

SENATE, NO. 1375

[SIMILAR MATTER FILED DURING PAST SESSION
SEE NO. HOUSE 3712 OF 2005-2006]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND SEVEN

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 of the General Laws is hereby amended by striking out section 9H the
2 following section: --

3 Section 9H. As used in this section the following words shall have the following meanings: --

4 “Commodity” means goods, services, materials, merchandise, supplies, equipment, resources,
5 or other articles of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum
6 products, and lumber essential for consumption or use as a direct result of a declared state of
7 emergency.

8 “Unconscionable price” an amount charged which represents a gross disparity between the
9 price of the commodity or rental or lease of a dwelling unit, including a motel or hotel unit or other

10 temporary lodging, or self-storage facility that is the subject of the offer or transaction and the average
11 price at which that commodity or dwelling unit, including a motel or hotel unit or other temporary
12 lodging, or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course
13 of business during the 30 days immediately before a declaration of a state of emergency, and the
14 increase in the amount charged is not attributable to additional costs incurred in connection with the
15 rental or sale of the commodity or rental or lease of the dwelling unit, including a motel or hotel unit
16 or other temporary lodging, or self-storage facility, or regional, national, or international market
17 trends; or grossly exceeds the average price at which the same or similar commodity, dwelling unit,
18 including a motel or hotel unit or other temporary lodging, or self-storage facility was readily
19 obtainable in the trade area during the 30 days immediately before a declaration of a state of
20 emergency. Such price shall not include a price during that period set as a result of a bona fide
21 manufacturer's or suppliers limited discount or rebate; provided however that the increase in the
22 amount charged is not with rental or sale of the commodity or rental or lease of the dwelling unit,
23 including a motel or hotel unit or other temporary lodging, or self-storage facility, or as the result of
24 regional, national, or international market trends, or is attributable to additional costs in connection
25 with the disaster, including replacement costs imposed by the vendors source.

26 Whenever the governor shall determine that an emergency exists in respect to food or fuel or
27 any other common necessity of life, including the providing of shelter, it shall be a violation of this
28 section for a person or his agent or employee to rent or sell or offer to rent or sell a commodity at an
29 unconscionable price within the area for which the state of emergency is declared; or impose
30 unconscionable prices for the rental or lease of a dwelling unit, including a motel or hotel unit or other
31 temporary lodging, or self-storage facility within the area for which the state of emergency is declared.
32 This prohibition remains in effect until the declaration expires or is terminated. Upon a declaration of a

33 state of disaster by the President, in which the disaster area includes all or a portion of the
34 commonwealth it is unlawful and a violation of this article for a person or his agent or employee in
35 this state to: rent or sell or offer to rent or sell a commodity at an unconscionable price within the area
36 for which the state of disaster is declared; or impose unconscionable prices for the rental or lease of a
37 dwelling unit, including a motel or hotel unit or other temporary lodging, or self-storage facility within
38 the area for which the state of disaster is declared. This prohibition remains in effect until ten days
39 after the declaration expires or is terminated. A price increase approved by an appropriate government
40 agency is not a violation of this section. This section does not apply to sales by growers, producers, or
41 processors of raw or processed food products, except for retail sales of those products to the ultimate
42 consumer within the area of the declared state of emergency or disaster.

43 This section does not preempt the powers of local government, except that the evidentiary
44 standards contained in this section are the sole evidentiary standards to be adopted by ordinance of a
45 local government to restrict price escalation during a declared state of emergency of disaster. In the
46 event a local government declares a state of emergency or disaster in which the disaster area includes
47 all or a portion of the area under the local government's jurisdiction, and restricts price escalation
48 during that emergency or disaster, the governmental entity must notify the Governor's office of such
49 declaration. The Governor's office must notify registered agents simultaneously at the time of the
50 declaration and also at the termination of the state of emergency.

51 A violation of this section shall be punished by a fine of not more than \$5,000 or by
52 imprisonment for not more that 2½ years or both

