

1 **PRICE CONTROLS DURING EMERGENCIES**

2 **ACT**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Patrice M. Arent**

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Price Controls During Emergencies Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ prohibits a person from charging an excessive price for a good or service if a state
- 14 of emergency exists;
- 15 ▶ 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



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 (l) 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**

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

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) ~~§~~ → [A] Upon request of the division, a ~~§~~ person ~~§~~ → allegedly ~~§~~ charging an
 99a excessive price

99a under Subsection (2) ~~§~~ → [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. ~~§~~

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:

- 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

Fiscal Note
Bill Number SB0052

Price Controls During Emergencies Act

26-Jan-05

11:31 AM

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