

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 06-1251

BY REPRESENTATIVE(S) Green, Borodkin, Coleman, Frangas, Madden, Merrifield, and Todd;
also SENATOR(S) Tochtrop, Bacon, Groff, Hagedorn, Sandoval, Takis, and Windels.

CONCERNING A PROHIBITION ON PRICE GOUGING.

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

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

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

(1) IMMEDIATELY PRIOR TO OR DURING AN EMERGENCY, A PERSON MAY NOT ENGAGE IN PRICE GOUGING AGAINST A CONSUMER FOR GOODS OR SERVICES SOLD OR PROVIDED AT RETAIL. FOR PURPOSES OF THIS SECTION, "RETAIL" MEANS THE LEVEL OF DISTRIBUTION WHERE A GOOD OR SERVICE IS TYPICALLY SOLD DIRECTLY, OR IS OTHERWISE PROVIDED, TO A MEMBER OF THE PUBLIC WHO IS AN END USER AND DOES NOT RESELL THE GOOD OR SERVICE.

(2) (a) A PRICE FOR A GOOD OR SERVICE IS PRESUMED TO BE UNREASONABLE AND UNCONSCIONABLE IN THE DESIGNATED AREA OF AN EMERGENCY IF THE PRICE REFLECTS A PRICE INCREASE AT LEAST TEN PERCENT GREATER THAN THE AVERAGE PRICE FOR THE GOOD OR SERVICE CHARGED BY THE SELLER IN THE DESIGNATED AREA DURING THE THIRTY DAYS IMMEDIATELY PRIOR TO THE FORMAL DECLARATION OF THE EMERGENCY.

(b) A PRICE FOR A GOOD OR SERVICE IS NOT UNREASONABLE AND UNCONSCIONABLE IF IT REFLECTS ONLY TEN PERCENT ABOVE THE SELLER'S TOTAL COST OF OBTAINING THE GOOD OR SERVICE, THE AVERAGE PROFIT MARGIN OF THE SELLER IMMEDIATELY PRIOR TO THE FORMAL DECLARATION OF AN EMERGENCY, AND THE INCREASED COSTS ACTUALLY INCURRED BY THE SELLER TO SELL THE GOOD OR SERVICE DURING THE EMERGENCY.

(3) IF A VIOLATION OF THIS SECTION IS ALLEGED TO HAVE OCCURRED, THE ATTORNEY GENERAL MAY FILE SUIT IN THE JUDICIAL DISTRICT IN WHICH SUCH VIOLATION IS ALLEGED TO HAVE OCCURRED FOR AN ORDER ENJOINING OR RESTRAINING THE COMMISSION OR CONTINUATION OF THE ALLEGED UNLAWFUL ACTS. IN SUCH PROCEEDING, THE COURT SHALL, NOTWITHSTANDING THE PENALTY SPECIFIED IN SECTION 6-2-116, IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH VIOLATION OF THIS SECTION; EXCEPT THAT IN NO CASE SHALL THE PENALTY EXCEED TEN THOUSAND DOLLARS PER DAY.

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

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

(5) FOR PURPOSES OF THIS SECTION:

(a) "EMERGENCY" MEANS A NATURAL DISASTER OR OTHER CIRCUMSTANCE OR EVENT THAT IS FORMALLY DECLARED TO BE AN EMERGENCY BY THE GOVERNOR PURSUANT TO SECTION 24-32-2104, C.R.S.

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

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

(6) NOTHING IN THIS SECTION SHALL APPLY TO ANY ELECTRIC, GAS, OR STEAM UTILITY.

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

SECTION 4. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO