



*BEFORE THE SENATE JUDICIARY COMMITTEE
OPPONENT TESTIMONY ON SENATE BILL 301*

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to provide opponent testimony on Senate Bill 301 (SB 301). My name is Kevin Shimp and I am the Director of Labor and Legal Affairs for the Ohio Chamber of Commerce.

The Ohio Chamber is the state's leading business advocate, and we represent over 8,000 companies that do business in Ohio. Our mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.

In our efforts to champion economic competitiveness and free enterprise, the Ohio Chamber opposes SB 301 as currently before the committee because there is no clear liability standard or definition of what constitutes price gouging. Similarly, the Ohio Chamber does not oppose reasonable reform efforts that attempt to stop price gouging during emergency situations since companies skyrocketing the cost of goods in response to a disaster are not championing free enterprise. Instead, those bad actors are exploiting people's fears and emotions for a quick buck.

Under SB 301, retailers and other businesses can be found to violate the Consumer Sales Practice Act if the business is offering for sale certain consumer goods at a price grossly in excess of the price prior to the declared emergency. This liability standard is problematic for Ohio businesses because it provides no guidance on what is grossly in excess.

Without any statutory guidance, courts and businesses will be left to make determinations on their own as to what price changes are grossly in excess. This uncertainty resulting from the broad and undefined "grossly in excess" liability standard exposes both large and small retailers to unreasonable legal risks and puts them in an unfavorable position of not being able to alter the price of their goods to reflect market fluctuation without fear of a potential lawsuit alleging price gouging.

However, following discussions with the bill sponsors and other interested parties, the Ohio Chamber believes the legislation can be amended so it provides the statutory

guidance businesses need to evaluate their legal obligations when altering prices during an emergency.

These changes to SB 301 include:

- Requiring a separate and specific declaration of emergency from the governor lasting less than 30 days to trigger the provisions of the price gouging law
- Limiting the application of the law to only the goods mentioned in the governor's declaration of emergency
- Setting a reference price for the price of covered goods as the cost for that good one day prior to the declaration of emergency
- Providing a safe harbor to businesses who raise prices on covered goods by 25% or less

With these changes to SB 301, the Ohio Chamber would likely re-evaluate our opposition to the legislation since the suggested amendments provide retailers with substantially more certainty about what constitutes price gouging which in turn reduces the likelihood the business will find themselves facing a price gouging lawsuit.

In closing, the Ohio Chamber of Commerce commends the efforts of the bill sponsors to tackle the abhorrent instances of severe price gouging we all witnessed in the early days of the coronavirus pandemic, but we oppose SB 301 as drafted since it lacks clear statutory guidance on what is price gouging which leaves Ohio businesses exposed to unreasonable liability.