



Senate

General Assembly

File No. 210

January Session, 2011

Substitute Senate Bill No. 1089

Senate, March 24, 2011

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT PROHIBITING PRICE GOUGING DURING SEVERE WEATHER EVENTS AND MAKING MINOR AND TECHNICAL REVISIONS TO THE UNIFORM ADMINISTRATIVE PROCEDURE ACT AND DEPARTMENT OF CONSUMER PROTECTION STATUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) For purposes of this
2 section:

3 (1) "Severe weather event" means any event resulting from adverse
4 weather conditions which create an unusually high demand for
5 consumer goods and services and which demand results in a
6 declaration by the Governor pursuant to subsection (b) of this section.

7 (2) "Consumer goods and services" means goods and services that
8 are vital and necessary for the health, welfare or safety of consumers
9 and are used, bought or rendered primarily for personal, family or
10 household purposes. Consumer goods and services, include, but are
11 not limited to, snow removal and flood abatement.

12 (b) The Governor may issue a severe weather event declaration. The
13 Governor shall post notice of such declaration on the home page of the
14 Internet web site of the office of the Governor. Such notice shall
15 include the inception and end date of any such event.

16 (c) During any severe weather event, no person within the chain of
17 distribution of consumer goods or services shall sell or offer to sell
18 such goods or services for an amount which represents an
19 unconscionably excessive price.

20 (d) (1) Whether a price is unconscionably excessive is a question of
21 law for the court. The court's determination that a violation of
22 subsection (c) of this section has occurred shall be based on the
23 following factors: (A) That the amount of the excess in price is
24 unconscionably extreme, (B) that there was an exercise of unfair
25 leverage or unconscionable means, or (C) a combination of both factors
26 in subparagraphs (A) and (B) of this subdivision.

27 (2) In a proceeding commenced pursuant to subsection (f) or (g) of
28 this section, prima facie proof that a violation of subsection (c) of this
29 section has occurred shall include evidence that: (A) The amount
30 charged represents a gross disparity between the price of the goods or
31 services which were the subject of the transaction and their value
32 measured by the price at which such consumer goods or services were
33 sold or offered for sale by the defendant in the usual course of business
34 immediately prior to the onset of the severe weather event, or (B) the
35 amount charged grossly exceeded the price at which the same or
36 similar goods or services were readily obtainable by other consumers
37 in the trade area. A defendant may rebut a prima facie case with
38 evidence that additional costs not within the control of the defendant
39 were imposed on the defendant for such goods or services.

40 (e) A seller of an energy resource, as defined in subsection (a) of
41 section 42-234 of the general statutes, shall be exempt from the
42 provisions of this section.

43 (f) A violation of the provisions of subsection (c) of this section shall

44 be deemed an unfair trade or deceptive practice under subsection (a)
45 of section 42-110b of the general statutes.

46 (g) Each violation and each day on which the violation occurs or
47 continues shall be a separate offense.

48 Sec. 2. Subsection (a) of section 4-168 of the general statutes is
49 repealed and the following is substituted in lieu thereof (*Effective*
50 *October 1, 2011*):

51 (a) Except as provided in subsection (g) of this section, an agency,
52 prior to adopting a proposed regulation, shall: (1) Give at least thirty
53 days' notice by publication in the Connecticut Law Journal of its
54 intended action. The notice shall include (A) either a statement of the
55 terms or of the substance of the proposed regulation or a description
56 sufficiently detailed so as to apprise persons likely to be affected of the
57 issues and subjects involved in the proposed regulation, (B) a
58 statement of the purposes for which the regulation is proposed, (C) a
59 reference to the statutory authority for the proposed regulation, (D)
60 when, where and how interested persons may obtain a copy of the
61 small business impact and regulatory flexibility analyses required
62 pursuant to section 4-168a, and (E) when, where and how interested
63 persons may present their views on the proposed regulation; (2) give
64 notice [by mail] to each joint standing committee of the General
65 Assembly having cognizance of the subject matter of the proposed
66 regulation; (3) give notice [by mail] to all persons who have made
67 requests to the agency for advance notice of its regulation-making
68 proceedings. The agency may charge a reasonable fee for such notice
69 based on the estimated cost of providing the service; (4) provide a
70 paper copy or electronic version of the proposed regulation to persons
71 requesting it. The agency may charge a reasonable fee for copies in
72 accordance with the provisions of section 1-212; (5) no later than the
73 date of publication of the notice in the Connecticut Law Journal,
74 prepare a fiscal note, including an estimate of the cost or of the
75 revenue impact (A) on the state or any municipality of the state, and
76 (B) on small businesses in the state, including an estimate of the

77 number of small businesses subject to the proposed regulation and the
78 projected costs, including but not limited to, reporting, recordkeeping
79 and administrative, associated with compliance with the proposed
80 regulation and, if applicable, the regulatory flexibility analysis
81 prepared under section 4-168a. The governing body of any
82 municipality, if requested, shall provide the agency, within twenty
83 working days, with any information that may be necessary for analysis
84 in preparation of such fiscal note; (6) afford all interested persons
85 reasonable opportunity to submit data, views or arguments, orally at a
86 hearing granted under subdivision (7) of this subsection or in writing,
87 and to inspect and copy the fiscal note prepared pursuant to
88 subdivision (5) of this subsection; (7) grant an opportunity to present
89 oral argument if requested by fifteen persons, by a governmental
90 subdivision or agency or by an association having not less than fifteen
91 members, if notice of the request is received by the agency within
92 fourteen days after the date of publication of the notice; and (8)
93 consider fully all written and oral submissions respecting the proposed
94 regulation and revise the fiscal note in accordance with the provisions
95 of subdivision (5) of this subsection to indicate any changes made in
96 the proposed regulation. No regulation shall be found invalid due to
97 the failure of an agency to give notice to each committee of cognizance
98 pursuant to subdivision (2) of this subsection, provided one such
99 committee has been so notified.

100 Sec. 3. Subdivision (1) of subsection (a) of section 20-306 of the
101 general statutes is repealed and the following is substituted in lieu
102 thereof (*Effective October 1, 2011*):

103 (a) (1) The Department of Consumer Protection shall notify [by
104 mail] each person licensed under this chapter of the date of the
105 expiration of such license and the amount of the fee required for its
106 renewal for one year. Such license renewals shall be accompanied by
107 the payment of the professional services fee for class G, as defined in
108 section 33-182*l*, in the case of a professional engineer license, a
109 professional engineer and land surveyor combined license, or a land
110 surveyor license. The license shall be considered lapsed if not renewed

111 within thirty days following the normal expiration date.

112 Sec. 4. Section 30-20 of the general statutes is repealed and the
113 following is substituted in lieu thereof (*Effective October 1, 2011*):

114 (a) A package store permit shall allow the retail sale of alcoholic
115 liquor not to be consumed on the premises, such sales to be made only
116 in sealed bottles or other containers. The holder of a package store
117 permit may, in accordance with regulations adopted by the
118 Department of Consumer Protection pursuant to the provisions of
119 chapter 54, offer free samples of alcoholic liquor for tasting on the
120 premises, conduct demonstrations and conduct tastings or
121 demonstrations provided by a permittee or backer of a package store
122 for a nominal charge to charitable nonprofit organizations. Any
123 offering, tasting or demonstration held on permit premises shall be
124 conducted only during the hours a package store is permitted to sell
125 alcoholic liquor under section 30-91. No store operating under a
126 package store permit shall sell any commodity other than alcoholic
127 liquor except that, notwithstanding any other provision of law, such
128 store may sell (1) cigarettes, (2) publications, (3) bar utensils, which
129 shall include, but need not be limited to, corkscrews, beverage
130 strainers, stirrers or other similar items used to consume or related to
131 the consumption of alcoholic liquor, (4) gift packages of alcoholic
132 liquor shipped into the state by a manufacturer or out-of-state shipper,
133 which may include a nonalcoholic item in the gift package that may be
134 any item, except food or tobacco products, provided the dollar value of
135 the nonalcoholic items does not exceed the dollar value of the alcoholic
136 items of the package, (5) nonalcoholic beverages, (6) concentrates used
137 in the preparation of mixed alcoholic beverages, (7) beer and wine-
138 making kits and products related to beer and wine-making kits, (8) ice
139 in any form, (9) articles of clothing imprinted with advertising related
140 to the alcoholic liquor industry, (10) gift baskets or other containers of
141 alcoholic liquor, (11) multiple packages of alcoholic liquors, as defined
142 in subdivision (3) of section 30-1, provided in all such cases the
143 minimum retail selling price for such alcoholic liquor shall apply, and
144 (12) lottery tickets authorized by the Division of Special Revenue, if

145 licensed as an agent to sell such tickets by said division. A package
146 store permit shall also allow the taking and transmitting of orders for
147 delivery of such merchandise in other states. Notwithstanding any
148 other provision of law, a package store permit shall allow the
149 participation in any lottery ticket promotion or giveaway sponsored by
150 the Division of Special Revenue. The annual fee for a package store
151 permit shall be five hundred thirty-five dollars. [plus the sum required
152 by section 30-66.]

153 (b) A grocery store beer permit may be granted to any grocery store
154 and shall allow the retail sale of beer in standard size containers not to
155 be consumed on the premises. A holder of a grocery store beer permit
156 shall post in a prominent location adjacent to the beer display, the
157 retail price for each brand of beer and said retail price shall include all
158 applicable federal and state taxes including the applicable state sales
159 taxes. The annual fee for a grocery store beer permit shall be one
160 hundred [sixty] seventy dollars. [plus the sum required by section 30-
161 66.]

162 (c) "Grocery store" means any store commonly known as a
163 supermarket, food store, grocery store or delicatessen, primarily
164 engaged in the retail sale of all sorts of canned goods and dry goods
165 such as tea, coffee, spices, sugar and flour, either packaged or in bulk,
166 with or without fresh fruits and vegetables, and with or without fresh,
167 smoked and prepared meats, fish and poultry, except that no store
168 primarily engaged in the retail sale of seafood, fruits and vegetables,
169 candy, nuts and confectioneries, dairy products, bakery products or
170 eggs and poultry shall be included in the definition of "grocery store".

171 Sec. 5. Section 30-36 of the general statutes is repealed and the
172 following is substituted in lieu thereof (*Effective October 1, 2011*):

173 A druggist permit may be issued by the Department of Consumer
174 Protection to a drug store proprietor. No druggist permit shall be
175 issued covering a new drug store or a new location for an old drug
176 store until the Commission of Pharmacy is satisfied that a drug store at
177 such location is necessary to the convenience and best interest of the

178 public. A druggist permit (1) shall allow the use of alcoholic liquors for
 179 the compounding of prescriptions of physicians, advanced practice
 180 registered nurses, physician assistants and dentists and for the
 181 manufacturing of all United States Pharmacopoeia and National
 182 Formulary preparations and all other medicinal preparations, (2) shall
 183 allow the retail sale of alcoholic liquor in containers of not less than
 184 eight ounces or one hundred eighty-seven and one-half milliliters and
 185 not more than one quart or one liter capacity except that beer may be
 186 sold in containers of not more than forty ounces or twelve hundred
 187 milliliters capacity, to any person, and (3) shall forbid the drinking of
 188 such alcoholic liquor on the premises of any drug store. Such permittee
 189 shall keep all alcoholic liquors in compartments, which compartments
 190 shall be securely locked except during those hours when the sale of
 191 alcoholic liquor is permitted by law. The holder of a druggist permit
 192 shall not display any alcoholic liquors or containers, marked or labeled
 193 or in any other way suggesting the contents of intoxicating liquors, in
 194 the windows of the permit premises. The Commission of Pharmacy
 195 shall revoke or suspend the pharmacy license of any pharmacist upon
 196 whose premises any violation of any provision of this section occurs.
 197 The annual fee for a druggist permit shall be five hundred thirty-five
 198 dollars. [plus the sum required by section 30-66.]

199 Sec. 6. Section 30-66 of the general statutes is repealed. (*Effective*
 200 *October 1, 2011*)

| | | |
|-------------------------------------------------------------------------------|------------------------|------------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>from passage</i> | New section |
| Sec. 2 | <i>October 1, 2011</i> | 4-168(a) |
| Sec. 3 | <i>October 1, 2011</i> | 20-306(a)(1) |
| Sec. 4 | <i>October 1, 2011</i> | 30-20 |
| Sec. 5 | <i>October 1, 2011</i> | 30-36 |
| Sec. 6 | <i>October 1, 2011</i> | Repealer section |

Statement of Legislative Commissioners:

In section 1(d)(2), the words "the prices charged were a result of" were removed from the last sentence for proper grammar.

GL *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 12 \$ | FY 13 \$ |
|----------------------------|-------------------------|-----------------|-----------------|
| Various | Various Funds - Savings | 1,000 to 1,500 | 1,000 to 1,500 |
| Consumer Protection, Dept. | GF - Savings | less than 2,000 | less than 2,000 |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a savings to various state agencies as it allows state agencies the option of providing paper or electronic versions of proposed regulations to persons requesting it. Approximately 100 state regulations are adopted each year. An average of 15 requests are made for each proposed regulation. Printing and mailing of proposed regulations is approximately \$1.00 per copy. Not all persons would accept receiving proposed regulations through electronic mail.

The bill results in a savings of less than \$2,000 to the Department of Consumer Protection as it eliminates the "by mail" requirement that the Department of Consumer Protection (DCP) must notify an engineering licensee that his or her license is expiring and the amount for renewal, allowing it to deliver notice electronically. Currently one-half the 10,000 engineering licensees apply for their license electronically. Assuming the approximate 5,000 licensees currently applying electronically would also accept receiving their license electronically a savings of \$0.41 per license would be saved by DCP.

There is no fiscal impact to the Department of Consumer Protection due to sections of the bill which prohibit price gouging during severe

weather events as the agency currently receives and acts upon such complaints.

Sections of the bill which change current administrative fees to a flat fee and adds them to the corresponding annual off-premise permit fees result in no fiscal impact as the new flat fees are equal to the current administrative fee.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1089*****AN ACT PROHIBITING PRICE GOUGING DURING SEVERE WEATHER EVENTS AND MAKING MINOR AND TECHNICAL REVISIONS TO THE UNIFORM ADMINISTRATIVE PROCEDURE ACT AND DEPARTMENT OF CONSUMER PROTECTION STATUTES.*****SUMMARY:**

This bill:

1. prohibits price gouging during severe weather events;
2. eliminates the requirement that state agencies deliver notice for proposed regulations by mail, allowing them to deliver notice electronically;
3. gives state agencies the option of providing paper or electronic versions of proposed regulations to people requesting them;
4. eliminates the requirement that the Department of Consumer Protection must mail notice to a licensee that his or her license is expiring and the amount for renewal, allowing it to deliver notice electronically; and
5. repeals a 6.25% administrative fee on package store, grocery store, and druggist permits and, creates an equivalent flat fee and adds it to the existing annual fees for these permits.

EFFECTIVE DATE: October 1, 2011, except upon passage for the price gouging provision.

PRICE GOUGING

The bill prohibits price gouging during severe weather events,

which are any events resulting from adverse weather conditions that create an unusually high demand for consumer goods and services. The governor may issue a severe weather event declaration. When he does so, notice, which includes the event's start and end date, must be posted on the Governor's website homepage.

During a severe weather event, no person in the chain of distributing consumer goods or services can sell or offer to sell any goods or services for an unconscionable excessive price. Consumer goods and services are those vital and necessary for health, welfare, or safety of consumers and are used, bought, or rendered primarily for personal, family, or household purposes. The bill does not include energy resource sellers (e.g., motor gasoline), which are covered under a separate price gouging law.

A court will determine whether a price is unconscionably excessive and must look at the following factors: (1) the excess price is unconscionably extreme, (2) that there was an exercise of unfair leverage or unconscionable means, or (3) a combination of these factors.

Prima facie proof of a violation includes evidence that the amount charged (1) represents a gross disparity between the price of the goods or services and their value measured by the price before the severe weather event or (2) grossly exceeded the price at which the same or similar goods or services were obtained by other consumers in the trade area. A defendant may rebut a prima facie case with evidence that additional costs were not within his or her control and were imposed on the defendant for such goods or services.

A violation is an unfair trade or deceptive practice. Each violation and day on which the violation occurs or continues is a separate offense.

BACKGROUND

Connecticut Unfair Trade Practices Act

The law prohibits businesses from engaging in unfair and deceptive

acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 12 Nay 5 (03/10/2011)