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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1172 Session of  
2018

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INTRODUCED BY VULAKOVICH, SCARNATI, ALLOWAY, ARGALL, BARTOLOTTA,  
BLAKE, BROWNE, EICHELBERGER, FOLMER, HUTCHINSON, KILLION,  
LANGERHOLC, LAUGHLIN, MARTIN, MCGARRIGLE, MENSCH, RAFFERTY,  
REGAN, RESCHENTHALER, SCAVELLO, STEFANO, VOGEL, WAGNER, WARD,  
WHITE AND YAW, MAY 21, 2018

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REFERRED TO VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS,  
MAY 21, 2018

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AN ACT

1 Amending the act of October 31, 2006 (P.L.1210, No.133),  
2 entitled "An act prohibiting price gouging; and imposing  
3 penalties," further providing for definitions, for price  
4 gouging prohibited and for investigation.

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

7 Section 1. The definition of "unconscionably excessive" in  
8 section 3 of the act of October 31, 2006 (P.L.1210, No.133),  
9 known as the Price Gouging Act, is amended and the section is  
10 amended by adding a definition to read:

11 Section 3. Definitions.

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

15 \* \* \*

16 "Cost." A cost directly or indirectly related to the sale of  
17 a consumer good or service or the operation of a seller's

1 business. The term includes a replacement cost, credit card  
2 cost, tax and transportation cost.

3 \* \* \*

4 ["Unconscionably excessive." A price is unconscionably  
5 excessive when the amount charged represents a gross disparity  
6 between the price of the consumer goods or services and the  
7 price at which the consumer goods or services were sold or  
8 offered for sale within the chain of distribution in the usual  
9 course of business seven days immediately prior to the state of  
10 disaster emergency.]

11 Section 2. Section 4(a), (b), (c) and (d) of the act are  
12 amended and the section is amended by adding a subsection to  
13 read:

14 Section 4. Price gouging prohibited.

15 (a) Prohibition.--[During and within 30 days of the  
16 termination] On the declaration of a state of disaster emergency  
17 [declared] by the Governor pursuant to the provisions of 35  
18 Pa.C.S. § 7301(c) (relating to general authority of Governor),  
19 the Governor may, by a separate declaration, impose a price  
20 restriction under this section on the sale of consumer goods or  
21 services necessary for use or consumption in the affected  
22 geographic area as a direct result of the state of disaster  
23 emergency for a period of 15 days. The price restriction may be  
24 renewed for up to three additional 15-day periods as may be  
25 necessary. During the period the price restriction is in effect,  
26 it shall be a violation of this act for any party within the  
27 chain of distribution of consumer goods or services or both to  
28 sell or offer to sell the affected goods or services within the  
29 geographic region that is the subject of the declared emergency  
30 for an amount which represents an unconscionably excessive

1 price.

2 (b) [Evidence of unconscionably] Unconscionably excessive  
3 price.--[It is prima facie evidence that a price is  
4 unconscionably excessive if, during and within 30 days of the  
5 termination of a state of disaster emergency, parties within the  
6 chain of distribution charge a price that exceeds an amount  
7 equal to or in excess of 20% of the average price at which the  
8 same or similar consumer goods or services were obtainable in  
9 the affected area during the last seven days immediately prior  
10 to the declared state of emergency.] The court shall consider  
11 all relevant factors, including whether there is a gross  
12 disparity between the seller's price immediately before the  
13 price restriction under subsection (a) was imposed and the  
14 seller's price following the declaration of a state of disaster  
15 emergency and whether the seller's price substantially exceeds  
16 those existing on the date and in the locality where the state  
17 of disaster emergency was declared. A price is not an  
18 unconscionably excessive price if the price:

19 (1) is 10% or less above the seller's price immediately  
20 before the price restriction under subsection (a) was  
21 imposed;

22 (2) is 10% or less above the sum of the seller's cost  
23 and normal markup for the good or service;

24 (3) is consistent with price fluctuations in applicable  
25 commodity, regional, national or international markets or  
26 with seasonal price fluctuations; or

27 (4) is a contract price, or the result of a price  
28 formula, established before the price restriction under  
29 subsection (a) was imposed.

30 (c) Nonapplicability.--

1 [(1) The provisions of this section shall not apply if  
2 the increase in price is due to a disparity that is  
3 substantially attributable to additional costs that arose  
4 within the chain of distribution in connection with the sale  
5 of consumer goods or services, including replacement costs,  
6 credit card costs, taxes and transportation costs.

7 [(2)] The provisions of this act shall not apply to the  
8 sale of goods or services sold by a person pursuant to a  
9 tariff or rate approved by a Federal or Commonwealth agency  
10 with power and authority over sales of such goods or  
11 services.

12 (d) Price reduction.--A person selling consumer goods or  
13 services who receives any price reduction, after an increase in  
14 his cost which is substantially attributable to costs that arose  
15 within the chain of distribution [as set forth in subsection  
16 (c)], may rebut an allegation of selling at an unconscionably  
17 excessive price if he reduces the price by a like amount within  
18 a reasonable period, not to exceed seven days, of acquiring the  
19 consumer good or service at such reduced price.

20 \* \* \*

21 (f) Preemption.--This section shall preempt a local law or  
22 regulation concerning the same or similar subject matter as this  
23 section.

24 Section 3. Section 5(a) of the act is amended to read:

25 Section 5. 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 up to \$10,000 for each  
2 willful violation, with an aggregate total that may not exceed  
3 \$25,000 for a 24-hour period against a seller, and to seek other  
4 relief, including injunctive relief, restitution and costs under  
5 the act of December 17, 1968 (P.L.1224, No.387), known as the  
6 Unfair Trade Practices and Consumer Protection Law. The civil  
7 penalty provided for under this subsection shall be the sole  
8 penalty for conduct in violation of this act. Nothing in this  
9 subsection shall be construed to create or imply a private cause  
10 of action for a violation of this act.

11 \* \* \*

12 Section 4. This act shall take effect in 60 days.