

## 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

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
OCTOBER 9, 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." Any cost directly or indirectly related to the sale

1 of a consumer good or service or the operation of a seller's  
2 business. The term includes replacement costs, credit card  
3 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 EXPRESSLY STATING IN <--  
21 A DECLARATION OF A STATE OF DISASTER EMERGENCY THAT THE  
22 PROVISIONS OF THIS ACT ARE APPLICABLE, impose a price  
23 restriction under this section on the sale of consumer goods or  
24 services necessary for use or consumption in the affected  
25 geographic area as a direct result of the state of disaster  
26 emergency for a period of 15 days. The price restriction may be  
27 renewed for up to three additional 15-day periods as may be  
28 necessary. During the period the price restriction is in effect,  
29 it shall be a violation of this act for any party within the  
30 chain of distribution of consumer goods or services or both to

1 sell or offer to sell the affected goods or services within the  
2 geographic region that is the subject of the declared emergency  
3 for an amount which represents an unconscionably excessive  
4 price.

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

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

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

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

23 \* \* \*

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

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

28 Section 5. Investigation.

29 (a) Authority.--The Bureau of Consumer Protection in the  
30 Office of Attorney General shall investigate any complaints

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

14 \* \* \*

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