

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: S3/3/97

## A Bill

ACT 376 OF 1997  
SENATE BILL 465

5 *By: Senators Harriman, Jeffries, Kennedy, Hill, Malone, Walters, Bell, Fitch, Dowd, Beebe, Gordon, and Webb*  
6 *By: Representatives Hall, Pollan, and Thicksten*  
7

### For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED TITLE 4, CHAPTER  
10 88, TO ADD SUBCHAPTER 3 TO PROTECT CONSUMERS FROM PRICE  
11 GOUGING AND UNFAIR PRICING PRACTICES DURING AND SHORTLY  
12 AFTER A STATE OF EMERGENCY; TO PROVIDE PENALTIES AND  
13 REMEDIES IN THE EVENT OF SUCH PRICE GOUGING; AND FOR OTHER  
14 PURPOSES."

### Subtitle

16  
17 "TO AMEND THE DECEPTIVE TRADE PRACTICES  
18 ACT TO PROTECT CONSUMERS FROM PRICE  
19 GOUGING AND UNFAIR PRICING PRACTICES  
20 DURING AND SHORTLY AFTER A STATE OF  
21 EMERGENCY"  
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code Annotated Title 4, Chapter 88 is amended by  
26 adding a new Subchapter 3 to read as follows:

27 "Subchapter 3 - Protection of Consumers from Price Gouging and Unfair  
28 Pricing Practices During and Shortly After a State of Emergency  
29 4-88-301. Emergencies and natural disasters - Unfair advantage of  
30 consumers.

31 The General Assembly hereby finds that during emergencies and major  
32 disasters, including, but not limited to, tornadoes, earthquakes, fires,  
33 floods, or civil disturbances, some merchants have taken unfair advantage of  
34 consumers by greatly increasing prices for essential consumer goods or  
35 services. While the pricing of consumer goods and services is generally best  
36 left to the marketplace under ordinary conditions, when a declared state of

1 emergency results in abnormal disruptions of the market, the public interest  
2 requires that excessive and unjustified increases in the prices of essential  
3 consumer goods and services be prohibited. It is the intent of the General  
4 Assembly in enacting this act to protect citizens from excessive and  
5 unjustified increases in the prices charged during or shortly after a declared  
6 state of emergency for goods and services that are vital and necessary for the  
7 health, safety, and welfare of consumers. Further it is the intent of the  
8 General Assembly that this section be liberally construed so that its  
9 beneficial purposes may be served.

10 4-88-302. Definitions.

11 (a) State of emergency means a natural or manmade disaster or  
12 emergency resulting from a tornado, earthquake, flood, fire, riot, or storm  
13 for which a state of emergency has been declared by the President of the  
14 United States or the Governor of Arkansas.

15 (b) Local emergency means a natural or manmade disaster or emergency  
16 resulting from a tornado, earthquake, flood, fire, riot, or storm for which a  
17 local emergency has been declared by the executive officer or governing body  
18 of any city or county in Arkansas.

19 (c) Consumer food item means any article that is used or intended for  
20 use for food, drink, confection, or condiment by a person or animal.

21 (d) Repair or reconstruction services means services performed by any  
22 person for repairs to residential or commercial property of any type that is  
23 damaged as a result of a disaster.

24 (e) Emergency supplies includes, but is not limited to, water,  
25 flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary  
26 shelters, tape, toiletries, plywood, nails, and hammers.

27 (f) Medical supplies includes, but is not limited to, prescription and  
28 nonprescription medications, bandages, gauze, isopropyl alcohol, and  
29 antibacterial products.

30 (g) Building materials means lumber, construction tools, windows, and  
31 anything else used in the building or rebuilding of property.

32 (h) Gasoline means any fuel used to power any motor vehicle or power  
33 tool.

34 (i) Transportation, freight, and storage services means any service  
35 that is performed by any company that contracts to move, store, or transport  
36 personal or business property or rents equipment for those purposes.

1        (j) Housing means any rental housing leased on a month-to-month term.

2        (k) Goods has the same meaning as defined in Arkansas Code Title 4,  
3 Chapter 88, Subchapter 1.

4        4-88-303. Prohibited unfair pricing practices.

5        (a) Upon the proclamation of a state of emergency resulting from a  
6 tornado, earthquake, flood, fire, riot, storm, or natural or manmade disaster  
7 declared by the President of the United States or the Governor, and upon the  
8 declaration of a local emergency resulting from a tornado, earthquake, flood,  
9 fire, riot, storm, or natural or manmade disaster by the executive officer of  
10 any city or county, and for a period of thirty (30) days following that  
11 declaration, it is unlawful for any person, contractor, business, or other  
12 entity to sell or offer to sell any consumer food items or goods, goods or  
13 services used for emergency cleanup, emergency supplies, medical supplies,  
14 home heating oil, building materials, housing, transportation, freight, and  
15 storage services, or gasoline or other motor fuels for a price of more than  
16 ten percent (10%) above the price charged by that person for those goods or  
17 services immediately prior to the proclamation of emergency. However, a  
18 greater price increase shall not be unlawful if that person can prove that the  
19 increase in price was directly attributable to additional costs imposed on it  
20 by the supplier of the goods, or directly attributable to additional costs for  
21 labor or materials used to provide the services, provided that in those  
22 situations where the increase in price is attributable to additional costs  
23 imposed by the seller's supplier or additional costs of providing the good or  
24 service during the state of emergency, the price represents no more than ten  
25 percent (10%) above the total of the cost to the seller plus the markup  
26 customarily applied by the seller for that good or service in the usual course  
27 of business immediately prior to the onset of the state of emergency.

28        (b) Upon the proclamation of a state of emergency resulting from a  
29 tornado, earthquake, flood, fire, riot, or storm declared by the President of  
30 the United States or the Governor, or upon the declaration of a local  
31 emergency resulting from a tornado, earthquake, flood, fire, riot, or storm by  
32 the executive officer of any city or county, and for a period of one hundred  
33 eighty (180) days following that declaration, it is unlawful for any  
34 contractor to sell or offer to sell any repair or reconstruction services or  
35 any services used in emergency cleanup for a price of more than ten percent  
36 (10%) above the price charged by that person for those services immediately

1 prior to the proclamation of emergency. However, a greater price increase  
2 shall not be unlawful if that person can prove that the increase in price was  
3 directly attributable to additional costs imposed on it by the supplier of the  
4 goods, or directly attributable to additional costs for labor or materials  
5 used to provide the services, provided that in those situations where the  
6 increase in price is attributable to the additional costs imposed by the  
7 contractors supplier or additional costs of providing the service during the  
8 state of emergency, the price represents no more than ten percent (10%) above  
9 the total of the cost to the contractor plus the markup customarily applied by  
10 the contractor for that good or service in the usual course of business  
11 immediately prior to the onset of the state of emergency.

12 (c) The provisions of this section may be extended for additional  
13 thirty (30) day periods by a local governing body or the General Assembly if  
14 deemed necessary to protect the lives, property, or welfare of the citizens.

15 (d) Any business offering an item for sale at a reduced price  
16 immediately prior to the proclamation of the emergency may use the price at  
17 which they usually sell the item to calculate the price pursuant to subsection  
18 (a) or (b).

19 4-88-304. Penalties, remedies, and enforcement.

20 (a) When a person violates this subchapter or a regulation prescribed  
21 under this subchapter, such violation shall constitute an unfair or deceptive  
22 act or practice as defined by the Deceptive Trade Practices Act, Arkansas Code  
23 Annotated §§ 4-88-101 et seq. All remedies, penalties, and authority granted  
24 to the Attorney General under the Deceptive Trade Practices Act shall be  
25 available to the Attorney General for the enforcement of this subchapter.

26 (b) Any person who is found to have violated this subchapter shall be  
27 guilty of a Class A misdemeanor and imprisoned not more than one (1) year and  
28 subject to a fine of not more than one thousand dollars (\$1,000), or both, for  
29 each violation.

30 (c) The remedies and penalties provided by this section are cumulative  
31 to each other, the remedies under Arkansas Code Annotated §§ 17-25-301 et seq.  
32 and the remedies or penalties available under all other laws of this state.

33 4-88-305. Preemption.

34 Nothing in this section shall preempt any local ordinance prohibiting  
35 the same or similar conduct or imposing a more severe penalty for the same  
36 conduct prohibited in this section."

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SECTION 2. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 4. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 6. EMERGENCY. It is found and determined by the General Assembly of the State of Arkansas that the widespread practice of price gouging and unfair pricing during and shortly after an emergency has created numerous problems for consumers; that such price gouging is particularly egregious due to the very nature of such an emergency; that such price gouging has a significant negative impact upon the economy and well-being of this state and its local communities; and that this act is necessary for the protection of the people of Arkansas. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

*/s/Harriman et al*

