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Rep. Baumbach

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 253

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO PRICE PROTECTIONS DURING THE COVID-19 RECOVERY PERIOD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The General Assembly finds and declares all of the following:

(1) On March 12, 2020, Governor John C. Carney declared a State of Emergency for the State effective as of March 13, 2020, due to the serious public health threat created by the novel coronavirus, COVID-19.

(2) The March 12, 2020 Declaration of a State of Emergency, as modified by the April 1, 2020 Ninth Modification of the March 12, 2020 Declaration of a State of Emergency for the State, put into place protections against price gouging.

(3) Continuation of price gouging protections during the COVID-19 recovery period are in the public interest.

(4) Given the rapidly evolving market conditions and needs, it is also in the public interest to give the Governor the flexibility to impose less restrictive protections or suspend protections to ease the transition back to normal operations.

(5) It is in the public interest to continue the protections in this Act or any lesser restrictions the Governor may impose in a subsequent modification to the Declaration of a State of Emergency related to the protections in this Act, based on changing market conditions and needs.

Section 2. Amend Subchapter II, Chapter 25, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2513A. Price protections during the COVID-19 recovery period.

(a) As used in this section:

(1) "COVID-19" means any of the following:

a. Severe acute respiratory syndrome coronavirus 2.

b. The disease caused by severe acute respiratory syndrome coronavirus 2.

(2) “COVID-19 order” means a modification to the COVID-19 State of Emergency Declaration or another order issued by the Governor under Chapter 31 of Title 20 and relating to the COVID-19 state of emergency.

(3) “COVID-19 state of emergency” means the state of emergency declared effective by the Governor as of Friday, March 13, 2020, at 8:00 a.m. Eastern Standard Time under the COVID-19 State of Emergency Declaration, and any subsequent state of emergency relating to COVID-19.

(4) “COVID-19 State of Emergency Declaration” means the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat issued by the Governor on March 12, 2020.

(5) “COVID-19 recovery period” means the period beginning immediately upon termination of the COVID-19 state of emergency and continuing until the sixty-first day following the termination of the COVID-19 state of emergency.

(6) “State of emergency” means as defined in § 3102 of Title 20.

(7) “Price gouging” means an excessive increase in the price of goods or services offered for sale by an entity as compared to the sales price offered by the entity in the usual course of business immediately before the date of the COVID-19 state of emergency. If an entity did not sell or offer to sell the goods or services before the COVID-19 state of emergency, the price at which that good or service was generally available within the State immediately before March 12, 2020 will be used to determine if an entity is engaging in price gouging.

(b)(1) An entity doing business in this State may not engage in price gouging during the COVID-19 recovery period.

(2) It is prima facie evidence that an entity has engaged in price gouging if all of the following apply:

a. The price increase is more than 10% above the sales price offered by the entity in the usual course of business immediately before the date of the COVID-19 state of emergency. If an entity did not sell or offer to sell goods or services before the COVID-19 state of emergency, the price at which that good or service was generally available within the State immediately before March 12, 2020 will be used to determine if there has been a price increase of more than 10%.

b. The increase in price is not attributable to additional costs imposed on the seller of the good or service.

(c) A violation of subsection (b) of this section is an unlawful act under § 2513 of this title, and a violation of this subchapter.

(d) Subject to paragraph (e)(1) of this section, subsections (b) and (c) of this section supersede any protections relating to price gouging contained in a COVID-19 order.

50 (e)(1) The Governor may, based on an evaluation of market needs or conditions, issue a COVID-19 order that does
51 the following as it relates to a protection under subsections (b) and (c) of this section:

52 a. Modifies the protection to impose a less restrictive protection that transitions back toward the
53 applicable law that was in effect before the COVID-19 State of Emergency Declaration. The less restrictive
54 protection applies during the COVID-19 recovery period.

55 b. Suspends the protection. The suspended protection does not apply during the COVID-19 recovery
56 period.

57 (2) Nothing in this subsection limits the Governor's power under Chapter 31 of Title 20. However, a price
58 gouging protection in a COVID-19 order that does not comply with paragraph (e)(1) of this section does not apply after
59 the termination of the COVID-19 state of emergency.

60 Section 3. The expiration of this Act under Section 4, the termination of the COVID-19 state of emergency, the
61 termination of the COVID-19 recovery period, or the suspension of the protection of this Act will not have the effect of
62 releasing or extinguishing any penalty, forfeiture, or liability incurred for any violation of this Act. Any proper action or
63 prosecution for the enforcement of such penalty, forfeiture, or liability, commenced after the expiration of this Act under
64 Section 4, the termination of the COVID-19 state of emergency, the termination of the COVID-19 recovery period, or the
65 suspension of the protection of this Act, will be sustained.

66 Section 4. Sections 1 and 2 of this Act expire on the sixty-first day following the termination of the COVID-19
67 state of emergency, unless terminated or extended by subsequent action of the General Assembly.

68 (1) For purposes of this Section, "COVID-19 state of emergency" means as defined in Section 2 of this Act.

69 (2) Within 7 days of the termination of the COVID-19 state of emergency, the Governor shall provide notice
70 of the termination to the Registrar of Regulations. The Registrar of Regulations shall publish the notice in the next
71 issue of the Register of Regulations.

SYNOPSIS

This Act ensures that the price protections for Delawareans related to price gouging put in place during the COVID-19 state of emergency do not cease immediately upon the lifting of the COVID-19 state of emergency, but instead continue for a short period of time during the COVID-19 recovery period. The COVID-19 recovery period runs until the sixty-first day following the termination of the COVID-19 state of emergency.

This Act is intended to set the ceiling for what constitutes price gouging during the COVID-19 recovery period. This Act is written to give the Governor flexibility to carry out the legislative will of protecting Delawareans while not regulating price more than necessary given the market needs and conditions. If additional executive orders are issued to further ratchet down or slowly ease the transition back to normal operations, those are the protections that will be in effect during the COVID-19 recovery period.

Sections 1 and 2 of this Act sunset on the sixty-first day following the termination of the COVID-19 state of emergency. Section 3 will not sunset to ensure that a violation of this Act occurring while the protections of this Act are in

effect can be pursued after the expiration of this Act, the termination of the COVID-19 state of emergency, the termination of the COVID-19 recovery period, or the suspension of the protection of this Act by the Governor.

Author: Senator Ennis