



HOW AN IDEA BECOMES A LAW:

*The Beginning, The
Middle, & The End*

Class Materials

New Member Orientation
UNC School of Government
January 6, 2015

THE COASTLINE NEWS

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COASTLINE CITY'S PREFERRED NEWS SOURCE

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Hurricane Victims Victimized Twice



Hurricane Aimee leaves local residents stranded.

Price Gouging Floods Areas Affected By Hurricane Aimee

Coastline City is not the only community to suffer from price gouging in the wake of Hurricane Aimee. Cities and counties across the region report excessively high prices for necessary items such as gas, bottled water, chain saws, matches, and food.

In neighboring Marshland, one resident reported gas prices at \$8.50 per gallon. Another resident reported bottled water being sold for \$7 per bottle. Even inland communities are being affected. The Town of Flatlands reports chainsaws being sold for up to \$1000.

Coastline City - In the days following Hurricane Aimee, one of the worst natural disasters to hit Coastline City in the last century, hurricane victims are being victimized a second time, but this time, not by Mother Nature.

"I had to pay \$10 for a box of matches," said local librarian Mabel Grover. "It is unbelievable what some folks will do to make a buck."

While local stores and merchants have opened their doors to their neighbors, keeping prices at pre-storm levels and extending credit to those who need it, a few businesses run by large corporate conglomerates have hiked prices for essential supplies. Some prices have risen by as much as 500% compared to pre-storm prices for the same items.

"These people ought to be thrown in jail," said Mayor Christine Wunche. "What they are doing is highway robbery."

North Carolina law already prohibits "excessive pricing" when the Governor has declared a disaster. The North Carolina Attorney General's Office is authorized to take action to stop the price gouging and seek refunds for consumers. And, the courts may impose civil penalties of up to \$5,000 for each violation. But it is not clear under current law that price gougers can also be prosecuted.

Consumers should report price gouging to the Consumer Protection Division of the North Carolina Attorney General's Office by calling 1-877-5-NO-SCAM.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

S

D

BILL DRAFT 2015-MM-5 [v.3] (12/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

12/9/2014 1:23:14 PM

Short Title: Disaster Victim Protection Act.

(Public)

Sponsors: Senator Brown (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A
DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-38 is amended by adding a new subsection to read:

“(g) A willful violation of this section is a crime and is punishable as a Class H felony.”

SECTION 2. The Division of Emergency Management shall develop informational materials to inform disaster victims about potential excessive pricing practices and post-disaster price gouging scams. Informational materials shall be disseminated widely through print and electronic means and shall be provided to the emergency management coordinator in each county. The Division shall submit a report to the Joint Legislative Emergency Management Oversight Committee by June 1, 2016, on the informational materials developed and dissemination methods used.

SECTION 3. Section 1 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.



2015-MM-5-v-3

Elements of North Carolina Legislation

	Description and Notes	Example from S 100
Editions/ Versions	The top right corner of the bill will include either a D for “Draft” or, after the bill has become public, a number for the edition of the bill (edition 1, 2, 3). When it is still in draft form, the drafting code will appear at the top. The letters indicate which drafter created the document. The version of the draft is in brackets. The version number iterates up each time the drafter makes a change to the draft.	D 2015-MM-5[v.3]
Type	The right side of the caption may include a word describing the type of bill: “Public” or “Local.” A public bill applies to the entire state. A local bill applies to 14 or fewer counties.	(Public)
Short title	The long title (described below) will provide some detail about the bill. The short title is often a condensed version of the long title and is intended to convey the main topic of the bill. Bill drafting staff may initially choose a short title for a bill but the member may change it before the bill is introduced.	Disaster Victim Protection Act
Sponsors	Primary sponsors will be listed on the bill. Co-sponsors will not be listed on the bill but will be listed on the NCGA website and in the system. If a committee adopts a substitute for the bill, the primary sponsors’ names will not appear on the bill but will remain listed on the NCGA website and in the system.	Senator Brown
Referrals	This section will identify the committee(s) the bill is referred to at the time of first reading in the chamber of introduction. This information does not appear on subsequent editions of the bill, but can be found on the bill history on the General Assembly web site.	N/A

Elements of North Carolina Legislation

	Description and Notes	Example from S 100
Long title	Each chamber has rules about what the title should include and when it should or may be amended.	AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.
Enacting clause	Standard language used at the beginning of all local and public bills as required under Art. II, Sec. 21 of the North Carolina Constitution. Any language coming before the enacting clause is prefatory; it does not become law. For example, a bill may include a “whereas clause” that explains some of the background or reasoning for a bill. A resolution will have a resolving clause rather than an enacting clause (“Be it resolved by the...” House/Senate/both).	“The General Assembly of North Carolina enacts...”
Statement of purpose	Language used after the enacting clause that explains the purpose of the bill or otherwise provide legislative findings of fact to support a bill.	N/A
Sections	Bills are divided into “sections.” Each section will address a different issue or include changes to a different state statute.	Sections 1, 2, and 3

Elements of North Carolina Legislation

	Description and Notes	Example from S 100
G.S.	The abbreviation refers to the “General Statutes,” which is a collection of those laws that are both enacted and codified. They are codified in “chapters” assigned to different subject areas. Some chapters are broad (such as Chapter 14 – Criminal Law) and others are narrower (such as Chapter 74F – Locksmith Licensing Act). All chapters are divided into sections; a section is commonly referred to as a statute. Longer chapters are divided into Articles and, on occasion, Parts and Subparts within an Article, but the Article number is not reflected in the citation.	G.S. 75-38 This refers to a statute that is in Section 38 of Chapter 75 of the NC General Statutes.
Redlining	Redlining is the term for the legislative drafting technique that shows amendments to existing codified law or creation of new codified law. New language being added to a statute is shown as underlined. Existing language being deleted from a statute is shown with strikethrough (e.g., felony). All changes to codified law begin and end in quotation marks. Language in a bill that is not codified is neither underlined nor shown as strikethrough unless it is modifying a prior act of the General Assembly which is typically shown as an amendment to a prior session law (see discussion of session laws below).	“(g) <u>A willful violation of this section is a crime and is punishable as a Class H felony.</u> ”

Elements of North Carolina Legislation

	Description and Notes	Example from S 100
S.L.	The abbreviation refers to a “session law,” literally meaning a law enacted by the General Assembly during a particular legislative session. Once a bill has been enacted by the General Assembly and, if necessary, signed by the Governor, it becomes law. At this point, the bill is assigned a “session law” number. The session law number is assigned in the sequential order in which a bill becomes law, and bears no relationship to the bill number itself. The first bill to become law during the 2015 legislative session will be S.L. 2015-1, the second bill to become law will be S.L. 2015-2, and so on in sequential numerical order until the end of the session. Next year during the short session the numbering of session laws will begin again with S.L. 2016-1. In 2013, there were 418 Session Laws. In 2014, there were 122 Session Laws. A session law may include changes to the General Statutes or it may enact law that is <i>not</i> codified in the General Statutes.	If S 100 were enacted, it would become S.L. 2015-____. Section 1 would amend a statute: G.S. 75-38. Section 2 would create new law but that law will be found only in the Session Law, not in the General Statutes.
Effective date	This will be the last section of the bill. It will indicate when each provision of the bill will go into effect. Different sections of the bill may have different effective dates. There are some standard effective dates. For example, provisions making appropriations (July 1), changing civil law (October 1), and changing criminal law (December 1). This section may include a contingency clause stipulating that the bill will go into effect only if something else occurs (such as an appropriation). This section may also include an expiration date (also known as “sunset” date). Finally, this section may also include a severability clause providing that if one section of the act is held invalid by the courts, the remaining sections of the act are still legally valid.	Section 1 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

§ 75-38. Prohibit excessive pricing during states of disaster, states of emergency, or abnormal market disruptions.

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

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

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

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

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

(d) A "triggering event" means the declaration of a state of emergency pursuant to Article 1A of Chapter 166A of the General Statutes or a finding of abnormal market disruption pursuant to G.S. 75-38(e).

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

(f) The existence of an abnormal market disruption shall be found and declared by the Governor pursuant to the definition in subsection (e) of this section. The duration of an abnormal market disruption shall be 45 days from the triggering event, but may be renewed by the Governor if the Governor finds and declares the disruption continues to affect the economic well-being of North Carolinians beyond the initial 45-day period. (2003-412, s. 1; 2006-245, s. 1; 2006-259, s. 41; 2012-12, s. 2(o).)

GENERAL ASSEMBLY OF NORTH CAROLINA

Legislative Fiscal Note

BILL NUMBER: Senate Bill 100 (First Edition)

SHORT TITLE: Disaster Victim Protection Act

SPONSOR(S): Senator Brown

FISCAL IMPACT (\$ in millions)					
	☐ Yes	☒ No	☐ No Estimate Available		
State Impact	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	\$0	\$0.0	\$0.0	\$0.0	\$0.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Public Safety					
EFFECTIVE DATE: When the bill becomes law.					
TECHNICAL CONSIDERATIONS: None					

NOTE: This Fiscal Note does not address the new criminal penalty created in Section 1 of S.B. 100, Disaster Victim Protection Act. A separate Incarceration Note has been completed addressing the potential fiscal impact of the new criminal penalty.

BILL SUMMARY:

Section 2 of S.B. 100, Disaster Victim Protection Act, directs the Division of Emergency Management of the Department of Public Safety to disseminate information about potential excessive pricing practices and post-disaster price gouging scams to the public and to the emergency management coordinator in each county.

ASSUMPTIONS AND METHODOLOGY:

Section 2 of S.B. 100 requires the Department of Public Safety to provide the public with information about potential excessive pricing practices and post-disaster price gouging scams. Informational materials are to be disseminated widely through print and electronic means and are to be provided to the emergency management coordinator in each county. The Department of Public Safety already provides information to the public through a variety of outlets, including radio, print, broadcast, and the Internet. Information required by this section could be disseminated using existing Department resources and personnel. Therefore, there is no cost associated with this section of the bill.

SOURCES OF DATA: Department of Public Safety

TECHNICAL CONSIDERATIONS: None

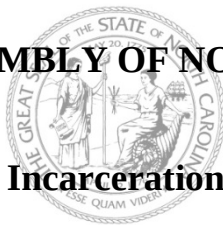
FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY: Mark Trogdon

DATE: December 29, 2014

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 100 (First Edition)

SHORT TITLE: Disaster Victim Protection Act

SPONSOR(S): Senator Brown

FISCAL IMPACT

(\$ in millions)

☐ Yes

☐ No

☒ No Estimate Available

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety

EFFECTIVE DATE: December 1, 2015

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

This Incarceration Note only addresses the changes to criminal penalties included in Section 1 of the bill. A separate Fiscal Note has been completed addressing the potential fiscal impact of other sections of S.B. 100, Disaster Victim Protection Act.

The proposed bill may have a fiscal impact to address a new chargeable offense being enforced, adjudicated and having penalties applied to those convicted of the new offense. However, given there is no historical data on this new offense, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$501 per disposition
- Indigent Defense Services: \$255 in district court
\$494 in superior court without a trial
\$1,180 in superior court with a trial
- Prison Section: \$3,420 per active sentence
- Community Corrections: Minimum of \$1,112 per conviction

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

S. B. 100 amends G.S. 75-38, the prohibition against excessive pricing during a declared state of emergency, by making a violation of this statute punishable as a Class H felony. The bill also makes technical and conforming changes.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. The 2014 Session of the General Assembly expanded this program to include all misdemeanants regardless of sentence length. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Since the bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

S.B. 100, Disaster Victim Protection Act, creates a new Class H felony offense. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class H felony, the average cost to the court would be \$501.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a new Class H felony will be \$255 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$494 if the case does not go to trial and \$1,180 if it does. These estimates assume the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, these costs may not be incurred.

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Population Projections and Bed Capacity Five Year Impact					
	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ²	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$11.23 per day, or \$342 per month, which includes the cost of food, clothing, and health care. In FY 2012-13, 35 percent of Class H felony offenders received active sentences averaging 10 months. For every one Class H felony offender receiving an active sentence, the cost to the prison section will be \$3,420 (\$342 monthly cost times 10 months equals \$3,420).

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

³ Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$123.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations.

In FY 2012-13, 35 percent of Class H felony offenders received active sentences; 33 percent received intermediate sentences; and 32 percent received community punishments. All active sentences result in nine months of post-release supervision (PRS). The average lengths of intermediate and community punishment imposed for this offense class were 29 and 27 months, respectively. Therefore, at a minimum, one conviction resulting from this bill will require at least nine months of supervision. The cost of nine months of supervision is \$1,112 per offender (\$123.50 per month times nine months).⁴

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristine Leggett

APPROVED BY: Mark Trogon

DATE: December 29, 2014

⁴ Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.



LRS Summary of S100 as filed

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Bill Summary for S 100 (2015-2016)

View Edit Publish

Bill: Disaster Victim Protection Act

Courts/Judiciary Criminal Justice Criminal Law and Procedure Government Public Safety

Summary date: Jan 4 2015

Bill Information:

Senate Bill 100 (Public) Filed Sunday, January 4, 2015

AN ACT TO CLARIFY THAT ENGAGING PRICING DURING A DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.

Intro. by Brown

View: All Summaries for Bill

Tracking: Track Bill

GS 75

Bill summary

Amends GS 75-38 to make it a Class H felony to willfully sell or rent goods or services, during a declared state of emergency or a finding of abnormal market disruption, that are used as a result of an emergency or to sustain well being with the knowledge and intent to charge an unreasonably excessive price. Effective for offenses committed on or after December 1, 2015.

Requires the Division of Emergency Management (Division) to develop print and electronic informational material to inform disaster victims about excessive pricing and price gouging scams, with the materials provided to county emergency management coordinators. The Division must report to the Joint Legislative Emergency Management Oversight Committee by June 1, 2016.

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Senate Bill 100 General Summary

Introduction

During disaster events, citizens in impacted areas sometimes fall prey to price gouging by unscrupulous individuals and businesses who take advantage of disaster victims desperate to rebuild their lives. Excessive pricing during a state of emergency declared by the Governor or local officials is a violation of the state's prohibition against unfair and deceptive trade practices. The prohibition is automatically triggered when a state of emergency is declared. Violators are subject to civil action by the Attorney General that can result in a fine of up to \$5000 as well as refunds to victims. However, it is not clear under current law that price gouging during a disaster can be punished as a criminal offense.

Senate Bill 100

Senate Bill 100 amends G.S. 75-38, the prohibition against excessive pricing during a declared state of emergency, by making a knowing violation of this statute punishable as a Class H felony (depending on the defendant's prior criminal record and the existence of aggravating and mitigating factors, punishment for a Class H felony ranges from 4-5 months of community punishment to up to 25 months of incarceration). The bill also makes technical and conforming changes. The bill also requires the Division of Emergency Management to develop informational materials to inform the public about potential price gouging scams during a disaster and to disseminate that information broadly. The Division is required to report annually to the Joint Legislative Emergency Management Oversight Committee on the materials it develops and the dissemination methods used.

Senate Bill 100 – Senate Committee Amendment

During consideration in the Senate Judiciary I Committee, SB100 is amended to codify in G.S. 166A-19.12 the Division of Emergency Management's responsibility for developing and disseminating price gouging information.

Senate Bill 100 – Proposed House Committee Substitute

After passing the Senate, SB100 is modified in the House Judiciary I committee. The House PCS amends G.S. 75-38 to require the Department of Public Safety to develop and maintain a database of all persons found to have engaged in price gouging during a declared state of emergency. The database must be made available to the public in a searchable format and includes the name of the person, date of violation, and a brief description of the nature of the violation. A violator's name remains on the database for five years after the date of the most recent violation. The purpose is to provide the public a means by which to investigate businesses that offer to perform disaster recovery work.



Senate Bill 100

Disaster Victim Protection Act.

2015-2016 General Assembly

Committee: Senate Judiciary I
Introduced by: Senator Brown
Analysis of: First Edition

Date: January 6, 2015
Prepared by: O. Walker Reagan,
 Committee Counsel

SUMMARY: *Senate Bill 100 amends the law prohibiting excessive pricing during a declared state of emergency by making a knowing violation of the law a Class H felony. The bill also directs the Division of Emergency Management to develop and disseminate informational materials about excessive price gouging during disasters to the public.*

CURRENT LAW: G.S. 75-38 makes excessive pricing during an emergency an unfair and deceptive trade practice under Chapter 75 of the General Statutes. A violation of this statute subjects the seller to civil penalty of up to \$5000 in an action brought by the Attorney General (G.S. 75-15.2), and civil liability to the injured person for treble damages (G.S. 75-16) and reasonable attorneys fees (G.S. 75-16.1).

BILL ANALYSIS: **Section 1** of the bill would make a violation of G.S. 75-38 punishable as a Class H felony. Under Structured Sentencing, depending on the defendant's prior criminal record, the defendant could be sentenced in a range of 4-5 months of community punishment up to 25 months in prison.

Section 2 requires the Division of Emergency Management to develop informational materials to inform the public about potential price gouging scams during a disaster and to disseminate that information broadly. The Division is required to report annually to the Joint Legislative Emergency Management Oversight Committee on the materials it develops and the dissemination methods used.

EFFECTIVE DATE: Section 1 of the bill becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of the bill is effective when it becomes law.

BACKGROUND: During disaster events, citizens in impacted areas sometimes fall prey to price gouging by individuals and businesses who take advantage of disaster victims desperate to rebuild their lives. Excessive pricing during a state of emergency declared by the Governor or local officials is currently a violation of the state's prohibition against unfair and deceptive trade practices. The prohibition is automatically triggered when a state of emergency is declared. Violators are subject to civil action by the Attorney General that can result in a fine of up to \$5000 as well as refunds to victims. However, the law is not clear that price gouging during a disaster can be punished as a criminal offense.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
 Senate Bill 100

AMENDMENT NO. _____
 (to be filled in by
 Principal Clerk)

S100-AMM-7 [v.1]

Page 1 of 1

Comm. Sub. [NO]
 Amends Title [NO]
 First Edition

Date _____, 2015

Senator

moves to amend the bill on page 1, lines 8-14, by deleting the lines and substituting the following:

"**SECTION 2.** G.S. 166A-19.12 is amended by adding a new subdivision to read:

"§ 166A-19.12. Powers of the Division of Emergency Management.

The Division of Emergency Management shall have the following powers and duties as delegated by the Governor and Secretary of Public Safety:

...

(21) Develop informational materials to inform disaster victims about potential excessive pricing practices and post-disaster price gouging scams. Informational materials shall be disseminated widely through print and electronic means and shall be provided to the emergency management coordinator in each county. The Division shall submit an annual report to the Joint Legislative Emergency Management Oversight Committee beginning June 1, 2015, on the informational materials developed and dissemination methods used."

SIGNED _____
 Amendment Sponsor

SIGNED _____
 Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



S100-ALB-7-v-1



LRS Summary of Senate Committee Action adopting Amendment to the 1st ed. of S100

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Bill Summary for S 100 (2015-2016)

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Bill: Disaster Victim Protection Act

Summary date: Jan 6 2015

Courts/Judiciary Criminal Justice Criminal Law and Procedure Government Public Safety

Bill Information:

Senate Bill 100 (Public) Filed Sunday, January 4, 2015

AN ACT TO CLARIFY THAT ENGAGING PRICING DURING A DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.

Intro. by Brown

View: All Summaries for Bill Tracking: Track Bill

GS 75 GS 166

Bill summary

Senate committee amendment makes the following changes to the 1st edition. Amends GS 166A-19.12 to (1) add to the Division of Emergency Management's duties that the Division develop print and electronic material informing disaster victims about excessive pricing practices and post disaster price gouging scams and (2) require that the material be provided to county emergency management coordinators. Requires an annual report to the Joint Legislative Emergency Management Oversight Committee beginning June 1, 2016.

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

S

2

**SENATE BILL 100
Second Edition Engrossed 1/6/15**

Short Title: Disaster Victim Protection Act.

(Public)

Sponsors:

Referred to:

January 5, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A
DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-38 is amended by adding a new subsection to read:
“(g) A willful violation of this section is a crime and is punishable as a Class H felony.”

SECTION 2. G.S. 166A-19.12 is amended by adding a new subdivision to read:
"**§ 166A-19.12. Powers of the Division of Emergency Management.**
The Division of Emergency Management shall have the following powers and duties as
delegated by the Governor and Secretary of Public Safety:

...
(21) Develop informational materials to inform disaster victims about potential
excessive pricing practices and post-disaster price gouging scams.
Informational materials shall be disseminated widely through print and
electronic means and shall be provided to the emergency management
coordinator in each county. The Division shall submit an annual report to the
Joint Legislative Emergency Management Oversight Committee beginning on
June 1, 2016, on the informational materials developed and dissemination
methods used."

SECTION 3. Section 1 of this act becomes effective December 1, 2015, and
applies to offenses committed on or after that date. The remainder of this act is effective when
it becomes law.



S100-v-2

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

S

D

**SENATE BILL 100
PROPOSED HOUSE COMMITTEE SUBSTITUTE S100-PCS1274-NH-15**

Short Title: Disaster Victim Protection Act.

(Public)

Sponsors:

Referred to:

January 5, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A
DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-38 is amended by adding two new subsections to read:

“(g) A willful violation of this section is a crime and is punishable as a Class H felony.”

(h) The Department of Public Safety shall develop and maintain a database of all persons found to have violated this section. The database shall be made available to the public in a searchable format and shall include the name of the person, date of violation, and a brief description of the nature of the violation. A person’s name shall remain on the database for five years after the date of the most recent violation.”

SECTION 2. G.S. 166A-19.12 is amended by adding a new subdivision to read:

“§ 166A-19.12. Powers of the Division of Emergency Management.

The Division of Emergency Management shall have the following powers and duties as delegated by the Governor and Secretary of Public Safety:

...

(21) Develop informational materials to inform disaster victims about potential excessive pricing practices and post-disaster price gouging scams. Informational materials shall be disseminated widely through print and electronic means and shall be provided to the emergency management coordinator in each county. The Division shall submit an annual report to the Joint Legislative Emergency Management Oversight Committee beginning on June 1, 2016, on the informational materials developed and dissemination methods used.”

SECTION 3. Section 1 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.



S100-v-3



Senate Bill 100

Disaster Victim Protection Act.

2015-2016 General Assembly

Committee:	House Judiciary I	Date:	January 7, 2015
Introduced by:	Senator Brown	Prepared by:	Karen Cochrane-
Analysis of:	PCS to the Second Edition		Brown, Committee
			Counsel

SUMMARY: *The House Proposed Committee Substitute to Senate Bill 100 amends the law prohibiting excessive pricing during a declared state of emergency by making a knowing violation of the law a Class H felony. The bill directs the Department of Public Safety to develop and maintain a database of persons who violate the prohibition on excessive pricing during a declared state of emergency. It also directs the Division of Emergency Management to develop and disseminate informational materials about excessive price gouging during disasters to the public.*

CURRENT LAW: G.S. 75-38 makes excessive pricing during an emergency an unfair and deceptive trade practice under Chapter 75 of the General Statutes. A violation of this statute subjects the seller to civil penalty of up to \$5000 in an action brought by the Attorney General (G.S. 75-15.2), and civil liability to the injured person for treble damages (G.S. 75-16) and reasonable attorney's fees (G.S. 75-16.1). No database of persons who have violated this statute is maintained.

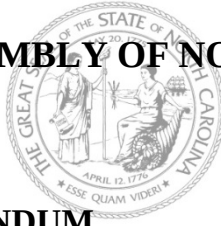
BILL ANALYSIS: **Section 1** of the bill would make a violation of G.S. 75-38 punishable as a Class H felony. Under Structured Sentencing, depending on the defendant's prior criminal record, the defendant could be sentenced in a range of 4-5 months of community punishment up to 25 months in prison. This section would also require the Department of Public Safety to develop and maintain a database of all persons found to have engaged in price gouging during a declared state of emergency. The database must be made available to the public in a searchable format and includes the name of the person, date of violation, and a brief description of the nature of the violation. A violator's name remains on the database for five years after the date of the most recent violation.

Section 2 requires the Division of Emergency Management to develop informational materials to inform the public about potential price gouging scams during a disaster and to disseminate that information broadly. The Division is required to report annually to the Joint Legislative Emergency Management Oversight Committee on the materials it develops and the dissemination methods used.

EFFECTIVE DATE: Section 1 of the bill becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of the bill is effective when it becomes law.

BACKGROUND: During disaster events, citizens in impacted areas sometimes fall prey to price gouging by individuals and businesses who take advantage of disaster victims desperate to rebuild their lives. Excessive pricing during a state of emergency declared by the Governor or local officials is currently a violation of the state's prohibition against unfair and deceptive trade practices. The prohibition is automatically triggered when a state of emergency is declared. Violators are subject to civil action by the Attorney General that can result in a fine of up to \$5000 as well as refunds to victims. However, the law is not clear that price gouging during a disaster can be punished as a criminal offense. The database would provide the public a means by which to investigate businesses that offer to perform disaster recovery work.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: December 29, 2014

TO: Rep. Martin

FROM: Kristine Leggett
Fiscal Research Division

RE: PCS to SB100, Disaster Victim Protection Act

FISCAL IMPACT (\$ in millions)					
	☒ Yes	☐ No	☐ No Estimate Available		
State Impact	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
General Fund Revenues:					
General Fund Expenditures:	\$54,000				
State Positions:					
NET STATE IMPACT	(\$54,000)	\$0.0	\$0.0	\$0.0	\$0.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Public Safety					
EFFECTIVE DATE: When the bill becomes law.					
TECHNICAL CONSIDERATIONS: None					

NOTE: This Fiscal Note does not address the new criminal penalty included in Section 1 of S.B. 100, Disaster Victim Protection Act. A separate Incarceration Note has been completed addressing the potential fiscal impact of that criminal penalty.

BILL SUMMARY:

Section 1 of S.B. 100, Disaster Victim Protection Act, amends G.S. 75-38, the prohibition against excessive pricing during a declared state of emergency, to require the Department of Public Safety to develop and maintain a public, searchable database of all persons found to have violated this statute.

Section 2 of S.B. 100 directs the Division of Emergency Management of the Department of Public Safety to disseminate information about potential excessive pricing practices and post-disaster price gouging scams to the public and to the emergency management coordinator in each county.

ASSUMPTIONS AND METHODOLOGY:

Section 1 of the bill requires the Department of Public Safety (DPS) to set up and maintain a publicly accessible database of people who violate G.S. 75-38. DPS currently maintains five criminal databases. One of these databases, the Sex Offender Registry, provides limited access to the public through the Internet. Therefore, it is assumed that the database proposed in the amendment would not require any new personnel or equipment, and that maintenance of the database can be managed through existing information technology personnel in the Department.

DPS states that the new database will require some changes to their existing criminal databases. Total contractual costs for these changes are estimated to be \$54,000. These non-recurring contractual costs are outlined in the table below:

Estimated Cost for Database Upgrades FY 2015-16		Est. Cost
Activity		
Adding new fields and functionality to the Database Structure, Web-Form, XSD Schema, Web Services, and Application		\$25,000
Modify Role-based security		\$10,000
Update Application Pages		\$5,000
Update Ad Hoc Reporting		\$5,000
Update Redaction Capabilities		\$6,000
Develop Pre-defined reports (\$3,000/report)		\$3,000
Total		\$54,000

Section 2 of S.B. 100 requires the Department of Public Safety to provide the public with information about potential excessive pricing practices and post-disaster price gouging scams. Informational materials are to be disseminated widely through print and electronic means and are to be provided to the emergency management coordinator in each county. The Department of Public Safety already provides information to the public through a variety of outlets, including radio, print, broadcast, and the Internet. Information required by this section could be disseminated using existing Department resources and personnel. Therefore, there is no cost associated with this section of the bill.

SOURCES OF DATA: Department of Public Safety

TECHNICAL CONSIDERATIONS: None



LRS Summary of House Committee Substitute to S100

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Bill: Disaster Victim Protection Act

Summary date: Jan 6 2015

Courts/Judiciary Criminal Justice Criminal Law and Procedure Government Public Safety

Bill Information:

Senate Bill 100 (Public) Filed Sunday, January 4, 2015

AN ACT TO CLARIFY THAT ENGAGING PRICING DURING A DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.

Intro. by Brown

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GS 75 GS 166A

Bill summary

House committee substitute to the 2nd edition makes the following changes. Amends GS 75-38 to require the Attorney General to keep a public database of persons who have violated the statute (prohibiting excessive pricing during states of disaster, states of emergency, or abnormal market disruptions). Specifies information that must be available in the database and requires that a person's name stay on the database for five years after the date of the most recent violation.

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**GENERAL ASSEMBLY OF NORTH CAROLINA
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3

**SENATE BILL 100
Second Edition Engrossed 1/6/15
House Committee Substitute Favorable 1/6/2015**

Short Title: Disaster Victim Protection Act. (Public)

Sponsors:

Referred to:

January 5, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A
3 DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.
4 The General Assembly of North Carolina enacts:
5 **SECTION 1.** G.S. 75-38 is amended by adding a new subsection to read:
6 “(g) A willful violation of this section is a crime and is punishable as a Class H
7 felony.
8 (h) The Department of Public Safety shall develop and maintain a database of all
9 persons found to have violated this section. The database shall be made available to the public
10 in a searchable format and shall include the name of the person, date of violation, and a brief
11 description of the nature of the violation. A person’s name shall remain on the database for
12 five years after the date of the most recent violation.”
13 **SECTION 2.** G.S. 166A-19.12 is amended by adding a new subdivision to read:
14 **"§ 166A-19.12. Powers of the Division of Emergency Management.**
15 The Division of Emergency Management shall have the following powers and duties as
16 delegated by the Governor and Secretary of Public Safety:
17 . . .
18 (21) Develop informational materials to inform disaster victims about potential
19 excessive pricing practices and post-disaster price gouging scams.
20 Informational materials shall be disseminated widely through print and
21 electronic means and shall be provided to the emergency management
22 coordinator in each county. The Division shall submit an annual report to the
23 Joint Legislative Emergency Management Oversight Committee beginning on
24 June 1, 2016, on the informational materials developed and dissemination
25 methods used."
26 **SECTION 3.** Section 1 of this act becomes effective December 1, 2015, and
27 applies to offenses committed on or after that date. The remainder of this act is effective when
28 it becomes law.



S100-v-3



LRS Summary of S100 Bill History

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AN ACT TO CLARIFY THAT ENGAGING PRICING DURING A DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.

Intro. by Brown

Status: House: Special Message Sent To Senate (Jan 6 2015)

LRS Editors: Add New Summary

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Subscriber actions:

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Bill History:

- Sun, 4 Jan 2015 Senate: Filed
- Mon, 5 Jan 2015 Senate: Passed 1st Reading
- Mon, 5 Jan 2015 Senate: Ref to Judiciary I
- Tue, 6 Jan 2015 Senate: Reptd Fav As Amended
- Tue, 6 Jan 2015 Senate: Com Amend Adopted A1
- Tue, 6 Jan 2015 Senate: Placed on Today's Calendar
- Tue, 6 Jan 2015 Senate: Passed 2nd Reading
- Tue, 6 Jan 2015 Senate: Passed 3rd Reading
- Tue, 6 Jan 2015 Special Message Received From Senate
- Tue, 6 Jan 2015 House: Passed 1st Reading
- Tue, 6 Jan 2015 House: Ref to Judiciary I
- Tue, 6 Jan 2015 House: Reptd Fav Com Substitute
- Tue, 6 Jan 2015 House: Com Substitute Adopted
- Tue, 6 Jan 2015 House: Added to Calendar
- Tue, 6 Jan 2015 House: Passed 2nd Reading
- Tue, 6 Jan 2015 House: Passed 3rd Reading
- Tue, 6 Jan 2015 House: Special Message Sent To Senate

Bill Summaries:

o Bill S 100 (2015-2016)
Summary date: Jan 6 2015 - View summary

House committee substitute to the 2nd edition makes the following changes. Amends GS 75-38 to require the Attorney General to keep a public database of persons who have violated the statute (prohibiting excessive pricing during states of disaster, states of emergency, or abnormal market disruptions). Specifies information that must be available in the database and requires that a person's name stay on the database for five years after the date of the most recent violation.

Courts/Judiciary, Criminal Justice, Criminal Law and Procedure, Government, Public Safety
GS 75, GS 166A

o Bill S 100 (2015-2016)
Summary date: Jan 6 2015 - View summary

Senate committee amendment makes the following changes to the 1st edition. Amends GS 166A-19.12 to (1) add to the Division of Emergency Management's duties that the Division develop print and electronic material informing disaster victims about excessive pricing practices and post disaster price gouging scams and (2) require that the material be provided to county emergency management coordinators. Requires an annual report to the Joint Legislative Emergency Management Oversight Committee beginning June 1, 2016.

Courts/Judiciary, Criminal Justice, Criminal Law and

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SENATE BILL 100
RATIFIED BILL**

AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A
DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-38 is amended by adding two new subsections to read:

“(g) A willful violation of this section is a crime and is punishable as a Class H felony.”

(h) The Department of Public Safety shall develop and maintain a database of all persons found to have violated this section. The database shall be made available to the public in a searchable format and shall include the name of the person, date of violation, and a brief description of the nature of the violation. A person’s name shall remain on the database for five years after the date of the most recent violation.”

SECTION 2. G.S. 166A-19.12 is amended by adding a new subdivision to read:

"§ 166A-19.12. Powers of the Division of Emergency Management.

The Division of Emergency Management shall have the following powers and duties as delegated by the Governor and Secretary of Public Safety:

...

(21) Develop informational materials to inform disaster victims about potential excessive pricing practices and post-disaster price gouging scams. Informational materials shall be disseminated widely through print and electronic means and shall be provided to the emergency management coordinator in each county. The Division shall submit an annual report to the Joint Legislative Emergency Management Oversight Committee beginning on June 1, 2016, on the informational materials developed and dissemination methods used."

SECTION 3. Section 1 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of January, 2015.

s/

President of the Senate

s/

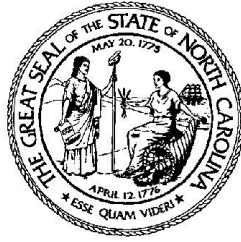
Speaker of the House of Representatives

Governor

Approved _____ .m. this _____ day of _____, 2015



S100-v-4



**STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR**

January 12, 2015

GOVERNOR'S OBJECTIONS AND VETO MESSAGE

Senate Bill 100: *"An act to clarify that engaging in excessive pricing during a declared state of emergency is punishable as a Class H felony."*

I am vetoing Senate Bill 100 because it interferes with the free market system that is essential to our system of capitalism and because it places on one class of merchants the burden of coping with a natural disaster while others are spared.

When I campaigned for office I promised the people of North Carolina to eliminate unnecessary regulations on business, strongly believing that free enterprise is the only route to economic prosperity. While the motivations behind this legislation may be commendable, it simply adds another layer of government authority over small business owners.

Current laws adequately address states of emergency situations without piling on the threat of prosecution for a felony. Our prosecutors have important criminal matters requiring their attention without being diverted to disputes over price.

Therefore, I veto the bill.

Governor of the State of North Carolina

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SENATE BILL 100
RATIFIED BILL**

AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A
DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-38 is amended by adding two new subsections to read:

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SECTION 2. G.S. 166A-19.12 is amended by adding a new subdivision to read:

"§ 166A-19.12. Powers of the Division of Emergency Management.

The Division of Emergency Management shall have the following powers and duties as delegated by the Governor and Secretary of Public Safety:

...

(21) Develop informational materials to inform disaster victims about potential excessive pricing practices and post-disaster price gouging scams. Informational materials shall be disseminated widely through print and electronic means and shall be provided to the emergency management coordinator in each county. The Division shall submit an annual report to the Joint Legislative Emergency Management Oversight Committee beginning on June 1, 2016, on the informational materials developed and dissemination methods used.

SECTION 3. Section 1 of this act becomes effective December 1, 2015, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of January, 2015.



s/

President of the Senate

s/

Speaker of the House of Representatives

Governor

Approved _____ .m. this _____ day of _____, 2015



S100-v-4