

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, BLAKE AND HAYWOOD, JANUARY 31, 2019

AS AMENDED ON THIRD CONSIDERATION, JUNE 3, 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
18 business. The term includes replacement costs, credit card

1 costs, taxes and transportation costs.

2 * * *

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

10 Section 2. Sections 4(a), (b), (c), (d) and 5(a) of the act
11 are amended to read:

12 Section 4. Price gouging prohibited.

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

1 (b) [~~Evidence of unconscionably~~] Unconscionably excessive
2 price.--[~~It is prima facie evidence that a price is~~
3 ~~unconscionably excessive if, during and within 30 days of the~~
4 ~~termination of a state of disaster emergency, parties within the~~
5 ~~chain of distribution charge a price that exceeds an amount~~
6 ~~equal to or in excess of 20% of the average price at which the~~
7 ~~same or similar consumer goods or services were obtainable in~~
8 ~~the affected area during the last seven days immediately prior~~
9 ~~to the declared state of emergency.] Whether a price is an TO <--
10 THE DECLARED STATE OF EMERGENCY.]~~

11 (1) WHETHER A PRICE IS AN unconscionably excessive price is
12 a question of law. The court shall consider all relevant
13 factors, including whether there is a gross disparity between
14 the seller's price immediately before the price restriction
15 under subsection (a) was imposed and the seller's price
16 following the declaration of a state of disaster emergency and
17 whether the seller's price substantially exceeds those
18 prevailing on the date and in the locality in question. A <--
19 QUESTION. <--

20 (2) A price is not an unconscionably excessive price if the
21 price:

22 ~~(1) is 10% or less above the seller's price immediately~~ <--
23 ~~before the price restriction under subsection (a) was~~
24 ~~imposed;~~

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

27 ~~(3) is consistent with price fluctuations in applicable~~
28 ~~commodity, regional, national or international markets or~~
29 ~~with seasonal price fluctuations; or~~

30 ~~(4) is a contract price, or the result of a price~~

1 ~~formula, established before the price restriction under~~
2 ~~subsection (a) was imposed.~~

3 (I) IS 10% OR LESS ABOVE THE SELLER'S PRICE <--
4 IMMEDIATELY BEFORE THE PRICE RESTRICTION UNDER SUBSECTION
5 (A) WAS IMPOSED;

6 (II) IS 10% OR LESS ABOVE THE SUM OF THE SELLER'S
7 COST AND NORMAL MARKUP FOR THE GOOD OR SERVICE;

8 (III) IS CONSISTENT WITH PRICE FLUCTUATIONS IN
9 APPLICABLE COMMODITY, REGIONAL, NATIONAL OR INTERNATIONAL
10 MARKETS OR WITH SEASONAL PRICE FLUCTUATIONS; OR

11 (IV) IS A CONTRACT PRICE, OR THE RESULT OF A PRICE
12 FORMULA, INCLUDING, BUT NOT LIMITED TO, A PRICE FORMULA
13 USED IN CONNECTION WITH THE RESERVATION OF GOODS OR
14 SERVICES FOR FUTURE USE, ESTABLISHED BEFORE THE PRICE
15 RESTRICTION UNDER SUBSECTION (A) WAS IMPOSED.

16 (3) IT IS PRIMA FACIE EVIDENCE THAT A PRICE IS AN
17 UNCONSCIONABLY EXCESSIVE PRICE IF NONE OF THE FACTORS IN
18 PARAGRAPH (2) APPLIES TO THAT PRICE.

19 (c) Nonapplicability.--

20 [(1) The provisions of this section shall not apply if
21 the increase in price is due to a disparity that is
22 substantially attributable to additional costs that arose
23 within the chain of distribution in connection with the sale
24 of consumer goods or services, including replacement costs,
25 credit card costs, taxes and transportation costs.]

26 [(2)] The provisions of this act shall not apply to the
27 sale of goods or services sold by a person pursuant to a
28 tariff or rate approved by a Federal or Commonwealth agency
29 with power and authority over sales of such goods or
30 services.

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

9 * * *

10 Section 5. Investigation.

11 (a) Authority.--The Bureau of Consumer Protection in the
12 Office of Attorney General shall investigate any complaints
13 received concerning violations of this act. If, after
14 investigating any complaint, the Attorney General finds that
15 there has been a violation of this act, the Attorney General may
16 bring an action to impose a civil penalty up to \$10,000 for each
17 willful violation, with an aggregate total that may not exceed
18 \$25,000 for a 24-hour period against a seller, and to seek other
19 relief, including injunctive relief, restitution and costs under
20 the act of December 17, 1968 (P.L.1224, No.387), known as the
21 Unfair Trade Practices and Consumer Protection Law. The civil
22 penalty provided for under this subsection shall be the sole
23 penalty for conduct in violation of this act. Nothing in this
24 subsection shall be construed to create or imply a private cause
25 of action for a violation of this act.

26 * * *

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