

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-245
HOUSE BILL 1231

AN ACT TO PROTECT CONSUMERS FROM EXTREME PRICING PRACTICES.

The General Assembly of North Carolina enacts:

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

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

(a) Upon a triggering event, It—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 at retail during a state of disaster, in the area for which the state of disaster has been declared, any merchandise 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 comfort 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 state of disaster; and triggering event.
- (2) The seller offered to sell or rent the merchandise or service at a price that was below the price charged by the seller exceeds the seller's average price in the preceding 60 days before the state of disaster triggering event. If the seller did not sell or rent or offer to sell or rent the merchandise goods or service in question prior to the time the state of disaster was declared, of the triggering event, the price at which the merchandise 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 ~~state of disaster 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, a natural or man made disaster or emergency as declared in accordance with G.S. 166A-6 or G.S. 166A-8.~~

(d) A "triggering event" means the declaration of a state of emergency pursuant to G.S. 166A-8, the proclamation of a state of disaster pursuant to Article 36A of Chapter 14 of the General Statutes, G.S. 166A-6, 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."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley

Governor

Approved 1:08 p.m. this 15th day of August, 2006