



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 12, 2008

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The Honorable Steven L. Beshear
Governor of Kentucky
State Capitol, Room 100
Frankfort, KY 40601

Re: Urgent request to protect consumers; implementation of KRS 367.374 during State of Emergency to prohibit grossly excessive prices on goods and services

Dear Governor Beshear:

I am requesting that you implement the consumer protection statute KRS 367.374 to prevent price gouging on the below listed goods and services, including gasoline and other motor fuels, during the state of emergency in light of the impending effects of Hurricane Ike. Under this statute the Governor has the authority to declare that:

“No person shall sell, rent, or offer to sell or rent, regardless of whether an actual sale or rental occurs, a good or service listed in this paragraph or any repair or reconstruction service for a price which is grossly in excess of the price prior to the declaration and unrelated to any increased cost to the seller.”

(Emphasis added).

Accordingly, any increase in the price of the itemized goods and services that is “unrelated to any increased cost to the seller” is deemed unlawful. Under KRS 367.374 the price gouging restriction remains in effect for thirty (30) days, with another thirty (30) day extension if deemed necessary.

The statute prohibits such increases in the cost of the following goods or services as defined in KRS 367.372: “1. Consumer food items; 2. Goods or services used for emergency cleanup; 3. Emergency supplies; 4. Medical supplies; 5. Home heating oil; 6. Building materials; 7. Housing; 8. Transportation, freight, and storage services; and 9. Gasoline or other motor fuels.”

An order to implement KRS 367.376 requires that public notices be issued by the Division of Emergency Management as follows:



“Upon the Governor's implementation of the provisions of KRS 367.374, renewal of the implementation, or termination of the implementation, the Division of Emergency Management shall immediately notify the public and those registered with the division for the purpose of receiving notice of the implementation, renewal, or termination. The division shall notify the public by any means available, including the division's Web site, news media, and electronic mail. Any person or trade association may register with the division for the purpose of receiving notification.”

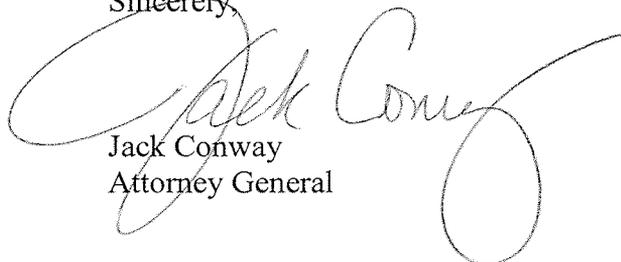
Hurricane Ike is forecast to strike the Gulf Coast this weekend, and could potentially deliver the oil production, refining and transportation infrastructure a terrible blow. The uncertainty about the market has already been felt here in Kentucky. We are receiving reports that gasoline prices in some areas of Kentucky have increased more than \$1.00 per gallon overnight, reaching as high as \$4.59 per gallon. My office has received dozens of phone calls from consumers across the Commonwealth today reporting high prices and stations rationing gas, at least temporarily. We are currently assessing all information we receive to determine whether any antitrust or consumer protection laws have been violated in connection with these reports.

I also request that the appropriate Cabinets and Departments of state government assist the Attorney General's Office in our assessment of this increase in gasoline prices and assist us in monitoring any price increases with regard to the other itemized goods and services. Historically, this support has been readily provided. I would request that similar assistance be provided to the Attorney General's Consumer Protection Division during this emergency.

While it remains unclear whether the price spike in gasoline and other motor fuels was wholly caused by legitimate economic market-based factors, we believe that implementing this statute will help prevent predatory pricing by suppliers and retailers looking to make a quick profit in anticipation of the storm that is predicted to strike the Gulf Coast region. Under KRS 367.378, violators are subject to civil penalties of \$5,000 per willful violation for first offenses and up to \$10,000 per violation for subsequent offenses.

For the good of the Commonwealth, its citizens and businesses, I am requesting that you implement KRS 367.374 to prevent price gouging and protect our citizens from this unscrupulous and unethical practice.

Sincerely,



Jack Conway
Attorney General



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2008-967

September 12, 2008

**STATE OF EMERGENCY RELATING TO
THE PROHIBITION AGAINST PRICE GOUGING**

WHEREAS, beginning on September 9, 2008, the Commonwealth of Kentucky received an Emergency Management Assistance Compact (EMAC) Interstate Mutual Aid Request for Assistance from Louisiana requesting assistance from the Commonwealth of Kentucky and the Kentucky National Guard in supporting their efforts in preparation for and during Hurricane Ike occurring within Southern Louisiana; and

WHEREAS, beginning on September 10, 2008, the Commonwealth of Kentucky received an Emergency Management Assistance Compact (EMAC) Interstate Mutual Aid Request for Assistance from Texas requesting assistance from the Commonwealth of Kentucky and the Kentucky National Guard in supporting their efforts in preparation for and during Hurricane Ike occurring within Texas; and

WHEREAS, beginning on September 12, 2008, the Commonwealth of Kentucky received information that Hurricane Ike could cause market uncertainties and consumer shortages; and

WHEREAS, I, STEVEN L. BESHEAR, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Constitution of the Commonwealth of Kentucky and by Chapter 39A of the Kentucky Revised Statutes, declare the existence of a State of Emergency in the Commonwealth of Kentucky to protect the citizens of the Commonwealth from predatory pricing by unscrupulous providers of goods and services including but not limited to gasoline and building supplies; and

WHEREAS, under such circumstances, I am empowered by the Constitution of the Commonwealth of Kentucky and Chapter 367 of the Kentucky Revised Statutes to implement certain provisions of law aimed toward protecting Kentucky consumers:



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER
2008-971

September 12, 2008

Secretary of State

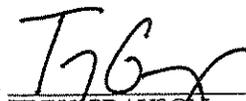
Frankfort
Kentucky

NOW, THEREFORE, I, Steven L. Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Constitution of the Commonwealth of Kentucky and Chapter 367 of the Kentucky Revised Statutes, do hereby implement the provisions of KRS 367.372, *et seq.*, as to the sale of goods and services in Kentucky, and do hereby ORDER and DIRECT that:

1. No person, within the meaning of KRS 446.010, shall sell or offer to sell any goods or service delineated in KRS 367.374(1)(b) at a price grossly in excess of the price prior to the declaration by Executive Order on September 12, 2008, that a State of Emergency exists in the Commonwealth of Kentucky.
2. The foregoing is subject to the qualifications and limitations set forth otherwise in KRS 367.372, *et seq.*, with regard to increased cost to sellers, *inter alia*.
3. Any person who violates the provisions of KRS 367.372, *et seq.*, as implemented by this Order, shall be subject to the penalties set forth in KRS 367.378.
4. The Division of Emergency Management shall immediately notify the public and those registered with the Division for the purpose of receiving notice of the implementation, renewal, or termination. The Division shall notify the public by any means available, including the Division's Web site, news media, and electronic mail. Any person or trade association may register with the Division for the purpose of receiving notification.

This Order shall be in effect for the duration of the State of Emergency herein referenced, and shall be subject to renewal thereafter, subject to applicable law, if necessary to protect the lives, property, or welfare of the citizens of the Commonwealth of Kentucky.


STEVEN L. BESHEAR
Governor


TREY GRAYSON
Secretary of State