

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 49

Short Title: Broaden Price Gouging Protections. (Public)

Sponsors: Senators Goss; Davis, Jones, Stevens, and Tillman.

Referred to: Commerce.

February 4, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE FINE FOR PRICE GOUGING AND TO EXPAND PRICE  
3 GOUGING PROTECTIONS TO SITUATIONS IN WHICH A DISASTER  
4 DECLARATION HAS NOT BEEN DECLARED.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 75-38 reads as rewritten:

7 "§ 75-38. **Prohibit excessive pricing during states of disaster, states of emergency, or**  
8 **abnormal market disruptions and price gouging.**

9 (a) ~~Upon a triggering event, it~~ It is prohibited and shall be a violation of G.S. 75-1.1 for  
10 any person to sell or rent or offer to sell or rent any goods or services which are consumed or  
11 used as a direct result of an emergency or which are consumed or used to preserve, protect, or  
12 sustain life, health, safety, or economic well-being of persons or their property with the  
13 knowledge and intent to charge a price that is unreasonably excessive under the circumstances.  
14 This prohibition shall apply to all parties in the chain of distribution, including, but not limited  
15 to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. ~~This~~  
16 ~~prohibition shall apply in the area where the state of disaster or emergency has been declared or~~  
17 ~~the abnormal market disruption has been found.~~

18 In determining whether a price is unreasonably excessive, it shall be considered whether:

- 19 (1) The price charged by the seller is attributable to additional costs imposed by  
20 the seller's supplier or other costs of providing the good or service during the  
21 triggering event.
- 22 (2) The price charged by the seller exceeds the seller's average price in the  
23 preceding 60 ~~days before the triggering event.~~ days. If the seller did not sell  
24 or rent or offer to sell or rent the goods or service in question prior to the  
25 time of the triggering event, the price at which the goods or service was  
26 generally available in ~~the trade area~~ that county and neighboring counties  
27 shall be used as a factor in determining if the seller is charging an  
28 unreasonably excessive price.
- 29 (3) The price charged by the seller is attributable to fluctuations in applicable  
30 commodity markets; fluctuations in applicable regional, national, or  
31 international market trends; or to reasonable expenses and charges for  
32 attendant business risk incurred in procuring or selling the goods or services.

33 (b) In the event the Attorney General investigates a complaint for a violation of this  
34 section and determines that the seller has not violated the provisions of this section and if the  
35 seller so requests, the Attorney General shall promptly issue a signed statement indicating that  
36 the Attorney General has not found a violation of this section.



1 (c) For the purposes of this section, the end of a triggering event is the earlier of 45  
2 days after the triggering event occurs or the expiration or termination of the triggering event  
3 unless the prohibition is specifically extended by the Governor.

4 (d) A "triggering event" means the declaration of a state of emergency pursuant to  
5 G.S. 166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state  
6 of disaster pursuant to G.S. 166A-6, or a finding of abnormal market disruption pursuant to  
7 G.S. 75-38(e). This section applies at all times regardless of whether or not a state of emergency  
8 or disaster has been declared.

9 (e) An "abnormal market disruption" means a significant disruption, whether actual or  
10 imminent, to the production, distribution, or sale of goods and services in North Carolina,  
11 which are consumed or used as a direct result of an emergency or used to preserve, protect, or  
12 sustain life, health, safety, or economic well-being of a person or his or her property. A  
13 significant disruption may result from a natural disaster, weather, acts of nature, strike, power  
14 or energy failures or shortages, civil disorder, war, terrorist attack, national or local emergency,  
15 or other extraordinary adverse circumstances. A significant market disruption can be found  
16 only if a declaration of a state of emergency, state of disaster, or similar declaration is made by  
17 the President of the United States or an issuance of Code Red/Severe Risk of Attack in the  
18 Homeland Security Advisory System is made by the Department of Homeland Security,  
19 whether or not such declaration or issuance applies to North Carolina.

20 (f) The existence of an abnormal market disruption shall be found and declared by the  
21 Governor pursuant to the definition in subsection (e) of this section. The duration of an  
22 abnormal market disruption shall be 45 days from the triggering event, but may be renewed by  
23 the Governor if the Governor finds and declares the disruption continues to affect the economic  
24 well-being of North Carolinians beyond the initial 45-day period."

25 **SECTION 2.** G.S. 75-15.2 reads as rewritten:

26 "**§ 75-15.2. Civil penalty.**

27 (a) In any suit instituted by the Attorney General, in which the defendant is found to  
28 have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when  
29 committed, knowingly violative of a statute, the court may, in its discretion, impose a civil  
30 penalty against the defendant of up to five thousand dollars (\$5,000) for each violation. In any  
31 action brought by the Attorney General pursuant to this Chapter in which it is shown that an  
32 action or practice when committed was specifically prohibited by a court order, the Court may,  
33 in its discretion, impose a civil penalty of up to five thousand dollars (\$5,000) for each  
34 violation. Civil penalties may be imposed in a new action or by motion in an earlier action,  
35 whether or not such earlier action has been concluded. In determining the amount of the civil  
36 penalty, the court shall consider all relevant circumstances, including, but not limited to, the  
37 extent of the harm caused by the conduct constituting a violation, the nature and persistence of  
38 such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net  
39 worth of the person, whether corporate or individual, and any corrective action taken by the  
40 defendant. The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and  
41 Forfeiture Fund in accordance with G.S. 115C-457.2."

42 (b) In any suit to which subsection (a) of this section would otherwise apply, the court  
43 shall impose a civil penalty against the defendant of ten thousand dollars (\$10,000) if the  
44 defendant is found to have violated G.S. 75-38 and that violation is the defendant's first  
45 violation of G.S. 75-38. This penalty shall be in lieu of any penalty under subsection (a) of this  
46 section. The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and  
47 Forfeiture Fund in accordance with G.S. 115C-457.2."

48 **SECTION 3.** This act becomes effective October 1, 2009.