

SENATE BILL No. 355

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-9.1.

Synopsis: Fuel price gouging. Permits the attorney general to investigate and take action against retailers of fuel who engage in fuel price gouging. Prohibits the sale of fuel at a retail price that is below the cost of acquiring the fuel where the effect is to injure competition.

Effective: Upon passage.

Kenley

January 8, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.

C
o
p
y



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.

C
o
p
y

SENATE BILL No. 355



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 6 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 and 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 during the seven (7) days**
15 **immediately before the declaration of emergency; and**

16 **(2) the increase in the amount charged is not attributable to**
17 **cost factors to the retailer, including replacement costs, taxes,**



1 and transportation costs incurred by the retailer.

2 **Sec. 3.** The attorney general has the following powers and duties
3 regarding price gouging:

4 (1) To investigate complaints received claiming price gouging.

5 (2) To seek injunctive relief as appropriate.

6 (3) To seek restitution for victims of price gouging.

7 (4) To institute an action to levy and collect a civil penalty if
8 an investigation proves the existence of price gouging.

9 **Sec. 4. (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) This section does not prohibit the use of confidential
20 information to prepare statistics or other general data for
21 publication, if the information is presented in a manner that
22 prevents identification of particular persons or locations under
23 investigation.

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

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

34 **Sec. 5.** If an investigation by the attorney general results in a
35 finding of price gouging, the attorney general may bring an action
36 in a circuit or superior court with jurisdiction in the county where
37 the price gouging allegedly occurred. If the court finds that the
38 retailer engaged in price gouging, the court may assess a civil
39 penalty against the retailer. The civil penalty may not be more than
40 one thousand dollars (\$1,000) per transaction.

41 **Sec. 6.** Civil penalties collected under section 5 of this chapter
42 must be deposited in the state general fund.

C
O
P
Y



1 **Sec. 7. (a) This section adopts and incorporates by reference the**
2 **rights and protections in the Robinson-Patman Act (15 U.S.C. 13**
3 **et seq.).**

4 **(b) It is unlawful to sell fuel at a retail price that is below the**
5 **cost of acquiring the fuel, plus taxes, transportation, and other**
6 **acquisition expenses where the effect is to injure or lessen**
7 **competition. A defense to a claim brought under this section is that**
8 **the difference in price resulted from a good faith effort to meet**
9 **equally low prices of a competitor. Upon a finding of a violation of**
10 **this section, the court shall award appropriate relief, including**
11 **injunctive relief, court costs, and reasonable attorney's fees, to the**
12 **plaintiff. It is not necessary for the plaintiff to allege or prove**
13 **actual damages, but if actual damages are proven, the plaintiff, in**
14 **addition to other appropriate relief, is entitled to recover from the**
15 **defendant the damages sustained by the plaintiff.**

16 **SECTION 2. An emergency is declared for this act.**

C
o
p
y

