

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 450** Session of  
2005

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INTRODUCED BY M. WHITE, CORMAN, RHOADES, TARTAGLIONE, ORIE,  
ERICKSON, STACK, KITCHEN, KASUNIC, TOMLINSON, WOZNIAK, COSTA,  
EARLL, PUNT, BOSCOLA, RAFFERTY, LAVALLE, MUSTO, ROBBINS,  
GORDNER, LOGAN, REGOLA AND PIPPY, MARCH 23, 2005

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SENATOR THOMPSON, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
SEPTEMBER 19, 2005

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## AN ACT

1 Prohibiting price gouging; and imposing penalties.

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 Price Gouging  
6 Act.

7 Section 2. Purpose.

8 The General Assembly finds and declares as follows:

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

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

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

5           ~~(4) To prevent this, the General Assembly should~~  
6           ~~prohibit price gouging and impose penalties on violators.~~

7   ~~Section 3. 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          ~~"Consumer goods or services." Those items used, bought or~~  
12          ~~rendered primarily for personal, family or household purposes.~~

13          ~~"Excessive." A price is excessive if the following are true:~~

14                 ~~(1) The amount charged represents a gross disparity~~  
15                 ~~between the price of the consumer goods or services and~~  
16                 ~~either of the following:~~

17                         ~~(i) The price at which the goods or services were~~  
18                         ~~sold or offered for sale by the seller in the usual~~  
19                         ~~course of business seven days immediately prior to the~~  
20                         ~~state of disaster emergency.~~

21                         ~~(ii) The price at which the same or similar consumer~~  
22                         ~~goods or services are readily obtainable by other buyers~~  
23                         ~~in the trade area.~~

24                 ~~(2) The disparity is not substantially attributable to~~  
25                 ~~additional costs to the seller in connection with the sale of~~  
26                 ~~the consumer goods or services, including replacement costs,~~  
27                 ~~taxes and transportation costs incurred by the seller.~~

28          ~~"Seller." A party that sells goods or services to consumers.~~

29   ~~Section 4. Price gouging prohibited.~~

30          ~~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), a seller of consumer goods or services may not sell or offer to sell the goods to consumers or provide or offer to provide the services to consumers at a price which is excessive.~~

~~Section 5.— Investigation.~~

~~(a) Authority. The Bureau of Consumer Protection in the Office of Attorney General shall investigate any 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. An aggrieved consumer is entitled to  
restitution from a seller whose conduct violates the provisions  
of this act.~~

~~Section 6. Effective date.~~

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

(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, WHOLESALE, DISTRIBUTOR OR RETAIL  
SELLER.

"CONSUMER GOODS OR SERVICES." THOSE ITEMS USED, BOUGHT OR  
RENDERED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

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

1 SECTION 4. PRICE GOUGING PROHIBITED.

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

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

19 (C) NONAPPLICABILITY.--THE PROVISIONS OF THIS SECTION SHALL  
20 NOT APPLY IF THE INCREASE IN PRICE IS DUE TO A DISPARITY THAT IS  
21 SUBSTANTIALLY ATTRIBUTABLE TO ADDITIONAL COSTS THAT AROSE WITHIN  
22 THE CHAIN OF DISTRIBUTION IN CONNECTION WITH THE SALE OF  
23 CONSUMER GOODS OR SERVICES, INCLUDING REPLACEMENT COSTS, TAXES  
24 AND TRANSPORTATION COSTS.

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 VIOLATION AND TO SEEK OTHER RELIEF, INCLUDING INJUNCTIVE RELIEF,  
3 RESTITUTION AND COSTS UNDER THE ACT OF DECEMBER 17, 1968  
4 (P.L.1224, NO.387), KNOWN AS THE UNFAIR TRADE PRACTICES AND  
5 CONSUMER PROTECTION LAW.

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

17 (C) CONFIDENTIALITY.--ANY TESTIMONY TAKEN OR MATERIAL  
18 PRODUCED SHALL BE KEPT CONFIDENTIAL BY THE ATTORNEY GENERAL  
19 EXCEPT TO THE EXTENT THAT SUCH INFORMATION MAY BE USED IN A  
20 JUDICIAL PROCEEDING OR IF THE DISCLOSURE IS AUTHORIZED BY THE  
21 COURT FOR GOOD CAUSE SHOWN OR CONFIDENTIALITY IS WAIVED BY THE  
22 PERSON BEING INVESTIGATED AND BY THE PERSON WHO HAS TESTIFIED,  
23 ANSWERED INTERROGATORIES OR PRODUCED MATERIALS.

24 SECTION 6. EFFECTIVE DATE.

25 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.