

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 06-0152.02 Thomas Morris

HOUSE BILL 06-1251

HOUSE SPONSORSHIP

Green,

SENATE SPONSORSHIP

Tochtrop,

House Committees
Business Affairs and Labor

Senate Committees
Business, Labor and Technology

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.

SENATE
3rd Reading Unamended
March 31, 2006

SENATE
Amended 2nd Reading
March 30, 2006

HOUSE
3rd Reading Unamended
March 7, 2006

HOUSE
Amended 2nd Reading
February 28, 2006

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

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

1 EMERGENCY.

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

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

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

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

25 (5) FOR PURPOSES OF THIS SECTION:

26 (a) "EMERGENCY" MEANS A NATURAL DISASTER OR OTHER
27 CIRCUMSTANCE OR EVENT THAT IS FORMALLY DECLARED TO BE AN

1 EMERGENCY BY THE GOVERNOR PURSUANT TO SECTION 24-32-2104,

2 C.R.S.

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

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

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

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

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