

CAYMAN ISLANDS



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**THE PRICE GOUGING CONTROL (EMERGENCY CIRCUMSTANCES)  
LAW, 2004**

**(LAW 24 OF 2004)**



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CAYMAN ISLANDS

Law 24 of 2004.

I Assent

B. H. Dinwiddy

Governor.

16 November, 2004

**A LAW TO PREVENT PRICE GOUGING IN COMMODITIES IN  
EMERGENCY CIRCUMSTANCES; TO PROVIDE FOR THE  
ESTABLISHMENT OF A PRICE GOUGING CONTROL COMMISSION;  
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART I**

**PRELIMINARY**

1. This Law may be cited as the Price Gouging Control (Emergency Circumstances) Law, 2004. Short title

2. In this Law unless the context otherwise requires- Interpretation

“Commission” means the Price Gouging Control Commission established under section 3;

“commodity” means any goods, dwelling unit, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of an emergency; and

“natural disaster” includes hurricane, fire, flood, earthquake, outbreak of pestilence, outbreak of infectious diseases or such other calamity whether similar to the foregoing or not.

Establishment of the  
Price Gouging Control  
Commission

3. (1) There is established a body called the Price Gouging Control Commission which shall have such functions as may be conferred by this Law or any other law.

(2) The Commission consists of a chairman and 4 members all of whom shall be appointed by the Governor in Cabinet.

(3) For the purposes of an inquiry under this Law the Governor in Cabinet may appoint to the Commission an additional member who, in his opinion, is by reason of that member’s special qualifications or experience able to assist the Commission in its inquiry and any person so appointed shall, for the duration and purposes of such inquiry, be deemed to be a member of the Commission.

(4) The incidental provisions contained in the Schedule shall have effect in relation to the Commission.

## **PART II**

### **UNCONSCIONABLE INCREASES OF PRICES OF COMMODITIES DURING A DECLARED STATE OF EMERGENCY OR DURING A PERIOD FOLLOWING A NATURAL DISASTER**

Increases of prices for  
commodities during a  
period of emergency or  
during a period  
following a natural  
disaster

4. (1) Upon and after a declaration of a state of emergency in the Islands by the Governor in accordance with the Emergency Powers Law (1997 Revision) or—

- (a) during a period when a tropical storm or a hurricane watch or warning is in effect in relation to the Islands; or
- (b) during such period of time (as may be specified by the Governor in Cabinet by order) immediately following a natural disaster,

subject to this Law, no person, his agent or employee shall rent or sell or offer to rent or sell at an unconscionable price any commodity; and this prohibition shall remain in effect—

- (i) until the declaration expires;
- (ii) where no tropical storm or hurricane occurs to which the tropical storm or hurricane watch or warning related, until the tropical storm or hurricane watch or warning is discontinued;
- (iii) for such longer period after the declaration has expired as may be specified by order of the Governor in Cabinet; or

(iv) for such other period as may be specified by order of the Governor in Cabinet.

(2) Any increase in installation charges, labour charges for repairs or other charges made in connection with the installation or use of any apparatus used for the supply of or necessary for the beneficial enjoyment of a commodity or of the delivery charges for such commodity shall not be deemed to be an increase of the price or charge of such commodity for the purposes of subsection (1).

(3) It is prima facie evidence that a price is unconscionable if-

- (a) the amount charged represents a gross disparity between the price of the commodity that is the subject of the offer or transaction and the average price at which that commodity was rented or sold, or offered for rent or sale in the usual course of business during the 30 days immediately prior to a declaration of a state of emergency or the occurrence of the natural disaster, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental of any self-storage facility, or national or international market trends; or
- (b) the amount charged grossly exceeds the average price at which the same or similar commodity was readily obtainable in the Islands during the 30 days immediately prior to a declaration of a state of emergency or the occurrence of the natural disaster, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any self-storage facility, or national or international market trends.

(4) This section does not apply to sales by growers, producers, or processors of raw or processed food products, except for retail sales of such products to the ultimate consumer within the Islands.

(5) A person who contravenes subsection (1) is liable on summary conviction to a fine of \$100,000.

(6) The burden of proof to show that any increase in the price or charge of a commodity is reasonable and not unconscionable is upon the person accused of such increase.

5. (1) Where the Commission has received a written complaint that a person may have committed an offence under section 4 the Commission shall conduct such inquiry as it considers necessary in the circumstances of the case; and without prejudice to the generality of the foregoing the Commission shall have

Powers to obtain information under this Part and to investigate complaints.

the power to order under the hand of the Chairman any person to attend before it and give evidence on oath or otherwise and to require the production of accounts, records and other documents so as to elicit all such information relevant to the matter inquired into as the Commission may think necessary.

- (2) A person who-
  - (a) fails without reasonable excuse to attend before the Commission in compliance with an order under subsection (1); or
  - (b) when in attendance before the Commission refuses to make an oath; or
  - (c) refuses to produce a document, knowingly produces a false document or refuses to give evidence in compliance with such aforesaid order,

commits an offence and is liable on summary conviction to a fine of \$50,000.

(3) Notwithstanding subsection (2), a person shall not be punished for refusing to answer any question or to produce any document which he could not be required to answer or produce before a court in the Islands or for failing or refusing to answer any question or produce any document which is not relevant to the matters in issue.

Referral of matters to the  
Legal Department by the  
Commission

6. Where by its inquiry carried out under section 5 the Commission has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates section 4 it shall submit a report of the results of the inquiry and such supporting evidence as it has collected to the Attorney General for prosecution of the person.

### **PART III**

#### **REQUEST TO THE COMMISSION FOR PRICE INCREASES DURING A DECLARED STATE OF EMERGENCY OR DURING A PERIOD FOLLOWING A NATURAL DISASTER**

Request for increase in  
price of commodities

7. (1) Notwithstanding section 4(1), a person may increase the price or charge for any commodity during a period of emergency or such other period as is specified in section 4(1) by an amount which may otherwise be deemed unconscionable in accordance with section 4 (3); and in order to effect such increase he shall give notice in writing to the Commission of his intention to increase the price or charge for any commodity and the amount of such increase.



(2) When notice of intention to increase prices or charges to which subsection (1) applies has been duly given to the Commission those prices or charges shall not be increased otherwise than –

- (a) in the event of the Commission giving a direction under section 8 within a period of 7 days beginning with the date on which that notice of intention was given, to the extent and in such amount as may be permitted by the direction; and
- (b) in any other case, until the expiration of the said period of 7 days.

8. (1) On receipt of a notice given under section 7 (1) the Commission may, after making such inquiry in the matter as it may think fit for the purpose of ascertaining that the increase is just and reasonable, give a direction-

Power of Commission on receipt of notice of increase

- (a) approving the increase;
- (b) disallowing the increase either wholly or in part;
- (c) postponing the date upon which the increase is intended to be effective to such other date as may be specified; or
- (d) otherwise setting out the terms and conditions upon which the increase may be made.

(2) In the exercise of its direction under subsection (1) the Commission shall have regard to-

- (a) the cost to the supplier of the commodity;
- (b) the needs of the supplier for adequate working capital and to establish reasonable reserves;
- (c) the need to afford investors a reasonable rate of return on their investment;
- (d) the public interest; and
- (e) any other matter which, to the Commission, appears relevant.

(3) The burden of proof to show that any increase in the price or charge of a commodity is just and reasonable is upon the person seeking the increase.

9. (1) A person who is aggrieved by a direction of the Commission under section 8 may, within 14 days of being notified thereof or such longer period as the Governor in Cabinet may allow, by notice in writing appeal to the Governor in Cabinet.

Appeal to the Governor in Cabinet against the decision of the Commission

(2) The Commission shall supply reasons for its direction to such person for the purposes of any such appeal.

(3) On an appeal under this section the Governor in Cabinet may, if it thinks fit, vary any direction of the Commission and such variation shall take effect on such date as the Governor in Cabinet may determine, but until such

variation takes effect the direction shall continue to have effect according to the tenor thereof.

Powers of the Governor in Cabinet to obtain information

10. The Governor in Cabinet may, for the purposes of this Law, by notice to a specified person require such person-

- (a) to furnish, whether by periodical returns or other means, such estimates or other information as may be specified or described in the notice;
- (b) to produce to an public officer of the Ministry responsible for commerce or to the Commission, any documents so specified or described; or
- (c) to keep such records as may be so specified or described.

(2) A notice under this section may specify the way in which, and the time during which, it is to be complied with.

(3) A person who fails to comply with a notice under this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Enforcement of price control provisions under this Part

11. (1) A person shall be guilty of an offence if he-

- (a) increases any price or charge for a commodity without giving notice required by section 7(1); or
- (b) fails to comply with a direction of the Commission under section 8 or, as the case may be, such direction as varied by the Governor in Cabinet,

and shall be liable, on summary conviction, to fine of \$100,000.

(2) Any charge made by a person for a commodity in excess of any amount permitted by a direction under section 8 shall be unenforceable to the extent of the excess.

Governor in Cabinet may require the Commission to conduct inquiry

12. The Governor in Cabinet may at any time require the Commission to inquire into-

- (a) any matter which may affect the exercise by the Governor in Cabinet of its powers under this Law;
- (b) the price or charge made for any commodity whether or not such commodity is a specified commodity; or
- (c) such other matters as it may specify concerning the cost or supply of any commodity,

and it shall be the duty of the Commission thereupon to make such an inquiry and report thereon to the Governor in Cabinet.

13. (1) For the purpose of an inquiry under section 8 or 12 the Commission shall have the power to order under the hand of the Chairman any person to attend before them and give evidence on oath or otherwise and to require the production of accounts, records and other documents so as to elicit all such information relevant to the matter inquired into as the Commission may think necessary.

Power to obtain  
information under this  
Part

(2) A person who-

- (a) fails without reasonable excuse to attend before the Commission in compliance with an order under subsection (1);
- (b) when in attendance before the Commission refuses to make an oath; or
- (c) refuses to produce a document, knowingly produces a false document or refuses to give evidence in compliance with such aforesaid order,

commits an offence and is liable on summary conviction to a fine of \$50,000.

(3) Notwithstanding subsection (2) a person shall not be punished for refusing to answer any question or to produce any document which he could not be required to answer or produce before a court in the Islands or for failing or refusing to answer any question or produce any document which is not relevant to the matters in issue.

#### **PART IV**

#### **SUPPLEMENTARY**

14. (1) The Attorney- General may apply to the Grand Court for an injunction on behalf of the Government restraining any breach or anticipated breach by any person of any provisions of this Law and the Grand Court shall have jurisdiction to entertain any such application and grant such injunction on such terms as it may think fit.

Enforcement of this Law  
by injunction

(2) An injunction granted under this section shall be enforceable by attachment or committal or otherwise as the court thinks just.

15. (1) Where an offence under this Law which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

Offences by officers of  
corporate bodies

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of the member in connection with his functions of management as if he were a director of the body corporate.

Section 3

#### SCHEDULE

1. A member of the Commission shall be appointed for a period of one year beginning on such day as may be determined by the Governor in Cabinet and such member shall be paid such fees as may be determined by the Governor in Cabinet.

2. A member of the Commission may resign his office at any time by notice in writing given to the Governor in Cabinet.

3. The Governor in Cabinet may declare the office of a member of the Commission vacant if he is satisfied that the member-

- (a) is unable through mental or physical incapacity or absence from the Islands to perform the functions of his office;
- (b) has failed, without adequate cause, to attend 3 successive meetings of the Commission; or
- (c) has been sentenced to imprisonment for the commission of a criminal offence.

4. A person appointed to fill the place of a member of the Commission before the end of the member's term shall hold office for so long as the vacating member would have held office.

5. Where a member of the Commission is absent from the Islands, ill or otherwise temporarily incapacitated from performing his functions as a member, the Governor in Cabinet may appoint a person to act in the place of such a member for the purposes of such inquiry or decision and any person so appointed shall while so acting be deemed to be a member of the Commission.

6. A person who has held office as a member of the Commission shall be eligible for re-appointment.

7. A member of the Commission shall not take part in an inquiry or decision relating to any business in which he or his spouse is a member or shareholder or has any private interests, direct or indirect whereby his private interests may conflict with his duties as a member and the Governor in Cabinet may appoint a person to act in place of such member for the purpose of such inquiry or decision

and any person so appointed shall while so acting be deemed to be a member of the Commission.

8. The Commission may act notwithstanding any vacancy in its membership and no act of the Commission shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

9. The Commission shall meet as often as may be necessary for it to dispatch its business under this Law.

10. Minutes shall be made of every decision of the Commission in such form as the Governor in Cabinet may direct.

11. The quorum of the Commission shall be 3.

12. The Governor in Cabinet may designate any public officer to be secretary to the Commission.

13. Any direction of the Commission given under the Law shall be deemed to be duly authenticated if it is given under the hand of the Chairman or, in his absence, the secretary thereof.

14. In any matter before the Commission the chairman or person acting as chairman shall have a deliberative as well as a casting vote.

15. A notice may be given to the Commission by service upon the secretary of the Commission.

16. Subject to the foregoing provisions of this Schedule the Commission may determine its procedure.

Passed by the Legislative Assembly the 1st day of November, 2004.

LINFORD A. PIERSON

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.