

SENATE No. 1192

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 adoption 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>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>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Robert L. Hedlund</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

SENATE No. 1192

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
2 by replacing Section 9H with the following:

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

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

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

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

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

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

33 the 30 days immediately before a declaration of a state of emergency, or the declaration of a state
34 of disaster, or;

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

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

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

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

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

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

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

64 (5) A violation of this section shall be punished by a fine of not more than
65 \$50,000 or by imprisonment for not more than 2 1/2 years or both.