

SENATE No. 01192

The Commonwealth of Massachusetts

PRESENTED BY:

Gale D. Candaras

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to prohibit price gouging during states of emergency..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Robert L. Hedlund</i>	<i>Plymouth and Norfolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

SENATE No. 01192

By Ms. Candaras, petition (accompanied by bill, Senate, No. 1192) of Swan, Puppolo, Provost and other members of the General Court for legislation to prohibit price gouging during states of emergency [Joint Committee on Public Safety and Homeland Security].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 930 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to prohibit price gouging during states of emergency..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 23, Section 9H of the General Laws is hereby amended by
2 replacing Section 9H with the following:

3 (1) Whenever the President or Governor shall determine that an emergency exists in
4 respect to food, or fuel, or any other common necessity of life, including the providing of shelter,
5 or any two or more of such necessities of life, or upon a declaration of a state of disaster by the
6 President or Governor, he may, by writing signed by him, designate the adjutant general, the
7 director of civil defense, the director of labor and workforce development and the commissioner
8 of public safety to act as an emergency commission, and thereupon the Commission shall have,
9 with respect to the necessary or necessities of life as to which the emergency exists, all powers

10 and authority granted by the Commonwealth Defense Act of nineteen hundred and seventeen,
11 being chapter three hundred and forty-two of the General Acts of nineteen hundred and
12 seventeen, to persons designated or appointed by the Governor under section twelve of said
13 chapter three hundred and forty-two; and the Governor may revoke such written authority at any
14 time. During such an emergency, the Governor, with the approval of the council, may make and
15 promulgate rules and regulations, effective forthwith, for the carrying out of the purposes of this
16 section and for the performance by the commonwealth and the cities and towns thereof of any
17 function affecting food or fuel or any other common necessary of life, including the providing of
18 shelter, authorized under Article XLVII of the amendments to the constitution. The provisions of
19 said chapter three hundred and forty-two are hereby made operative to such extent as the
20 provisions of this section may from time to time require.

21 (2) As used in this section the following words shall have the following meanings: --

22 "Commodity" means goods, services, materials, merchandise, supplies, equipment,
23 resources, or other articles of commerce, and includes, without limitation, food, water, ice,
24 chemicals, petroleum products, and lumber essential for consumption or use as a direct result of
25 a declared state of emergency.

26 "Unconscionable price" is (a) where the amount charged represents a gross disparity
27 between the price of the commodity or price of a rental or a lease of a dwelling unit, including a
28 motel or hotel unit or other temporary lodging, or self-storage facility and;

29 (b) the average price at which the same product was sold or offered for sale
30 by the business selling the commodity or renting or leasing of a dwelling unit, including a motel
31 or hotel unit or temporary lodging, or self-storage facility in the usual course of business the 30

32 days immediately before a declaration of a state of emergency, or the declaration of a state of
33 disaster, or;

34 (c) the average price at which the same or similar commodity or rental or
35 lease of a dwelling unit, including a motel or hotel unit or other temporary lodging, or self-
36 storage facility is readily obtainable by other buyers in the trade area or the price at which the
37 same or similar commodity or rental or lease of a dwelling unit, including a motel or hotel unit or
38 other temporary lodging, or self-storage facility was rented, leased, sold, or offered for rent or
39 sale in the usual course of business during the 30 days immediately before a declaration of a state
40 of emergency in respect to food or fuel or any other common necessity of life, including the
41 providing of shelter, or the declaration of a state of disaster, and;

42 (d) the disparity is not substantially attributable to increased prices charged
43 by the commodity manufacturers, or as the result of regional, national, or international market
44 trends, or increased costs due to an abnormal market disruption or is attributable to additional
45 costs in connection with the disaster, including replacement costs imposed by the vendors'
46 source.

47 (e) Such price shall not include a price during that period set as a result of a
48 bona fide manufacturer's or suppliers' limited discount or rebate.

49 "State of Emergency" declaration of a state of emergency by President or Governor in
50 respect to food or fuel or any other common necessity of life, including the providing of shelter.

51 (3) Whenever the President or Governor shall determine that an emergency exists, or
52 upon a declaration of a state of disaster by the President or Governor, in which the disaster area
53 includes all or a portion of the commonwealth it is unlawful and a violation of this section for a

54 person or his agent or employee to rent or sell or offer to rent or sell a commodity at an
55 unconscionable price within the area for which the state of emergency or disaster is declared; or
56 impose unconscionable prices for the rental or lease of a dwelling unit, including a motel or hotel
57 unit or other temporary lodging, or self-storage facility within the area for which the state of
58 emergency or disaster is declared. This prohibition remains in effect until the declaration expires
59 or is terminated.

60 (4) This section does not apply to sales by growers, producers, or processors of raw or
61 processed food products, except for retail sales of those products to the ultimate consumer within
62 the area of the declared state of emergency or disaster.

63 (5) A violation of this section shall be punished by a fine of not more than \$50,000 or
64 by imprisonment for not more than 2 1/2 years or both.