
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 139 Session of
2019

INTRODUCED BY J. WARD, SCARNATI, LANGERHOLC, SCAVELLO, BROWNE,
PHILLIPS-HILL, FOLMER, BARTOLOTTA, WHITE, MARTIN, ARGALL,
K. WARD, STEFANO, MENSCH, YAW, KILLION, LAUGHLIN, HUTCHINSON,
VOGEL, BROOKS, REGAN AND BLAKE, JANUARY 31, 2019

REFERRED TO VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS,
JANUARY 31, 2019

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

1 business. The term includes replacement costs, credit card
2 costs, taxes and transportation costs.

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. Sections 4(a), (b), (c), (d) and 5(a) of the act
12 are amended to read:

13 Section 4. Price gouging prohibited.

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

1 unconscionably excessive 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.] Whether a price is an
11 unconscionably excessive price is a question of law. The court
12 shall consider all relevant factors, including whether there is
13 a gross disparity between the seller's price immediately before
14 the price restriction under subsection (a) was imposed and the
15 seller's price following the declaration of a state of disaster
16 emergency and whether the seller's price substantially exceeds
17 those prevailing on the date and in the locality in question. A
18 price is not an 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 Section 5. Investigation.

22 (a) Authority.--The Bureau of Consumer Protection in the
23 Office of Attorney General shall investigate any complaints
24 received concerning violations of this act. If, after
25 investigating any complaint, the Attorney General finds that
26 there has been a violation of this act, the Attorney General may
27 bring an action to impose a civil penalty up to \$10,000 for each
28 willful violation, with an aggregate total that may not exceed
29 \$25,000 for a 24-hour period against a seller, and to seek other
30 relief, including injunctive relief, restitution and costs under

1 the act of December 17, 1968 (P.L.1224, No.387), known as the
2 Unfair Trade Practices and Consumer Protection Law. The civil
3 penalty provided for under this subsection shall be the sole
4 penalty for conduct in violation of this act. Nothing in this
5 subsection shall be construed to create or imply a private cause
6 of action for a violation of this act.

7 * * *

8 Section 3. This act shall take effect in 60 days.