

Chapter 41 Price Controls During Emergencies Act

Part 1 General Provisions

13-41-101 Title.

This chapter is known as the "Price Controls During Emergencies Act."

Enacted by Chapter 306, 2005 General Session

13-41-102 Definitions.

For purposes of this chapter:

- (1) "Consumer" means a person who seeks to acquire or acquires a good or service for consumption.
- (2) "Division" means the Division of Consumer Protection.
- (3)
 - (a) "Emergency territory" means the geographical area:
 - (i) for which there has been a state of emergency declared; and
 - (ii) that is directly affected by the events giving rise to a state of emergency.
 - (b) "Emergency territory" does not include a geographical area that is affected by the events giving rise to a state of emergency only by economic market forces.
- (4) "Excessive price" means:
 - (a) for a person that sold the good or provided the service in the 30-day period immediately preceding the day on which a state of emergency is declared:
 - (i) a price for a good or service that exceeds by more than 10% the highest price the person charged for the good or service in the 30-day period immediately preceding the day on which the state of emergency is declared; or
 - (ii) if the person's total cost for the good or service exceeds the average total cost to the person for the good or service in the 30-day period immediately preceding the day on which the state of emergency is declared, a price that exceeds by more than 10% the sum of:
 - (A) the total cost to the person for the good or service; and
 - (B) the person's customary margin; or
 - (b) for a person that did not sell the good or provide the service in the 30-day period immediately preceding the day on which a state of emergency is declared, a price for a good or service that is more than twice the person's total cost for the good or service.
- (5) "Good" means any personal property displayed, held, or offered for sale by a merchant that is necessary for consumption or use as a direct result of events giving rise to a state of emergency.
- (6) "Margin" means the difference between the sale price and the total cost of the good or service.
- (7) "Retail" means the level of distribution where a good or service is typically sold directly, or otherwise provided, to a member of the public who is an end user and does not resell the good or service.
- (8) "Service" means any activity that is performed in whole or in part for the purpose of financial gain including personal service, professional service, rental, leasing, or licensing for use that is necessary for consumption or use as a direct result of events giving rise to a state of emergency.

(9) "State of emergency" means a declaration of:

- (a) an emergency or major disaster by the president of the United States of America; or
- (b) a state of emergency by the governor under Section 53-2a-206.

(10)

(a) "Total cost" means an amount equal to:

- (i) the sum of all costs associated with a person obtaining a product or service and providing the product or service to a consumer, including fees, shipping, or employee labor; minus
 - (ii) any trade discount, cash discount, or manufacturer rebate.
- (b) "Total cost" does not include an amount that incorporates an ongoing cost to operate a business that is not directly associated with a good or service.

Amended by Chapter 226, 2021 General Session

Part 2

Excessive Prices Prohibited

13-41-201 Excessive price prohibited.

(1) A person may not offer for sale, offer to provide, sell, or provide a good or service to a consumer at an excessive price, if:

- (a) a state of emergency exists; and
- (b) the person offers for sale, offers to provide, sells, or provides the good or service at retail:

(i)

- (A) during the time period for which a state of emergency declared by the governor exists, if the state of emergency described in Subsection (1) is declared by the governor; or
- (B) for 30 days after the day on which the state of emergency begins, if the state of emergency described in Subsection (1)(a) is declared by the president of the United States; and

(ii) within the emergency territory.

(2) A person may offer for sale, offer to provide, sell, or provide a good or service as otherwise prohibited under Subsection (1), if the person establishes that:

- (a) the good or service is identical, similar, or comparable in nature to a good or service that the person sold or provided in the 30-day period immediately preceding the day on which the state of emergency described in Subsection (1)(a) is declared; and
- (b) the person applies the same margin to the good or service as the margin applied to the identical, similar, or comparable good or service described in Subsection (2)(a) during the 30-day period immediately preceding the day on which the state of emergency described in Subsection (1)(a) is declared.

(3) Upon request of the division, a person allegedly offering for sale, offering to provide, selling, or providing a good or service at an excessive price in accordance with this chapter shall provide documentation to the division that the person is in compliance with this chapter.

Amended by Chapter 226, 2021 General Session

13-41-202 Enforcement -- Penalty.

(1) The division shall enforce this chapter.

- (2) In determining whether to investigate, contact, or request information from a person in the enforcement of this chapter, the division shall consider:
 - (a) whether a complaint, information, or evidence reasonably justifies further division inquiry;
 - (b) the burden contact, investigation, or providing information places on the person;
 - (c) the result of a previous investigation of the person, including whether the previous investigation suggests that the person did not violate this chapter;
 - (d) whether the person may benefit from receiving information about requirements under this chapter; and
 - (e) the potential gravity of harm to consumers, considering price, availability, and volume of a good or service.
- (3) In enforcing this chapter, the division may not publicly disclose the identity of a person the division investigates unless:
 - (a) the person's identity is a matter of public record in an enforcement proceeding; or
 - (b) the person consents to public disclosure.
- (4) In determining whether to impose penalties against a person who violates this chapter, the division shall consider:
 - (a) the person's cost of doing business not accounted for in the total cost to the person for the good or service, including costs associated with a decrease in the supply available to a person who relies on a high volume of sales;
 - (b) the person's efforts to comply with this chapter;
 - (c) whether the average price charged by the person during the 30-day period immediately preceding the day on which the state of emergency is declared is artificially deflated because the good or service was on sale for a lower price than the person customarily charges for the good or service; and
 - (d) any other factor that the division considers appropriate.
- (5)
 - (a) If the division finds that a person has violated, or is violating, this chapter, the division may:
 - (i) issue a cease and desist order; and
 - (ii) subject to Subsection (5)(b), impose an administrative fine for each violation of this chapter.
 - (b) Each instance of charging an excessive price under Section 13-41-201 constitutes a separate violation, but in no case shall the administrative fine imposed under Subsection (5)(a) exceed double the excessive portion of the price the person charged.
- (6) The division may sue in a court of competent jurisdiction to enforce an order under Subsection (5).
- (7) In a suit brought under Subsection (5), if the division prevails, the court may award the division:
 - (a) court costs;
 - (b) attorney fees; and
 - (c) the division's costs incurred in the investigation of the violation of this chapter.
- (8) All money received through an administrative fine imposed, or judgment obtained, under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.

Amended by Chapter 226, 2021 General Session