

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2001

Session of
2005

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

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, IN SENATE, AS AMENDED, SEPTEMBER 20, 2006

AN ACT

1 ~~Prohibiting price gouging; providing for preemption of municipal~~ <—
2 ~~laws and ordinances; and imposing penalties.~~
3 PROHIBITING PRICE GOUGING; AND IMPOSING PENALTIES. <—

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

6 ~~Section 1. Short title.~~ <—

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

9 ~~Section 2. Purpose.~~

10 ~~The General Assembly finds and declares as follows:~~

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

1 ~~outweighs supply, sometimes heavily.~~

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

6 ~~(3) During these periods, some parties selling consumer~~
7 ~~goods and services may take unfair advantage of consumers in~~
8 ~~this Commonwealth by charging unconscionably excessive~~
9 ~~prices, or price gouging.~~

10 ~~(4) To prevent this, the General Assembly declares price~~
11 ~~gouging illegal and imposes penalties on violators throughout~~
12 ~~the entire chain of distribution.~~

13 ~~Section 3. Definitions.~~

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

17 ~~"Additional costs." The term includes replacement costs,~~
18 ~~taxes and transportation costs incurred by a person within a~~
19 ~~chain of custody.~~

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

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

26 ~~"Gross disparity." More than 15% greater than goods or~~
27 ~~services of like grade and quality being offered by competing~~
28 ~~sellers.~~

29 ~~"Principally." Constituting more than 50% of an increased~~
30 ~~price.~~

~~"Replacement cost." The term includes acquisition costs, costs that are a result of a contract where consumer goods or services are priced on a formula that references published market prices, or the actual or reasonably contemplated cost of replacing goods or services being sold.~~

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

~~(1) The amount charged represents a gross disparity between the price of the consumer goods or services when compared to the highest price at which the goods or services are sold or offered for sale by the seller in the usual course of business during the seven days immediately prior to a declaration of disaster emergency by the Governor.~~

~~(2) The retail amount charged represents a gross disparity between the price of the consumer goods or services of like grade and quality when compared to the highest price at which the goods and services are offered for sale by other sellers in the same or adjacent county.~~

~~(3) The disparity is not principally attributable to the additional costs to the person providing the consumer goods or services.~~

~~Section 4. Price gouging prohibited.~~

~~During a state of disaster emergency declared by the Governor pursuant to the provisions of 35 Pa.C.S. § 7301(c) (relating to general authority of Governor), no person in the chain of distribution of consumer goods or services shall sell or offer to sell consumer goods or services, or both, at an unconscionably excessive price within the geographic area covered by the declaration of disaster emergency.~~

~~Section 5. Preemption.~~

~~The provisions of this act shall preempt any local laws or ordinances of any municipality.~~

~~Section 6.— Applicability.~~

~~The provisions of this act shall not apply to a person who sells goods or services subject to a tariff or rate approved by a Federal or Commonwealth agency with power and authority over sales of such goods or services.~~

~~Section 7.— Investigation.~~

~~(a) Authority. The Bureau of Consumer Protection in the Office of Attorney General shall investigate complaints received concerning violations of this act. If, after investigating any complaint, the Attorney General finds that there has been a violation of this act, the Attorney General may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, under the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.~~

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

~~(c) Confidentiality. Any testimony taken or material produced shall be kept confidential by the Attorney General except to the extent he may use information in a judicial~~

~~proceeding or if the disclosure is authorized by the court for good cause shown or confidentiality is waived by the person being investigated and by the person who has testified, answered interrogatories or produced materials.~~

~~(d) Restitution. The Attorney General, in addition to the other remedies available under this act, may seek to recover, for the benefit of each aggrieved consumer, either the actual monetary loss from each violation, or up to \$500 in damages for each violation, whichever is greater, from any person in the chain of distribution whose conduct violates the provisions of this act.~~

~~(e) Period of limitations. No action to enforce this act may be brought more than two years after the date the alleged violation occurred.~~

~~(f) Limitation on damages. The total amount that may be recovered from any person in the chain of distribution for a violation of this act or any other law including the Unfair Trade Practices and Consumer Protection Law, and whether in the nature of a civil penalty or restitution, or both, shall be \$25,000 per day. The Attorney General has the sole right to enforce any violations of this act.~~

~~Section 8. Notification.~~

~~A trade association, corporation, partnership, person or other entity may register an agent for the purposes of being notified when the Governor declares and ceases a state of disaster emergency declaration. The Governor or his designee is responsible for notifying the registered agents simultaneous to the declaration and cessation of the state of disaster emergency declaration.~~

~~Section 9. Effective date.~~

~~This act shall take effect in 60 days.~~

SECTION 1. SHORT TITLE.

THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE PRICE GOUGING ACT.

SECTION 2. PURPOSE.

THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS:

(1) IN AN ECONOMIC MARKET, THERE ARE PERIODS OF DISRUPTION OF THE MARKET WHICH CAUSE AN UNEVEN FLOW OF SUPPLY OF CONSUMER GOODS. DURING THESE PERIODS, CONSUMER DEMAND 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, PARTIES INVOLVED IN THE SALE AND RESALE OF CONSUMER GOODS AND SERVICES SOMETIMES TAKE UNFAIR ADVANTAGE OF CONSUMERS IN THIS COMMONWEALTH BY CHARGING UNCONSCIONABLY EXCESSIVE PRICES, OR PRICE GOUGING.

(4) TO PREVENT THIS, THE GENERAL ASSEMBLY SHOULD PROHIBIT PRICE GOUGING AND IMPOSE PENALTIES ON VIOLATORS.

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:

"CHAIN OF DISTRIBUTION." ALL PARTIES INVOLVED IN THE SALE AND RESALE OF CONSUMER GOODS AND SERVICES, INCLUDING 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.

1 "UNCONSCIONABLY EXCESSIVE." A PRICE IS UNCONSCIONABLY
2 EXCESSIVE WHEN THE AMOUNT CHARGED REPRESENTS A GROSS DISPARITY
3 BETWEEN THE PRICE OF THE CONSUMER GOODS OR SERVICES AND THE
4 PRICE AT WHICH THE CONSUMER GOODS OR SERVICES WERE SOLD OR
5 OFFERED FOR SALE WITHIN THE CHAIN OF DISTRIBUTION IN THE USUAL
6 COURSE OF BUSINESS SEVEN DAYS IMMEDIATELY PRIOR TO THE STATE OF
7 DISASTER EMERGENCY.

8 SECTION 4. PRICE GOUGING PROHIBITED.

9 (A) PROHIBITION.--DURING AND WITHIN 30 DAYS OF THE
10 TERMINATION OF A STATE OF DISASTER EMERGENCY DECLARED BY THE
11 GOVERNOR PURSUANT TO THE PROVISIONS OF 35 PA.C.S. § 7301(C)
12 (RELATING TO GENERAL AUTHORITY OF GOVERNOR), IT SHALL BE A
13 VIOLATION OF THIS ACT FOR ANY PARTY WITHIN THE CHAIN OF
14 DISTRIBUTION OF CONSUMER GOODS OR SERVICES OR BOTH TO SELL OR
15 OFFER TO SELL THE GOODS OR SERVICES FOR AN AMOUNT WHICH
16 REPRESENTS AN UNCONSCIONABLY EXCESSIVE PRICE.

17 (B) EVIDENCE OF UNCONSCIONABLY EXCESSIVE PRICE.--IT IS PRIMA
18 FACIE EVIDENCE THAT A PRICE IS UNCONSCIONABLY EXCESSIVE IF
19 DURING AND WITHIN 30 DAYS OF THE TERMINATION OF A STATE OF
20 DISASTER EMERGENCY PARTIES WITHIN THE CHAIN OF DISTRIBUTION
21 CHARGE A PRICE THAT EXCEEDS AN AMOUNT EQUAL TO OR IN EXCESS OF
22 20% OF THE AVERAGE PRICE AT WHICH THE SAME OR SIMILAR CONSUMER
23 GOODS OR SERVICES WERE OBTAINABLE IN THE AFFECTED AREA DURING
24 THE LAST SEVEN DAYS IMMEDIATELY PRIOR TO THE DECLARED STATE OF
25 EMERGENCY.

26 (C) NONAPPLICABILITY.--THE PROVISIONS OF THIS SECTION SHALL
27 NOT APPLY IF THE INCREASE IN PRICE IS DUE TO A DISPARITY THAT IS
28 SUBSTANTIALLY ATTRIBUTABLE TO ADDITIONAL COSTS THAT AROSE WITHIN
29 THE CHAIN OF DISTRIBUTION IN CONNECTION WITH THE SALE OF
30 CONSUMER GOODS OR SERVICES, INCLUDING REPLACEMENT COSTS, TAXES

1 AND TRANSPORTATION COSTS.

2 SECTION 5. INVESTIGATION.

3 (A) AUTHORITY.--THE BUREAU OF CONSUMER PROTECTION IN THE
4 OFFICE OF ATTORNEY GENERAL SHALL INVESTIGATE ANY COMPLAINTS
5 RECEIVED CONCERNING VIOLATIONS OF THIS ACT. IF, AFTER
6 INVESTIGATING ANY COMPLAINT, THE ATTORNEY GENERAL FINDS THAT
7 THERE HAS BEEN A VIOLATION OF THIS ACT, THE ATTORNEY GENERAL MAY
8 BRING AN ACTION TO IMPOSE A CIVIL PENALTY UP TO \$10,000 FOR EACH
9 VIOLATION AND TO SEEK OTHER RELIEF, INCLUDING INJUNCTIVE RELIEF,
10 RESTITUTION AND COSTS UNDER THE ACT OF DECEMBER 17, 1968
11 (P.L.1224, NO.387), KNOWN AS THE UNFAIR TRADE PRACTICES AND
12 CONSUMER PROTECTION LAW.

13 (B) PROCEDURE.--PRIOR TO THE INITIATION OF A CIVIL ACTION,
14 THE ATTORNEY GENERAL IS AUTHORIZED TO REQUIRE THE ATTENDANCE AND
15 TESTIMONY OF WITNESSES AND THE PRODUCTION OF DOCUMENTS. FOR THIS
16 PURPOSE THE ATTORNEY GENERAL MAY ISSUE SUBPOENAS, EXAMINE
17 WITNESSES AND RECEIVE EVIDENCE. IF A PERSON OBJECTS TO OR
18 OTHERWISE FAILS TO COMPLY WITH A SUBPOENA OR REQUEST FOR
19 TESTIMONY, THE ATTORNEY GENERAL MAY FILE IN COMMONWEALTH COURT
20 OR ANY COURT OF RECORD OF THE COMMONWEALTH AN ACTION TO ENFORCE
21 THE SUBPOENAS OR REQUEST. NOTICE OF HEARING OF THE ACTION AND A
22 COPY OF ALL PLEADINGS SHALL BE SERVED UPON THE PERSON WHO MAY
23 APPEAR IN OPPOSITION.

24 (C) CONFIDENTIALITY.--ANY TESTIMONY TAKEN OR MATERIAL
25 PRODUCED SHALL BE KEPT CONFIDENTIAL BY THE ATTORNEY GENERAL
26 EXCEPT TO THE EXTENT THAT SUCH INFORMATION MAY BE USED IN A
27 JUDICIAL PROCEEDING OR THE DISCLOSURE IS AUTHORIZED BY THE COURT
28 FOR GOOD CAUSE SHOWN OR CONFIDENTIALITY IS WAIVED BY THE PERSON
29 BEING INVESTIGATED AND BY THE PERSON WHO HAS TESTIFIED, ANSWERED
30 INTERROGATORIES OR PRODUCED MATERIALS.

1 SECTION 6. EFFECTIVE DATE.

2 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.