

# HOW AN IDEA BECOMES A LAW

## Class Materials

New Member Orientation  
UNC School of Government  
January 7, 2021

# *“How an Idea Becomes a Law”*

## Senate Bill 100 Summary

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### **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 (G.S. 75-1.1). The prohibition is automatically triggered when a state of emergency is declared by the Governor. 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 – 1<sup>st</sup> Edition (as filed)**

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 requires the Attorney General to develop and disseminate information to the public on disaster price gouging. Section 1 of the bill is effective October 1, 2021 and applies to all offenses committed on or after that date. The remainder of the bill is effective when it becomes law.

### **Senate Bill 100 – Senate Committee Amendment**

During consideration in the Senate Judiciary I Committee, SB100 is amended to require the Attorney General 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 – Proposed House Committee Substitute**

After passing the Senate, SB100 is amended in the House Judiciary I committee in the form of a proposed committee substitute (PCS). The House PCS retains the language in the Senate version of the bill, and adds a requirement that, when an emergency is declared, the Attorney General must publically disseminate information that clearly describes the activities that constitute price gouging, including the factors enumerated in G.S. 75-38 used to determine whether a price is unreasonably excessive. The purpose is to help educate both consumers and businesses on what does – and does not – constitute price gouging during an emergency.

# THE COASTLINE NEWS

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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 declares a state of emergency. The NC Attorney General's Office can 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 if price gougers can be prosecuted under current state law.

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.

**§ 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).)

# Elements of North Carolina Legislation

	Description and Notes	Example from S 100
<b>Editions/ Versions</b>	<p>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).</p> <p>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.</p>	<p>D</p> <p><b>2021-MM-542-1a [v.1]</b></p>
<b>Type</b>	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)
<b>Short title</b>	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
<b>Sponsors</b>	<p>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.</p> <p>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.</p>	Senator Wall
<b>Referrals</b>	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.	Judiciary I

	Description and Notes	Example from S 100
<b>Long title</b>	<p>Each chamber has rules or practices about what the title should include and when it should or may be amended.</p> <p>The 2015-16 Rules provided as follows:</p> <p><b>Senate</b>            RULE 54.1. Bill title. – The title of each bill shall adequately and fairly reflect its subject matter.            RULE 55. Amending titles of bills. – When a bill is materially modified or the scope of its application extended or decreased, or if the county or counties to which it applies is changed, the title of the bill shall be changed by the committee having it in charge or by the Principal Clerk, so as to indicate the full purport of the bill as amended and the county or counties to which it applies.</p> <p><b>House</b>            RULE 31 (d) All bills and resolutions shall show in their captions a brief descriptive statement of the true substance of same, which captions may thereafter be amended. Amendments to captions of bills are in order only if the amendment is germane to the bill. Third reading shall not be had on any bill or resolution on the same day that such caption is amended.</p>	<p>AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.</p>
<b>Enacting clause</b>	<p>Standard language used at the beginning of all local and public bills as required under Art. II, Sec. 21 of the North Carolina Constitution.</p> <p>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.</p> <p>A resolution will have a resolving clause rather than an enacting clause (“Be it resolved by the...” House/Senate/both).</p>	<p>“The General Assembly of North Carolina enacts...”</p>

	Description and Notes	Example from S 100
<b>Statement of purpose</b>	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
<b>Sections</b>	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
<b>G.S.</b>	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 but the Article number is not reflected in the citation. On occasion, an Article will be further subdivided into Parts and Subparts.	G.S. 75-38  This refers to a statute that is in Section 38 of Chapter 75 of the NC General Statutes.
<b>Redlining</b>	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., <del>felony</del> ). 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).	<u>“(g) A willful violation of this section is a crime and is punishable as a Class H felony.”</u>



	Description and Notes	Example from S 100
<b>S.L.</b>	<p>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.</p> <p>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 2021 legislative session will be S.L. 2019-1, the second bill to become law will be S.L. 2021-2, 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. 2022-1. In 2019, there were 251 Session Laws. In 2020, there were 97 Session Laws.</p> <p>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.</p>	<p>If S 100 were enacted, it would become S.L. 2021-____. 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.</p>
<b>Effective date</b>	<p>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.</p> <p>There are some standard effective dates. For example, provisions making appropriations (July 1), changing civil law (October 1), and changing criminal law (December 1).</p> <p>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.</p>	<p>Section 1 of this act becomes effective October 1, 2021, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law. <i>(Note: S 100 makes the criminal law effective date October 1, 2021, to expedite protection for consumers in the event of a major disaster in 2021)</i></p>

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021**

**S**

**D**

**BILL DRAFT 2021-MM-542-1a [v1]**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/9/2020 1:23:14 PM**

Short Title: Disaster Victim Protection Act. (Public)

Sponsors: Senator Wall (Primary Sponsor).

Referred to:

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 felony.”

7 **SECTION 2.** The Division of Emergency Management shall develop informational  
8 materials to inform disaster victims about potential excessive pricing practices and post-disaster  
9 price gouging scams. Informational materials shall be disseminated widely through print and  
10 electronic means and shall be provided to the emergency management coordinator in each  
11 county. The Division shall submit a report to the Joint Legislative Emergency Management  
12 Oversight Committee by June 1, 2021, on the informational materials developed and  
13 dissemination methods used.

14 **SECTION 3.** Section 1 of this act becomes effective October 1, 2021 and applies to  
15 offenses committed on or after that date. The remainder of this act is effective when it becomes  
16 law.



2021-MM-542-1a\*





# NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

## Legislative Fiscal Note

**Short Title:** Disaster Victims Protection Act  
**Bill Number:** Senate Bill 100 (Second Edition)  
**Sponsor(s):** Senator Wall

### SUMMARY TABLE

FISCAL IMPACT OF S.B.100, V.1					
	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>
<b>State Impact</b>					
General Fund Revenue	\$0	-	-	-	-
<u>Less Expenditures</u>	<u>\$54,000</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>General Fund Impact</b>	<b>(\$54,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>NET STATE IMPACT</b>	<b>(\$54,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

### FISCAL IMPACT SUMMARY

This bill will cost \$54,000 in FY 2021-22. No additional costs are anticipated.

### FISCAL ANALYSIS

S.B. 100 creates a new felony offense under 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 requires the Attorney General 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 should include the name of the person, the date of the 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.

**NOTE:** An Incarceration Fiscal Note has already been published on the criminal penalty portion of this bill. No fiscal estimate was available for the incarceration note, as the violation is a new criminal offense. That Incarceration Fiscal Note can be accessed on the General Assembly's website attached to the bill.

This fiscal note addresses the costs associated with Section 1(h) of the bill, requiring a database.



**Section 1(h):** Section 1(h) of the bill requires the Department of Justice to set up and maintain a publicly accessible database of people who violate G.S. 75-38. The Department of Justice currently maintains five criminal databases through its Division of Criminal Information in the State Bureau of Investigation. 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.

The Department of Justice 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:

<b>Estimated Cost for Database Upgrades FY 2021-22</b>	
<b>Activity</b>	<b>Est. Cost</b>
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
<b>Total</b>	<b>\$54,000</b>

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## TECHNICAL CONSIDERATIONS

N/A.

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## DATA SOURCES

Department of Justice

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## LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

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## CONTACT INFORMATION

Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.



**ESTIMATE PREPARED BY**

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Anna Analysis

**ESTIMATE APPROVED BY**

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Mark Trogon, Director  
Fiscal Research Division





# NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

## Legislative Incarceration Fiscal Note

**Short Title:** Disaster Victim Protection Act  
**Bill Number:** Senate Bill 100 (First Edition)  
**Sponsor(s):** Senator Wall

### SUMMARY TABLE

#### FISCAL IMPACT OF S.B.100, V.1

	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>
<b>State Impact</b>					
General Fund Revenue	-	-	-	-	-
<u>Less Expenditures</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>General Fund Impact</b>	No Estimate Available - Refer to Fiscal Analysis section				

#### NET STATE IMPACT

No Estimate Available - Refer to Fiscal Analysis section

### FISCAL IMPACT SUMMARY

The proposed bill may have a fiscal impact because of the application of a more stringent penalty for each offense. However, since there is no historical data on this offense, or similar offenses to use as a proxy for predicting the total number of 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: \$709 per disposition
- Indigent Defense Services: \$392 per disposition
- Department of Public Safety (DPS) - Prisons: \$5,740 per active sentence
- DPS - Community Corrections: Minimum of \$1,521 per supervised probation sentence and \$4,394 per suspended probation sentence

### FISCAL ANALYSIS

#### 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, 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. 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.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

### **Judicial Branch**

The Administrative Office of the Courts (AOC) 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.

Section 1 of the bill 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 \$709.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs.

In FY 2017-18, the most recent year data is available, 78% of Class H felony cases were handled through IDS. The weighted average cost of a new Class H felony is \$392 per case for a private appointed counsel (PAC) attorney. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.





## **Department of Public Safety – Prisons**

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation or authorized for construction or operation as of December 2019.

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). Rows four and five in the chart demonstrate the impact of the bill. Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. As shown, it is not known how many offenders might be convicted and sentenced under the proposed bill.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2021</b>	<b>June 30 2022</b>	<b>June 30 2023</b>	<b>June 30 2024</b>	<b>June 30 2025</b>
1. Inmates <sup>2</sup>	35,982	36,147	36,328	36,416	36,738
2. Prison Beds (Expanded Capacity)	37,330	37,330	37,330	37,330	37,330
3. Beds Over/(Under) Inmate Population	1,348	1,183	1,002	914	592
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

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. A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

In FY 2018-19, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months. Nine months of post-release supervision is required upon

<sup>1</sup> **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.

<sup>2</sup> 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 February 2020.

<sup>3</sup> Criminal penalty bills effective October 1, 2021 should not affect prison population and bed needs until FY 2022-23 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.



release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if there were four convictions (the threshold) or 20 convictions for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.

<b>Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony</b>					
<b>Convictions</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
4 (Threshold)	1	2	2	2	2
20	7	10	10	10	11

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 \$18.86 per day, or \$574 per month, which includes the cost of food, clothing, and health care. In FY 2018-19, 34% 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 \$5,740 (\$574 monthly cost times 10 months).

### **Department of Public Safety – Community Corrections**

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, 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. All misdemeanor offenders may face the same non-active sentences as felons.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$169 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 and supervised probation.



In FY 2018-19, 34% of Class H felony offenders received active sentences and 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for Class H felony offenders receiving a suspended sentence was 26 months. All active sentences for Class F through I felonies result in nine months of post-release supervision (PRS). 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 \$1,521 per offender (\$169 per month times 9 months).<sup>4</sup> For every offender sentenced to probation, the average cost would be \$4,394 (\$169 per month times 26 months).

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## **TECHNICAL CONSIDERATIONS**

N/A.

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## **DATA SOURCES**

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

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## **LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS**

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

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## **CONTACT INFORMATION**

Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

---

## **ESTIMATE PREPARED BY**

*Anna Analysis*

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## **ESTIMATE APPROVED BY**

Mark Trogon, Director  
Fiscal Research Division

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<sup>4</sup> Due to the effective date of October 1, 2021 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2021-22. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2022-23.





# Senate Bill 100

## Disaster Victim Protection Act.

2021-2022 General Assembly

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

**Date:** January 6, 2021  
**Prepared by:** Alison Attorney,  
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 Attorney General 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 Attorney General to develop informational materials to inform the public about potential price gouging scams during a disaster and to disseminate that information broadly. The Attorney General is required to report to the Joint Legislative Emergency Management Oversight Committee by June 1, 2021, on the materials developed and the dissemination methods used.

**EFFECTIVE DATE:** Section 1 of the bill becomes effective October 1, 2021, 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.

## LRS Summary of S100 as filed

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Bill: Disaster Victim Protection Act  
Summary date: Jan 7 2021

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

**Bill Information:**

Senate Bill 100 (Public) Filed Thursday, January 7, 2021  
AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.  
Intro. by Wall

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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 October 1, 2019.

Requires the Attorney General 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. Requires the Attorney General to report to the Joint Legislative Emergency Management Oversight Committee by June 1, 2019, on the development and dissemination of materials.

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**NORTH CAROLINA GENERAL ASSEMBLY**  
**AMENDMENT**  
Senate Bill 100

AMENDMENT NO. \_\_\_\_\_

Page 1 of 1

Comm. Sub. [NO]  
Amends Title [YES]  
1<sup>st</sup> Edition

Date: January 7, 2021

Senator \_\_\_\_\_

- 1 moves to amend the bill on page 1, lines 2-3 by rewriting those lines to read:  
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 AND TO REQUIRE THE ATTORNEY GENERAL TO DEVELOP AND MAINTAIN  
5 A DATABASE ON PERSONS AND BUSINESSES FOUND TO HAVE ENGAGED  
6 IN EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY.”;  
7 and  
8  
9 further amends the bill on page 1, line 7 by inserting the following language:  
10 “(h) The Attorney General shall develop and maintain a database of all persons found  
11 to have violated this section. The database shall be made available to the public in a  
12 searchable format and shall include the name of the person, date of violation, and a brief  
13 description of the nature of the violation. A person’s name shall remain on the database  
14 for five years after the date of the most recent violation.”

SIGNED: \_\_\_\_\_

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



\*S100-v-2\*

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

S

2

SENATE BILL 100  
Second Edition Engrossed 1/7/21

Short Title: Disaster Victim Protection Act.

(Public)

Sponsors:

Referred to:

January 7, 2021

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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 AND  
TO REQUIRE THE ATTORNEY GENERAL TO DEVELOP AND MAINTAIN A  
DATABASE ON PERSONS AND BUSINESSES FOUND TO HAVE ENGAGED IN  
EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY.

The General Assembly of North Carolina enacts:

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

“(g) A willful violation of this section is a crime and is punishable as a Class H felony.  
(h) The Attorney General 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.** The Attorney General 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 Attorney General shall submit a report to the Joint Legislative Emergency  
Management Oversight Committee by June 1, 2021, on the informational materials developed  
and dissemination methods used.

**SECTION 3.** Section 1 of this act becomes effective October 1, 2021 and applies  
to offenses committed on or after that date. The remainder of this act is effective when it becomes  
law.



\*S100-v-2\*



## LRS Summary of Senate Committee Action adopting Amendment to the 1<sup>st</sup> ed. of S100

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Summary date: Jan 7 2021

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**Bill Information:**

Senate Bill 100 (Public) Filed Thursday, January 7, 2021  
AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.  
Intro. by Wall

View: All Summaries for Bill Tracking: Track Bill

GS 75

**Bill summary**

Senate committee amendment makes the following changes to the 1st edition.

Further amends GS 75-38 by requiring the Attorney General to create and maintain a database of individuals who have violated the statute (have charged excessive prices during states of disaster, states of emergency, or abnormal market disruptions). Specifies database requirements, including that it available to the public in a searchable format and that a person's name remain on the database for five year following a violation.

Makes conforming long title changes.

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**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021**

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**D**

**SENATE BILL 100  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S100-PCS1274-NH-1**

Short Title: Disaster Victim Protection Act.

(Public)

Sponsors:

Referred to:

January 7, 2021

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 AND  
TO REQUIRE THE ATTORNEY GENERAL TO DEVELOP AND MAINTAIN A  
DATABASE ON PERSONS AND BUSINESSES FOUND TO HAVE ENGAGED IN  
EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY AND TO  
PROVIDE INFORMATION TO CITIZENS AND BUSINESSES ON ALLOWABLE AND  
PROHIBITED PRICING DURING A DECLARED STATE OF EMERGENCY.

The General Assembly of North Carolina enacts:

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

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

(i) Upon a triggering event, the Attorney General shall publicly disseminate  
information clearly describing the activities prohibited under this section, including the factors  
used to determine whether a price is unreasonably excessive as provided for in subsection (a) of  
this section.”

**SECTION 2.** The Attorney General 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 Attorney General shall submit a report to the Joint Legislative Emergency  
Management Oversight Committee by June 1, 2021, on the informational materials developed  
and dissemination methods used.

**SECTION 3.** Section 1 of this act becomes effective October 1, 2021 and applies  
to offenses committed on or after that date. The remainder of this act is effective when it becomes  
law.



\*S100-PCS1274-NH-1\*



# Senate Bill 100

## Disaster Victim Protection Act.

2021-2022 General Assembly

**Committee:** House Judiciary I  
**Introduced by:** Senator Wall  
**Analysis of:** PCS to the Second Edition

**Date:** January 7, 2021  
**Prepared by:** Blair Barrister,  
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 Attorney General 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 Attorney General 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 Attorney General 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** of the bill requires the Attorney General to report to the Joint Legislative Emergency Management Oversight Committee by June 1, 2021, on the materials developed and the dissemination methods used.

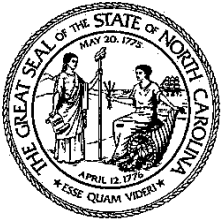
**EFFECTIVE DATE:** Section 1 of the bill becomes effective October 1, 2021, and applies to offenses committed on or after that date. The remainder of the bill is effective when it becomes law.

**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.

\*-v1\*

Jeffrey Hudson  
Director

Legislative Analysis  
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Packet Page 26



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

## Fiscal Analysis Memorandum

**CONFIDENTIAL**

**Requestor:** Rep. Gangi  
**Analyst(s):** Anna Analysis  
**RE:** House PCS to Senate Bill 100 – Disaster Victim Protection Act

### SUMMARY TABLE

#### FISCAL IMPACT OF S100-PCS1274-NH-1, V.

	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>
<b>State Impact</b>					
General Fund Revenue	\$0	-	-	-	-
<u>Less Expenditures</u>	<u>\$54,000</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>General Fund Impact</b>	<b>(\$54,000)</b>	-	-	-	-
<b>NET STATE IMPACT</b>	<b>(\$54,000)</b>	-	-	-	-

### FISCAL IMPACT SUMMARY

This bill will cost \$54,000 in FY 2021-22. No additional costs are anticipated.

### FISCAL ANALYSIS

S.B. 100 creates a new felony offense under 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 requires the Attorney General 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 should include the name of the person, the date of the 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 proposed committee substitute adds a requirement that the Attorney General publicly disseminate information clearly describing the activities that constitute price gouging, including the factors enumerated in G.S. 75-38 used to determine whether a price is unreasonably excessive.



**NOTE:** An Incarceration Fiscal Note has already been published on the criminal penalty portion of this bill. No fiscal estimate was available for the incarceration note, as the violation is a new criminal offense. That Incarceration Fiscal Note can be accessed on the General Assembly's website attached to the bill.

This fiscal memo addresses the costs associated with Section 1(h), requiring a database, and Section 1(i), requiring information dissemination, of the proposed committee substitute.

**Section 1(h):** Section 1(h) of the bill requires the Department of Justice to set up and maintain a publicly accessible database of people who violate G.S. 75-38. The Department of Justice currently maintains five criminal databases through its Division of Criminal Information in the State Bureau of Investigation. 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.

The Department of Justice 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:

<b>Estimated Cost for Database Upgrades FY 2021-22</b>	
<b>Activity</b>	<b>Est. Cost</b>
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
<b>Total</b>	<b>\$54,000</b>

**Section 1(i):** Section 1(i) of the proposed committee substitute requires the Department of Justice to provide the public with information about the activities that constitute price gouging during a declared state of emergency. The Department of Justice, through its Consumer Protection Division, already provides consumer information to the public through a variety of outlets, including radio, print, broadcast, and the internet. Since declarations of emergency are relatively rare, it is assumed that any 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 proposed committee substitute.

## **TECHNICAL CONSIDERATIONS**

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N/A.

## **DATA SOURCES**

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Department of Justice

## **FISCAL ANALYSIS MEMORANDUM – PURPOSE AND LIMITATIONS**

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This document is a fiscal analysis of a bill, draft bill, amendment, committee substitute, or conference committee report that is confidential under Chapter 120 of the General Statutes. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts. This document is not an official fiscal note. If a formal fiscal note is requested, please email your request to the Fiscal Research Division at [FiscalNoteRequests@ncleg.net](mailto:FiscalNoteRequests@ncleg.net) or call (919) 733-4910.



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Bill: Disaster Victim Protection Act  
Summary date: Jan 7 2021

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

**Bill Information:**

Senate Bill 100 (Public) Filed Thursday, January 7, 2021  
AN ACT TO CLARIFY THAT ENGAGING IN EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY IS PUNISHABLE AS A CLASS H FELONY.  
Intro. by Wall

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GS 75

**Bill summary**

House committee substitute makes the following changes to the 2nd edition.

Amends GS 75-38 by adding a requirement that the Attorney General, upon a triggering event, publicly disseminate information describing the activities prohibited by the statute, including the factors used to determine whether a price is unreasonably excessive.

Makes conforming long title changes.

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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

S

3

SENATE BILL 100  
Second Edition Engrossed 1/7/21  
House Judiciary I Committee Substitute Adopted 1/7/21

Short Title: Disaster Victim Protection Act.

(Public)

Sponsors:

Referred to:

January 7, 2021

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 AND  
4 TO REQUIRE THE ATTORNEY GENERAL TO DEVELOP AND MAINTAIN A  
5 DATABASE ON PERSONS AND BUSINESSES FOUND TO HAVE ENGAGED IN  
6 EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY AND TO  
7 PROVIDE INFORMATION TO CITIZENS AND BUSINESSES ON ALLOWABLE AND  
8 PROHIBITED PRICING DURING A DECLARED STATE OF EMERGENCY.  
9 The General Assembly of North Carolina enacts:  
10 **SECTION 1.** G.S. 75-38 reads as rewritten:  
11 “(g) A willful violation of this section is a crime and is punishable as a Class H felony.  
12 (h) The Attorney General shall develop and maintain a database of all persons found  
13 to have violated this section. The database shall be made available to the public in a searchable  
14 format and shall include the name of the person, date of violation, and a brief description of the  
15 nature of the violation. A person’s name shall remain on the database for five years after the  
16 date of the most recent violation.  
17 (i) Upon a triggering event, the Attorney General shall publicly disseminate  
18 information clearly describing the activities prohibited under this section, including the factors  
19 used to determine whether a price is unreasonably excessive as provided for in subsection (a) of  
20 this section.”  
21 **SECTION 2.** The Attorney General shall develop informational materials to  
22 inform disaster victims about potential excessive pricing practices and post-disaster price  
23 gouging scams. Informational materials shall be disseminated widely through print and  
24 electronic means and shall be provided to the emergency management coordinator in each  
25 county. The Attorney General shall submit a report to the Joint Legislative Emergency  
26 Management Oversight Committee by June 1, 2021, on the informational materials developed  
27 and dissemination methods used.  
28 **SECTION 3.** Section 1 of this act becomes effective October 1, 2021 and applies  
29 to offenses committed on or after that date. The remainder of this act is effective when it becomes  
30 law.



\*S100-v-3\*



## LRS Summary of S100 Bill History

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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

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

**LRS Editors: Add New Summary**

- Bill Summary

**Subscriber actions:**

Track Bill

**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:**

- 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

- 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 2021**

**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 AND TO REQUIRE THE ATTORNEY GENERAL TO DEVELOP AND MAINTAIN A DATABASE ON PERSONS AND BUSINESSES FOUND TO HAVE ENGAGED IN EXCESSIVE PRICING DURING A DECLARED STATE OF EMERGENCY AND TO PROVIDE INFORMATION TO CITIZENS AND BUSINESSES ON ALLOWABLE AND PROHIBITED PRICING DURING A DECLARED STATE OF EMERGENCY.

The General Assembly of North Carolina enacts:

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

- “(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.
- (i) Upon a triggering event, the Attorney General shall publicly disseminate information clearly describing the activities prohibited under this section, including the factors used to determine whether a price is unreasonably excessive as provided for in subsection (a) of this section.”

**SECTION 2.** The Attorney General 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 Attorney General shall submit a report to the Joint Legislative Emergency Management Oversight Committee by June 1, 2021, on the informational materials developed and dissemination methods used.

**SECTION 3.** Section 1 of this act becomes effective October 1, 2021 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 7<sup>th</sup> day of January, 2021.

s/

President of the Senate

s/

Speaker of the House of Representatives

\_\_\_\_\_  
Governor

Approved \_\_\_\_\_m. this \_\_\_\_\_ day of \_\_\_\_\_, 2021

# *“How an Idea Becomes a Law”*

## Enrollment and Ratification

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### Enrollment, Ratification, and Publication

After a bill passes both houses, it is enrolled by the enrolling clerk. A clean copy, including all amendments, is prepared, with space for the signatures of the two presiding officers, and the governor if the bill is subject to gubernatorial consideration. This bill has been **enrolled** at this point in the process.

The enrolled copy is taken to each presiding officer during the daily session. Each presiding officer signs the enrolled copy. When the second signature is affixed, the bill has been **ratified**. If the bill is a local law, it is not presented to the Governor for consideration and becomes law at that point.

In November 1996, the citizens of North Carolina voted to amend the State Constitution to allow for a gubernatorial veto (Section 22 of Article II of the North Carolina Constitution). All Public Bills other than bills making appointments, proposing constitutional amendments, or revising electoral districts are presented to the Governor on the day following ratification for the Governor's approval or veto (Local laws are not subject to consideration by the Governor and become law when ratified). If the Governor signs the bill or takes no action on the bill, the bill becomes law. While the General Assembly is in session, the Governor has ten days after presentation to act on the bill. After the General Assembly adjourns, the Governor has 30 days to act on a bill. The Governor is required to reconvene the General Assembly if a bill is vetoed after adjournment, unless a written request is received and signed by a majority of the Members of both houses that it is not necessary to reconvene.

If the Governor vetoes a bill, the bill is returned to the original house where 3/5 of members present and voting can vote to override the veto. If the original house votes to override the veto, the bill is then sent to the second house where 3/5 of member present and voting also must vote to override the veto before the bill can become law. If one or the other house fails to override the veto, the veto stands and the bill does not become law.

After it becomes law, the term "bill" is no longer used. The enrolled act or law is given a chapter number and is published under that number in a volume called "Session Laws of North Carolina."<sup>1</sup> The law is then **published** in the Session Laws. Session laws are assigned a chapter number for the year of the session and a sequential number based on the order in which bill became law during that session. For example, the first bill to become law during the 2018 session would be chaptered in the 2018 Session Laws as S.L. 2018-1, the second bill to become law would be chaptered as S.L. 2018-2, and so forth.

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<sup>1</sup> Source: General Assembly Website “How a Law is Made” <https://www.ncleg.net/NCGAInfo/Bill-Law/bill-law.html>

## The Governor's Role in the Legislative Process

### Frequently Asked Questions

Aimee Wall, UNC School of Government

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In 1996, the North Carolina General Assembly (NCGA) passed legislation authorizing the voters to approve amendments to the state Constitution granting the Governor new authority to take action on legislation (S.L. 1996-5). The voters subsequently approved those amendments and beginning in 1997, the Governor officially had a significant new role in the legislative process. After being presented with a bill that has been passed by the NCGA, the Governor may take one of three actions: (a) sign the bill into law, (b) veto the bill, or (c) decline to either sign or veto the bill. Below are answers to several frequently asked questions about the Governor's authority to take action on legislation.

#### 1. May the Governor take action on *any* bill enacted by the NCGA?

No. The Governor has authority to act on most bills, including any bill that contains an appropriation. There are, however, some types of bills that become law immediately after they are ratified. A bill is "ratified" after it is passed by both chambers of the NCGA and signed by the presiding officer of both chambers. The following types of bills become law after ratification:

- *Joint resolutions*
- *U.S. Constitution*: A bill that either (a) approves an amendment to the U.S. Constitution or (b) applies for a convention to propose amendments to the U.S. Constitution, as long as the bill does not address any other matters.
- *Appointments*: A bill that makes one or more appointments to public office, as long as the bill does not address any other matters.
- *Redistricting*: A bill revising state and federal legislative districts, as long as the bill does not address any other matters.
- *Local bills*: Most local bills (i.e., bills that apply in fewer than 15 counties). However, there are two important exceptions. In the following instances, the Governor retains the authority to take action on a local bill:
  - The local bill extends the application of a previous law enacted during the same biennium so that the law applies to more than half of the counties; or
  - The local bill would enact a law identical in effect to another law or laws enacted during the same biennium that would result in the law applying in more than half of the counties.

Note that the Governor also retains the authority to take action on a bill that enacts a general law that is classified by population or other criteria. These approaches are sometimes referred to as "local bills" because they affect only certain areas of the state but they technically are not local bills and are therefore subject to the Governor's authority.

The Governor also does not have the authority to take action on a bill that addresses changes to the North Carolina Constitution. Specifically, if a bill (a) proposes a new state Constitution, (2) proposes revising the state Constitution, or (3) calls a convention of the people for the purpose of amending the state Constitution, the bill must be submitted to the voters for approval after being ratified by the NCGA. In order for this exception to apply, the bill must not address any other matters.

## **2. What happens if the Governor signs a bill?**

If the Governor signs a bill, it becomes law. The legislation may go into effect immediately or it may provide for a delayed effective date for some or all of its provisions.

## **3. What happens if the Governor vetoes a bill?**

If the Governor vetoes a bill, the Governor must return it to the chamber of the NCGA where the bill was first introduced. When returning the bill, the Governor must include a veto message that explains the reason or reasons he or she refused to sign the bill. Once returned, the chamber is required to consider overriding the veto. The veto may be overridden if three-fifths of the members present and voting in both chambers vote to approve of the bill. Note that the majority required to override applies to those who are *present* and *voting*; in the past, some members have been absent for veto override votes. If the NCGA successfully overrides the veto, the bill becomes law.

## **4. How many days does the Governor have to take action on a bill after it is ratified by the NCGA?**

This depends on whether the NCGA is still in session or has adjourned. If the NCGA is in session, the Governor has 10 days to take action on a bill by either signing or vetoing it. The 10-day window begins as soon as the bill is “presented” to the Governor and the count includes weekends. The day of “presentment” is the next business day following the day on which the bill is ratified unless the chamber ordering the bill enrolled directs the bill to be presented sooner. If the NCGA has adjourned completely for the term (“Sine Die”) or for more than 30 days, the Governor has a longer window of time (30 days or more) to take action. See examples set forth in Question 5, below.

## 5. What happens if the Governor fails to take action during the applicable time period?

In some states, a Governor has the option of exercising a “pocket veto.” This refers to a situation in which the Governor refuses to act on a bill within a certain period of time and, as a result, the bill is vetoed. This is not how the process works in North Carolina. Instead, if the Governor refuses to act on a bill within a certain period of time, the bill becomes law.

When the NCGA is in session, the Governor has 10 days to take action by either signing or vetoing the bill. If the Governor fails to take action during the 10-day window, the bill becomes law.

- *Example:* In 2011, a bill was presented to the Governor on June 16. The NCGA was still in session. The Governor did not sign or veto the bill by the end of the day on June 26 so it became law. “This bill having been presented to the Governor for signature on the 16th day of June, 2011 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 27th day of June, 2011.” (S.L. 2011-306).

As mentioned above, if the NCGA has adjourned Sine Die or for more than 30 days, the Governor has a longer window of time to take action.

- If the Governor fails to take action within 30 days after adjournment, the bill becomes law on the thirtieth day. Note that the 30-day window starts on the day of adjournment, not on the day the bill is presented to the Governor.
  - *Example:* In 2016, the NCGA adjourned Sine Die on July 1, 2016 and a bill was presented to the Governor that same day. The thirtieth day after adjournment was July 31. The Governor did not take action so the bill became law at the end of the day on July 31. “This bill having been presented to the Governor for signature on the 1st day of July, 2016 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 1st day of August, 2016.” (S.L. 2016-123). If the bill had been presented to the Governor on June 25, he still would have had until July 31 to take action.
- If the Governor vetoes the bill during the 30-day window, he or she must return the bill to the chamber of origin with a veto message explaining the objections.
  - The Governor is required to reconvene the NCGA to consider an override of the veto. During the reconvened session, legislators are limited to considering only the veto override; if legislators wish to modify the bill that was vetoed, or take up additional matters, they must be called into a separate extra session. If the Governor fails to reconvene the NCGA promptly, the bill becomes law on the fortieth day after adjournment.
  - If a majority of members of each house informs the Governor in writing between the thirtieth and the fortieth day that it is not necessary to reconvene them, the Governor is *not* required to do so and the veto is sustained. The bill does *not* become law.

- *Example:* The Governor is presented with a ratified bill on July 1. The NCGA adjourns on July 2. The Governor vetoes the bill on July 30 (28 days after adjournment). The Governor must either (1) reconvene the NCGA before August 11 or (2) receive the required written messages from a majority of both chambers between August 1 and August 10 stating that it is not necessary to do so.

## 6. How has the Governor exercised the authority to take action on legislation?

The table below summarizes (1) how many bills have been vetoed, (2) how many vetoes have been overridden, and (3) how many bills have been presented to the Governor and become law without being signed.

Biennium	Bills Vetoed	Vetoes Overridden	Law w/out Signature
1997-98	0	0	2
1999-00	0	0	2
2001-02	1	0	4
2003-04	3	0	2
2005-06	3	0	6
2007-08	2	1	0
2009-10	1	0	1
2011-12	19	11	18
2013-14	3	2	4
2015-16	3	2	5
2017-18	28	23	16
2019-20	25	0	4

More detailed statistics are available from the N.C. Legislative Library. See:

- <http://ncleg.net/library/Documents/VetoStats.pdf>
- <http://ncleg.net/library/Documents/PresentedBillsNotSignedbyGov.pdf>

## Excerpt from the North Carolina Constitution

### Article II, Section 22. Action on bills.

(1) Bills subject to veto by Governor; override of veto. Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) Amendments to Constitution of North Carolina. Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) Amendments to Constitution of the United States. Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

(4) Joint resolutions. Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) Other exceptions. Every bill:

- (a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;
- (b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;
- (c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or
- (d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter,

shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) Local bills. Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

- (a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or
- (b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) Time for action by Governor; reconvening of session. If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

- (a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or
- (b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such adjournment. Notwithstanding the previous sentence, if the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) Return of bills after adjournment. For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment.