

**Senator Lincoln Fillmore** proposes the following substitute bill:

**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" and "margin";

▶ 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



26 **Utah Code Sections Affected:**

27 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



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) [Hf] 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[5];

58 (A) the citation may not become final[5]; 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[5];

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 seeks to acquire or acquires a good or service for  
118 consumption.

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

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

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

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

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

125 (4) "Excessive price" means:

126 (a) for a person that sold the good or provided the service in the 30-day period  
127 immediately preceding the day on which a state of emergency is declared, a price for a good or  
128 service that exceeds by more than 10% the [average price charged by that person for that]  
129 highest price the person charged for the good or service in the 30-day period immediately  
130 preceding the day on which the state of emergency is declared[-]; or

131 (b) for a person that did not sell the good or provide the service in the 30-day period  
132 immediately preceding the day on which a state of emergency is declared, a price for a good or  
133 service that is more than twice the person's total cost for the good or service.

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

137 (6) "Margin" means the difference between the sale price and the total cost of the good  
138 or service.

139 [(6)] (7) "Retail" means the level of distribution where a good or service is typically  
140 sold directly, or otherwise provided, to a member of the public who is an end user and does not  
141 resell the good or service.

142 [(7)] (8) "Service" means any activity that is performed in whole or in part for the  
143 purpose of financial gain including personal service, professional service, rental, leasing, or  
144 licensing for use that is necessary for consumption or use as a direct result of events giving rise  
145 to a state of emergency.

146 [(8)] (9) "State of emergency" means a declaration of:

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

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

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

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

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

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

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

157 **13-41-201. Excessive price prohibited.**

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

161 (a) a state of emergency exists; and

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

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

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

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

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

173 (a) that person's total cost [~~of obtaining~~] for the good or [~~providing the~~] service exceeds  
174 the average total cost to the person [~~of obtaining~~] for the good or [~~providing the~~] service in the  
175 30-day period immediately preceding the day on which the state of emergency is declared; and

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

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

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

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

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

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

190 **13-41-202. Enforcement -- Penalty.**

191 (1) The division shall enforce this chapter.

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

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

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

197 [~~(2)~~] (3) In determining whether to impose penalties against a person who violates this  
198 chapter, the division shall consider:

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

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

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

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

208 [~~(3)~~] (4) (a) If the division finds that a person has violated, or is violating, this chapter,  
209 the division may:

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

211 (ii) subject to Subsection [~~(3)~~] (4)(b), impose an administrative fine [~~of up to \$1,000~~]

212 for each violation of this chapter.

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

216 [~~(4)~~] (5) The division may sue in a court of competent jurisdiction to enforce an order  
217 under Subsection [~~(3)~~] (4).

218 [~~(5)~~] (6) In a suit brought under Subsection [~~(3)~~] (4), if the division prevails, the court  
219 may award the division:

220 (a) court costs;

221 (b) attorney fees; and

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

223 [~~(6)~~] (7) All money received through an administrative fine imposed, or judgment  
224 obtained, under this section shall be deposited in the Consumer Protection Education and  
225 Training Fund created by Section 13-2-8.