

PRICE CONTROLS DURING EMERGENCIES

ACT

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

House Sponsor: David Clark

LONG TITLE

General Description:

This bill enacts the Price Controls During Emergencies Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a person from charging an excessive price for a good or service if a state of emergency exists;
- ▶ permits a person to increase the price of a good or service during a state of emergency if costs rise;
- ▶ requires the Division of Consumer Protection to enforce the act;
- ▶ allows the division to impose and enforce fines;
- ▶ allows the division to collect costs and attorney fees if the division prevails in an action;
- ▶ requires money collected by the division to be deposited into the Consumer Protection Education and Training Fund; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-2-1, as last amended by Chapter 222, Laws of Utah 2002

ENACTS:

13-41-101, Utah Code Annotated 1953

13-41-102, Utah Code Annotated 1953

13-41-201, Utah Code Annotated 1953

13-41-202, Utah Code Annotated 1953

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

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

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

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

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

- (a) Chapter 5, Unfair Practices Act;
- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;
- (e) Chapter 20, New Motor Vehicles Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 30, Utah Personal Introduction Services Protection Act; ~~and~~
- (m) Chapter 34, Utah Postsecondary Proprietary School Act~~[-];~~ and
- (n) Chapter 41, Price Controls During Emergencies Act.

Section 2. Section 13-41-101 is enacted to read:

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."

Section 3. Section 13-41-102 is enacted to read:

13-41-102. Definitions.

For purposes of this chapter:

- (1) "Consumer" means a person who acquires a good or service for consumption.
- (2) "Division" means the Division of Consumer Protection.
- (3) "Emergency territory" means the geographical area for which there has been a state of emergency declared.
- (4) "Excessive price" means a price for a good or service that exceeds by more than 10% the average price charged by that person for that good or service in the 30-day period immediately preceding the day on which the state of emergency is declared.
- (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) "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.
- (7) "Service" means any activity that is performed in whole or in part for the purpose of financial gain including, but not limited to, 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.
- (8) "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 63-5a-5.

Section 4. Section **13-41-201** is enacted to read:

Part 2. Excessive Prices Prohibited

13-41-201. Excessive price prohibited.

(1) Except as provided in Subsection (2), if a state of emergency exists, a person may not charge a consumer an excessive price for goods or services sold or provided at retail:

(a) (i) during the time period for which a state of emergency declared by the governor exists; or

(ii) for 30 days after the day on which the state of emergency begins, if declared by the President of the United States; and

(b) within the emergency territory.

(2) A person may charge an excessive price if:

(a) that person's cost of obtaining the good or providing the service exceeds the average cost to the person of obtaining the good or providing the service in the 30-day period immediately preceding the day on which the state of emergency is declared; and

(b) the price charged for the good or service does not exceed the sum of:

(i) 10% above the total cost to that person of obtaining the good or providing the service; and

(ii) the person's customary markup.

(3) Upon request of the division, a person allegedly charging an excessive price under Subsection (2) shall provide documentation to the division that the person is in compliance with this chapter.

(4) If a good or service has not been sold by a person during the 30-day period immediately preceding the day on which the state of emergency is declared, a price is not excessive if it does not exceed 30% above the person's total cost of obtaining the good or providing the service.

Section 5. Section **13-41-202** is enacted to read:

13-41-202. Enforcement -- Penalty.

(1) The division shall enforce this chapter.

(2) 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 cost to the person of 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.

(3) (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 (2)(b), impose an administrative fine of up to \$1,000 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 (3)(a) exceed \$10,000 per day.

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

(5) In a suit brought under Subsection (3), 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.

(6) 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.