1	PRICE CONTROLS DURING EMERGENCIES				
2	ACT				
3	2005 GENERAL SESSION				
4	STATE OF UTAH				
5	Sponsor: Patrice M. Arent				
6 7	LONG TITLE				
8	General Description:				
9	This bill enacts the Price Controls During Emergencies Act.				
10	Highlighted Provisions:				
11	This bill:				
2	defines terms;				
13	 prohibits a person from charging an excessive price for a good or service if a state 				
4	of emergency exists;				
5	 permits a person to increase the price of a good or service during a state of 				
16	emergency if costs rise;				
17	requires the Division of Consumer Protection to enforce the act;				
18	allows the division to impose and enforce fines;				
19	 allows the division to collect costs and attorney fees if the division prevails in an 				
20	action;				
21	 requires money collected by the division to be deposited into the Consumer 				
22	Protection Education and Training Fund; and				
23	makes technical changes.				
24	Monies Appropriated in this Bill:				
25	None				
26	Other Special Clauses:				
27	None				



28	Utah Code Sections Affected:			
29	AMENDS:			
30	13-2-1, as last amended by Chapter 222, Laws of Utah 2002			
31	ENACTS:			
32	13-41-101, Utah Code Annotated 1953			
33	13-41-102, Utah Code Annotated 1953			
34	13-41-201 , Utah Code Annotated 1953			
35	13-41-202 , Utah Code Annotated 1953			
36				
37	Be it enacted by the Legislature of the state of Utah:			
38	Section 1. Section 13-2-1 is amended to read:			
39	13-2-1. Consumer protection division established Functions.			
40	(1) There is established within the Department of Commerce the Division of Consumer			
41	Protection.			
42	(2) The division shall administer and enforce the following:			
43	(a) Chapter 5, Unfair Practices Act;			
44	(b) Chapter 10a, Music Licensing Practices Act;			
45	(c) Chapter 11, Utah Consumer Sales Practices Act;			
46	(d) Chapter 15, Business Opportunity Disclosure Act;			
47	(e) Chapter 20, New Motor Vehicles Warranties Act;			
48	(f) Chapter 21, Credit Services Organizations Act;			
49	(g) Chapter 22, Charitable Solicitations Act;			
50	(h) Chapter 23, Health Spa Services Protection Act;			
51	(i) Chapter 25a, Telephone and Facsimile Solicitation Act;			
52	(j) Chapter 26, Telephone Fraud Prevention Act;			
53	(k) Chapter 28, Prize Notices Regulation Act;			
54	(1) Chapter 30, Utah Personal Introduction Services Protection Act; [and]			
55	(m) Chapter 34, Utah Postsecondary Proprietary School Act[-]; and			
56	(n) Chapter 41, Price Controls During Emergencies Act.			
57	Section 2. Section 13-41-101 is enacted to read:			
58	CHAPTER 41. PRICE CONTROLS DURING EMERGENCIES ACT			

59	Part 1. General Provisions			
60	13-41-101. Title.			
61	This chapter is known as the "Price Controls During Emergencies Act."			
62	Section 3. Section 13-41-102 is enacted to read:			
63	<u>13-41-102.</u> Definitions.			
64	For purposes of this chapter:			
65	$\hat{S} \rightarrow (1)$ "Consumer" means a person who acquires a good or service for consumption.			
65a	[(1)] (2) (2) (2) Division" means the Division of Consumer Protection.			
66	$\$ \rightarrow [\underbrace{(2)}]$ (3) $\leftarrow \$$ "Emergency territory" means the geographical area for which there has			
66a	been a state			
67	of emergency declared.			
68	\$→ [(3)] (4) ←\$ "Excessive price" means a price for a good or service that exceeds by more			
68a	<u>than</u>			
69	10% the average price charged by that person for that good or service in the 30-day period			
70	immediately preceding the day on which the state of emergency is declared.			
71	$\hat{S} \rightarrow [\underline{(4)}]$ (5) $\leftarrow \hat{S}$ "Good" means any personal property displayed, held, or offered for sale by a			
72	merchant that is necessary for consumption or use as a direct result of events giving rise to a			
73	state of emergency.			
74	$\hat{S} \rightarrow [\underline{(5)}]$ (6) "Retail" means the level of distribution where a good or service is typically			
74a	sold directly, or otherwise provided, to a member of the public who is an end-user and does no			
74b	resell the good or service.			
74c	(7) ←\$ "Service" means any activity that is performed in whole or in part for the purpose of			
75	financial gain including, but not limited to, personal service, professional service, rental,			
76	leasing, or licensing for use that is necessary for consumption or use as a direct result of events			
77	giving rise to a state of emergency.			
78	\$→ [(6)] (8) ←\$ "State of emergency" means a declaration of:			
79	(a) an emergency or major disaster by the President of the United States of America; or			
80	(b) a state of emergency by the governor under Section 63-5a-5.			
81	Section 4. Section 13-41-201 is enacted to read:			
82	Part 2. Excessive Prices Prohibited			
83	13-41-201. Excessive price prohibited.			
84	(1) Except as provided in Subsection (2), if a state of emergency exists, a person may			
85	not charge $\$ \rightarrow $ a consumer $\leftarrow \$$ an excessive price for goods or services $\$ \rightarrow $ sold or provided at			
85a	retail ←Ŝ·			

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86	(a) (i) during the time period for which a state of emergency declared by the governor
87	exists; or
88	(ii) for 30 days after the day on which the state of emergency begins, if declared by the
89	President of the United States; and

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90	(b) within the emergency territory.		
91	(2) A person may charge an excessive price if:		
92	(a) that person's cost of obtaining the good or providing the service exceeds the average		
93	cost to the person of obtaining the good or providing the service in the 30-day period		
94	immediately preceding the day on which the state of emergency is declared; and		
95	(b) the price charged for the good or service does not exceed the sum of:		
96	(i) 10% above the total cost to that person of obtaining the good or providing the		
97	service; and		
98	(ii) the person's customary markup.		
99	(3) $\$ \rightarrow [A]$ Upon request of the division, $a \leftarrow \$$ person $\$ \rightarrow allegedly \leftarrow \$$ charging an		
99a	excessive price		
99a	under Subsection (2) $\hat{S} \rightarrow [\underline{\text{has the burden of}}]$		
100	proving that the person meets the requirements of Subsections (2)(a) and (b).] shall provide		
100a	documentation to the division that the person is in compliance with this chapter. \leftarrow Ŝ		
101	(4) If a good or service has not been sold by a person during the 30-day period		
102	immediately preceding the day on which the state of emergency is declared, a price is not		
103	excessive if it does not exceed 30% above the person's total cost of obtaining the good or		
104	providing the service.		
105	Section 5. Section 13-41-202 is enacted to read:		
106	13-41-202. Enforcement Penalty.		
107	(1) The division shall enforce this chapter.		
108	(2) In determining whether to impose penalties against a person who violates this		
109	chapter, the division shall consider:		
110	(a) the person's cost of doing business not accounted for in the cost to the person of the		
111	good or service, including costs associated with a decrease in the supply available to a person		
112	who relies on a high volume of sales;		
113	(b) the person's efforts to comply with this chapter;		
114	(c) whether the average price charged by the person during the 30-day period		
115	immediately preceding the day on which the state of emergency is declared is artificially		
116	deflated because the good or service was on sale for a lower price than the person customarily		
117	charges for the good or service; and		
118	(d) any other factor that the division considers appropriate.		
119	(3) (a) If the division finds that a person has violated, or is violating, this chapter, the		
120	division may:		

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121	(i) issue a cease and desist order; and		
122	(ii) subject to Subsection (2)(b), impose an administrative fine of up to \$1,000 for each		
123	violation of this chapter.		
124	(b) Each instance of charging an excessive price under Section 13-41-201 constitutes a		
125	separate violation, but in no case shall the administrative fine imposed under Subsection (2)(a)		
126	exceed \$10,000 per day.		
127	(4) The division may sue in a court of competent jurisdiction to enforce an order under		
128	Subsection (2).		
129	(5) In a suit brought under Subsection (3), if the division prevails, the court may award		
130	the division:		
131	(a) court costs;		
132	(b) attorney fees; and		
133	(c) the division's costs incurred in the investigation of the violation of this chapter.		
134	(6) All money received through an administrative fine imposed, or judgment obtained,		
135	under this section shall be deposited in the Consumer Protection Education and Training Fund		
136	created by Section 13-2-8.		

Legislative Review Note as of 1-21-05 1:56 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

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Price Controls During Emergencies Act

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State Impact

No fiscal impact.

Individual and Business Impact

Businesses in violation are subject to an administrative fine not to exceed \$1,000 per violation and not to total more than \$10,000 per day. Individuals should avoid price gouging in a declared disaster.

Office of the Legislative Fiscal Analyst