

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2001

Session of  
2005

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INTRODUCED BY BEYER, CIVERA, ALLEN, BAKER, BARRAR, BELARDI, CALTAGIRONE, CAPPELLI, CAUSER, COHEN, CORNELL, DALLY, DeLUCA, DeWEESE, J. EVANS, FAIRCHILD, FEESE, GODSHALL, GOOD, GOODMAN, HARHART, HERMAN, HERSHEY, HESS, HICKERNELL, KENNEY, MACKERETH, MAJOR, MARKOSEK, MARSICO, McILHATTAN, R. MILLER, MUNDY, MUSTIO, O'NEILL, PALLONE, PAYNE, PETRARCA, PHILLIPS, PICKETT, QUIGLEY, RAYMOND, READSHAW, REICHLEY, RUBLEY, SANTONI, SATHER, SCAVELLO, SHANER, SIPTROTH, SOLOBAY, R. STEVENSON, E. Z. TAYLOR, J. TAYLOR, TIGUE, TRUE, WATSON, WILLIAMS, WILT, ZUG, B. SMITH, THOMAS, BLACKWELL, ROBERTS, WANSACZ, SAINATO AND JAMES, OCTOBER 13, 2005

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AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, DECEMBER 6, 2005

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## AN ACT

1 Prohibiting price gouging; PROVIDING FOR PREEMPTION OF MUNICIPAL <—  
2 LAWS AND ORDINANCES; and imposing penalties.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Price Gouging  
7 Act.

8 Section 2. Purpose.

9 The General Assembly finds and declares as follows:

10 (1) In an economic market, there are periods of  
11 disruption of the market which cause an uneven flow of supply  
12 of consumer goods. During these periods, consumer demand  
13 outweighs supply, sometimes heavily.

(2) These periods of disruption result from many factors, including extreme weather conditions, depletion of stockpiles, labor strikes, civil disorder, natural or manmade emergencies or disasters and military action.

(3) During these periods, SOME parties selling consumer goods ~~and services to the consumer sometimes~~ MAY take unfair advantage of consumers in this Commonwealth by charging unnecessary grossly excessive prices, or price gouging.

(4) To prevent this, the General Assembly ~~should~~ ~~prohibit price gouging and impose~~ DECLARES PRICE GOUGING ILLEGAL AND IMPOSES penalties on violators throughout the entire chain of distribution.

### Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"ADDITIONAL COSTS." THE TERM INCLUDES REPLACEMENT COSTS, TAXES AND TRANSPORTATION COSTS INCURRED BY A PERSON WITHIN A CHAIN OF CUSTODY.

"Chain of distribution." All persons involved in the sale and resale of consumer goods and services, including without limitation any manufacturer, supplier, wholesaler, distributor or retail seller.

"Consumer goods or services." Those items used, bought or rendered primarily for personal, family or household purposes.

~~"Person." A natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal entity.~~

"GROSS DISPARITY." MORE THAN 15% GREATER THAN GOODS OR SERVICES OF LIKE GRADE AND QUALITY BEING OFFERED BY COMPETING

1 SELLERS.

2 "Principally." Constituting more than 50% of an increased  
3 price.

4 "REPLACEMENT COST." THE TERM INCLUDES ACQUISITION COSTS, <—  
5 COSTS THAT ARE A RESULT OF A CONTRACT WHERE CONSUMER GOODS OR  
6 SERVICES ARE PRICED ON A FORMULA THAT REFERENCES PUBLISHED  
7 MARKET PRICES, OR THE ACTUAL OR REASONABLY CONTEMPLATED COST OF  
8 REPLACING GOODS OR SERVICES BEING SOLD.

9 "Unconscionably excessive." A price is unconscionably  
10 excessive if the following are true:

11 (1) The amount charged represents a gross disparity  
12 between the price of the consumer goods or services and <—  
13 ~~either of the following:~~

14 ~~(i) The price at which the goods or services were~~  
15 ~~sold or offered for sale by the seller in the usual~~  
16 ~~course of business seven days immediately prior to the~~  
17 ~~earlier date stated by the Governor to be the effective~~  
18 ~~date of the state of disaster emergency or the date of~~  
19 ~~such declaration.~~

20 ~~(ii) The price at which the same or similar consumer~~  
21 ~~goods or services are readily obtainable by other persons~~  
22 ~~in the trade area. WHEN COMPARED TO THE HIGHEST PRICE AT <—~~  
23 ~~WHICH THE GOODS OR SERVICES ARE SOLD OR OFFERED FOR SALE~~  
24 ~~BY THE SELLER IN THE USUAL COURSE OF BUSINESS DURING THE~~  
25 ~~SEVEN DAYS IMMEDIATELY PRIOR TO A DECLARATION OF DISASTER~~  
26 ~~EMERGENCY BY THE GOVERNOR.~~

27 (2) THE RETAIL AMOUNT CHARGED REPRESENTS A GROSS  
28 DISPARITY BETWEEN THE PRICE OF THE CONSUMER GOODS OR SERVICES  
29 OF LIKE GRADE AND QUALITY WHEN COMPARED TO THE HIGHEST PRICE  
30 AT WHICH THE GOODS AND SERVICES ARE OFFERED FOR SALE BY OTHER

1       SELLERS IN THE SAME OR ADJACENT COUNTY.

2           ~~(2)~~ (3) The disparity is not principally attributable to <—  
3       the additional costs to the person providing the consumer  
4       goods or services. ~~to any other person, in connection with~~ <—  
5       ~~the sale of the consumer goods or services, including~~  
6       ~~replacement costs, taxes and transportation costs incurred.~~

7       Section 4. Price gouging prohibited.

8       During a state of disaster emergency declared by the Governor  
9       pursuant to the provisions of 35 Pa.C.S. § 7301(c) (relating to  
10      general authority of Governor), ~~and for 30 days immediately~~ <—

11     ~~following the expiration or termination of the disaster~~  
12     ~~emergency~~, no person in the chain of distribution of consumer  
13     goods or services shall sell or offer to sell consumer goods or  
14     services, or both, at an unconscionably excessive price WITHIN <—  
15     THE GEOGRAPHIC AREA COVERED BY THE DECLARATION OF DISASTER  
16     EMERGENCY.

17      SECTION 5. PREEMPTION.

18       THE PROVISIONS OF THIS ACT SHALL PREEMPT ANY LOCAL LAWS OR  
19      ORDINANCES OF ANY MUNICIPALITY.

20      SECTION 6. APPLICABILITY.

21       THE PROVISIONS OF THIS ACT SHALL NOT APPLY TO A PERSON WHO  
22      SELLS GOODS OR SERVICES SUBJECT TO A TARIFF OR RATE APPROVED BY  
23      A FEDERAL OR COMMONWEALTH AGENCY WITH POWER AND AUTHORITY OVER  
24      SALES OF SUCH GOODS OR SERVICES.

25      Section ~~5~~ 7. Investigation. <—

26       (a) Authority.--The Bureau of Consumer Protection in the  
27      Office of Attorney General shall investigate ~~any~~ complaints <—  
28      received concerning violations of this act. If, after  
29      investigating any complaint, the Attorney General finds that  
30      there has been a violation of this act, the Attorney General may

1 bring an action to impose a civil penalty and to seek other  
2 relief, including injunctive relief, under the act of December  
3 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices  
4 and Consumer Protection Law.

5 (b) Procedure.--Prior to the institution of a civil action,  
6 the Attorney General is authorized to require the attendance and  
7 testimony of witnesses and the production of documents. For this  
8 purpose the Attorney General may issue subpoenas, examine  
9 witnesses and receive evidence. If a person objects to or  
10 otherwise fails to comply with a subpoena or request for  
11 testimony, the Attorney General may file in Commonwealth Court  
12 an action to enforce the subpoenas or request. Notice of hearing  
13 of the action and a copy of all pleadings shall be served upon  
14 the person who may appear in opposition.

15 (c) Confidentiality.--Any testimony taken or material  
16 produced shall be kept confidential by the Attorney General  
17 except to the extent he may use information in a judicial  
18 proceeding or if the disclosure is authorized by the court for  
19 good cause shown or confidentiality is waived by the person  
20 being investigated and by the person who has testified, answered  
21 interrogatories or produced materials.

22 (d) Restitution.--The Attorney General may seek to recover,  
23 for the benefit of each aggrieved consumer, either the actual  
24 monetary loss from each violation, or up to \$500 in damages for  
25 each violation, whichever is greater, from any person in the  
26 chain of distribution whose conduct violates the provisions of  
27 this act.

28 (E) PERIOD OF LIMITATIONS.--NO ACTION TO ENFORCE THIS ACT  
29 MAY BE BROUGHT MORE THAN TWO YEARS AFTER THE DATE THE ALLEGED  
30 VIOLATION OCCURRED.

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1 (F) LIMITATION ON DAMAGES.--THE TOTAL AMOUNT THAT MAY BE  
2 RECOVERED FROM ANY PERSON IN THE CHAIN OF DISTRIBUTION FOR A  
3 VIOLATION OF THIS ACT OR ANY OTHER LAW INCLUDING THE UNFAIR  
4 TRADE PRACTICES AND CONSUMER PROTECTION LAW, AND WHETHER IN THE  
5 NATURE OF A CIVIL PENALTY OR RESTITUTION, OR BOTH, SHALL BE  
6 \$25,000 PER DAY. THE ATTORNEY GENERAL HAS THE SOLE RIGHT TO  
7 ENFORCE ANY VIOLATIONS OF THIS ACT.

8 SECTION 8. NOTIFICATION.

9 A TRADE ASSOCIATION, CORPORATION, PARTNERSHIP, PERSON OR  
10 OTHER ENTITY MAY REGISTER AN AGENT FOR THE PURPOSES OF BEING  
11 NOTIFIED WHEN THE GOVERNOR DECLARES AND CEASES A STATE OF  
12 DISASTER EMERGENCY DECLARATION. THE GOVERNOR OR HIS DESIGNEE IS  
13 RESPONSIBLE FOR NOTIFYING THE REGISTERED AGENTS SIMULTANEOUS TO  
14 THE DECLARATION AND CESSATION OF THE STATE OF DISASTER EMERGENCY  
15 DECLARATION.

16 Section 6 9. Effective date.

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17 This act shall take effect in 60 days.