

No. 2006-133

AN ACT

HB 2001

Prohibiting price gouging; and imposing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Price Gouging Act.

Section 2. Purpose.

The General Assembly finds and declares as follows:

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

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

(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, wholesaler, distributor or retail seller.

“Consumer goods or services.” Those items used, bought or rendered primarily for personal, family or household purposes.

“Replacement cost.” The term includes:

(1) acquisition costs;

(2) costs that are a result of a contract where consumer goods or services are priced on a formula that references published market prices;

(3) the actual cost of replacing goods or services being sold; or

(4) the reasonably contemplated cost of replacing goods or services being sold based on information available at the time of the increase in price.

“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.

Section 4. Price gouging prohibited.

(a) Prohibition.—During and within 30 days of the termination of 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), it shall be a violation of this act for any party within the chain of distribution of consumer goods or services or both to sell or offer to sell the goods or services within the geographic region that is the subject of the declared emergency for an amount which represents an unconscionably excessive price.

(b) Evidence of unconscionably excessive price.—It is prima facie evidence that a price is unconscionably excessive if, during and within 30 days of the termination of a state of disaster emergency, parties within the chain of distribution charge a price that exceeds an amount equal to or in excess of 20% of the average price at which the same or similar consumer goods or services were obtainable in the affected area during the last seven days immediately prior to the declared state of emergency.

(c) Nonapplicability.—

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

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

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

(e) Notification.—A trade association, corporation, partnership, person or other entity may register an agent for the purpose of being notified when the Governor declares and ceases a state of emergency. The Governor or his designee is responsible for notifying the registered agents upon the declaration and cessation of the state of emergency. Lack of notification or the failure to receive notification of the declaration and cessation of an emergency shall not be a defense with respect to any violation of this act.

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 up to \$10,000 for each violation and to seek other relief, including injunctive relief, restitution and costs 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 initiation 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 or any court of record of this Commonwealth 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 that such information may be used in a judicial proceeding or 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.

Section 6. Effective date.

This act shall take effect in 60 days.

APPROVED—The 31st day of October, A.D. 2006.

EDWARD G. RENDELL