

PRICE CONTROLS DURING EMERGENCIES ACT

AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rex P. Shipp

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Price Controls During Emergencies Act.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "excessive price";
- ▶ defines "margin" and "total cost";
- ▶ amends the conditions under which a person may charge an excessive price;
- ▶ permits the Division of Consumer Protection to issue a subpoena for certain documents under certain conditions; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-41-102, as last amended by Laws of Utah 2013, Chapter 295

13-41-201, as enacted by Laws of Utah 2005, Chapter 306

13-41-202, as last amended by Laws of Utah 2006, Chapter 153



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

Section 1. Section **13-41-102** is amended to read:

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, a price for a good or service that exceeds by more than 10% the [average price charged by that person for that] 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

(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.

~~[(6)]~~ (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.

~~[(7)]~~ (8) "Service" means any activity that is performed in whole or in part for the

59 purpose of financial gain including personal service, professional service, rental, leasing, or
 60 licensing for use that is necessary for consumption or use as a direct result of events giving rise
 61 to a state of emergency.

62 ~~[(8)]~~ (9) "State of emergency" means a declaration of:

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

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

66 (i) the sum of all costs associated with a person obtaining a product or service and
 67 providing the product or service to a consumer, including fees, shipping, or employee labor;
 68 minus

69 (ii) any trade discount, cash discount, or manufacturer rebate.

70 (b) "Total cost" does not include an amount that incorporates an ongoing cost to
 71 operate a business that is not directly associated with a good or service.

72 Section 2. Section 13-41-201 is amended to read:

73 **13-41-201. Excessive price prohibited.**

74 (1) ~~[Except as provided in Subsection (2), if a state of emergency exists, a]~~ A person
 75 may not [charge a consumer an excessive price for goods or services sold or provided] offer for
 76 sale, offer to provide, sell, or provide a good or service to a consumer at an excessive price, if:

77 (a) a state of emergency exists; and

78 (b) the person offers for sale, offers to provide, sells, or provides the good or service at
 79 retail:

80 ~~[(a)-(i)]~~ (i) (A) during the time period for which a state of emergency declared by the
 81 governor exists, if the state of emergency described in Subsection (1)(a) is declared by the
 82 governor; or

83 ~~[(ii)]~~ (B) for 30 days after the day on which the state of emergency begins, if the state
 84 of emergency described in Subsection (1)(a) is declared by the President of the United States;
 85 and

86 ~~[(b)]~~ (ii) within the emergency territory.

87 (2) A person may ~~[charge]~~ offer for sale, offer to provide, sell, or provide a good or
 88 service at an excessive price as otherwise prohibited under Subsection (1), if:

89 (a) that person's total cost ~~[of obtaining the good or providing the]~~ for the good or

90 service exceeds the average total cost to the person [~~of obtaining the good or providing the~~] for
91 the good or service in the 30-day period immediately preceding the day on which the state of
92 emergency is declared; and

93 (b) the excessive price [~~charged for~~] at which the person offers for sale, offers to
94 provide, sells, or provides the good or service does not exceed the sum of:

95 (i) [~~10% above~~] 110% of the total cost to that person [~~of obtaining the good or~~
96 ~~providing the~~] for the good or service; and

97 (ii) the person's customary [~~markup~~] margin.

98 [~~(3) Upon request of the division, a person allegedly charging an excessive price under~~
99 ~~Subsection (2) shall provide documentation to the division that the person is in compliance~~
100 ~~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 3. Section **13-41-202** is amended to read:

106 **13-41-202. Enforcement -- Penalty.**

107 (1) The division shall enforce this chapter.

108 (2) (a) The division may subpoena a person to provide documentation demonstrating
109 that the person is in compliance with this chapter.

110 (b) A subpoena described in Subsection (2)(a) shall allow the person at least 14 days
111 after the day on which the subpoena is served to provide a response.

112 [(2)] (3) In determining whether to impose penalties against a person who violates this
113 chapter, the division shall consider:

114 (a) the person's cost of doing business not accounted for in the total cost to the person
115 of the good or service, including costs associated with a decrease in the supply available to a
116 person who relies on a high volume of sales;

117 (b) the person's efforts to comply with this chapter;

118 (c) whether the average price [~~charged by~~] at which the person offers to sell, offers to
119 provide, sells, or provides a good or service during the 30-day period immediately preceding
120 the day on which the state of emergency is declared is artificially deflated because the good or

121 service was on sale for a lower price than the person customarily [~~charges~~] offers for the good
122 or service; and

123 (d) any other factor that the division considers appropriate.

124 [~~(3)~~] (4) (a) If the division finds that a person has violated, or is violating, this chapter,
125 the division may:

126 (i) issue a cease and desist order; and

127 (ii) subject to Subsection [~~(3)~~] (4)(b), impose an administrative fine of up to \$1,000 for
128 each violation of this chapter.

129 (b) Each instance of charging an excessive price under Section 13-41-201 constitutes a
130 separate violation, but in no case shall the administrative fine imposed under Subsection [~~(3)~~]
131 (4)(a) exceed \$10,000 per day.

132 [~~(4)~~] (5) The division may sue in a court of competent jurisdiction to enforce an order
133 under Subsection [~~(3)~~] (4).

134 [~~(5)~~] (6) In a suit brought under Subsection [~~(3)~~] (4), if the division prevails, the court
135 may award the division:

136 (a) court costs;

137 (b) attorney fees; and

138 (c) the division's costs incurred in the investigation of the violation of this chapter.

139 [~~(6)~~] (7) All money received through an administrative fine imposed, or judgment
140 obtained, under this section shall be deposited [~~in~~] into the Consumer Protection Education and
141 Training Fund created by Section 13-2-8.