



Testimony Submitted to the U.S. House Committee on Energy & Commerce, Subcommittee on
Consumer Protection and Commerce

For the hearing entitled:

“Pandemic Profiteers: Legislation to Stop Corporate Price Gouging”

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Introduction

Chair Schakowsky, Ranking Member Bilirakis, Members of the Committee, thank you for inviting me to testify today. My name is Sarah Frascch, and I serve as Director of the Bureau of Consumer Protection for the Pennsylvania Office of Attorney General.

The Office of Attorney General's Bureau of Consumer Protection (BCP) is charged with civil enforcement of Pennsylvania's consumer protection laws, including the Commonwealth's Price Gouging Act. Our 82 attorneys, agents and support staff work directly with consumers and businesses to both mediate disputes and to bring legal actions when necessary to stop abusive practices and obtain restitution for those who are harmed. During the 2020-21 fiscal year, BCP fielded 25,286 consumer complaints – a nearly 20% increase from before Attorney General Josh Shapiro took office. In addition, during the same time period, our office filed 108 legal actions, resulting in more than \$28.2 million for consumers. Additionally, our mediation efforts helped save another \$6.2 million for consumers—bringing our total dollars for consumers to \$34.3 million in our last fiscal year.

Pennsylvania's Statute and Efforts to Combat Price Gouging Related to COVID-19

Pennsylvania's Price Gouging Act, which was passed in 2006, has given our office an important tool in our toolbox to help protect consumers when disasters strike. This act protects consumers from unconscionably excessive price hikes beginning when the Governor declares a state of disaster emergency and continuing through thirty days after the termination of the state of emergency. Generally, unconscionably excessive prices, in violation of the act, include price increases of 20 percent or more during the applicable time period when compared to the price seven days prior to the declaration of the state of emergency. The Pennsylvania Price Gouging Act gives the Office of Attorney General's Bureau of Consumer Protection the responsibility to enforce the law with civil penalties of up to \$10,000 per violation. While this law is limited in its scope, it helps us both combat and deter price gouging during disaster situations, including the COVID-19 pandemic.

In March 2020, immediately following Governor Tom Wolf's declaration of a state of emergency due to the pandemic, our office set up a task force within the Bureau of Consumer Protection to accept, investigate and act on tips and complaints of price gouging made by the public. We set up a designated email address to accept complaints and shifted personnel from other cases to handle the inflow of price gouging tips. At its peak, our task force included 12 attorneys, 6 agents and 2 support personnel working full-time to investigate and respond to these complaints and tips. Tips covered a host of consumer products, but we found gouging to be most prevalent in sales of personal protective equipment (PPE), hand sanitizer and bottled water.

One example of the type of complaints we received was from the husband of a nurse in Bucks County, Pennsylvania. The man was concerned that his wife and her co-workers did not have access to appropriate PPE, including N95 masks, during the first weeks of the pandemic. Hospitals and medical facilities in Southeastern Pennsylvania—and many places across the country—were experiencing severe shortages of PPE. One of his employees went to a local pharmacy to fill a prescription and saw that the store had N95 masks available, so she purchased

them. Unfortunately, she was only able to purchase five and was charged \$20 per mask. For context, before the Governor issued his disaster declaration, N95 masks could be obtained for less than \$1, and even after factoring in the increased cost in supply incurred by the pharmacy, the price to the consumer was significantly increased, in clear violation of our statute. Our office contacted the store, and as a result, the buyer received a refund of the full amount she was overcharged. The store also brought their prices back to reasonable levels, preventing other consumers from being fleeced as well.

The Governor's disaster declaration remained in effect from March 2020 through June of 2021. During that time, our Price Gouging Task Force received more than 6,200 complaints of price gouging from every corner of our Commonwealth of Pennsylvania. Some of these complaints were honest mistakes by businesses that were fixed after engagement with our office. Others fell outside the scope of the statute, because they were referencing business-to-business transactions, not for household use. Many of the cases involved local stores that experienced increased costs themselves and had passed those costs onto the consumers, which is legal under the act. And there were other cases where consumers didn't like the prices they were seeing and thought that they must be being gouged but in reality were not.

However, we did not hesitate to use our enforcement authority under the act. Throughout this period, BCP issued 523 cease and desist letters to individuals and entities allegedly involved in price gouging. We issued 241 subpoenas, filed two legal actions to enforce subpoenas and filed two lawsuits alleging violations of Pennsylvania's Price Gouging Act. We also entered into 29 Assurances of Voluntary Compliance (AVCs) to resolve allegations of violations of the Price Gouging Act and obtained a total of \$73,272 in consumer restitution to make the consumers whole in instances where they spent more than they should have under the law.

In addition to our legal efforts, prevention was a core part of our strategy. Our Price Gouging Task Force led a multistate effort to engage with major e-commerce platforms, including eBay, Amazon and Facebook Marketplace among others to enhance protections for consumers and avoid price gouging through their websites. As a result of those efforts, we were able to identify additional price gouging, take appropriate action, obtain refunds for consumers, and take down any ads identified as violations of the act. We also gave several presentations to trade groups, consumer advocates and retailers to educate them on the Price Gouging Act, and to help them stay in compliance. And our office's Communications team worked hard to get the message out about our legal work to deter others who might consider engaging in price gouging from doing so.

Limitations of Pennsylvania's Price Gouging Act

As I noted previously, Pennsylvania's price gouging statute is limited in a number of ways. First, it only applies to consumer goods and services that are primarily for personal, family or household purposes. That meant that even though we were made aware of instances of potential price gouging in the business sector, we lacked the tools to intervene. For instance, early in the pandemic, essential workers from every sector needed increased PPE. Unfortunately, because Pennsylvania's price gouging statute does not cover products used primarily in a

business or professional setting, employers had to pay significantly higher prices because of massive increases in demand.

A second limitation of our statute is that the lookback period on pricing is only seven days prior to the declaration of the state of emergency. While this lookback period is adequate for certain disasters, in the case of COVID-19, prices had already started to rise before a disaster was declared. That meant that when we tried to enforce the statute, oftentimes we were comparing prices that were already elevated in anticipation of the impact the pandemic would have. A longer lookback period would better protect consumers against pre-disaster price hikes in the COVID-19 context.

The COVID-19 Price Gouging Prevention Act

The bill being considered by the Committee, the COVID-19 Price Gouging Prevention Act, would close these gaps and give state and federal regulators additional tools in our toolbox to help protect consumers from predatory pricing.

First, this legislation specifically includes those products and services that were in highest demand as a result of the pandemic: PPE, medical equipment and prescription drugs; disinfectants, sanitizers and other cleaning supplies; food, beverages, chemicals and personal hygiene products; and health care, cleaning and delivery services. Many of these items are purchased on a business-to-business basis which means they fall outside the scope of Pennsylvania's Price Gouging Act. This legislation would effectively broaden protections for Pennsylvanians by expanding the scope of our office's power to stop price gouging in a way that is tailored to the current crisis.

Second, the bill includes a 90-day lookback period, ensuring that when we receive complaints, we are comparing against prices that are less impacted by the pandemic, and thus likely lower for purchasers.

Third, the COVID-19 Price Gouging Prevention Act would give authority to both the Federal Trade Commission and state attorney generals to police excessive pricing in these key markets. This will help us guard against gouging by suppliers that operate in different jurisdictions and sell across many state lines.

Fourth, this legislation would reinstate price gouging protections for Pennsylvania consumers. Pennsylvania's state of emergency is no longer in effect, meaning that our authority to protect against price gouging is also no longer in effect. But we know that the economic ramifications, including both demand surges and supply chain limitations continue. Having this law in place would ensure that our office is able to continue its price gouging enforcement efforts throughout this period of economic uncertainty to help ensure normal market conditions remain in place across Pennsylvania's economy.

Conclusion

Price gouging does real harm to both people and businesses. It takes money out of the pockets of working people when they need it most. It undermines the public's faith in our economy during times of crisis. It contributes to supply chain disruptions. And in certain cases, like the nurses and other front line workers who have served their fellow citizens so ably throughout this crisis, it makes it more difficult to get them the gear they need to keep them safe on the job.

Those who price gouge are engaging in predatory behavior. Consumers need regulators with the right tools at their disposal to protect them during these trying times. Pennsylvania's Price Gouging Act is an important tool, and I'm proud of the work we've done using it to combat unconscionably excessive price hikes in the Commonwealth. The COVID-19 Price Gouging Prevention Act would expand these tools and allow us to do even more to protect Pennsylvanians from the excessive pricing that has occurred all too often as a result of this pandemic.