

**AMENDMENTS TO THE PRICE CONTROLS DURING
EMERGENCIES ACT**

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Price Controls During Emergencies Act.

Highlighted Provisions:

This bill:

- ▶ amends the standard of evidence required to cite a person for a violation of the Price Controls During Emergencies Act;
- ▶ defines "total cost" as all acquisition and distribution costs;
- ▶ amends provisions regarding when a price is excessive;
- ▶ requires certain conditions be met before the Division of Consumer Protection may investigate a violation of the Price Controls During Emergencies Act;
- ▶ amends the amount the Division of Consumer Protection may fine for a violation of the Price Controls During Emergencies Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 13-2-6, as last amended by Laws of Utah 2019, Chapter 115
- 29 13-41-102, as last amended by Laws of Utah 2013, Chapter 295
- 30 13-41-201, as enacted by Laws of Utah 2005, Chapter 306
- 31 13-41-202, as last amended by Laws of Utah 2006, Chapter 153

32

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

34 Section 1. Section 13-2-6 is amended to read:

35 **13-2-6. Enforcement powers.**

36 (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the
37 division shall have authority to convene administrative hearings, issue cease and desist orders,
38 and impose fines under all the chapters identified in Section 13-2-1.

39 (2) Any person who intentionally violates a final cease and desist order entered by the
40 division of which the person has notice is guilty of a third degree felony.

41 (3) If the division has reasonable cause to believe that any person has violated or is
42 violating any chapter listed in Section 13-2-1, the division may promptly issue the alleged
43 violator a citation signed by the division's director or the director's designee.

44 (a) Each citation shall be in writing and shall:

45 (i) set forth with particularity the nature of the violation, including a reference to the
46 statutory or administrative rule provision violated;

47 (ii) state that any request for review of the citation shall be made in writing and be
48 received by the division no more than 20 calendar days [~~following issuance~~] after the day on
49 which the division issues the citation;

50 (iii) state the consequences of failing to make a timely request for review; and

51 (iv) state all other information required by Subsection 63G-4-201(2).

52 (b) In computing any time period prescribed by this section, the following days may
53 not be included:

54 (i) the day on which the division issues a citation; and

55 (ii) the day on which the division receives a request for review of a citation.

56 (c) (i) [~~H~~] Except as provided in Subsection (3)(c)(iii), if the presiding officer finds that
57 there is not substantial evidence that the recipient violated a chapter listed in Section 13-2-1;

58 (A) the citation may not become final; and

59 (B) the division shall immediately vacate the citation and promptly notify the recipient
60 in writing.

61 (ii) [Hf] Except as provided in Subsection (3)(c)(iv), if the presiding officer finds that
62 there is substantial evidence that the recipient violated a chapter listed in Section 13-2-1[7];

63 (A) the citation shall become final; and

64 (B) the division may enter a cease and desist order against the recipient.

65 (iii) For a citation issued for a violation of Chapter 41, Price Controls During
66 Emergencies Act, if the presiding officer finds that there is not clear and convincing evidence
67 that the recipient violated the chapter:

68 (A) the citation may not become final; and

69 (B) the division shall immediately vacate the citation and promptly notify the recipient
70 in writing.

71 (iv) For a citation issued for a violation of Chapter 41, Price Controls During
72 Emergencies Act, if the presiding officer finds that there is clear and convincing evidence that
73 the recipient violated the chapter:

74 (A) the citation shall become final; and

75 (B) the division may enter a cease and desist order against the recipient.

76 (d) (i) A citation issued under this chapter may be personally served upon any person
77 upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure.

78 (ii) A citation also may be served by first-class mail, postage prepaid.

79 (e) (i) If the recipient fails to make a request for review within 20 calendar days after
80 the day on which the division issues the citation, the citation shall become the final order of the
81 division.

82 (ii) The period to contest the citation may be extended by the director for good cause
83 shown.

84 (f) If the chapter violated allows for an administrative fine, after a citation becomes
85 final, the director may impose the administrative fine.

86 (4) (a) A person who has violated, is violating, or has attempted to violate a chapter
87 identified in Section 13-2-1 is subject to the division's jurisdiction if:

88 (i) the violation or attempted violation is committed wholly or partly within the state;

89 (ii) conduct committed outside the state constitutes an attempt to commit a violation

90 within the state; or

91 (iii) transactional resources located within the state are used by the offender to directly
92 or indirectly facilitate a violation or attempted violation.

93 (b) As used in this section, "transactional resources" means:

94 (i) any mail drop or mail box, regardless of whether the mail drop or mail box is
95 located on the premises of a United States Post Office;

96 (ii) any telephone or facsimile transmission device;

97 (iii) any Internet connection by a resident or inhabitant of this state with a resident- or
98 nonresident-maintained [~~internet~~] Internet site;

99 (iv) any business office or private residence used for a business-related purpose;

100 (v) any account with or services of a financial institution;

101 (vi) the services of a common or private carrier; or

102 (vii) the use of any city, county, or state asset or facility, including any road or
103 highway.

104 (5) The director or the director's designee, for the purposes outlined in any chapter
105 administered by the division, may administer oaths, issue subpoenas, compel the attendance of
106 witnesses, or compel the production of papers, books, accounts, documents, or evidence.

107 (6) (a) An administrative action filed under this chapter or a chapter listed in Section
108 13-2-1 shall be commenced no later than 10 years after the day on which the alleged violation
109 occurs.

110 (b) A civil action filed under this chapter or a chapter listed in Section 13-2-1 shall be
111 commenced no later than five years after the day on which the alleged violation occurs.

112 (c) The provisions of this Subsection (6) control over the provisions of Title 78B,
113 Chapter 2, Statutes of Limitations.

114 Section 2. Section 13-41-102 is amended to read:

115 **13-41-102. Definitions.**

116 For purposes of this chapter:

117 (1) "Consumer" means a person who acquires a good or service for consumption.

118 (2) "Division" means the Division of Consumer Protection.

119 (3) (a) "Emergency territory" means the geographical area:

120 (i) for which there has been a state of emergency declared; and

121 (ii) that is directly affected by the events giving rise to a state of emergency.

122 (b) "Emergency territory" does not include a geographical area that is affected by the
123 events giving rise to a state of emergency only by economic market forces.

124 (4) "Excessive price" means a price for a good or service that exceeds by more than
125 10% the average price charged by that person for that good or service in the 30-day period
126 immediately preceding the day on which the state of emergency is declared.

127 (5) "Good" means any personal property displayed, held, or offered for sale by a
128 merchant that is necessary for consumption or use as a direct result of events giving rise to a
129 state of emergency.

130 (6) "Retail" means the level of distribution where a good or service is typically sold
131 directly, or otherwise provided, to a member of the public who is an end user and does not
132 resell the good or service.

133 (7) "Service" means any activity that is performed in whole or in part for the purpose of
134 financial gain including personal service, professional service, rental, leasing, or licensing for
135 use that is necessary for consumption or use as a direct result of events giving rise to a state of
136 emergency.

137 (8) "State of emergency" means a declaration of:

138 (a) an emergency or major disaster by the president of the United States of America; or

139 (b) a state of emergency by the governor under Section 53-2a-206.

140 (9) "Total cost" means total acquisition and distribution costs.

141 Section 3. Section 13-41-201 is amended to read:

142 **13-41-201. Excessive price prohibited.**

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

146 (a) a state of emergency exists; and

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

149 [(a)] (i) (A) during the time period for which a state of emergency declared by the
150 governor exists, if the state of emergency described in Subsection (1) is declared by the
151 governor; or

152 ~~[(i)]~~ (B) for 30 days after the day on which the state of emergency begins, if the state
153 of emergency described in Subsection (1)(a) is declared by the [President] president of the
154 United States; and

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

156 (2) ~~[A]~~ Notwithstanding Subsection (1), a person may [charge] offer for sale, offer to
157 provide, sell, or provide a good or service at an excessive price if:

158 (a) that person's total cost ~~[of obtaining]~~ for the good or ~~[providing the]~~ service exceeds
159 the average total cost to the person ~~[of obtaining]~~ for the good or ~~[providing the]~~ service in the
160 30-day period immediately preceding the day on which the state of emergency is declared; and

161 (b) the price ~~[charged for]~~ at which the good or service is offered for sale or sold does
162 not exceed the sum of:

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

165 (ii) the person's customary markup.

166 (3) Upon request of the division, a person allegedly ~~[charging]~~ offering for sale,
167 offering to provide, selling, or providing a good or service at an excessive price [under] in
168 accordance with Subsection (2) shall provide documentation to the division that the person is
169 in compliance with ~~[this chapter]~~ Subsection (2).

170 (4) If a good or service has not been sold by a person during the 30-day period
171 immediately preceding the day on which the state of emergency is declared, a price is not
172 excessive if it does not exceed ~~[30%]~~ 40% above the person's total cost ~~[of obtaining]~~ for the
173 good or ~~[providing the]~~ service.

174 Section 4. Section **13-41-202** is amended to read:

175 **13-41-202. Enforcement -- Penalty.**

176 (1) The division shall enforce this chapter.

177 (2) The division may not investigate a person for a violation of this chapter unless:

178 (a) the division receives three or more credible reports about the person allegedly
179 violating this chapter, regardless of whether the reports indicate the same violation; and

180 (b) the person appears to profit in an aggregate amount of at least \$1,000 from the
181 alleged violation or violations.

182 ~~[(2)]~~ (3) In determining whether to impose penalties against a person who violates this

183 chapter, the division shall consider:

184 (a) the person's cost of doing business not accounted for in the total cost to the person
185 [~~of~~] for the good or service, including costs associated with a decrease in the supply available
186 to a person who relies on a high volume of sales;

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

188 (c) whether the average price charged by the person during the 30-day period
189 immediately preceding the day on which the state of emergency is declared is artificially
190 deflated because the good or service was on sale for a lower price than the person customarily
191 charges for the good or service; and

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

193 [~~(3)~~] (4) (a) If the division finds that a person has violated, or is violating, this chapter,
194 the division may:

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

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

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

201 [~~(4)~~] (5) The division may sue in a court of competent jurisdiction to enforce an order
202 under Subsection [~~(3)~~] (4).

203 [~~(5)~~] (6) In a suit brought under Subsection [~~(3)~~] (4), if the division prevails, the court
204 may award the division:

205 (a) court costs;

206 (b) attorney fees; and

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

208 [~~(6)~~] (7) All money received through an administrative fine imposed, or judgment
209 obtained, under this section shall be deposited in the Consumer Protection Education and
210 Training Fund created by Section 13-2-8.