

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

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