
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 WENGER, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, OCTOBER 16, 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~~

~~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, some parties selling consumer goods and services may take unfair advantage of consumers in this Commonwealth by charging unconscionably excessive prices, or price gouging.~~

~~(4) To prevent this, the General Assembly 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.~~

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

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

1 ~~price.~~

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

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

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

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

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

23 ~~Section 4. Price gouging prohibited.~~

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

1 ~~Section 5.—Preemption.~~

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

4 ~~Section 6.—Applicability.~~

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

9 ~~Section 7.—Investigation.~~

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

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

29 ~~(c) Confidentiality.—Any testimony taken or material~~
30 ~~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.~~

1 ~~Section 9. Effective date.~~

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

3 SECTION 1. SHORT TITLE.

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

6 SECTION 2. PURPOSE.

7 THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS:

8 (1) IN AN ECONOMIC MARKET, THERE ARE PERIODS OF
9 DISRUPTION OF THE MARKET WHICH CAUSE AN UNEVEN FLOW OF SUPPLY
10 OF CONSUMER GOODS. DURING THESE PERIODS, CONSUMER DEMAND
11 OUTWEIGHS SUPPLY, SOMETIMES HEAVILY.

12 (2) THESE PERIODS OF DISRUPTION RESULT FROM MANY
13 FACTORS, INCLUDING EXTREME WEATHER CONDITIONS, DEPLETION OF
14 STOCKPILES, LABOR STRIKES, CIVIL DISORDER, NATURAL OR MANMADE
15 EMERGENCIES OR DISASTERS AND MILITARY ACTION.

16 (3) DURING THESE PERIODS, PARTIES INVOLVED IN THE SALE
17 AND RESALE OF CONSUMER GOODS AND SERVICES SOMETIMES TAKE
18 UNFAIR ADVANTAGE OF CONSUMERS IN THIS COMMONWEALTH BY
19 CHARGING UNCONSCIONABLY EXCESSIVE PRICES, OR PRICE GOUGING.

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

22 SECTION 3. DEFINITIONS.

23 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
24 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
25 CONTEXT CLEARLY INDICATES OTHERWISE:

26 "CHAIN OF DISTRIBUTION." ALL PARTIES INVOLVED IN THE SALE
27 AND RESALE OF CONSUMER GOODS AND SERVICES, INCLUDING ANY
28 MANUFACTURER, SUPPLIER, WHOLESALER, DISTRIBUTOR OR RETAIL
29 SELLER.

30 "CONSUMER GOODS OR SERVICES." THOSE ITEMS USED, BOUGHT OR

1 RENDERED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

2 "REPLACEMENT COST." THE TERM INCLUDES: <—

3 (1) ACQUISITION COSTS;

4 (2) COSTS THAT ARE A RESULT OF A CONTRACT WHERE CONSUMER
5 GOODS OR SERVICES ARE PRICED ON A FORMULA THAT REFERENCES
6 PUBLISHED MARKET PRICES;

7 (3) THE ACTUAL COST OF REPLACING GOODS OR SERVICES BEING
8 SOLD; OR

9 (4) THE REASONABLY CONTEMPLATED COST OF REPLACING GOODS
10 OR SERVICES BEING SOLD BASED ON INFORMATION AVAILABLE AT THE
11 TIME OF THE INCREASE IN PRICE.

12 "UNCONSCIONABLY EXCESSIVE." A PRICE IS UNCONSCIONABLY
13 EXCESSIVE WHEN THE AMOUNT CHARGED REPRESENTS A GROSS DISPARITY
14 BETWEEN THE PRICE OF THE CONSUMER GOODS OR SERVICES AND THE
15 PRICE AT WHICH THE CONSUMER GOODS OR SERVICES WERE SOLD OR
16 OFFERED FOR SALE WITHIN THE CHAIN OF DISTRIBUTION IN THE USUAL
17 COURSE OF BUSINESS SEVEN DAYS IMMEDIATELY PRIOR TO THE STATE OF
18 DISASTER EMERGENCY.

19 SECTION 4. PRICE GOUGING PROHIBITED.

20 (A) PROHIBITION.--DURING AND WITHIN 30 DAYS OF THE
21 TERMINATION OF A STATE OF DISASTER EMERGENCY DECLARED BY THE
22 GOVERNOR PURSUANT TO THE PROVISIONS OF 35 PA.C.S. § 7301(C)
23 (RELATING TO GENERAL AUTHORITY OF GOVERNOR), IT SHALL BE A
24 VIOLATION OF THIS ACT FOR ANY PARTY WITHIN THE CHAIN OF
25 DISTRIBUTION OF CONSUMER GOODS OR SERVICES OR BOTH TO SELL OR
26 OFFER TO SELL THE GOODS OR SERVICES WITHIN THE GEOGRAPHIC REGION <—
27 THAT IS THE SUBJECT OF THE DECLARED EMERGENCY FOR AN AMOUNT
28 WHICH REPRESENTS AN UNCONSCIONABLY EXCESSIVE PRICE.

29 (B) EVIDENCE OF UNCONSCIONABLY EXCESSIVE PRICE.--IT IS PRIMA
30 FACIE EVIDENCE THAT A PRICE IS UNCONSCIONABLY EXCESSIVE IF

1 DURING AND WITHIN 30 DAYS OF THE TERMINATION OF A STATE OF
2 DISASTER EMERGENCY PARTIES WITHIN THE CHAIN OF DISTRIBUTION
3 CHARGE A PRICE THAT EXCEEDS AN AMOUNT EQUAL TO OR IN EXCESS OF
4 20% OF THE AVERAGE PRICE AT WHICH THE SAME OR SIMILAR CONSUMER
5 GOODS OR SERVICES WERE OBTAINABLE IN THE AFFECTED AREA DURING
6 THE LAST SEVEN DAYS IMMEDIATELY PRIOR TO THE DECLARED STATE OF
7 EMERGENCY.

8 ~~(C) NONAPPLICABILITY. THE PROVISIONS OF THIS SECTION SHALL~~ <—

9 (C) NONAPPLICABILITY.-- <—

10 (1) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IF
11 THE INCREASE IN PRICE IS DUE TO A DISPARITY THAT IS
12 SUBSTANTIALLY ATTRIBUTABLE TO ADDITIONAL COSTS THAT AROSE
13 WITHIN THE CHAIN OF DISTRIBUTION IN CONNECTION WITH THE SALE
14 OF CONSUMER GOODS OR SERVICES, INCLUDING REPLACEMENT COSTS,
15 CREDIT CARD COSTS, TAXES AND TRANSPORTATION COSTS. <—

16 (2) THE PROVISIONS OF THIS ACT SHALL NOT APPLY TO THE <—
17 SALE OF GOODS OR SERVICES SOLD BY A PERSON PURSUANT TO A
18 TARIFF OR RATE APPROVED BY A FEDERAL OR COMMONWEALTH AGENCY
19 WITH POWER AND AUTHORITY OVER SALES OF SUCH GOODS OR
20 SERVICES.

21 (D) PRICE REDUCTION.--A PERSON SELLING CONSUMER GOODS OR
22 SERVICES WHO RECEIVES ANY PRICE REDUCTION, AFTER AN INCREASE IN
23 HIS COST WHICH IS SUBSTANTIALLY ATTRIBUTABLE TO COSTS THAT AROSE
24 WITHIN THE CHAIN OF DISTRIBUTION AS SET FORTH IN SUBSECTION (C),
25 MAY REBUT AN ALLEGATION OF SELLING AT AN UNCONSCIONABLY
26 EXCESSIVE PRICE IF HE REDUCES THE PRICE BY A LIKE AMOUNT WITHIN
27 A REASONABLE PERIOD, NOT TO EXCEED SEVEN DAYS, OF ACQUIRING THE
28 CONSUMER GOOD OR SERVICE AT SUCH REDUCED PRICE.

29 (E) NOTIFICATION.--A TRADE ASSOCIATION, CORPORATION,
30 PARTNERSHIP, PERSON OR OTHER ENTITY MAY REGISTER AN AGENT FOR

1 THE PURPOSE OF BEING NOTIFIED WHEN THE GOVERNOR DECLARES AND
2 CEASES A STATE OF EMERGENCY. THE GOVERNOR OR HIS DESIGNEE IS
3 RESPONSIBLE FOR NOTIFYING THE REGISTERED AGENTS UPON THE
4 DECLARATION AND CESSATION OF THE STATE OF EMERGENCY. LACK OF
5 NOTIFICATION OR THE FAILURE TO RECEIVE NOTIFICATION OF THE
6 DECLARATION AND CESSATION OF AN EMERGENCY SHALL NOT BE A DEFENSE
7 WITH RESPECT TO ANY VIOLATION OF THIS ACT.

8 SECTION 5. INVESTIGATION.

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

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

30 (C) CONFIDENTIALITY.--ANY TESTIMONY TAKEN OR MATERIAL

1 PRODUCED SHALL BE KEPT CONFIDENTIAL BY THE ATTORNEY GENERAL
2 EXCEPT TO THE EXTENT THAT SUCH INFORMATION MAY BE USED IN A
3 JUDICIAL PROCEEDING OR THE DISCLOSURE IS AUTHORIZED BY THE COURT
4 FOR GOOD CAUSE SHOWN OR CONFIDENTIALITY IS WAIVED BY THE PERSON
5 BEING INVESTIGATED AND BY THE PERSON WHO HAS TESTIFIED, ANSWERED
6 INTERROGATORIES OR PRODUCED MATERIALS.
7 SECTION 6. EFFECTIVE DATE.
8 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.