

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1407 Session of
2000

INTRODUCED BY TILGHMAN, SCHWARTZ, WAGNER, HELFRICK, TOMLINSON,
KASUNIC, HOLL, COSTA, PUNT, O'PAKE, SALVATORE, BELL, LEMMOND,
CORMAN, BOSCOLA AND ROBBINS, APRIL 6, 2000

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
APRIL 6, 2000

AN ACT

1 Prohibiting price gouging; and providing for a penalty.

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

4 Section 1. Short title.

5 This act shall be known and may be cited as the Anti-Price
6 Gouging Act.

7 Section 2. Definitions.

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

11 "Abnormal disruption of the market." Any change in the
12 market, whether actual or imminently threatened, resulting from
13 a disaster, local emergency, or other cause of an abnormal
14 disruption of the market.

15 "Chain of distribution." A manufacturer, supplier,
16 wholesaler, distributor or retail seller of raw or processed

1 natural resources, or commodities, goods or services.

2 "Disaster." A manmade disaster, natural disaster or war-
3 caused disaster.

4 "Economic disaster emergency." Those economic conditions
5 which by investigation may be found, actually or likely, to:

6 (1) Affect seriously the safety, health, welfare or
7 economic well-being of a substantial number of citizens of
8 this Commonwealth or preclude the operation or use of
9 essential public facilities.

10 (2) Be of such magnitude or severity as to render
11 essential State intervention, or State supplementation of
12 county and local efforts or resources exerted or utilized in
13 alleviating the danger, damage, suffering or hardship faced.

14 "Local emergency." The condition declared by the local
15 governing body when in its judgment the threat or actual
16 occurrence of a disaster is or threatens to be of sufficient
17 severity and magnitude to warrant coordinated local government
18 action to prevent or alleviate the damage, loss, hardship or
19 suffering threatened or caused thereby. A local emergency
20 arising wholly or substantially out of a resource shortage may
21 be declared only by the Governor, upon petition of the local
22 governing body, when he deems the threat or actual occurrence of
23 a disaster to be of sufficient severity and magnitude to warrant
24 coordinated local government action to prevent or alleviate the
25 damage, loss, hardship or suffering threatened or caused
26 thereby.

27 "Manmade disaster." Any industrial, nuclear or
28 transportation accident, explosion, conflagration, power
29 failure, natural resource shortage or other condition, except
30 enemy action, resulting from manmade causes, such as oil spills

1 and other injurious environmental contamination which threatens
2 or causes substantial damage to property, human suffering,
3 hardship or loss of life.

4 "Natural disaster." Any hurricane, tornado, storm, flood,
5 high water, wind-driven water, tidal wave, earthquake,
6 landslide, mudslide, snowstorm, drought, fire, explosion or
7 other catastrophe which results in substantial damage to
8 property, hardship, suffering or possible loss of life.

9 "Person." An individual, corporation, firm, association,
10 public utility, trust, estate, public or private institution,
11 group, the Commonwealth or a local agency or political
12 subdivision and any legal successor, representative or agency of
13 the foregoing.

14 "Resource shortage." The absence, unavailability or reduced
15 supply of any raw or processed natural resource, or any
16 commodities, goods or services of any kind which bear a
17 substantial relationship to the health, safety, welfare and
18 economic well-being of the citizens of this Commonwealth.

19 "War-caused disaster." Any condition following an attack
20 upon the United States resulting in substantial damage to
21 property or injury to persons in the United States caused by use
22 of bombs, missiles, shellfire, nuclear, radiological, chemical
23 or biological means, or other weapons or overt paramilitary
24 actions, or other conditions such as sabotage.

25 Section 3. Price gouging.

26 Whenever an abnormal disruption of the market or a resource
27 shortage exists during the period of an economic disaster
28 emergency declared by the Governor, no person within the chain
29 of distribution shall sell or offer to sell any raw or processed
30 natural resources or any commodities, goods or services which

1 bear a substantial relationship to the health, safety, welfare
2 or economic well-being of the citizens of this Commonwealth for
3 an amount which represents an unconscionably excessive price
4 pursuant to section 4.

5 Section 4. Unconscionably excessive price.

6 (a) Question for court.--Whether a price is unconscionably
7 excessive is a question of law for the court.

8 (b) Violation.--The court's determination that a violation
9 of this act has occurred shall be based on any of the following
10 factors:

11 (1) The amount of the excess in price is unconscionably
12 extreme.

13 (2) There was an exercise of unfair leverage or
14 unconscionable means.

15 (3) A combination of both factors in paragraphs (1) and
16 (2).

17 (c) Evidence.--In any proceeding commenced pursuant to
18 section 5, prima facie proof that a violation of this act has
19 occurred shall include evidence that:

20 (1) The amount charged represents a gross disparity
21 between the price of the raw or processed natural resources
22 or commodities, goods or services which were the subject of
23 the transaction and their value measured by the price at
24 which such items were sold or offered for sale by the
25 defendant in the usual course of business immediately prior
26 to the onset of the abnormal disruption of the market.

27 (2) The amount charged grossly exceeded the price at
28 which the same or similar raw or processed natural resources
29 or commodities, goods or services were readily obtainable by
30 other consumers in the trade area.

1 (d) Rebuttal.--A defendant charged with a violation of this
2 act may rebut a prima facie case with evidence that additional
3 costs not within the control of the defendant were imposed on
4 the defendant for the raw or processed natural resources or
5 commodities, goods or services.

6 Section 5. Proceedings.

7 Whenever a violation of this act is alleged to have occurred,
8 the Attorney General may apply to the court of common pleas
9 within the judicial district where such violations are alleged
10 to have occurred, for an order enjoining or restraining
11 commission or continuance of the alleged unlawful acts.

12 Section 6. Penalty.

13 A court of common pleas shall impose a civil penalty for a
14 violation of this act in an amount not to exceed \$10,000 and may
15 order restitution to an aggrieved consumer.

16 Section 7. Effective date.

17 This act shall take effect in 60 days.