEFT AND RELATED OFFENSES**

22 ****

23 **§337. Excessive pricing during a declared state of emergency**

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

- 25 1. “Average Price” means the average price at which the same or similar commodity
26 was obtainable within the Navajo Nation and border towns during the last 30 days
27 immediately prior to the declared state of emergency.
- 28 2. “Commodity” means any goods, services, materials, merchandise, supplies,
29 equipment, resources, or other articles of commerce, and includes without
30 imitation all services offered or provided or work performed or offered to be

1 performed as an occupation or business to consumers and food, water, ice,
2 pharmaceuticals, emergency supplies, chemicals, household building materials,
3 and fuel necessary for consumption or use as a direct result of the emergency.

4 3. "Excessive price" means a price for a commodity or rental facility that exceeds by
5 more than 10% the average price charged for that commodity or rental facility in
6 the 30-day period immediately preceding declaration of a state of emergency.

7 4. "Person" shall include, but not be limited to, natural persons, corporations,
8 partnerships, incorporated or unincorporated associations, and any other legal
9 entity.

10 5. "Rental Facility" shall include, but not be limited to, any hotel, motel, boarding
11 house, dwelling house, and self-storage facility offered for rent or lease.

12 B. Offense

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

19 2. Each instance of charging an excessive price under this Section constitutes a
20 separate violation. Lack of notice or failure to receive notice of the declaration of
21 a state of emergency shall not be a defense with respect to any violation of this
22 Section.

23 C. Defenses

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

27 1. The price for the commodity or rental facility does not exceed 10% above the cost
28 of obtaining the commodity or rental facility; and,

29 2. The price for the commodity or rental facility does not exceed 10% above the
30 person's customary markup.

1 **D. Penalties**

- 2 1. Any person convicted of violating this Section shall be ordered to pay a fine of not
3 less than five hundred (\$500.00) dollars per offense.
- 4 2. Upon a showing of continuous and knowing or intentional violations, the Court
5 shall sentence the offender:
- 6 a. To serve a term of not less than 30 days in jail. A court shall not grant
7 probation, pardon, parole, commutation, or suspension of sentence or release
8 on any other basis; and
- 9 b. To pay a fine of not less than two thousand five hundred (\$2,500) nor more
10 than five thousand (\$5,000.00) dollars; and
- 11 c. Order the revocation of any license or certificate authorizing the offender to
12 engage in business within the Navajo Nation.

13 **E. Restitution**

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

17 **Section Four. Codification**

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

22
23 **Section Five. Savings Clause**

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

28
29 **Section Six. Effective Date**

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