

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1172 Session of 2018

INTRODUCED BY VULAKOVICH, SCARNATI, ALLOWAY, ARGALL, BARTOLOTTA, BLAKE, BROWNE, EICHELBERGER, FOLMER, HUTCHINSON, KILLION, LANGERHOLC, LAUGHLIN, MARTIN, MCGARRIGLE, MENSCH, RAFFERTY, REGAN, RESCHENTHALER, SCAVELLO, STEFANO, VOGEL, WAGNER, WARD, WHITE, YAW AND DINNIMAN, MAY 21, 2018

SENATOR VULAKOVICH, VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, AS AMENDED, JUNE 5, 2018

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." ~~A~~ ANY cost directly or indirectly related to the <--
17 sale of a consumer good or service or the operation of a

1 seller's business. The term includes a ~~replacement cost, credit~~ <--
2 ~~card cost, tax and transportation cost~~ REPLACEMENT COSTS, CREDIT <--
3 CARD COSTS, TAXES AND TRANSPORTATION COSTS.

4 * * *

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

12 Section 2. Section 4(a), (b), (c) and (d) of the act are
13 amended and the section is amended by adding a subsection to
14 read:

15 Section 4. Price gouging prohibited.

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

1 for an amount which represents an unconscionably excessive
2 price.

3 (b) [Evidence of unconscionably] Unconscionably excessive
4 price.--[It is prima facie evidence that a price is
5 unconscionably excessive if, during and within 30 days of the
6 termination of a state of disaster emergency, parties within the
7 chain of distribution charge a price that exceeds an amount
8 equal to or in excess of 20% of the average price at which the
9 same or similar consumer goods or services were obtainable in
10 the affected area during the last seven days immediately prior
11 to the declared state of emergency.] WHETHER A PRICE IS AN <--
12 UNCONSCIONABLY EXCESSIVE PRICE IS A QUESTION OF LAW. The court
13 shall consider all relevant factors, including whether there is
14 a gross disparity between the seller's price immediately before
15 the price restriction under subsection (a) was imposed and the
16 seller's price following the declaration of a state of disaster
17 emergency and whether the seller's price substantially exceeds
18 those ~~existing~~ PREVAILING on the date and in the locality where <--
19 the state of disaster emergency was declared IN QUESTION. A <--
20 price is not an unconscionably excessive price if the price:

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

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

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

29 (4) is a contract price, or the result of a price
30 formula, established before the price restriction under

1 subsection (a) was imposed.

2 (c) Nonapplicability.--

3 [(1) The provisions of this section shall not apply if
4 the increase in price is due to a disparity that is
5 substantially attributable to additional costs that arose
6 within the chain of distribution in connection with the sale
7 of consumer goods or services, including replacement costs,
8 credit card costs, taxes and transportation costs.

9 (2)] The provisions of this act shall not apply to the
10 sale of goods or services sold by a person pursuant to a
11 tariff or rate approved by a Federal or Commonwealth agency
12 with power and authority over sales of such goods or
13 services.

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

22 * * *

23 (f) Preemption.--This section shall preempt a local law or
24 regulation concerning the same or similar subject matter as this
25 section.

26 Section 3. Section 5(a) of the act is amended to read:

27 Section 5. Investigation.

28 (a) Authority.--The Bureau of Consumer Protection in the
29 Office of Attorney General shall investigate any complaints
30 received concerning violations of this act. If, after

1 investigating any complaint, the Attorney General finds that
2 there has been a violation of this act, the Attorney General may
3 bring an action to impose a civil penalty up to \$10,000 for each
4 willful violation, with an aggregate total that may not exceed
5 \$25,000 for a 24-hour period against a seller, and to seek other
6 relief, including injunctive relief, restitution and costs under
7 the act of December 17, 1968 (P.L.1224, No.387), known as the
8 Unfair Trade Practices and Consumer Protection Law. The civil
9 penalty provided for under this subsection shall be the sole
10 penalty for conduct in violation of this act. Nothing in this
11 subsection shall be construed to create or imply a private cause
12 of action for a violation of this act.

13 * * *

14 Section 4. This act shall take effect in 60 days.