

Considerations regarding the statute governing “price gouging” complaints
(Utah Code § 13-41-101 et seq.)

- **Consider addressing challenges related to what sellers can include in the price to consumers.** Currently, the statute allows a percentage charge over the total cost of obtaining a good or providing the service. It would be helpful to further clarify what costs a business can include in the price charged consumers.
 - For example, some sales of goods (including online sales) require costs to ship the goods to the consumer.
- **Further define what goods and services are covered by the statute.** Currently, the statute covers goods and services “necessary for consumption or use as a direct result of events giving rise to a state of emergency.” Utah Code § 13-41-102(5), (7) (defining “good” and “service”). While some goods and services are more clearly “necessary” for an emergency than others, determining what is “necessary” and what is not can be very challenging. For example, food is necessary during a pandemic; but what is the line between “necessary” food and “unnecessary” food? An alternative approach could be to keep the “necessary” language, but also add to the definition of goods and services those things that have become scarce as a result of the emergency.
- **Consider applying the customary markup + 10% rule to substitute goods.** If a seller has sold a good previously, the statute indicates that the seller can charge the customary markup plus 10%. If a seller has not sold a good previously, the seller can charge 30% over the cost of obtaining the good. The statute is not clear on which percentage to apply when a seller sells a substitute of a good sold previously (for example, a different brand, quality, or quantity). It may make the most sense to specify that in these circumstances, the customary markup plus 10% rule applies. See Utah Code § 13-41-102(4), -201(2), (4).
- **Clarify that an advertisement or offer, even before a sale is completed, is covered by the statute.**
- **Clarify that the statute applies equally to individuals and businesses.** The terms of the statute appear to apply equally to businesses and individuals selling at retail, but it may be helpful to clarify this.
- **Challenges with administering the per-day cap.** The Act’s administrative fine is up to \$1,000 per violation with a cap of \$10,000 per day. Because of a lack of record keeping by some sellers, it can be difficult or impossible to administer this provision.
- **Consider modifications to the requirement to provide documentation to the Division found in Utah Code § 13-41-201(3).**
 - To enforce the statute, it is key for the Division to obtain documentation from a seller to determine whether a violation occurred. It may be helpful to specify a time period for a business to provide the documentation required by the statute. A countervailing consideration is the burden of providing documentation during an emergency.
 - Section 13-41-201(3) requires a person to provide documentation to the Division to demonstrate compliance with the Act, but only with regard to a certain subset of allegations (those in § 13-41-201(2)). Consider making this provision applicable regardless of which subsection of the statute the allegation falls under.

- **Other considerations or notes:**

- At least one retailer raised the concern that the statute does not allow for normal price increases based on seasonal demand (not driven by emergency-based demand), a challenge during extended emergencies.
- The 30% markup limitation on goods not sold before emergencies can be disproportionately impactful with respect to low-dollar items. An item that cost \$1 to obtain provides only 30 cents to cover fixed and overhead costs, whereas an item that cost \$100 to obtain provides \$30.
- Some sellers have obtained goods free from others and have subsequently sold the goods at high prices. Under the statute, the seller's cost to obtain the goods would be \$0 (see Utah Code § 13-41-201(4)), technically preventing the seller from selling the items at all. While one solution might be to use the market price for the 30 days prior to the emergency as a baseline, this would be very difficult to ascertain.
- A number of sellers have not had the documentation needed to determine whether a price is excessive. The statute could address how to handle this circumstance.
- A few sellers anticipated the pandemic coming, and started selling at inflated prices more than 30 days before the emergency declarations. Because the sellers' inflated baseline cost was established earlier than the 30-day window, the Act likely does not apply to these sales.
- One report involved bartering - offering 4 rolls of toilet paper for an iPhone 7. The statute does not appear to contemplate this transaction.