

Senator Kathleen A. Riebe proposes the following substitute bill:

CONSUMER PROTECTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen A. Riebe

House Sponsor: Andrew Stoddard

LONG TITLE

General Description:

This bill modifies the Price Controls During Emergencies Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a business that provides certain cleanup services from charging a vulnerable consumer an unconscionable price for a good or service;
- ▶ empowers the Division of Consumer Protection to enforce the provisions of this bill;
- ▶ directs money received from fines and judgments to be deposited into the Governor's Suicide Prevention Fund; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 **13-2-1**, as last amended by Laws of Utah 2020, Chapter 118
- 27 **13-41-101**, as enacted by Laws of Utah 2005, Chapter 306
- 28 **13-41-102**, as last amended by Laws of Utah 2013, Chapter 295
- 29 **13-41-202**, as last amended by Laws of Utah 2006, Chapter 153
- 30 **62A-15-1103**, as enacted by Laws of Utah 2018, Chapter 414

31 ENACTS:

- 32 **13-41-301**, Utah Code Annotated 1953
- 33 **13-41-302**, Utah Code Annotated 1953



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **13-2-1** is amended to read:

37 **13-2-1. Consumer protection division established -- Functions.**

38 (1) There is established within the Department of Commerce the Division of Consumer
39 Protection.

40 (2) The division shall administer and enforce the following:

- 41 (a) Chapter 5, Unfair Practices Act;
- 42 (b) Chapter 10a, Music Licensing Practices Act;
- 43 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 44 (d) Chapter 15, Business Opportunity Disclosure Act;
- 45 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 46 (f) Chapter 21, Credit Services Organizations Act;
- 47 (g) Chapter 22, Charitable Solicitations Act;
- 48 (h) Chapter 23, Health Spa Services Protection Act;
- 49 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 50 (j) Chapter 26, Telephone Fraud Prevention Act;
- 51 (k) Chapter 28, Prize Notices Regulation Act;
- 52 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 53 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 54 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 55 (o) Chapter 39, Child Protection Registry;
- 56 (p) Chapter 41, Price Controls [~~During Emergencies~~] Act;

- 57 (q) Chapter 42, Uniform Debt-Management Services Act;
- 58 (r) Chapter 49, Immigration Consultants Registration Act;
- 59 (s) Chapter 51, Transportation Network Company Registration Act;
- 60 (t) Chapter 52, Residential Solar Energy Disclosure Act;
- 61 (u) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 62 (v) Chapter 54, Ticket Website Sales Act;
- 63 (w) Chapter 56, Ticket Transferability Act; and
- 64 (x) Chapter 57, Maintenance Funding Practices Act.

65 Section 2. Section 13-41-101 is amended to read:

66 **CHAPTER 41. PRICE CONTROLS ACT**

67 **13-41-101. Title.**

68 This chapter is known as the "Price Controls [~~During Emergencies~~] Act."

69 Section 3. Section 13-41-102 is amended to read:

70 **13-41-102. Definitions.**

71 For purposes of this chapter:

- 72 (1) "Consumer" means a person who acquires a good or service for consumption.
- 73 (2) "Division" means the Division of Consumer Protection.
- 74 (3) (a) "Emergency territory" means the geographical area:
 - 75 (i) for which there has been a state of emergency declared; and
 - 76 (ii) that is directly affected by the events giving rise to a state of emergency.
- 77 (b) "Emergency territory" does not include a geographical area that is affected by the

78 events giving rise to a state of emergency only by economic market forces.
- 79 (4) "Excessive price" means a price for a good or service that exceeds by more than

80 10% the average price charged by that person for that good or service in the 30-day period

81 immediately preceding the day on which the state of emergency is declared.
- 82 (5) "Good" means any personal property displayed, held, or offered for sale by a

83 merchant that is necessary for consumption or use as a direct result of events giving rise to a

84 state of emergency.
- 85 (6) "Retail" means the level of distribution where a good or service is typically sold

86 directly, or otherwise provided, to a member of the public who is an end user and does not

87 resell the good or service.

88 (7) "Service" means any activity that is performed in whole or in part for the purpose of
89 financial gain including personal service, professional service, rental, leasing, or licensing for
90 use that is necessary for consumption or use as a direct result of events giving rise to a state of
91 emergency.

92 (8) "State of emergency" means a declaration of:

93 (a) an emergency or major disaster by the president of the United States of America; or

94 (b) a state of emergency by the governor under Section [53-2a-206](#).

95 (9) (a) "Unconscionable price" means a price of a good or service that is substantially
96 above the average price at which the good or service is readily obtainable by other consumers
97 in the trade area.

98 (b) "Unconscionable price" does not include a price that is directly related to an
99 increase in the seller's cost of providing the emergency, disaster, or death cleanup good or
100 service, including:

101 (i) direct costs of providing the good or service, including additional costs imposed by
102 one or more of the seller's suppliers;

103 (ii) increased costs due to normal fluctuations in an applicable market; or

104 (iii) increased costs caused by a legitimate business decision.

105 (10) "Vulnerable consumer" means a consumer whose need for an emergency, disaster,
106 or death cleanup service puts the consumer in a vulnerable state.

107 Section 4. Section **13-41-202** is amended to read:

108 **Part 2. Excessive Prices During Emergencies Prohibited**

109 **13-41-202. Enforcement -- Penalty.**

110 (1) The division shall enforce this [~~chapter~~] part.

111 (2) In determining whether to impose penalties against a person who violates [~~this~~
112 ~~chapter~~] Section [13-41-201](#), the division shall consider:

113 (a) the person's cost of doing business not accounted for in the cost to the person of the
114 good or service, including costs associated with a decrease in the supply available to a person
115 who relies on a high volume of sales;

116 (b) the person's efforts to comply with [~~this chapter~~] Section [13-41-201](#);

117 (c) whether the average price charged by the person during the 30-day period
118 immediately preceding the day on which the state of emergency is declared is artificially

119 deflated because the good or service was on sale for a lower price than the person customarily
120 charges for the good or service; and

121 (d) any other factor that the division considers appropriate.

122 (3) (a) If the division finds that a person has violated, or is violating, [~~this chapter~~]

123 Section 13-41-201, the division may:

124 (i) issue a cease and desist order; and

125 (ii) subject to Subsection (3)(b), impose an administrative fine of up to \$1,000 for each
126 violation of [~~this chapter~~] Section 13-41-201.

127 (b) Each instance of charging an excessive price under Section 13-41-201 constitutes a
128 separate violation, but in no case shall the administrative fine imposed under Subsection (3)(a)
129 exceed \$10,000 per day.

130 (4) The division may sue in a court of competent jurisdiction to enforce an order under
131 Subsection (3).

132 (5) In a suit brought under Subsection [~~(3)~~] (4), if the division prevails, the court may
133 award the division:

134 (a) court costs;

135 (b) attorney fees; and

136 (c) the division's costs incurred in the investigation of the violation of [~~this chapter~~]

137 Section 13-41-201.

138 (6) All money received through an administrative fine imposed, or judgment obtained,
139 under this section shall be deposited [~~in~~] into the Consumer Protection Education and Training
140 Fund created by Section 13-2-8.

141 Section 5. Section 13-41-301 is enacted to read:

142 **Part 3. Unconscionable Price for Cleanup Services Prohibited**

143 **13-41-301. Unconscionable price for cleanup services prohibited.**

144 A person who provides emergency, disaster, or death scene cleanup services to a
145 vulnerable consumer may not charge the vulnerable consumer an unconscionable price for a
146 good or service used in the person's emergency, disaster, or death scene cleanup services.

147 Section 6. Section 13-41-302 is enacted to read:

148 **13-41-302. Enforcement -- Penalty.**

149 (1) The division shall enforce this part.

150 (2) (a) If the division finds that a person has violated, or is violating, Section
151 13-41-301, the division may:
152 (i) issue a cease and desist order; and
153 (ii) impose an administrative fine of up to \$10,000 for each violation of Section
154 13-41-301.
155 (b) Each instance of charging an excessive price under Section 13-41-301 is a separate
156 violation.
157 (3) The division may sue in a court of competent jurisdiction to enforce an order under
158 Subsection (2).
159 (4) If the division prevails in a suit brought under Subsection (3), the court may award
160 the division:
161 (a) court costs;
162 (b) attorney fees; and
163 (c) the division's costs incurred in investigating the violation of Section 13-41-301.
164 (5) All money received through an administrative fine imposed, or judgment obtained,
165 under this section shall be deposited into the Governor's Suicide Prevention Fund created in
166 Section 62A-15-1103.
167 Section 7. Section **62A-15-1103** is amended to read:
168 **62A-15-1103. Governor's Suicide Prevention Fund.**
169 (1) There is created an expendable special revenue fund known as the Governor's
170 Suicide Prevention Fund.
171 (2) The fund shall consist of:
172 (a) gifts, grants, and bequests of real property or personal property made to the fund[?];
173 and
174 (b) contributions deposited into the fund in accordance with Section 13-41-302.
175 (3) A donor to the fund may designate a specific purpose for the use of the donor's
176 donation, if the designated purpose is described in Subsection (4) or 62A-15-1101(3).
177 (4) Subject to Subsection (3), money in the fund shall be used for the following
178 activities:
179 (a) efforts to directly improve mental health crisis response;
180 (b) efforts that directly reduce risk factors associated with suicide; and

181 (c) efforts that directly enhance known protective factors associated with suicide
182 reduction.

183 (5) The division shall establish a grant application and review process for the
184 expenditure of money from the fund.

185 (6) The grant application and review process shall describe:

186 (a) requirements to complete a grant application;

187 (b) requirements to receive funding;

188 (c) criteria for the approval of a grant application;

189 (d) standards for evaluating the effectiveness of a project proposed in a grant
190 application; and

191 (e) support offered by the division to complete a grant application.

192 (7) The division shall:

193 (a) review a grant application for completeness;

194 (b) make a recommendation to the governor or the governor's designee regarding a
195 grant application;

196 (c) send a grant application to the governor or the governor's designee for evaluation
197 and approval or rejection;

198 (d) inform a grant applicant of the governor or the governor's designee's determination
199 regarding the grant application; and

200 (e) direct the fund administrator to release funding for grant applications approved by
201 the governor or the governor's designee.

202 (8) The state treasurer shall invest the money in the fund under Title 51, Chapter 7,
203 State Money Management Act, except that all interest or other earnings derived from money in
204 the fund shall be deposited into the fund.

205 (9) Money in the fund may not be used for the Office of the Governor's administrative
206 expenses that are normally provided for by legislative appropriation.

207 (10) The governor or the governor's designee may authorize the expenditure of fund
208 money in accordance with this section.

209 (11) The governor shall make an annual report to the Legislature regarding the status of
210 the fund, including a report on the contributions received, expenditures made, and programs
211 and services funded.