



January 18, 2002

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## SENATE BILL No. 355

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DIGEST OF SB 355 (Updated January 15, 2002 3:21 PM - DI 75)

**Citations Affected:** IC 4-6.

**Synopsis:** Fuel price gouging. Makes unlawful the sale of fuel at an unconscionable price during a state of emergency declared by the governor. Permits the attorney general to investigate and take action against retailers of fuel who engage in fuel price gouging. Preempts the power of local government to regulate fuel pricing during a state of emergency.

**Effective:** Upon passage.

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### Kenley, Lanane, Long, Wyss

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January 8, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.  
January 17, 2002, amended, reported favorably — Do Pass.

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SB 355—LS 6930/DI 14+



January 18, 2002

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.

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

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

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

9 (2) To seek injunctive relief as appropriate.

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

11 (4) To institute an action to levy and collect a civil penalty.

12 **Sec. 5. (a) Information obtained during the attorney general's**  
13 **investigation under this chapter, including information from a**  
14 **person who responds to the investigation and designates the**  
15 **information as confidential, must be maintained as confidential**  
16 **until the investigation is completed by the attorney general and a**  
17 **course of action is determined. The attorney general may not make**  
18 **known in any manner any information obtained in the course of**  
19 **the investigation to persons other than those specified in subsection**  
20 **(c). Once the investigation is completed, if there is an agreed upon**  
21 **settlement or if charges are filed, the information becomes public.**

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

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

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

37 **Sec. 6. If an investigation by the attorney general results in a**  
38 **finding of price gouging, the attorney general may bring an action**  
39 **in a circuit or superior court with jurisdiction in the county where**  
40 **the price gouging allegedly occurred. If the court finds that the**  
41 **retailer engaged in price gouging, the court may assess a civil**  
42 **penalty against the retailer. The civil penalty may not be more than**

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1        **one thousand dollars (\$1,000) per transaction.**  
2        **Sec. 7. Civil penalties collected under section 6 of this chapter**  
3        **must be deposited in the state general fund.**  
4        **Sec. 8. This chapter preempts the power of local governments to**  
5        **regulate pricing of commodities under a declaration of emergency:**  
6            **(1) under IC 10-4-1-7;**  
7            **(2) under IC 10-4-1-7.1; or**  
8            **(3) by a local government.**  
9        **SECTION 2. An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Lanane be added as second author and Senators Long and Wyss be added as coauthors of Senate Bill 355.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 355, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 5, delete "6" and insert "7".

Page 1, line 8, delete "and" and insert "or".

Page 1, line 14, after "obtainable" insert "**within the retailer's trade area**".

Page 2, between lines 1 and 2, begin a new paragraph and insert:

**"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."**

Page 2, line 2, delete "3" and insert "4".

Page 2, line 7, delete "penalty if" and insert "**penalty**".

Page 2, delete line 8.

Page 2, line 9, delete "4" and insert "5".

Page 2, line 34, delete "5" and insert "6".

Page 2, line 41, delete "6" and insert "7".

Page 2, line 41, delete "5" and insert "6".

Page 3, delete lines 1 through 15, begin a new paragraph and insert:

**"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."**

and when so amended that said bill do pass.

(Reference is to SB 355 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 9, Nays 1.

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