

CHAPTER 11.**RETAIL PRICE MONITORING**

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An Act to provide for the monitoring of retail prices charged aboard vessels and within the outer islands; to gather information on retail pricing; to encourage consumer education; and to repeal the Price Control Act 1975. [The Price Control Act 1975, 10 MIRC Chapter 11, was repealed and replaced effective April 9, 1992 [P.L. 1992-12, §20.]

Commencement: April 9, 1992
 Source: P.L. 1992-12

PART I - PRELIMINARY; INTENT**§1101. Short Title.**

This Chapter may be cited as the Retail Price Monitoring Act of 1992. [P.L. 1992-12, §1.]

§1102. Legislative Intent.

The Nitijela hereby makes the following findings:

(1) that in many places within the Republic retailers may be selling or bartering commodities at prices which are in excess of any fair profit margin;

(2) that residents of the Republic should not be burdened by prices exceeding those which provide retailers a fair and reasonable profit;

(3) that the instance of excessive prices is made worse by monopoly and near monopoly practices which prevail in most localities;

(4) that the increase in copra prices may aggravate this situation;

(5) that this situation is so grave and widespread that it presents a threat to the welfare of the residents of the Republic;

(6) that an inflexible rule regarding retail pricing may have the adverse affect of discouraging the importation of essential goods, therefore, the Nitijela will provide for atoll by atoll review and intends to allow for extraordinary instances;

(7) that greater public awareness of pricing levels will have the overall effect of encouraging more competitive pricing at the retail level; and

(8) that this Chapter should be implemented to effectuate these findings. [P.L. 1992-12, §2.]

PART II- DEFINITIONS - BOARD

§1103. Definitions.

As used in this Chapter, the following terms shall have the meanings given to them, unless the context otherwise requires:

(1) "Board" means the Marshall Islands Retail Price Monitoring Board;

(2) "baseline price" means the average retail price charged in Majuro or Ebeye determined in accordance with regulations promulgated pursuant to Section 1105, at a minimum it should reflect an average of retail prices over a four week period:

(3) "commodity" means any goods, wares, merchandise, or foodstuff;

(4) "cost" means the purchase price paid by a retailer for any commodity as reflected on the invoice for the commodity or the replacement cost, whichever is less, plus insurance costs, terminal fees, and import taxes directly attributable to such commodity (if not reflected in the invoice);

(5) "cost of doing business" or "overhead expense" means all current costs of doing business incurred in the conduct of a business at a given location and includes the following items of expense: Labor costs, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, insurance, and advertising, and other fixed and incidental expenses as may be defined by regulation; the term shall not include taxes imposed on gross revenue, and sales taxes which are required by law to be separately stated;

(6) "essential commodity" means commodities such as foodstuffs, fuel, and other items that are essential and required to provide for the basic needs of life as may be prescribed by the Board;

(7) "person" means natural persons, corporations, partnerships, associations, and other combinations acting as a unit;

(8) "retailer" means any person, partnership, firm, corporation, or association, selling any commodities to the consumer thereof;

(9) "retail store" means a location at which essential commodities are regularly offered for sale at retail to ultimate consumers;

(10) "sale" means the transfer of title or possession of an essential commodity to a person whether for a monetary consideration or by means of barter. "Sale" does not include a casual sale

by a person not regularly engaged in the trade or business of offering commodities for sale. [P.L. 1992-12, §3.]

§1104. The Retail Price Monitoring Board.

- (1) The Marshall Islands Price Monitoring Board (“the Board”) is hereby established.
- (2) The Board shall be composed of five (5) members as follows:
 - (a) the Secretary of Internal Affairs, who shall chair the Board;
 - (b) four members who are citizens residing in the Republic. The four citizen members shall be appointed by the Cabinet and serve terms of four years, and no more than two terms altogether. Two of the citizens appointed shall be from among the business community in the Republic.
- (3) All appointments made pursuant to Subsection (2)(b) are subject to the approval of the Nitijela, or of a committee thereof designated by the Nitijela to review appointments, or, if no committee has been so designated, such appointments shall be made after consultation with the Speaker of the Nitijela and shall be subject to confirmation by the Nitijela at its next succeeding session.
- (4) Appointed members may receive compensation in accordance with law from funds which have been appropriated by the Nitijela for the purpose.
- (5) Meetings may be called by either the Chairman or the Cabinet, provided that the Board shall meet not less frequently than once in every calendar quarter.
- (6) Three (3) members of the Board shall constitute a quorum. [P.L. 1992-12, §4.]

§1105. Authority for Regulations.

In accordance with the Marshall Islands Administrative Procedure Act, the Board, with the approval of the Cabinet, shall promulgate regulations to enforce and implement this Chapter. [P.L. 1992-12, §5.]

PART III - PRICE MONITORING

§1106. Baseline Retail Prices.

- (1) The Board shall, as soon as possible after the initial appointments are made, perform a survey of retail prices in the Majuro and Ebeye communities. The Board shall determine by regulation those commodities or categories of commodities that will be surveyed. Commodities deemed essential by regulation shall be surveyed.
- (2) The Board shall make the price surveys and information gathered available to the public.
- (3) The survey information shall be used to determine the baseline price months.
- (4) The baseline price shall be updated every six months.
- (5) In setting the baseline price, the Board shall take into account the availability of the item at wholesale and the wholesale costs or prices, as well as any local taxes that may be imposed. If deemed necessary by the Board, a ‘wholesale baseline price’ may be applied to any particular retailer. [P.L. 1992-12, §6.]

§1107. Local Monitoring.

- (1) The Board shall, as soon as possible after the initial appointments are made,

prepare through regulations a listing of essential commodities or categories of essential commodities.

(2) The list prepared pursuant to Subsection (1) of this Section shall be transmitted to each local government and, at the discretion of the Board, to such other persons who will assist in gathering and reporting retail price information.

(3) Each local government or reporter of information must indicate the following for each item on the list:

- (a) the name and address of each retailer and retail location offering the item for sale;
- (b) the current price being charged by each retailer; and
- (c) any other information relating to pricing and availability.

(4) The information compiled by the local governments and other reporters shall be transmitted to the Board.

(5) The information shall be updated every six months.

(6) Summaries of the information shall be made available to the public. [P.L. 1992-12, §7.]

§1108. Other Price and Cost Information.

(1) The Board shall gather such further information as may from time to time needed in order to assure that their decisions are based on the most complete and accurate information available.

(2) The Board shall gather information on the cost of transportation and shipping commodities to the various atolls and islands of the Republic. [P.L. 1992-12, §8.]

§1109. Imposition of Price Controls.

(1) Whenever the Board determines, based upon information from the local governments, information on the cost of transportation and shipping, and any other information the Board may receive, that prices charged by a retailer for any essential commodities on any atoll or island or upon field trip and commercial vessels in the Republic are in excess of 25% over the total of the baseline price plus the relevant transportation and shipping costs as determined by the Board, the Board shall:

(a) declare price controls in effect with respect to such essential commodities in the atolls and islands or vessels affected;

(b) issue a declaration imposing price controls which shall state:

(i) the reasons for the imposition;

(ii) the terms of the price restrictions imposed;

(iii) the information upon which the restrictions are based, the formula to be used in determining the maximum lawful price of affected essential commodities or both; and

(iv) the areas and essential commodities affected.

(c) a copy of the declaration shall be filed with the Chief Secretary, the local government of all islands or atolls affected, and, as applicable, on the captain of the vessel, and

(d) shall be publicized in a way that will best bring the declaration to the attention of the residents of those islands or atolls or other relevant population.

(2) In any declaration, or by regulation, the Board may make allowances for breakage, spillage, theft, and hardship cases as the Board deems equitable.

(3) Whenever the Board determines, based upon information from the local governments,

information on the cost of transportation and shipping, and any other information the Board may receive, that prices charged by a retailer for any essential commodities on any atoll or island or upon field trip and commercial vessels in the Republic are in excess of 25% over the actual cost paid for the essential commodity plus the relevant transportation and shipping costs as determined by the Board, the Board shall implement the price control provisions of Section 1109.

(4) Commencing the fourth day after the date upon which the declaration is filed with the Chief Secretary it shall be unlawful for any person to sell or offer to sell in the locality or upon the vessels specified in a declaration, an essential commodity at a price greater than the maximum lawful price specified in the declaration or as determined with reference to a declaration, except as may be specified by the Board in accordance with this Chapter. [P.L. 1992-12, §59.]

§1110. Modification and Termination of Price Controls.

(1) Any price controls imposed in accordance with the terms of Section 1109 of this Chapter may be modified or terminated at any time by declaration of the Board or by resolution of the Nitijela, provided that no modification shall be made by resolution of the Nitijela which shall have the effect of reducing the maximum lawful price imposed by the Board on any essential commodity or increasing the areas or essential commodities affected by the Board's declaration.

(2) Any declaration or resolution modifying or terminating a price control declaration shall be disseminated and publicized in the same manner as the original declaration. [P.L. 1992-12, §10.]

§1111. Allowable Markups.

(1) Any other provision of this Chapter and any provision of any declaration of the Board or resolution of the Nitijela to the contrary notwithstanding, if at any given time an essential commodity is sold or offered for sale at a price that does not exceed 25% over the total of the baseline price plus the cost of transportation and shipping as determined by the Board for that essential commodity, such sale shall not constitute a violation of this Chapter or of any declaration issued under the authority of this Chapter. This provision shall not apply when the Board determines that the wholesale price represents the relevant baseline.

(2) Any person intending to sell or offer to sell, at a price which exceeds one hundred twenty-five percent (125%) of the baseline price plus shipping and transportation, an essential commodity that is subject to a declaration must furnish to the Board at least the following information:

- (a) the specific reason that the price will exceed the allowed mark up;
- (b) copies of any and all invoices or other documentation showing the cost;
- (c) evidence of their costs of doing business at the location in question; and
- (d) any other relevant information.

(3) The Board shall promptly review all submissions of information made under Subsection (2) of this Section. The Board shall, within 5 (five) days of the date the information is received do one of the following:

- (a) issue an exemption to the declaration specific to the essential commodity, the seller, and any other information deemed necessary;
- (b) issue a maximum lawful price or formula specific to the essential commodity;
- (c) request further information from the person making the request or any other source; or,

(d) deny the submission and transmit notice of the denial to the person making the request. [P.L. 1992-12, §11.]

§1112. Notices and Records.

(1) Each retail store located within an area affected by a price control declaration shall within ten (10) days after the issuance of such declaration post a conspicuous notice which is conveniently visible to its customers which shall list all essential commodities offered for sale by it and subject to price controls. The notice must state with respect to each such essential commodity the maximum price which may be charged in accordance with such declaration.

(2) Each such retail store shall also post a notice at its main entrance, or service window if there is no entrance, which shall clearly inform its customers that price controls are in effect with respect to certain essential commodities referred to in the preceding sentence of this Section.

(3) Both notices required by this section shall be posted continuously and conspicuously, and shall be corrected as necessary until price controls are terminated with respect to the area in which such retail store is located or with respect to all essential commodities sold or offered for sale by such retail store.

(4) Upon reasonable notice, to be not less than two business days, the books of account and records of each person offering essential commodities for sale within the Republic shall be made available for inspection by members of the Board or its agents for the purpose of determining what price margins are in effect with respect to essential commodities.

(5) During periods and in areas where a price control declaration is in effect the books of account and records of each person offering essential commodities shall be made available upon request of the Board or its agents for the purpose of monitoring compliance with any price control declaration. [P.L. 1992-12, §12.]

PART IV - ENFORCEMENT AND PENALTIES.

§1113. Enforcement.

(1) The Board shall have all necessary investigative powers including the power to compel the attendance of witnesses and the production of evidence of every description. The Board may, as deemed appropriate in any given circumstance, delegate the necessary investigative authority to a local government or any other person.

(2) If the Board finds that any person is selling or offering for sale any essential commodity in violation of the provisions of this Chapter or of any declaration or regulations issued pursuant hereto, the Board shall transmit a written notice of non-compliance to the person.

(3) Such notice shall state the specific nature of the violation.

(4) Any person who receives a notice of noncompliance shall have ten (10) days from the date he receives such notice to satisfy the Board that he is then in compliance with this Chapter and the applicable declarations and regulations of the Board or that he was not initially in violation.

(5) If the Board is not so satisfied at the end of such ten (10) day period it shall report the violation to the Attorney-General for prosecution in accordance with this Chapter.

(6) After two notices of noncompliance have been sent to any one person and the Board has determined that the person was initially in violation of this Chapter or the declarations or regulations of the Board in both instances, any subsequent violation by the person within one hundred and eighty

(180) days after the initial violation shall be reported directly to the Attorney-General for prosecution in accordance with this Chapter. [P.L. 1992-12, §13.]

§1114. Penalties.

Any person who violates any provision of this Chapter or any declaration or regulation issued hereunder shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$5,000 or, if a natural person, to a term of imprisonment not exceeding one year, or both. Each sale or offer for sale of an essential commodity in violation of this Chapter or of the declarations and regulations of the Board shall constitute a separate violation thereof and shall be punished as such. In making a determination on sentencing the Court shall take into account the overall circumstances of the person found guilty of a violation. The Court may, when appropriate, provide for a term of imprisonment for the person within a corporation, partnership, or other organization, that was responsible for the violation. [P.L. 1992-12, §14.]

§1115. Price Lists; Falsifying Records.

(1) It shall be unlawful for a person to substitute a list of prices furnished by a retailer with a list indicating higher prices. Any person substituting lists in violation of this Section shall be fined at least \$5,000, or sentenced to one year imprisonment, or both.

(2) Any person who falsifies or creates records which have the effect of misleading the Board or conveying false information to the Board about any item, shall be found guilty of a misdemeanor and fined at least \$5,000, sentenced to one year imprisonment, or both. [P.L. 1992-12, §15.]

PART V - PUBLIC EDUCATION

§1116. Consumer Awareness.

The Board shall undertake measures to encourage consumers to responsibly exercise their economic choices. [P.L. 1992-12, §16.]

§1117. Recommendations to the Cabinet.

The Board shall make recommendations to the Cabinet on any further measures that may be necessary or helpful in achieving the goals of this legislation. [P.L. 1992-12, §17.]

PART VI- MISCELLANEOUS

§1118. Board Staff.

The Cabinet may, in consultation with the Public Service Commission, designate appropriately skilled officers of the public service as staff to the Board. If there are no appropriately qualified officers available within the public service, the Board may, in consultation with the Cabinet, seek other appropriately qualified staff or consultants. [P.L. 1992-12, §18.]

§1119. Severability.

In the event that any of the provisions of this Chapter are found to be invalid, or if the application of any provision of this Chapter to any person or circumstance is found to be invalid, such invalidity shall not affect any other provision or application which can be given effect without

the invalid provision or application. [P.L. 1992-12, §19.]

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