

Representative Andrew Stoddard proposes the following substitute bill:

CONSUMER PROTECTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen A. Riebe

House Sponsor: Andrew Stoddard

LONG TITLE

General Description:

This bill modifies the Price Controls During Emergencies Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a business that provides certain cleanup services from charging a vulnerable consumer an unconscionable price for a good or service;
- ▶ empowers the Division of Consumer Protection to enforce the provisions of this bill;
- ▶ directs money received from fines and judgments to be deposited into the Governor's Suicide Prevention Fund; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:



- 26 **13-2-1**, as last amended by Laws of Utah 2020, Chapter 118
- 27 **13-41-101**, as enacted by Laws of Utah 2005, Chapter 306
- 28 **13-41-102**, as last amended by Laws of Utah 2013, Chapter 295
- 29 **13-41-202**, as last amended by Laws of Utah 2006, Chapter 153
- 30 **62A-15-1103**, as enacted by Laws of Utah 2018, Chapter 414

31 ENACTS:

- 32 **13-41-301**, Utah Code Annotated 1953
- 33 **13-41-302**, Utah Code Annotated 1953

34 **Utah Code Sections Affected by Coordination Clause:**

- 35 **13-41-202**, as last amended by Laws of Utah 2006, Chapter 153



37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **13-2-1** is amended to read:

39 **13-2-1. Consumer protection division established -- Functions.**

40 (1) There is established within the Department of Commerce the Division of Consumer
41 Protection.

42 (2) The division shall administer and enforce the following:

- 43 (a) Chapter 5, Unfair Practices Act;
- 44 (b) Chapter 10a, Music Licensing Practices Act;
- 45 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 46 (d) Chapter 15, Business Opportunity Disclosure Act;
- 47 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 48 (f) Chapter 21, Credit Services Organizations Act;
- 49 (g) Chapter 22, Charitable Solicitations Act;
- 50 (h) Chapter 23, Health Spa Services Protection Act;
- 51 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 52 (j) Chapter 26, Telephone Fraud Prevention Act;
- 53 (k) Chapter 28, Prize Notices Regulation Act;
- 54 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 55 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 56 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;

- 57 (o) Chapter 39, Child Protection Registry;
- 58 (p) Chapter 41, Price Controls [~~During Emergencies~~] Act;
- 59 (q) Chapter 42, Uniform Debt-Management Services Act;
- 60 (r) Chapter 49, Immigration Consultants Registration Act;
- 61 (s) Chapter 51, Transportation Network Company Registration Act;
- 62 (t) Chapter 52, Residential Solar Energy Disclosure Act;
- 63 (u) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 64 (v) Chapter 54, Ticket Website Sales Act;
- 65 (w) Chapter 56, Ticket Transferability Act; and
- 66 (x) Chapter 57, Maintenance Funding Practices Act.

67 Section 2. Section **13-41-101** is amended to read:

68 **CHAPTER 41. PRICE CONTROLS ACT**

69 **13-41-101. Title.**

70 This chapter is known as the "Price Controls [~~During Emergencies~~] Act."

71 Section 3. Section **13-41-102** is amended to read:

72 **13-41-102. Definitions.**

73 For purposes of this chapter:

74 (1) "Consumer" means a person who acquires a good or service for consumption.

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

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

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

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

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

81 (4) "Excessive price" means a price for a good or service that exceeds by more than
82 10% the average price charged by that person for that good or service in the 30-day period
83 immediately preceding the day on which the state of emergency is declared.

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

87 (6) "Retail" means the level of distribution where a good or service is typically sold

88 directly, or otherwise provided, to a member of the public who is an end user and does not
89 resell the good or service.

90 (7) "Service" means any activity that is performed in whole or in part for the purpose of
91 financial gain including personal service, professional service, rental, leasing, or licensing for
92 use that is necessary for consumption or use as a direct result of events giving rise to a state of
93 emergency.

94 (8) "State of emergency" means a declaration of:

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

96 (b) a state of emergency by the governor under Section [53-2a-206](#).

97 (9) (a) "Unconscionable price" means a price of a good or service that is substantially
98 above the average price at which the good or service is readily obtainable by other consumers
99 in the trade area.

100 (b) "Unconscionable price" does not include a price that is directly related to an
101 increase in a seller's cost of providing a good or service, including:

102 (i) direct costs of providing the good or service, including additional costs imposed by
103 one or more of the seller's suppliers;

104 (ii) increased costs due to normal fluctuations in an applicable market; or

105 (iii) increased costs caused by a legitimate business decision.

106 (10) "Vulnerable consumer" means a consumer whose need for an emergency death
107 scene cleanup service puts the consumer in a vulnerable state.

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

109 **Part 2. Excessive Prices During Emergencies Prohibited**

110 **13-41-202. Enforcement -- Penalty.**

111 (1) The division shall enforce this [~~chapter~~] part.

112 (2) In determining whether to impose penalties against a person who violates [~~this~~
113 ~~chapter~~] Section [13-41-201](#), the division shall consider:

114 (a) the person's cost of doing business not accounted for in the cost to the person of the
115 good or service, including costs associated with a decrease in the supply available to a person
116 who relies on a high volume of sales;

117 (b) the person's efforts to comply with [~~this chapter~~] Section [13-41-201](#);

118 (c) whether the average price charged by the person during the 30-day period

119 immediately preceding the day on which the state of emergency is declared is artificially
120 deflated because the good or service was on sale for a lower price than the person customarily
121 charges for the good or service; and

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

123 (3) (a) If the division finds that a person has violated, or is violating, [~~this chapter~~]

124 Section 13-41-201, the division may:

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

126 (ii) subject to Subsection (3)(b), impose an administrative fine of up to \$1,000 for each
127 violation of [~~this chapter~~] Section 13-41-201.

128 (b) Each instance of charging an excessive price under Section 13-41-201 constitutes a
129 separate violation, but in no case shall the administrative fine imposed under Subsection (3)(a)
130 exceed \$10,000 per day.

131 (4) The division may sue in a court of competent jurisdiction to enforce an order under
132 Subsection (3).

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

135 (a) court costs;

136 (b) attorney fees; and

137 (c) the division's costs incurred in the investigation of the violation of [~~this chapter~~]
138 Section 13-41-201.

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

142 Section 5. Section **13-41-301** is enacted to read:

143 **Part 3. Unconscionable Price for Cleanup Services Prohibited**

144 **13-41-301. Unconscionable price for cleanup services prohibited.**

145 A person who provides an emergency death scene cleanup service to a vulnerable
146 consumer may not charge the vulnerable consumer an unconscionable price for a good or
147 service used in the person's emergency death scene cleanup service.

148 Section 6. Section **13-41-302** is enacted to read:

149 **13-41-302. Enforcement -- Penalty.**

- 150 (1) The division shall enforce this part.
- 151 (2) (a) If the division finds that a person has violated, or is violating, Section
152 13-41-301, the division may:
- 153 (i) issue a cease and desist order; and
- 154 (ii) impose an administrative fine of up to \$5,000 for each violation of Section
155 13-41-301.
- 156 (b) Each instance of charging an excessive price under Section 13-41-301 is a separate
157 violation.
- 158 (3) The division may sue in a court of competent jurisdiction to enforce an order under
159 Subsection (2).
- 160 (4) If the division prevails in a suit brought under Subsection (3), the court may award
161 the division:
- 162 (a) court costs;
- 163 (b) attorney fees; and
- 164 (c) the division's costs incurred in investigating the violation of Section 13-41-301.
- 165 (5) All money received through an administrative fine imposed, or judgment obtained,
166 under this section shall be deposited into the Governor's Suicide Prevention Fund created in
167 Section 62A-15-1103.
- 168 Section 7. Section **62A-15-1103** is amended to read:
- 169 **62A-15-1103. Governor's Suicide Prevention Fund.**
- 170 (1) There is created an expendable special revenue fund known as the Governor's
171 Suicide Prevention Fund.
- 172 (2) The fund shall consist of:
- 173 (a) gifts, grants, and bequests of real property or personal property made to the fund[.];
174 and
- 175 (b) contributions deposited into the fund in accordance with Section 13-41-302.
- 176 (3) A donor to the fund may designate a specific purpose for the use of the donor's
177 donation, if the designated purpose is described in Subsection (4) or 62A-15-1101(3).
- 178 (4) Subject to Subsection (3), money in the fund shall be used for the following
179 activities:
- 180 (a) efforts to directly improve mental health crisis response;

- 181 (b) efforts that directly reduce risk factors associated with suicide; and
182 (c) efforts that directly enhance known protective factors associated with suicide
183 reduction.
- 184 (5) The division shall establish a grant application and review process for the
185 expenditure of money from the fund.
- 186 (6) The grant application and review process shall describe:
- 187 (a) requirements to complete a grant application;
188 (b) requirements to receive funding;
189 (c) criteria for the approval of a grant application;
190 (d) standards for evaluating the effectiveness of a project proposed in a grant
191 application; and
192 (e) support offered by the division to complete a grant application.
- 193 (7) The division shall:
- 194 (a) review a grant application for completeness;
195 (b) make a recommendation to the governor or the governor's designee regarding a
196 grant application;
197 (c) send a grant application to the governor or the governor's designee for evaluation
198 and approval or rejection;
199 (d) inform a grant applicant of the governor or the governor's designee's determination
200 regarding the grant application; and
201 (e) direct the fund administrator to release funding for grant applications approved by
202 the governor or the governor's designee.
- 203 (8) The state treasurer shall invest the money in the fund under Title 51, Chapter 7,
204 State Money Management Act, except that all interest or other earnings derived from money in
205 the fund shall be deposited into the fund.
- 206 (9) Money in the fund may not be used for the Office of the Governor's administrative
207 expenses that are normally provided for by legislative appropriation.
- 208 (10) The governor or the governor's designee may authorize the expenditure of fund
209 money in accordance with this section.
- 210 (11) The governor shall make an annual report to the Legislature regarding the status of
211 the fund, including a report on the contributions received, expenditures made, and programs

212 and services funded.

213 Section 8. **Coordinating S.B. 207 with S.B. 86 -- Substantive and technical**
214 **amendments.**

215 If this S.B. 207 and S.B. 86, Amendments to the Price Controls During Emergencies
216 Act, both pass and become law, it is the intent of the Legislature that the Office of Legislative
217 Research and General Counsel shall prepare the Utah Code database for publication by
218 amending Section 13-41-202 to read:

219 **"13-41-202. Enforcement -- Penalty.**

220 (1) The division shall enforce this [~~chapter~~] part.

221 (2) In determining whether to investigate, contact, or request information from a person
222 in the enforcement of this part, the division shall consider:

223 (a) whether a complaint, information, or evidence reasonably justifies further division
224 inquiry;

225 (b) the burden contact, investigation, or providing information places on the person;

226 (c) the result of a previous investigation of the person, including whether the previous
227 investigation suggests that the person did not violate this part;

228 (d) whether the person may benefit from receiving information about requirements
229 under this part; and

230 (e) the potential gravity of harm to consumers, considering price, availability, and
231 volume of a good or service.

232 (3) In enforcing this part, the division may not publicly disclose the identity of a person
233 the division investigates unless:

234 (a) the person's identity is a matter of public record in an enforcement proceeding; or

235 (b) the person consents to public disclosure.

236 [~~(2)~~] (4) In determining whether to impose penalties against a person who violates this
237 [~~chapter~~] part, the division shall consider:

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

241 (b) the person's efforts to comply with this [~~chapter~~] part;

242 (c) whether the average price charged by the person during the 30-day period

243 immediately preceding the day on which the state of emergency is declared is artificially
244 deflated because the good or service was on sale for a lower price than the person customarily
245 charges for the good or service; and

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

247 ~~[(3)]~~ (5) (a) If the division finds that a person has violated, or is violating, this ~~[chapter]~~
248 part, the division may:

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

250 (ii) subject to Subsection ~~[(3)]~~ (5)(b), impose an administrative fine ~~[of up to \$1,000]~~
251 for each violation of this ~~[chapter]~~ part.

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

255 ~~[(4)]~~ (6) The division may sue in a court of competent jurisdiction to enforce an order
256 under Subsection ~~[(3)]~~ (5).

257 ~~[(5)]~~ (7) In a suit brought under Subsection ~~[(3)]~~ (5), if the division prevails, the court
258 may award the division:

259 (a) court costs;

260 (b) attorney fees; and

261 (c) the division's costs incurred in the investigation of the violation of this ~~[chapter]~~
262 part.

263 ~~[(6)]~~ (8) All money received through an administrative fine imposed, or judgment
264 obtained, under this section shall be deposited ~~[in]~~ into the Consumer Protection Education and
265 Training Fund created by Section 13-2-8."