

CHAPTER 108

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 05-089

BY SENATOR(S) Hanna, Sandoval, Fitz-Gerald, Groff, Grossman, Keller, Shaffer, Tapia, Tochtrop, Tupa, Veiga, Williams, and Windels;
also REPRESENTATIVE(S) Paccione, Borodkin, Boyd, Buescher, Butcher, Carroll M., Coleman, Frangas, Hodge, Madden, Marshall, McGihon, Merrifield, Solano, and Todd.

AN ACT**CONCERNING A PROHIBITION AGAINST THE PRACTICE OF UNFAIR DRUG PRICING.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 25-1.5-101 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

25-1.5-101. Powers and duties of the department. (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(aa) TO DETERMINE IF THERE IS A SHORTAGE OF DRUGS CRITICAL TO THE PUBLIC SAFETY OF THE PEOPLE OF COLORADO AND DECLARE AN EMERGENCY FOR THE PURPOSE OF PREVENTING THE PRACTICE OF UNFAIR DRUG PRICING AS PROHIBITED BY SECTION 6-1-714, C.R.S.

SECTION 2. Part 7 of article 1 of title 6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

6-1-714. Unfair drug pricing practice - definitions - deceptive trade practice.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "EMERGENCY" MEANS A DECLARATION MADE BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-101 (1) (aa), C.R.S., AFTER THE DEPARTMENT HAS DETERMINED THAT THERE IS A SHORTAGE OF DRUGS CRITICAL TO PUBLIC SAFETY.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) "UNFAIR DRUG PRICING" MEANS CHARGING A CONSUMER AN UNCONSCIONABLE AMOUNT FOR THE SALE OF A DRUG. UNFAIR DRUG PRICING OCCURS IF:

(I) THE PRICE CHARGED BY A WHOLESALER, DISTRIBUTOR, OR RETAILER EXCEEDS BY MORE THAN TEN PERCENT THE AVERAGE PRICE FOR THE DRUG CHARGED BY THAT WHOLESALER, DISTRIBUTOR, OR RETAILER DURING THE THIRTY DAYS IMMEDIATELY PRECEDING THE DECLARATION OF AN EMERGENCY; AND

(II) THE INCREASE IN THE AMOUNT CHARGED BY A WHOLESALER, DISTRIBUTOR, OR RETAILER IS NOT ATTRIBUTABLE TO COST FACTORS OF THE RETAILER, INCLUDING, BUT NOT LIMITED TO, REPLACEMENT COSTS, TAXES, AND TRANSPORTATION COSTS INCURRED BY THAT WHOLESALER, DISTRIBUTOR, OR RETAILER.

(2) A PERSON ENGAGES IN A DECEPTIVE TRADE PRACTICE WHEN, IN THE COURSE OF SUCH PERSON'S BUSINESS, VOCATION, OR OCCUPATION, THE PERSON ENGAGES IN THE PRACTICE OF UNFAIR DRUG PRICING.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 22, 2005