

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 06-0152.02 Thomas Morris

HOUSE BILL 06-1251

HOUSE SPONSORSHIP

Green,

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A PROHIBITION ON PRICE GOUGING.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits price gouging during an emergency. Prohibits price gouging for goods or services upon which a person's life depends. Allows the attorney general to file suit to enjoin violations, for a maximum \$10,000 per day civil penalty, and for restitution. Specifies the evidence needed to create or rebut a presumption of price gouging. Makes a legislative declaration.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby:

4 (a) Finds that emergencies can strain commercial and consumer
5 relationships in areas beyond those directly damaged or affected by the
6 emergency;

7 (b) Determines that it is an unfortunate truth that some will try to
8 take advantage of others in emergency situations by price gouging for
9 consumer and other commercial goods or services; and

10 (c) Declares that it is in the interest of the state of Colorado to
11 prohibit and deter price gouging.

12 **SECTION 2.** Article 2 of title 6, Colorado Revised Statutes, is
13 amended BY THE ADDITION OF A NEW SECTION to read:

14 **6-2-104.5. Price gouging prohibited - remedy - definitions.**

15 (1) (a) DURING AN EMERGENCY DECLARED BY THE GOVERNOR, NO PARTY
16 WITHIN THE CHAIN OF DISTRIBUTION OF GOODS OR SERVICES SHALL
17 ENGAGE IN PRICE GOUGING. NO PARTY WITHIN THE CHAIN OF
18 DISTRIBUTION OF GOODS OR SERVICES UPON WHICH A PERSON'S LIFE
19 DEPENDS OR WITH REGARD TO WHICH A PERSON'S FAILURE TO PURCHASE
20 SUCH GOODS OR SERVICES WOULD CREATE A LIFE-THREATENING
21 SITUATION SHALL ENGAGE IN PRICE GOUGING.

22 (b) THE PROHIBITION CONTAINED IN THIS SUBSECTION (1) APPLIES
23 TO EVERY PARTY WITHIN THE CHAIN OF DISTRIBUTION, INCLUDING A
24 MANUFACTURER, SUPPLIER, WHOLESALER, DISTRIBUTOR, OR RETAIL
25 SELLER OF GOODS OR SERVICES SOLD BY ONE PARTY TO ANOTHER WHEN
26 THE PRODUCT OR THE SERVICE SOLD OCCURRED IN COLORADO PRIOR TO
27 THE EMERGENCY.

1 (2) (a) A PRICE FOR A GOOD OR SERVICE IS PRESUMED TO BE
2 UNREASONABLE AND UNCONSCIONABLE:

3 (I) IN THE DESIGNATED AREA OF AN EMERGENCY IF THE PRICE
4 REFLECTS A PRICE INCREASE AT LEAST TEN PERCENT GREATER THAN THE
5 AVERAGE PRICE FOR THE GOOD OR SERVICE CHARGED BY THE SELLER IN
6 THE DESIGNATED AREA DURING THE THIRTY DAYS IMMEDIATELY PRIOR TO
7 THE FORMAL DECLARATION OF THE EMERGENCY; AND

8 (II) OUTSIDE THE DESIGNATED AREA OF AN EMERGENCY IF THE
9 PRICE IS AFFECTED BY THE EMERGENCY AND IF THE PRICE REFLECTS A
10 PRICE INCREASE AT LEAST TEN PERCENT GREATER THAN THE AVERAGE
11 PRICE FOR THE GOOD OR SERVICE CHARGED BY THE SELLER IN THE AREA
12 OF THE SALE DURING THE THIRTY DAYS IMMEDIATELY PRIOR TO THE
13 FORMAL DECLARATION OF AN EMERGENCY.

14 (b) A PRICE FOR A GOOD OR SERVICE IS NOT UNREASONABLE AND
15 UNCONSCIONABLE IF IT REFLECTS ONLY THE COST OF THE GOOD OR
16 SERVICE TO THE SELLER PRIOR TO THE EMERGENCY, THE AVERAGE PROFIT
17 MARGIN OF THE SELLER DURING THE THIRTY DAYS IMMEDIATELY PRIOR TO
18 THE FORMAL DECLARATION OF AN EMERGENCY, AND THE INCREASED
19 COSTS ACTUALLY INCURRED BY THE SELLER TO SELL THE GOOD OR
20 SERVICE DURING OR FOLLOWING THE EMERGENCY.

21 (3) IF A VIOLATION OF THIS SECTION IS ALLEGED TO HAVE
22 OCCURRED, THE ATTORNEY GENERAL MAY FILE SUIT IN THE JUDICIAL
23 DISTRICT IN WHICH SUCH VIOLATION IS ALLEGED TO HAVE OCCURRED
24 FOR AN ORDER ENJOINING OR RESTRAINING THE COMMISSION OR
25 CONTINUATION OF THE ALLEGED UNLAWFUL ACTS. IN SUCH PROCEEDING,
26 THE COURT SHALL, NOTWITHSTANDING THE PENALTY SPECIFIED IN
27 SECTION 6-2-116, IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED

1 TEN THOUSAND DOLLARS PER DAY AND, WHERE APPROPRIATE, SHALL
2 ORDER RESTITUTION TO AGGRIEVED CONSUMERS.

3 (4) (a) IF THE ATTORNEY GENERAL FINDS THAT A PERSON HAS
4 VIOLATED OR IS VIOLATING THIS SECTION, THE ATTORNEY GENERAL MAY
5 ISSUE A CEASE AND DESIST ORDER.

6 (b) EACH INSTANCE OF PRICE GOUGING SHALL BE A SEPARATE
7 VIOLATION.

8 (5) FOR PURPOSES OF THIS SECTION:

9 (a) "EMERGENCY" MEANS A NATURAL DISASTER OR OTHER
10 CIRCUMSTANCE OR EVENT THAT IS FORMALLY DECLARED TO BE AN
11 EMERGENCY BY FEDERAL OR STATE AUTHORITIES. AN EMERGENCY MAY
12 BE ASSOCIATED WITH A DESIGNATED AREA.

13 (b) "GOODS OR SERVICES" MEANS GOODS OR SERVICES OF ANY
14 TYPE, INCLUDING, BUT NOT LIMITED TO, FOOD, MEDICINES,
15 TRANSPORTATION, HOUSING, AND ENERGY SUPPLIES.

16 (c) "PRICE GOUGING" MEANS CHARGING AN UNREASONABLE AND
17 UNCONSCIONABLE PRICE FOR A GOOD OR SERVICE IMMEDIATELY PRIOR TO,
18 DURING, OR FOLLOWING AN EMERGENCY.

19 **SECTION 3. Applicability.** This act shall apply to price gouging
20 that occurs on or after the effective date of this act.

21 **SECTION 4. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.