

1                                   **PRICE CONTROLS DURING EMERGENCIES**

2   **ACT**

3   2005 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Patrice M. Arent**

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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**

**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) "Division" means the Division of Consumer Protection.

(2) "Emergency territory" means the geographical area for which there has been a state of emergency declared.

(3) "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.

(4) "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.

(5) "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.

(6) "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 an excessive price for goods or services:

(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

- 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 person charging an excessive price under Subsection (2) has the burden of
- 100 proving that the person meets the requirements of Subsections (2)(a) and (b).
- 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.

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**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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**Fiscal Note**  
**Bill Number SB0052**

**Price Controls During Emergencies Act**

*26-Jan-05*

*11:31 AM*

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**State Impact**

No fiscal impact.

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**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.

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**Office of the Legislative Fiscal Analyst**