THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL No. 1172 ^{Session of} 2018

INTRODUCED BY VULAKOVICH, SCARNATI, ALLOWAY, ARGALL, BARTOLOTTA, BLAKE, BROWNE, EICHELBERGER, FOLMER, HUTCHINSON, KILLION, LANGERHOLC, LAUGHLIN, MARTIN, McGARRIGLE, MENSCH, RAFFERTY, REGAN, RESCHENTHALER, SCAVELLO, STEFANO, VOGEL, WAGNER, WARD, WHITE AND YAW, MAY 21, 2018

REFERRED TO VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, MAY 21, 2018

AN ACT

1 2 3 4	Amending the act of October 31, 2006 (P.L.1210, No.133), entitled "An act prohibiting price gouging; and imposing penalties," further providing for definitions, for price gouging prohibited and for investigation.
5	The General Assembly of the Commonwealth of Pennsylvania
6	hereby enacts as follows:
7	Section 1. The definition of "unconscionably excessive" in
8	section 3 of the act of October 31, 2006 (P.L.1210, No.133),
9	known as the Price Gouging Act, is amended and the section is
10	amended by adding a definition to read:
11	Section 3. Definitions.
12	The following words and phrases when used in this act shall
13	have the meanings given to them in this section unless the
14	context clearly indicates otherwise:
15	* * *
16	"Cost." A cost directly or indirectly related to the sale of
17	a consumer good or service or the operation of a seller's

1 business. The term includes a replacement cost, credit card

2 cost, tax and transportation cost.

3 * * *

4 ["Unconscionably excessive." A price is unconscionably 5 excessive when the amount charged represents a gross disparity 6 between the price of the consumer goods or services and the 7 price at which the consumer goods or services were sold or 8 offered for sale within the chain of distribution in the usual 9 course of business seven days immediately prior to the state of 10 disaster emergency.]

11 Section 2. Section 4(a), (b), (c) and (d) of the act are 12 amended and the section is amended by adding a subsection to 13 read:

14 Section 4. Price gouging prohibited.

15 (a) Prohibition.--[During and within 30 days of the 16 termination] On the declaration of a state of disaster emergency [declared] by the Governor pursuant to the provisions of 35 17 18 Pa.C.S. § 7301(c) (relating to general authority of Governor), 19 the Governor may, by a separate declaration, impose a price 20 restriction under this section on the sale of consumer goods or services necessary for use or consumption in the affected 21 geographic area as a direct result of the state of disaster 22 23 emergency for a period of 15 days. The price restriction may be 24 renewed for up to three additional 15-day periods as may be necessary. During the period the price restriction is in effect, 25 26 it shall be a violation of this act for any party within the chain of distribution of consumer goods or services or both to 27 28 sell or offer to sell the <u>affected</u> goods or services within the 29 geographic region that is the subject of the declared emergency 30 for an amount which represents an unconscionably excessive

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1 price.

2 [Evidence of unconscionably] <u>Unconscionably</u> excessive (b) 3 price.--[It is prima facie evidence that a price is unconscionably excessive if, during and within 30 days of the 4 termination of a state of disaster emergency, parties within the 5 chain of distribution charge a price that exceeds an amount 6 7 equal to or in excess of 20% of the average price at which the 8 same or similar consumer goods or services were obtainable in 9 the affected area during the last seven days immediately prior 10 to the declared state of emergency.] The court shall consider all relevant factors, including whether there is a gross 11 12 disparity between the seller's price immediately before the 13 price restriction under subsection (a) was imposed and the 14 seller's price following the declaration of a state of disaster emergency and whether the seller's price substantially exceeds 15 16 those existing on the date and in the locality where the state 17 of disaster emergency was declared. A price is not an 18 unconscionably excessive price if the price: 19 (1) is 10% or less above the seller's price immediately 20 before the price restriction under subsection (a) was 21 imposed; 22 (2) is 10% or less above the sum of the seller's cost and normal markup for the good or service; 23 24 (3) is consistent with price fluctuations in applicable 25 commodity, regional, national or international markets or 26 with seasonal price fluctuations; or 27 (4) is a contract price, or the result of a price formula, established before the price restriction under 28 29 subsection (a) was imposed. 30 (c) Nonapplicability.--

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[(1) The provisions of this section shall not apply if the increase in price is due to a disparity that is substantially attributable to additional costs that arose within the chain of distribution in connection with the sale of consumer goods or services, including replacement costs, credit card costs, taxes and transportation costs.

7 (2)] The provisions of this act shall not apply to the 8 sale of goods or services sold by a person pursuant to a 9 tariff or rate approved by a Federal or Commonwealth agency 10 with power and authority over sales of such goods or 11 services.

12 (d) Price reduction. -- A person selling consumer goods or 13 services who receives any price reduction, after an increase in 14 his cost which is substantially attributable to costs that arose within the chain of distribution [as set forth in subsection 15 16 (c)], may rebut an allegation of selling at an unconscionably excessive price if he reduces the price by a like amount within 17 18 a reasonable period, not to exceed seven days, of acquiring the 19 consumer good or service at such reduced price.

20 * * *

(f) Preemption.--This section shall preempt a local law or
 regulation concerning the same or similar subject matter as this
 section.

24 Section 3. Section 5(a) of the act is amended to read: 25 Section 5. Investigation.

(a) Authority.--The Bureau of Consumer Protection in the
Office of Attorney General shall investigate any complaints
received concerning violations of this act. If, after
investigating any complaint, the Attorney General finds that
there has been a violation of this act, the Attorney General may

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1	bring an action to impose a civil penalty up to \$10,000 for each
2	willful violation, with an aggregate total that may not exceed
3	<u>\$25,000 for a 24-hour period against a seller,</u> and to seek other
4	relief, including injunctive relief, restitution and costs under
5	the act of December 17, 1968 (P.L.1224, No.387), known as the
6	Unfair Trade Practices and Consumer Protection Law. <u>The civil</u>
7	penalty provided for under this subsection shall be the sole
8	penalty for conduct in violation of this act. Nothing in this
9	subsection shall be construed to create or imply a private cause
10	of action for a violation of this act.
11	* * *
12	Section 4. This act shall take effect in 60 days.