



Reprinted
February 26, 2002

ENGROSSED HOUSE BILL No. 1015

DIGEST OF HB 1015 (Updated February 25, 2002 3:06 PM - DI 14)

Citations Affected: IC 4-6.

Synopsis: Fuel price gouging. Permits the attorney general to investigate and take action against retailers of fuel who engage in fuel price gouging. Requires the attorney general to make aggregate information concerning investigations of price gouging, with no identifying information, available to the public upon request. Preempts the power of local government to regulate fuel pricing during a state of emergency.

Effective: Upon passage.

Cochran, Dobis, Bauer, Bottorff

(SENATE SPONSORS — SIPES, BORST, LEWIS, KENLEY)

January 8, 2002, read first time and referred to Committee on Human Affairs.
January 24, 2002, amended, reported — Do Pass.
January 29, 2002, read second time, amended, ordered engrossed.
January 30, 2002, engrossed. Read third time, passed. Yeas 91, nays 1.

SENATE ACTION

February 1, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.
February 19, 2002, reported favorably — Do Pass.
February 25, 2002, read second time, amended, ordered engrossed.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED HOUSE BILL No. 1015

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-9.1 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 9.1. Price Gouging in Declared Emergencies**

5 **Sec. 1. (a) Sections 1 through 7 of this chapter apply to the**
6 **period during which an emergency is declared and the twenty-four**
7 **(24) hours before the declaration by the governor under**
8 **IC 10-4-1-7 or IC 10-4-1-7.1.**

9 **(b) The definitions in IC 10-4-1-3 apply to this chapter.**

10 **Sec. 2. For purposes of this chapter, "price gouging" means**
11 **charging a consumer an unconscionable amount for the sale of fuel.**
12 **Price gouging occurs if:**

13 **(1) the amount charged grossly exceeds the average price at**
14 **which fuel was readily obtainable within the retailer's trade**
15 **area during the seven (7) days immediately before the**
16 **declaration of emergency; and**

17 **(2) the increase in the amount charged is not attributable to**

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1 cost factors to the retailer, including replacement costs, taxes,
 2 and transportation costs incurred by the retailer.
 3 **Sec. 4.** The attorney general has the following powers and duties
 4 regarding price gouging:
 5 (1) To investigate complaints received claiming price gouging.
 6 (2) To seek injunctive relief as appropriate.
 7 (3) To seek restitution for victims of price gouging.
 8 (4) To institute an action to levy and collect a civil penalty.
 9 **Sec. 5. (a)** Information obtained during the attorney general's
 10 investigation under this chapter, including information from a
 11 person who responds to the investigation and designates the
 12 information as confidential, must be maintained as confidential
 13 until the investigation is completed by the attorney general and a
 14 course of action is determined. The attorney general may not make
 15 known in any manner any information obtained in the course of
 16 the investigation to persons other than those specified in subsection
 17 (c). Once the investigation is completed, if there is an agreed upon
 18 settlement or if charges are filed, the information becomes public.
 19 (b) The attorney general shall make available to the public,
 20 upon request, aggregate information concerning complaints of
 21 price gouging. The aggregate data may not identify particular
 22 persons or locations under investigation.
 23 (c) For purposes of this section, references to the attorney
 24 general include other individuals designated in writing and acting
 25 on behalf of the attorney general during the investigation. A person
 26 designated shall preserve the confidentiality of information under
 27 subsection (a).
 28 (d) A person who is served with a request for information, a
 29 subpoena to give testimony orally or in writing, or a request or
 30 order to produce books, papers, correspondence, memoranda,
 31 agreements, or other documents or records under this chapter may
 32 apply to any court for protection against abuse or hardship.
 33 **Sec. 6.** If an investigation by the attorney general results in a
 34 finding of price gouging, the attorney general may bring an action
 35 in a circuit or superior court with jurisdiction in the county where
 36 the price gouging allegedly occurred. If the court finds that the
 37 retailer engaged in price gouging, the court may assess a civil
 38 penalty against the retailer. The civil penalty may not be more than
 39 one thousand dollars (\$1,000) per transaction.
 40 **Sec. 7.** Civil penalties collected under section 6 of this chapter
 41 must be deposited in the state general fund.
 42 **Sec. 8.** This chapter preempts the power of local governments to

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1 **regulate pricing of commodities under a declaration of emergency:**
2 **(1) under IC 10-4-1-7;**
3 **(2) under IC 10-4-1-7.1; or**
4 **(3) by a local government.**
5 **SECTION 2. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Human Affairs, to which was referred House Bill 1015, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Page 1, line 1, delete "IC 24-3-5" and insert "IC 4-6-9.1".

Page 1, line 2, delete "JULY" and insert "UPON PASSAGE]:".

Page 1, delete line 3.

Page 1, line 4, delete "5." and insert "9.1".

Page 1, line 4, after "Gouging" insert "**in Declared Emergencies**".

Page 1, line 5, delete "As used in this chapter, "commodity" means a good," and insert "**(a) Sections 1 through 7 of this chapter apply to the period during which an emergency is declared and the twenty-four (24) hours before the declaration by the governor under IC 10-4-1-7 or IC 10-4-1-7.1.**

(b) The definitions in IC 10-4-1-3 apply to this chapter.

Sec. 2. For purposes of this chapter, "price gouging" means charging a consumer an unconscionable amount for the sale of fuel. Price gouging occurs if:

- (1) the amount charged grossly exceeds the average price at which fuel was readily obtainable within the retailer's trade area during the seven (7) days immediately before the declaration of emergency; and**
- (2) the increase in the amount charged is not attributable to cost factors to the retailer, including replacement costs, taxes, and transportation costs incurred by the retailer.**

Sec. 3. It is unlawful for a retailer to sell a commodity to a consumer at an unconscionable price within the area for which a state of emergency has been declared.

Sec. 4. The attorney general has the following powers and duties regarding price gouging:

- (1) To investigate complaints received claiming price gouging.**
- (2) To seek injunctive relief as appropriate.**
- (3) To seek restitution for victims of price gouging.**
- (4) To institute an action to levy and collect a civil penalty.**

Sec. 5. (a) Information obtained during the attorney general's investigation under this chapter, including information from a person who responds to the investigation and designates the information as confidential, must be maintained as confidential

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until the investigation is completed by the attorney general and a course of action is determined. The attorney general may not make known in any manner any information obtained in the course of the investigation to persons other than those specified in subsection (c). Once the investigation is completed, if there is an agreed upon settlement or if charges are filed, the information becomes public.

(b) This section does not prohibit the use of confidential information to prepare statistics or other general data for publication, if the information is presented in a manner that prevents identification of particular persons or locations under investigation.

(c) For purposes of this section, references to the attorney general include other individuals designated in writing and acting on behalf of the attorney general during the investigation. A person designated shall preserve the confidentiality of information under subsection (a).

(d) A person who is served with a request for information, a subpoena to give testimony orally or in writing, or a request or order to produce books, papers, correspondence, memoranda, agreements, or other documents or records under this chapter may apply to any court for protection against abuse or hardship.

Sec. 6. If an investigation by the attorney general results in a finding of price gouging, the attorney general may bring an action in a circuit or superior court with jurisdiction in the county where the price gouging allegedly occurred. If the court finds that the retailer engaged in price gouging, the court may assess a civil penalty against the retailer. The civil penalty may not be more than one thousand dollars (\$1,000) per transaction.

Sec. 7. Civil penalties collected under section 6 of this chapter must be deposited in the state general fund.

Sec. 8. This chapter preempts the power of local governments to regulate pricing of commodities under a declaration of emergency:

- (1) under IC 10-4-1-7;
- (2) under IC 10-4-1-7.1; or
- (3) by a local government.

SECTION 2. An emergency is declared for this act."

Page 1, delete lines 6 through 17.

Delete page 2.

and when so amended that said bill do pass.

(Reference is to HB 1015 as introduced.)

SUMMERS, Chair

Committee Vote: yeas 13, nays 1.

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HOUSE MOTION

Mr. Speaker: I move That House Bill 1015 be amended to read as follows:

Page 2, delete lines 3 through 5.

Renumber all SECTIONS consecutively.

(Reference is to House Bill 1015 as printed January 25, 2002.)

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SENATE MOTION

Mr. President: I move that Senator Kenley be added as cosponsor of Engrossed House Bill 1015.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1015, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1015 as reprinted January 30, 2002.)

SERVER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1015 be amended to read as follows:

Page 2, line 16, delete "that" and insert "**than**".

Page 2, delete lines 19 through 23, begin a new paragraph and insert:

"(b) The attorney general shall make available to the public, upon request, aggregate information concerning complaints of price gouging. The aggregate data may not identify particular persons or locations under investigation."

(Reference is to EHB as printed February 20, 2002.)

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