



ATTORNEY GENERAL WILLIAM TONG
STATE OF CONNECTICUT

Testimony in Support of House Bill 5463, *An Act Concerning the Authority of the Office of the Attorney General to Bring an Action Against a Seller Who Engages in Price Gouging During a Disaster or Emergency*
Judiciary Committee
Friday, March 18, 2022

Chairman Winfield, Ranking Member Kissel, Chairman Stafstrom, Ranking Member Fishbein, and distinguished members of the Judiciary Committee, thank you for the opportunity to testify in strong support of HB 5463, *An Act Concerning the Authority of the Office of the Attorney General to Bring an Action Against a Seller Who Engages in Price Gouging During a Disaster or Emergency*.

During the pandemic, the Office of the Attorney General discovered that illegal price hikes were caused by sellers higher up the chain of distribution. However, we could not bring enforcement proceedings against the culpable parties because they were beyond the reach of the statute. **HB 5463 modifies the price gouging statute, Conn. Gen. Stat. § 42-230, by extending liability for price gouging beyond retailers to bad actors up the chain of distribution.**

Price gouging at the retail level has been illegal in our state since 1986. Unfortunately, certain select bad actors will take advantage in a crisis, like the pandemic, and charge amounts they would never be able to obtain under normal circumstances. The current law presumes that the only bad actors are retailers. In fact, the opposite is true.

During the pandemic, a large number of the 750 complaints that we received during the Governor's emergency declarations concerned small retailers, often "Mom and Pop" store owners, who worked very hard to stock the shelves with items their customers desperately needed, like hand sanitizer and N95 masks. Time and again, these small business owners showed themselves to be caring, good people who sincerely wanted to help customers. Unfortunately, at times, these same people were often on the receiving end of public displays of frustration about spiking prices. These retail sellers were *not* responsible for those spikes and were not price gouging. There is no question that charging \$35 for 16 ounces of hand sanitizer is price gouging. In this scenario, we realized that it was a wholesaler, or a supplier, or both who were jacking up the prices, forcing retailers to raise the price at the point of sale to obtain the same profit, or just come out even.

Similarly, we participated in a multistate investigation into high egg prices for a three-month period at the outset of the pandemic. At the time retail prices for eggs were extremely volatile and at times exceptionally high. After an initial investigation, it became clear that grocery stores were not price gouging. They were passing along the increased cost charged by someone up the chain. At that point, our office had to end the inquiry because retailers were not the cause of the spike. We were unable, under our current price gouging law, to determine whether producers, wholesalers, and/or suppliers were responsible for the egg price spikes. Minnesota and New York opened investigations and favorably resolved the cases. Notably, the list of defendants in the New York action against a



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mega egg producer and distributor had a subsidiary operating in Connecticut. Despite knowing that Connecticut consumers were being gouged, our office was not able to act on their behalf.

The current price gouging statute has an Achilles heel: it *only* applies to retailers. It does not cover suppliers, wholesalers, and rental and leasing businesses. This bill would remedy that shortcoming to allow us to bring enforcement actions against the culpable parties within the chain of distribution. Price gougers should not be immune from liability when they victimize Connecticut consumers simply because they are not retailers. If the statute is not modified, and we are faced with a new emergency declaration, price gougers will be able to profit with impunity.

The bill also provides a better legal standard for price gouging because the current one is unclear. It states that any increase in price that exceeds the price in the ordinary course of business is prohibited. Law abiding businesses need better guidance, so this bill prohibits price increases that are “unconscionably excessive.” Some state price gouging statutes prohibit a percentage increase over the ordinary price. This is problematic because it provides would-be price gougers with a means to skirt the law and avoid prosecution. If a markup higher than 20% was the price gouging benchmark, violators could raise the price 19% and avoid liability. The “unconscionably excessive” standard will allow the Office of the Attorney General to be fair in enforcing the law.

This bill also updates the statutes so that when we are investigating allegations of unfair trade practices, including price gouging allegations related to suppliers, wholesalers and others as proposed in section 1, we are not forced to disclose business sensitive records in the middle of an active investigation or enforcement action. The statute currently requires document disclosures that could be so premature that doing so jeopardizes our access to evidence, and could impact the whole case outcome. We may also have to publicly disclose the identity of a target who we do not ultimately pursue, to the detriment of its business reputation. This change would put the Office on par with many states with whom we partner in multistate enforcement actions allowing us to economize office resources, and maximize our negotiating leverage, as we advocate for Connecticut consumers.

We appreciate your support of our work to protect consumers from illegal and deceptive trade practices.

For additional information, please contact Cara Passaro, Chief Counsel to the Attorney General and Director of Legislative Affairs at cara.passaro@ct.gov.