

LEGISLATIVE COMMITTEE MINUTES

# **SB138**

Bill as  
Introduced

SB 138 - AS INTRODUCED

2021 SESSION

21-1077  
11/10

SENATE BILL        **138**

AN ACT            relative to consumer protections against profiteering in necessities.

SPONSORS:        Sen. Sherman, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Gannon, Dist 23; Sen. Carson, Dist 14; Sen. Perkins Kwoka, Dist 21; Sen. Rosenwald, Dist 13; Sen. Watters, Dist 4; Sen. Bradley, Dist 3; Sen. Giuda, Dist 2; Sen. Hennessey, Dist 1; Rep. Knirk, Carr. 3; Rep. Grote, Rock. 24; Rep. M. Pearson, Rock. 34

COMMITTEE:        Commerce

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ANALYSIS

This bill prohibits profiteering in necessities during a declared abnormal market disruption.

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Explanation:      Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT relative to consumer protections against profiteering in necessities.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Section; Consumer Protection; Profiteering in Necessities. Amend RSA 358-A by  
2 inserting after section 2 the following new section:

3 358-A:2-a Profiteering in Necessities.

4 I. For purposes of this section, the following terms shall have the following meaning:

5 (a) "Abnormal market disruption" means a significant disruption to the production,  
6 distribution, supply, sale, or availability of a commodity or commodities that:

7 (1) Is caused by an event such as a natural or man-made emergency or disaster,  
8 whether local or remote; and

9 (2) Causes ordinary competitive market forces to cease to function normally.

10 (b) "Cost" means the expense associated with the acquisition, production, distribution, or  
11 sale of necessities and may include, among other things, replacement costs, taxes, and  
12 transportation costs.

13 (c) "Necessities" means food for human or animal consumption, potable water,  
14 pharmaceutical products including prescription medications, wearing apparel, shoes, building  
15 materials, gas and electricity for light, heat, and power, ice, fuel of all kinds, and fertilizer and  
16 fertilizer ingredients, together with tools, utensils, implements, machinery, and equipment required  
17 for the actual production or manufacture of the same. "Necessities" shall include any other vital or  
18 necessary good or service except those:

19 (1) Subject to continuous maximum price regulation under the provisions of any  
20 state or federal law;

21 (2) As to which the state's authority is preempted; or

22 (3) Furnished or provided by:

23 A. Insurers; or

24 B. Nonprofit hospitals, medical service organizations, or health maintenance  
25 organizations authorized to transact business within the state.

26 (d) "Unconscionable price" means a price that is actionable under this section. There is  
27 a rebuttable presumption that a price is unconscionable when it exceeds by more than 15 percent the  
28 sum of:

29 (1) The price at which similar goods or services were offered for sale or sold by that  
30 person immediately prior to the beginning date of the abnormal market disruption. If that person  
31 did not offer such goods or services immediately prior to the abnormal market disruption, then the

1 prices is the price at which similar goods or services were offered for sale or sold by another person  
2 similarly situated prior to the abnormal market disruption; and

3 (2) The increased cost to the person of providing the goods or services following the  
4 abnormal market disruption, calculated according to the method used by that person prior to the  
5 abnormal market disruption.

6 II.(a) Whenever it appears upon due inquiry and consultation with the attorney general that  
7 an abnormal market disruption exists or that there is a substantial likelihood that an abnormal  
8 market disruption is imminent, the governor may, in the governor's sole discretion and after  
9 considering whether the declaration of an abnormal market disruption itself will disrupt supplies for  
10 affected necessities, declare an abnormal market disruption.

11 (b) A declaration made pursuant to this paragraph section shall specify:

12 (1) The beginning date of the abnormal market disruption;

13 (2) The particular necessity, necessities, or categories of necessities that are affected  
14 by the abnormal market disruption and made subject to the provisions of paragraphs III and IV; and

15 (3) The levels of trade or commerce that are affected by the abnormal market  
16 disruption and made subject to the provisions of paragraphs III and IV.

17 (c) A declaration of abnormal market disruption made pursuant to this section expires  
18 when the governor declares it expired or 60 days from the date of its issuance, which ever is sooner.  
19 The declaration of abnormal market disruption may be modified by the governor at any time.

20 (d) The governor shall publish decisions made pursuant to this section in a manner  
21 reasonably calculated to give affected persons adequate notice.

22 (e) Any person may petition the governor regarding the governor's decisions under this  
23 section.

24 III. After the governor has declared an abnormal market disruption and before the  
25 declaration of the abnormal market disruption expires, a person may not sell or offer for sale  
26 necessities at an unconscionable price.

27 IV. Any violation of this section shall constitute an unfair or deceptive act or practice within  
28 the meaning of RSA 358-A:2. Any right, remedy, or power set forth in RSA 358-A may be used to  
29 enforce the provisions of this section.

30 2 Effective Date. This act shall take effect January 1, 2022.

SB 138 - AS AMENDED BY THE SENATE

04/01/2021 0979s

2021 SESSION

21-1077

11/10

SENATE BILL **138**

AN ACT relative to the definition of an "investment metal contract".

SPONSORS: Sen. Sherman, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Gannon, Dist 23; Sen. Carson, Dist 14; Sen. Perkins Kwoka, Dist 21; Sen. Rosenwald, Dist 13; Sen. Watters, Dist 4; Sen. Bradley, Dist 3; Sen. Giuda, Dist 2; Sen. Hennessey, Dist 1; Rep. Knirk, Carr. 3; Rep. Grote, Rock. 24; Rep. M. Pearson, Rock. 34

COMMITTEE: Commerce

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AMENDED ANALYSIS

This bill exempts certain contracts from the definition of "investment metal contract".

---

Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT relative to the definition of an "investment metal contract".

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 New Subparagraph; Uniform Securities Act; Definitions; Investment Metal Contract;  
2 Exemptions. Amend RSA 421-B:1-102, (32)(B) by inserting after subparagraph (iv) the following  
3 new subparagraph:

4                           (v) A commodity contract for the purchase of one or more investment metals  
5 and investment gems which requires, and under which the purchaser receives, within 7 calendar  
6 days from the payment in good funds of any portion of the purchase price, physical delivery of the  
7 quantity of the investment metals and investment gems purchased by such payment, provided that,  
8 for purposes of this paragraph, physical delivery shall be deemed to have occurred if, within that 7-  
9 day period, the quantity of investment metals and investment gems purchased by the payment is  
10 delivered, whether in specifically segregated or fungible bulk form, into the possession of a  
11 depository, other than the seller, which is either:

12                   (a) A bank;

13                   (b) A depository, the warehouse receipts of which are recognized for delivery purposes  
14 for any commodity on a contract market designated by the Commodity Futures Trading Commission;

15                   (c) A storage facility licensed or regulated by the United States or any agency of the  
16 United States; or

17                   (d) A depository designated by the department, and such depository, or other person  
18 which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a  
19 certificate, document of title, confirmation or other instrument evidencing that such quantity of  
20 investment metals and investment gems has been delivered to the depository and is being and will  
21 continue to be held by the depository on the purchaser's behalf, free and clear of all liens and  
22 encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens  
23 of the depository for fees and expenses, which have previously been disclosed to the purchaser.

24           2 Effective Date. This act shall take effect January 1, 2022.

CHAPTER 120  
SB 138 - FINAL VERSION

04/01/2021 0979s

2021 SESSION

21-1077  
11/10

SENATE BILL **138**

AN ACT relative to the definition of an "investment metal contract".

SPONSORS: Sen. Sherman, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Gannon, Dist 23; Sen. Carson, Dist 14; Sen. Perkins Kwoka, Dist 21; Sen. Rosenwald, Dist 13; Sen. Watters, Dist 4; Sen. Bradley, Dist 3; Sen. Giuda, Dist 2; Sen. Hennessey, Dist 1; Rep. Knirk, Carr. 3; Rep. Grote, Rock. 24; Rep. M. Pearson, Rock. 34

COMMITTEE: Commerce

---

AMENDED ANALYSIS

This bill exempts certain contracts from the definition of "investment metal contract".

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Explanation: Matter added to current law appears in ***bold italics***.  
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CHAPTER 120  
SB 138 - FINAL VERSION

04/01/2021 0979s

21-1077  
11/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT relative to the definition of an "investment metal contract".

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 120:1 New Subparagraph; Uniform Securities Act; Definitions; Investment Metal Contract;  
2 Exemptions. Amend RSA 421-B:1-102, (32)(B) by inserting after subparagraph (iv) the following  
3 new subparagraph:

4 (v) A commodity contract for the purchase of one or more investment metals  
5 and investment gems which requires, and under which the purchaser receives, within 7 calendar  
6 days from the payment in good funds of any portion of the purchase price, physical delivery of the  
7 quantity of the investment metals and investment gems purchased by such payment, provided that,  
8 for purposes of this paragraph, physical delivery shall be deemed to have occurred if, within that 7-  
9 day period, the quantity of investment metals and investment gems purchased by the payment is  
10 delivered, whether in specifically segregated or fungible bulk form, into the possession of a  
11 depository, other than the seller, which is either:

12 (a) A bank;

13 (b) A depository, the warehouse receipts of which are recognized for delivery purposes  
14 for any commodity on a contract market designated by the Commodity Futures Trading Commission;

15 (c) A storage facility licensed or regulated by the United States or any agency of the  
16 United States; or

17 (d) A depository designated by the department, and such depository, or other person  
18 which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a  
19 certificate, document of title, confirmation or other instrument evidencing that such quantity of  
20 investment metals and investment gems has been delivered to the depository and is being and will  
21 continue to be held by the depository on the purchaser's behalf, free and clear of all liens and  
22 encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens  
23 of the depository for fees and expenses, which have previously been disclosed to the purchaser.

120:2 Effective Date. This act shall take effect January 1, 2022.

Approved: July 09, 2021

Effective Date: January 01, 2022

# Amendments

Amendment to SB 138

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to consumer protections against profiteering in necessities and relative  
4 to the definition of an "investment metal contract".  
5

6 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to  
7 read as 3:

8

9 2 New Subparagraph; Uniform Securities Act; Definitions; Investment Metal Contract;  
10 Exemptions. Amend RSA 421-B:1-102, (32)(B) by inserting after subparagraph (iv) the following  
11 new subparagraph:

12 (v) A commodity contract for the purchase of one or more precious metals which requires,  
13 and under which the purchaser receives, within 7 calendar days from the payment in good funds of  
14 any portion of the purchase price, physical delivery of the quantity of the precious metals purchased  
15 by such payment, provided that, for purposes of this paragraph, physical delivery shall be deemed to  
16 have occurred if, within that 7-day period, the quantity of precious metals purchased by the payment  
17 is delivered, whether in specifically segregated or fungible bulk form, into the possession of a  
18 depository, other than the seller, which is either:

19 (a) A financial institution;

20 (b) A depository, the warehouse receipts of which are recognized for delivery purposes  
21 for any commodity on a contract market designated by the Commodity Futures Trading Commission;

22 (c) A storage facility licensed or regulated by the United States or any agency of the  
23 United States; or

24 (d) A depository designated by the department, and such depository, or other person  
25 which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a  
26 certificate, document of title, confirmation or other instrument evidencing that such quantity of  
27 precious metals has been delivered to the depository and is being and will continue to be held by the  
28 depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of  
29 the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and  
30 expenses, which have previously been disclosed to the purchaser.

2021-0543s

AMENDED ANALYSIS

This bill prohibits profiteering in necessities during a declared abnormal market disruption. This bill also exempts certain contracts from the definition of "investment metal contract".

UNAPPROVED

Amendment to SB 138

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to consumer protections against profiteering in necessities and relative  
4 to the definition of an "investment metal contract".  
5

6 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to  
7 read as 3:

8

9 2 New Subparagraph; Uniform Securities Act; Definitions; Investment Metal Contract;  
10 Exemptions. Amend RSA 421-B:1-102, (32)(B) by inserting after subparagraph (iv) the following  
11 new subparagraph:

12 (v) A commodity contract for the purchase of one or more investment metals and investment  
13 gems which requires, and under which the purchaser receives, within 7 calendar days from the  
14 payment in good funds of any portion of the purchase price, physical delivery of the quantity of the  
15 investment metals and investment gems purchased by such payment, provided that, for purposes of  
16 this paragraph, physical delivery shall be deemed to have occurred if, within that 7-day period, the  
17 quantity of investment metals and investment gems purchased by the payment is delivered, whether  
18 in specifically segregated or fungible bulk form, into the possession of a depository, other than the  
19 seller, which is either:

20 (a) A bank;

21 (b) A depository, the warehouse receipts of which are recognized for delivery purposes  
22 for any commodity on a contract market designated by the Commodity Futures Trading Commission;

23 (c) A storage facility licensed or regulated by the United States or any agency of the  
24 United States; or

25 (d) A depository designated by the department, and such depository, or other person  
26 which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a  
27 certificate, document of title, confirmation or other instrument evidencing that such quantity of  
28 investment metals and investment gems has been delivered to the depository and is being and will  
29 continue to be held by the depository on the purchaser's behalf, free and clear of all liens and  
30 encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens  
31 of the depository for fees and expenses, which have previously been disclosed to the purchaser.

2021-0873s

AMENDED ANALYSIS

This bill prohibits profiteering in necessities during a declared abnormal market disruption. This bill also exempts certain contracts from the definition of "investment metal contract".

UNAPPROVED

Amendment to SB 138

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the definition of an "investment metal contract".

4

5 Amend the bill by replacing section 1 with the following:

6

7 1 New Subparagraph; Uniform Securities Act; Definitions; Investment Metal Contract;  
8 Exemptions. Amend RSA 421-B:1-102, (32)(B) by inserting after subparagraph (iv) the following  
9 new subparagraph:

10 (v) A commodity contract for the purchase of one or more investment metals  
11 and investment gems which requires, and under which the purchaser receives, within 7 calendar  
12 days from the payment in good funds of any portion of the purchase price, physical delivery of the  
13 quantity of the investment metals and investment gems purchased by such payment, provided that,  
14 for purposes of this paragraph, physical delivery shall be deemed to have occurred if, within that 7-  
15 day period, the quantity of investment metals and investment gems purchased by the payment is  
16 delivered, whether in specifically segregated or fungible bulk form, into the possession of a  
17 depository, other than the seller, which is either:

18 (a) A bank;

19 (b) A depository, the warehouse receipts of which are recognized for delivery purposes  
20 for any commodity on a contract market designated by the Commodity Futures Trading Commission;

21 (c) A storage facility licensed or regulated by the United States or any agency of the  
22 United States; or

23 (d) A depository designated by the department, and such depository, or other person  
24 which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a  
25 certificate, document of title, confirmation or other instrument evidencing that such quantity of  
26 investment metals and investment gems has been delivered to the depository and is being and will  
27 continue to be held by the depository on the purchaser's behalf, free and clear of all liens and  
28 encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens  
29 of the depository for fees and expenses, which have previously been disclosed to the purchaser.

Amendment to SB 138  
- Page 2 -

2021-0979s

AMENDED ANALYSIS

This bill exempts certain contracts from the definition of "investment metal contract".



Floor Amendment to SB 138

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to consumer protections against profiteering in necessities and relative to the  
4 definition of an "investment metal contract."  
5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 New Section; Consumer Protection; Profiteering in Necessities. Amend RSA 358-A by  
9 inserting after section 2 the following new section:

10 358-A:2-a Profiteering in Necessities.

11 I. For purposes of this section, the following terms shall have the following meaning:

12 (a) "Abnormal market disruption" means a significant disruption to the production,  
13 distribution, supply, sale, or availability of a commodity or commodities that:

14 (1) Is caused by an event such as a natural or man-made emergency or disaster,  
15 whether local or remote; and

16 (2) Causes ordinary competitive market forces to cease to function normally.

17 (b) "Cost" means the expense associated with the acquisition, production, distribution, or  
18 sale of necessities and may include, among other things, replacement costs, taxes, and  
19 transportation costs.

20 (c) "Necessities" means food for human or animal consumption, potable water,  
21 pharmaceutical products including prescription medications, wearing apparel, shoes, building  
22 materials, gas and electricity for light, heat, and power, ice, fuel of all kinds, and fertilizer and  
23 fertilizer ingredients, together with tools, utensils, implements, machinery, and equipment required  
24 for the actual production or manufacture of the same. "Necessities" shall include any other vital or  
25 necessary good or service except those:

26 (1) Subject to continuous maximum price regulation under the provisions of any  
27 state or federal law;

28 (2) As to which the state's authority is preempted; or

29 (3) Furnished or provided by:

30 A. Insurers; or

31 B. Nonprofit hospitals, medical service organizations, or health maintenance  
32 organizations authorized to transact business within the state.

1 (d) "Unconscionable price" means a price that is actionable under this section. There is  
2 a rebuttable presumption that a price is unconscionable when it exceeds by more than 20 percent the  
3 sum of:

4 (1) The price at which similar goods or services were offered for sale or sold by that  
5 person immediately prior to the beginning date of the abnormal market disruption. If that person  
6 did not offer such goods or services immediately prior to the abnormal market disruption, then the  
7 prices is the price at which similar goods or services were offered for sale or sold by another person  
8 similarly situated prior to the abnormal market disruption; and

9 (2) The increased cost to the person of providing the goods or services following the  
10 abnormal market disruption, calculated according to the method used by that person prior to the  
11 abnormal market disruption.

12 II.(a) Whenever it appears upon due inquiry and consultation with the attorney general that  
13 an abnormal market disruption exists or that there is a substantial likelihood that an abnormal  
14 market disruption is imminent, the governor may, in the governor's sole discretion and after  
15 considering whether the declaration of an abnormal market disruption itself will disrupt supplies for  
16 affected necessities, declare an abnormal market disruption.

17 (b) A declaration made pursuant to this paragraph section shall specify:

18 (1) The beginning date of the abnormal market disruption;

19 (2) The particular necessity, necessities, or categories of necessities that are affected  
20 by the abnormal market disruption and made subject to the provisions of paragraphs III and IV; and

21 (3) The levels of trade or commerce that are affected by the abnormal market  
22 disruption and made subject to the provisions of paragraphs III and IV.

23 (c) A declaration of abnormal market disruption made pursuant to this section expires  
24 when the governor declares it expired or 60 days from the date of its issuance, which ever is sooner.  
25 The declaration of abnormal market disruption may be modified by the governor at any time.

26 (d) The governor shall publish decisions made pursuant to this section in a manner  
27 reasonably calculated to give affected persons adequate notice.

28 (e) Any person may petition the governor regarding the governor's decisions under this  
29 section.

30 III. After the governor has declared an abnormal market disruption and before the  
31 declaration of the abnormal market disruption expires, a person may not sell or offer for sale  
32 necessities at an unconscionable price.

33 IV. Any violation of this section shall constitute an unfair or deceptive act or practice within  
34 the meaning of RSA 358-A:2. Any right, remedy, or power set forth in RSA 358-A may be used to  
35 enforce the provisions of this section.

Floor Amendment to SB 138

- Page 3 -

1           2 New Subparagraph; Uniform Securities Act; Definitions; Investment Metal Contract;  
2 Exemptions. Amend RSA 421-B:1-102, (32)(B) by inserting after subparagraph (iv) the following  
3 new subparagraph:

4                           (v) A commodity contract for the purchase of one or more investment metals  
5 and investment gems which requires, and under which the purchaser receives, within 7 calendar  
6 days from the payment in good funds of any portion of the purchase price, physical delivery of the  
7 quantity of the investment metals and investment gems purchased by such payment, provided that,  
8 for purposes of this paragraph, physical delivery shall be deemed to have occurred if, within that 7-  
9 day period, the quantity of investment metals and investment gems purchased by the payment is  
10 delivered, whether in specifically segregated or fungible bulk form, into the possession of a  
11 depository, other than the seller, which is either:

12                   (a) A bank;

13                   (b) A depository, the warehouse receipts of which are recognized for delivery purposes  
14 for any commodity on a contract market designated by the Commodity Futures Trading Commission;

15                   (c) A storage facility licensed or regulated by the United States or any agency of the  
16 United States; or

17                   (d) A depository designated by the department, and such depository, or other person  
18 which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a  
19 certificate, document of title, confirmation or other instrument evidencing that such quantity of  
20 investment metals and investment gems has been delivered to the depository and is being and will  
21 continue to be held by the depository on the purchaser's behalf, free and clear of all liens and  
22 encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens  
23 of the depository for fees and expenses, which have previously been disclosed to the purchaser.

24           3 Effective Date. This act shall take effect January 1, 2022.

2021-1061s

AMENDED ANALYSIS

This bill prohibits profiteering in necessities during a declared abnormal market disruption. This bill also exempts certain contracts from the definition of "investment metal contract".

# Committee Minutes

**SENATE CALENDAR NOTICE**  
**Commerce**

Sen Harold French, Chair  
Sen Bill Gannon, Vice Chair  
Sen Jeb Bradley, Member  
Sen Donna Soucy, Member  
Sen Kevin Cavanaugh, Member

Date: March 9, 2021

**HEARINGS**

Tuesday	03/16/2021	
(Day)	(Date)	
Commerce	REMOTE 000	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	<b>SB 138</b>	relative to consumer protections against profiteering in necessities.
9:15 a.m.		Hearing on proposed Amendment #0543s, relative to consumer protections against profiteering in necessities and relative to the definition of an "investment metal contract", to <b>SB 138</b> , relative to consumer protections against profiteering in necessities.
9:30 a.m.	<b>SB 67</b>	relative to paid sick leave.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/99575649210>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799, or 1-646-558-8656, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-9128
3. Or iPhone one-tap: 13017158592,,99575649210# or 13126266799,,99575649210#
4. Webinar ID: [995 7564 9210](https://www.zoom.us/j/99575649210)
5. To view/listen to this hearing on YouTube, use this link:  
<https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:  
<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: [remotesenate@leg.state.nh.us](mailto:remotesenate@leg.state.nh.us) or call (603-271-6931).

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

**SB 138**

Sen. Sherman  
Sen. Perkins Kwoka  
Sen. Giuda  
Rep. M. Pearson

Sen. D'Allesandro  
Sen. Rosenwald  
Sen. Hennessey

Sen. Gannon  
Sen. Watters  
Rep. Knirk

Sen. Carson  
Sen. Bradley  
Rep. Grote

**SB 138**

Sen. Sherman  
Sen. Perkins Kwoka  
Sen. Giuda  
Rep. M. Pearson

Sen. D'Allesandro  
Sen. Rosenwald  
Sen. Hennessey

Sen. Gannon  
Sen. Watters  
Rep. Knirk

Sen. Carson  
Sen. Bradley  
Rep. Grote

**SB 67**

Sen. Whitley  
Sen. Prentiss  
Rep. McWilliams

Sen. Perkins Kwoka  
Sen. D'Allesandro  
Rep. Schultz

Sen. Rosenwald  
Sen. Sherman  
Rep. Wazir

Sen. Watters  
Sen. Soucy

Aaron Jones 271-4063

Harold F. French  
Chairman

# Senate Commerce Committee

*Aaron Jones 271-4063*

**SB 138**, relative to consumer protections against profiteering in necessities.

**Hearing Date:** March 16, 2021

**Time Opened:** 9:05 a.m.

**Time Closed:** 10:00 a.m.

**Members of the Committee Present:** Senators French, Gannon, Bradley, Soucy and Cavanaugh

**Members of the Committee Absent :** None

**Bill Analysis:** This bill prohibits profiteering in necessities during a declared abnormal market disruption.

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**Sponsors:**

Sen. Sherman

Sen. D'Allesandro

Sen. Gannon

Sen. Carson

Sen. Perkins Kwoka

Sen. Rosenwald

Sen. Watters

Sen. Bradley

Sen. Giuda

Sen. Hennessey

Rep. Knirk

Rep. Grote

Rep. M. Pearson

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**Who supports the bill:** Please refer to sign-in sheets

**Who opposes the bill:** Elliot Axelman, Brian Moran (NECSEMA), Sara Belletete, Daniel McGuire (Granite State Taxpayers), Alvin See, Sandra Stonebanks, Alexandra Mennella, Curtis Barry (NH Retail Lumber Association), Helmut Koch, Amy Dattner-Levy, David McConville; Gary Devore, John Elliott

**Who is neutral on the bill:** Brandon Garod (NH Attorney General's Office), Barry Glennon (NH Bureau of Securities Regulation)

**Summary of testimony presented in support:**

Senator Tom Sherman

- Other states have robust protections against profiteering or price gouging by declaring a market disruption for a particular product.
- Senator Sherman said that everyone believes in profit, but no one should be able to take advantage of people who are vulnerable.
- Residents and their families, staff, and administrators in nursing homes have suffered greatly from the COVID-19 pandemic.



- Last March, Senator Sherman co-founded the COVID Alliance Senior Support Team (SST).
  - After several weeks of outreach, the SST found that nursing homes and assisted living facilities were being price gouged. Often, these facilities already have limited budgets, and they rely on Medicaid for reimbursement.
- Currently, the only protection against profiteering comes from the federal government.
- Senator Sherman said that former Attorney General McDonald was supportive of providing the department with a mechanism to ensure that the most vulnerable aren't taken advantage of during a crisis or an emergency.
- In Maine, a similar statute exists that can be invoked by the governor when there's a market disruption for a specific product.
  - During the pandemic, Governor Mills invoked the statute; however, according to the Maine Attorney General's Office, they haven't used it at all.
- Senator Sherman said the best type of legislation doesn't invoke litigation or criminal prosecution, instead it has a deterrent effect.
- With help from the Attorney General's Office, this bill has adapted the Maine statute to fit New Hampshire.
- Senator Sherman addressed two concerns raised by lobbyists.
  - First, states that have enacted similar legislation haven't seen increased litigation or lawsuits against companies. Senator Sherman said it would be a major hurdle to use this statute for frivolous lawsuits.
  - Second, this bill has protections in place before it can be invoked to ensure it isn't abused.
- Senator Sherman emphasized that this bill is reserved only for the most egregious abuses of the most vulnerable. Additionally, similar to Maine's experience, Senator Sherman hoped it would serve as a strong deterrent.
- **Senator French** asked at what price level would this bill take effect.
  - **Senator Sherman** said there's no fixed number, but there's a formula. A similar approach has been taken in Maine. Beginning on page 1, line 26, an unconscionable price is defined as a price that exceeds 15 percent more than the additional charge. In other words, a vendor couldn't exceed a 15 percent markup after overhead and a wholesaler's markup is taken into account. Often, a vendor doesn't have control over a wholesaler's markup; therefore, Senator Sherman said he didn't think they should be penalized for that.
- **Senator French** asked if this legislation applied to wages.
  - **Senator Sherman** said wages aren't covered by this bill.
- **Senator French** said he thought that wages would come under services.
  - **Senator Sherman** replied that he didn't believe so.

- **Senator Gannon** asked if the 15 percent applied to more than what someone would pay, or if it were more than what it would cost for someone to buy the product in a hyperinflated situation.
  - **Senator Sherman** responded that he would defer this question to the Department of Justice (DOJ). If the DOJ were unable to provide an answer, Senator Sherman said he would follow up with the Committee.

Daniel Curtis, Executive Director, New Hampshire COVID Alliance Senior Support Team

- The SST has provided over 60 assisted living, skilled nursing, and other senior care facilities with actionable information, such as up-to-date guidance, throughout the pandemic.
- Additionally, the SST has monitored the daily status of these facilities and has advocated for these facilities to receive supplies and services that make outbreaks less likely to occur.
- Last April and May, price gouging of essential supplies, particularly PPE, became a recurring complaint from facilities.
- During that time, some facilities ordered from new vendors, some placed substantial orders that were a 1,000 percent higher than what they paid pre-pandemic, and some never received their orders at all. This left some facilities without products and it placed a burden on them to figure out if legal action was a viable option.
- This bill would discourage this type of bad behavior from happening and ensure that medical supplies can be provided to the most vulnerable in long-term care facilities.
- As Senator Sherman stated, this bill would serve as a deterrent too, which would help to keep new and established vendors honest.
- The market disruption declaration provision requires product suppliers to document their increased costs. Therefore, if a wholesaler has increased their prices, then a retailer can document that as the reason they increased their price. Under this provision, Mr. Curtis believed that many price increases could be justified, and most honest suppliers would be able to continue to operate throughout an emergency.
- **Senator French** asked if facilities would purchase products from other countries if an increase of 15 percent were prohibited on certain products.
  - **Mr. Curtis** replied that states with similar price gouging statutes didn't experience a sharper decline in supplies compared to other states. This bill would simply discourage bad behavior and discourage extreme price markups.
- **Senator French** asked if Maine had a similar law.
  - **Mr. Curtis** said that the law in Maine is extremely similar.
- **Senator French** asked if Maine had any trouble getting gloves.
  - **Mr. Curtis** responded that he didn't hear of any reports that they had difficulty physically acquiring gloves.

- **Senator French** asked if Maine paid the same prices as New Hampshire did.
  - Despite individual egregious cases, **Mr. Curtis** said that there wasn't a large difference in prices.
- **Senator French** asked if egregious cases involved small sellers who wouldn't typically be suppliers to nursing homes.
  - **Mr. Curtis** replied that they wouldn't normally supply these facilities; however, as a result of the pandemic, some facilities have sought out new suppliers.
- **Senator Gannon** asked how the stakeholders arrived at 15 percent. Also, **Senator Gannon** wondered what the average profit margin for a nursing home was.
  - **Mr. Curtis** said the average nursing home has no profit margin. In fact, some facilities entered the pandemic with staff shortages and very little savings. Based on Maine's experience, the 15 percent benchmark has worked for them. Additionally, 15 percent is larger than the typical profit margin for bulk goods ranging from gasoline to electricity to masks. **Mr. Curtis** concluded that a lot of suppliers would be excited to get that type of profit margin under normal conditions.

Dr. Judith Joy, RN, Volunteer Statewide Coordinator, New Hampshire COVID Alliance Senior Support Team

- Seventeen facilities mentioned either PPE pricing, expenses, or price gouging on at least 47 separate SST liaison phone calls.
  - During those calls, 12 facilities believed they had been price gouged by private vendors when they purchased PPE.
  - At least 6 notes were made indicating that a facility had asked for information to report price gouging.
  - Finally, one facility went to the federal district attorney to pursue a case against a vendor.
- Based on those calls, many facilities were concerned about PPE and cleaning products, which are essential for the continued operation of facilities dealing with virulent diseases.
- More recently, facilities have been concerned about the increase in their liability insurance as well as the reduction in the range of coverage being offered.
- There have been specific examples provided of a 1,000 percent markup on products. **Dr. Joy** said this was an unconscionable markup amid a pandemic.
- Senior care facilities are businesses that must sustain themselves financially in order to remain open. However, **Dr. Joy** was concerned that facilities might remain open, but their services will fail to meet expectations.
- **Senator French** said he heard twice about the 1,000 percent markup, but he wondered if **Dr. Joy** could elaborate on it.
  - **Dr. Joy** replied that one facility paid \$10 for a box of gloves pre-pandemic; however, they're now paying over \$100 per box.
- **Senator French** asked if it were a big distributor charging this price.

- **Dr. Joy** said she believed so and that the facility was purchasing from their regular distributor.

### **Summary of testimony presented in opposition:**

Daniel McGuire, Board Member, Granite State Taxpayers

- This bill would make an emergency worse.
- During shortages, particularly in emergencies, price increases help to moderate demand and increase supply.
- Mr. McGuire asked the Committee if it were better to have some supply in New Hampshire rather than no supply at all.
  - For example, since gloves didn't exist in the quantities demanded, the price for them had to rise. The raised price did two things:
    - First, it told people who use them for non-medical purposes to use them less often, or reuse them, or find an alternative product.
    - Second, it told suppliers that they needed to create more gloves because there's profit available.
- In a snowstorm, for example, power lines might go down. If overtime were not allowed because it would constitute a 15 percent increase in wages, then line workers might not be willing to travel to New Hampshire. This example demonstrates that higher wages would help drive workers to take the most important jobs.
- Mr. McGuire reiterated that increased prices tell people to moderate their demand and tell suppliers to go to extraordinary efforts to bring in supplies.
- **Senator French** wondered if Mr. McGuire thought this bill would affect wages because he asked that earlier and he was told it wouldn't.
  - **Mr. McGuire** replied that this bill doesn't explicitly mention wages. Instead, he was using it as an example to demonstrate supply and demand. While wages aren't directly mentioned in this bill, vendors must pay their employees. Consequently, if a vendor cannot charge what it wants, then it might be harder to find workers to keep places open during emergencies.

Brian Moran, Director of Government Affairs, New England Convenience Store & Energy Marketers Association

- Mr. Moran believed there had been mixed messages given on whether this bill tried to create statutory authority to go after those who are profiteering or if it sought to control prices.
- NECSEMA was concerned by the 15 percent ceiling limit because retailers are key in addressing supply and demand.
- Similar legislation has been introduced in Connecticut and Massachusetts; however, those bills don't include a price ceiling for products and services.
- During shortages, retailers can impose quantity restrictions to help minimize hoarding so there's greater supply.

- In Connecticut it was found that many retailers weren't price gouging. Instead, they were responding to the costs of wholesalers, manufacturers, and raw materials.
- Mr. Moran reiterated that they didn't support the 15 percent ceiling limit.
- **Senator Gannon** asked if Mr. Moran had a better number in mind for the ceiling. If so, **Senator Gannon** wanted to know why that number was chosen.
  - **Mr. Moran** recommended that no ceiling be placed. Retailer pricing can be complex, and it can vary based on who the retailer is, who their suppliers are, and where they get their products and services from. In Connecticut and Massachusetts, while there's no ceiling limit in their proposed legislation, the state is provided with the authority to look at every business and their supply chain before making a determination that a product has been egregiously priced. As written, this bill would exacerbate supply chain disruptions because a business might decide not to sell a particular product.

Sara Belletete, President, New Hampshire Retail Lumber Association

- Ms. Belletete works at Belletete, Inc., which is a family-owned business that was started in 1898.
- The New Hampshire Retail Lumber Association (NHRLA) represents 69 independent lumber and building material dealers, manufacturers, wholesalers, and other distributors.
- Ms. Belletete said they understood the intent of the bill, especially as people continue to adapt to the financial hardships of the pandemic.
- While price gouging should be discouraged, there should be at risk or less likely to be at risk classifications made.
  - Lumber and building materials, for example, aren't stockpiled in large volumes so that they can be distributed at inflated prices. Instead, items are bought and sold on a weekly basis with prices drastically fluctuating.
- As a result of the pandemic, lumber prices have reached historic levels. While prices are high, Ms. Belletete said there's no price gouging occurring and consumers are being treated fairly.
- Ms. Belletete worried that this bill would lead to frivolous claims by consumers of price gouging. If these accusations were susceptible to a private right of action, then businesses would need to spend their resources and time trying to defend themselves.
- **Senator French** asked Ms. Belletete if she thought prices would go up or down soon.
  - **Ms. Belletete** responded that no one believes prices will go down any time soon due to demand for projects and housing.

**Neutral Information Presented:**

Brandon Garod, Chief of the Consumer Protection & Antitrust Bureau, New Hampshire Department of Justice

- While the Department of Justice is neutral on this bill, it would provide New Hampshire consumers with a substantial level of protections against price gouging during natural disasters or pandemics.
- As Senator Sherman stated, New Hampshire doesn't have any existing protections against price gouging.
- In most cases, the free market should be able to regulate itself when it comes to supply and demand.
- Since the pandemic, however, the Consumer Protection Bureau has received inquiries and reports of price gouging for prescriptions, medical equipment, PPE, and masks.
- Even though products were sold for unconscionable prices, Attorney Garod said there's no mechanism for the Attorney General's Office to investigate or do anything about these reports.
- As previously mentioned, this bill is modeled after Maine's price gouging statute.
- According to the Maine Consumer Protection Chief, the best function of Maine's statute has been its ability to deter price gouging. When price gouging did occur, a phone call was made to the individual wherein they were directed to the statute where price gouging is considered a crime during an abnormal market disruption.
- Unlike a majority of the Consumer Protection Act, this proposed statute wouldn't always be in effect. In fact, there would need to be several circumstances in place for it to be activated.
  - First, a man-made or natural disaster must lead to a market disruption. If there's no such event, then this statute couldn't be activated.
  - Second, even after a disaster exists, a product must be deemed a necessity. In this bill, a necessity is defined as food, medications, items that are used for heat and electricity, and those that provide a vital or necessary good.
  - Third, this statute wouldn't be activated until the governor in consultation with the Attorney General's Office has declared there's an abnormal market disruption for a particular product.
- After all of these circumstances have been met, profiteering on a particular product would then be in violation of the Consumer Protection Act.
- What amounts to an unconscionable price isn't an easy calculus to make and it will be different in each case.
- The language of this bill is constrained enough to provide guidance on what constitutes an unconscionable price, while being broad enough not to enact a one-size-fits-all solution.

- If a product price were to exceed 15 percent of the sum of the prior price and the increased cost of providing it, then there's a rebuttable presumption that the price is unconscionable.
- Even if a product exceeded the 15 percent ceiling, a business could rebut the presumption and present evidence as to why they needed to charge the price they did. If good cause is shown, then a price increase exceeding 15 percent might not be unconscionable.
- Attorney Garod concluded that this bill provides protections that didn't exist before, while also giving the department a tool to deter price gouging before deciding to prosecute a case.
- **Senator French** asked Attorney Garod to elaborate on the calls he received during the pandemic:
  - **Attorney Garod** said they received numerous calls. For example, people reported that stores were selling toilet paper at an unreasonable price. The jurisdiction of the Consumer Protection Bureau is confined to the Consumer Protection Act (RSA 358-A). Since the Consumer Protection Act doesn't define price as an unfair or deceptive practice, there are no protections against price gouging. In some circumstances, the Bureau did call a business owner and try to persuade them that what they're doing isn't in the best interest for the public; however, without the legal authority, the Bureau is unable to deter or curb price gouging.
- **Senator French** asked if action could be taken by the Bureau if a gas station sold toilet paper for \$1.50 a roll when it used to be \$1.00.
  - **Attorney Garod** responded that it was possible, but there are several steps that must occur prior to the statute taking effect. First, the governor would need to declare that there's an abnormal market disruption for toilet paper. If a gas station sold toilet paper at a price that was 15 percent the sum of the prior price and the increased price, then there's a presumption that the price is unconscionable. If the gas station didn't rebut the presumption and no evidence was provided to show that the price increase amounted to a good cause, then a civil enforcement action could be filed against the business in superior court to end their price gouging.

# Senate Commerce Committee

*Aaron Jones 271-4063*

**Amendment 2021-0543s**, relative to consumer protections against profiteering in necessities and relative to the definition of an "investment metal contract", to **SB 138**, relative to consumer protections against profiteering in necessities.

**Hearing Date:** March 16, 2021

**Time Opened:** 10:01 a.m.

**Time Closed:** 10:11 a.m.

**Members of the Committee Present:** Senators French, Gannon, Bradley, Soucy and Cavanaugh

**Members of the Committee Absent :** None

**Bill Analysis:** This bill prohibits profiteering in necessities during a declared abnormal market disruption.

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**Sponsors:**

Sen. Sherman

Sen. D'Allesandro

Sen. Gannon

Sen. Carson

Sen. Perkins Kwoka

Sen. Rosenwald

Sen. Watters

Sen. Bradley

Sen. Giuda

Sen. Hennessey

Rep. Knirk

Rep. Grote

Rep. M. Pearson

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**Who supports the bill:** Senator David Watters, George Kotta

**Who opposes the bill:** No one

**Who is neutral on the bill:** Barry Glennon (NH Bureau of Securities Regulation)

**Summary of testimony presented in support:**

Senator David Watters

- The trade of precious metals is regulated to ensure that buyers make payments and receive the metals they purchased.
- The existing statute has made it difficult and expensive to trade in these metals because RSA 421-B:1-102, (32)(B)(iii) states that the physical delivery of metals must be made within 20 days to a person or to a designated bank or licensed broker dealer only within New Hampshire.
- Amendment 21-0543s would permit physical deliveries to be made outside of New Hampshire. These deliveries must be made to a financial institution, depository, storage facility, or a depository designated by the department.



- Regardless of the place chosen, the Consumer Protection Act would ensure that it's a protected location.
- Senator Watters concluded that the amendment balanced consumer protection, while providing New Hampshire residents with the opportunity to better participate in these markets.

George Kotta

- Through Mr. Kotta's current precious metals dealer, there's a two-way market established where a person can buy from them and sell back to them.
- To have the purchased metals shipped to him, Mr. Kotta must pay postage and insurance. When he wants to sell the metals, he must request packaging and labels from the dealer. Once the items are received by the dealer, Mr. Kotta receives the price at which they were received, not when they were sold.
- Last year, the dealer offered a program where they would store the metals in a depository for Mr. Kotta without the added expense of shipping and insurance. However, under existing law, New Hampshire doesn't permit this.
- As Senator Watters stated, this amendment would allow New Hampshire residents to store their metals in a depository that's not within the state; thus, allowing people to trade in their metals the way they see fit.

**Summary of testimony presented in opposition:** None

**Neutral Information Presented:**

Barry Glennon, Director, New Hampshire Bureau of Securities Regulation

- This amendment came from a model act from 1985. Currently, only 15 states have adopted the model language.
- Director Glennon requested the phrases "precious metals" and "precious gems" be changed to "investment metals" and "investment gems" to be consistent with RSA 421-B.
- Additionally, the amendment permits financial institutions to receive and hold these metals and gems; however, financial institutions aren't defined in the New Hampshire Securities Act, only banks are defined.
- Under current statute, metals must be delivered in 20 days. This amendment would shorten the delivery period to 7 days, which Director Glennon said wasn't a bad idea.

# Speakers

# Commerce Committee Testify List for Bill SB138 on 2021-03-16

Support: 65 Oppose: 15 Neutral: 2 Total to Testify: 11

<b>Name</b>	<b>Email Address</b>	<b>Phone</b>	<b>Representing</b>	<b>Position</b>	<b>Testifying</b>
Curtis Daniel	daniel@covidalliance.com	903.271.7642	Senior Support Team of NH	Support	Yes
Watters Senator David	david.watters@leg.state.nh.us	603-271-2104	Myself (SD 4) - Prime on Amendment	Support	Yes
Kotta George	georgkotta@aol.com	516.491.7096	Myself	Support	Yes
Garod Brandon	brandon.garod@doj.nh.gov	603-573-6103	Attorney General Office - Consumer Protection and Antitrust Bureau	Neutral	Yes
Sherman Senator Tom	jennifer.horgan@leg.state.nh.us	271-7875	SD24	Support	Yes
Axelman Elliot	aluaxelman@gmail.com	732.674.2355	Myself	Oppose	Yes
Moran Brian	brian@necsema.net	781.297.9600	NECSEMA	Oppose	Yes
Joy PhD RN Judith	judyajoy1@gmail.com	603.477.4895	NH Covid Alliance Senior Support Team	Support	Yes
Belletete Sara	sbelletete@belletetes.com	Not Given	Myself	Oppose	Yes
Glennon Barry	barry.glennon@sos.nh.gov	603-271-1463	Bureau of Securities Regulation	Neutral	Yes
McGuire Daniel	danmcguire@gmail.com	603-782-4918	Granite State Taxpayers	Oppose	Yes
Petrucelli Maxine	maxinepet@gmail.com	Not Given	Myself	Support	No
Petrucelli Charles	chasmxpet@gmail.com	Not Given	Myself	Support	No
Campion Polly	Not Given	Not Given	Myself	Support	No
See Alvin	absee@4Liberty.net	Not Given	Myself	Oppose	No
Platt Elizabeth-Anne	lizanneplatt09@gmail.com	603-715-8191	Myself	Support	No
Stonebanks Sandra	sandrastonebanks@yahoo.com	Not Given	Myself	Oppose	No
Nardino Marie	mdnardino@gmail.com	Not Given	Myself	Support	No
Lucas Janet	janluca1953@gmail.com	16037267614	Myself	Support	No
DiNapoli Pamela	nhna.ned@gmail.com	Not Given	New Hampshire Nurses Association	Support	No
Gordon Laurie	Lmgord23@gmail.com	Not Given	Myself	Support	No
Solomon Lois Renee	Lrenees53@gmail.com	603.479.0427	Myself	Support	No
Boutin Carole	Not Given	Not Given	Myself	Support	No
Kayser Shelly	s.kayser@comcast.net	603-943-1711	Myself	Support	No

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<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>
Laker-Phelps Gail	lpsart@tds.net	603.798.5394	Myself	Support	No
Wade Joan	jwade1146@gmail.com	Not Given	Myself	Support	No
Hinebauch Mel	Not Given	603.224.4866	Myself	Support	No
Hinebauch Melissa	Not Given	603.224.4866	Myself	Support	No
Nadeau Sara	snadeau@carriagehillassistedliving.com	603-343-4475	Myself	Support	No
Rettew Annie	abrettew@gmail.com	Not Given	Myself	Support	No
Mennella Alexandra	am88@fastmail.com	646.610.9858	Myself	Oppose	No
Gordon Margaret	Megord98@gmail.com	Not Given	Myself	Support	No
Mattlage Linda	l.mattlage@gmail.com	16034960172	Myself	Support	No
Zaenglein Barbara	Not Given	Not Given	Myself	Support	No
Koutroubas Alex	Not Given	Not Given	NH Association of Residential Care Homes	Support	No
Smith Carla	Tsmith1992@yahoo.com	603.303.0615	Myself	Support	No
Straiton Marie	Not Given	Not Given	Myself	Support	No
Barry Curtis	curtis@barrygr.com	603 496 4564	NH Retail Lumber Association (building materials suppliers)	Oppose	No
Koch Helmut	helmut.koch.2001@gmail.com	603.491.3306	Myself	Oppose	No
Keeler Margaret	peg5keeler@gmail.com	603-491-4689	Myself	Support	No
Newton Jay	Jjnewt@gmail.com	508.254.1286	Myself	Support	No
Perkins Kwoka Senator Rebecca	rebecca.perkinskwoka@leg.state.nh.us	603-271-2104	Myself (SD 21)	Support	No
Hennessey Erin	erin.hennessey@leg.state.nh.us	603.271.4151	SD1	Support	No
Jakubowski Deb	Not Given	Not Given	Myself	Support	No
Jakubowski Deborah	Not Given	Not Given	Myself	Oppose	No
jakubowski dennis	dendeb146@gmail.com	603.496.5749	Myself	Support	No
Garland Ann	annhgarland@gmail.com	Not Given	Myself	Support	No
Rosenwald Cindy	cindy.rosenwald@leg.state.nh.us	603.566.0586	SD 13	Support	No
Lajoie Katherine	jlje23@hotmail.com	603.826.4803	Myself	Support	No
Solomon Renee	Lrenees@myfairpoint.net	603.479.0427	Myself	Support	No

# Commerce Committee Testify List for Bill SB138 on 2021-03-16

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<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>
Sanchez Ruth	ruthmaria29@yahoo.com	Not Given	Myself	Support	No
Bruce Susan	susanb.red@mac.com	603.730.7078	Myself	Support	No
FRIEDRICH ED	erfriedrich@yahoo.com	781.775.9397	Myself	Support	No
Torpey Jeanne	Not Given	Not Given	Myself	Support	No
Falk Cheri	Falk.cj@gmail.com	603.654.2777	Myself	Support	No
Carson Sharon	deborah.chroniak@leg.state.nh.us	603-271-1403	SD 14	Support	No
Taylor Gale	galeforcefacilitators@gmail.com	603.321.7160	Myself	Support	No
Damon Claudia	cordsdamon@gmail.com	603.226.4561	Myself	Support	No
Perencevich Ruth	Not Given	Not Given	Myself	Support	No
Clark Denise	denise.m.clark03055@gmail.com	603.213.1692	Myself	Support	No
Casino Joanne	joannecasino@comcast.net	603.746.3491	Myself	Support	No
Kusch Dan	Not Given	Not Given	Myself	Support	No
Baker Deb	deborahba@yahoo.com	Not Given	Myself	Support	No
Spielman Kathy	jspielman@comcast.net	603.397.7879	Myself	Support	No
Zavgren John	john@zavgren.com	603.371.0513	Myself	Support	No
Corell Elizabeth	Elizabeth.j.corell@gmail.com	603.545.9091	Myself	Support	No
Reed Barbara	moragmcp83@outlook.com	603.352.5015	Myself	Support	No
Blanchard Sandra	sandyblanchard3@gmail.com	603.724.3768	Myself	Support	No
Rankin Don	diggindawgsgw@gmail.com	603.732.2783	Myself	Support	No
Hackmann Kent	hackmann@uidaho.edu	16039343225	Myself	Support	No
McNamee Brigid	brigidmcnamee@yahoo.com	603.223.0139	Myself	Support	No
Vogt Robin	robin.w.vogt@gmail.com	603.969.5720	Myself	Support	No
Dattner-Levy Amy	datcounsl@verizon.net	718.926.9570	Myself	Oppose	No
Rosenberger Teresa	Trosenberger@bernsteinshur.com	Not Given	NH Healthcare Association	Support	No
McConville David	dmc2015@comcast.net	603.801.0187	Myself	Oppose	No
Jones Andrew	arj11718@yahoo.com	Not Given	Myself	Support	No
Devore Gary	torin.asheron@yahoo.com	Not Given	Myself	Oppose	No
Elliott John	john@AllyUSTrading.com	603.233.6953	Myself	Oppose	No
Howard Sherrill	golfmoms@gmail.com	603.726.7614	Myself	Support	No

# Commerce Committee Testify List for Bill SB138 on 2021-03-16

Support: 65 Oppose: 15 Neutral: 2 Total to Testify: 11

<b><u>Name</u></b>	<b><u>Email Address</u></b>	<b><u>Phone</u></b>	<b><u>Representing</u></b>	<b><u>Position</u></b>	<b><u>Testifying</u></b>
Coon Kate	Not Given	Not Given	Myself	Support	No
Deneka Richard	Not Given	Not Given	Myself	Oppose	No
Cahoon Gary	cgccahoon@aol.com	16038011467	Myself	Support	No

# Testimony

## Aaron Jones

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**From:** M K <gouma47sport@gmail.com>  
**Sent:** Wednesday, February 17, 2021 7:03 PM  
**To:** Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones; Bob Giuda; Sharon Carson  
**Subject:** Vote against SB 138

Please vote against SB 138.

I can't believe what is going on at all levels of our government.

You are trying to strip away personal property rights and put struggling small businesses out of business. Incredible. Leave small businesses alone. This legislation makes you look like you are either in the pocket of the big conglomerates that are trying to destroy the character of our nation, or are some sort of power hungry totalitarians.

I never thought that this would be possible in NH, but I was desperately wrong.

I hope to live the remainder of my life as I see fit. I just want the government to leave me alone. Apparently you are determined to establish edicts for all of the citizens of this state.

If you pass this bill, you will cease to be 'elected representatives' and will become 'elite officials.'

Shame on you for even considering this bill. I hope you come to your senses and vote against it,  
Marian Knight  
Nashua, NH



## Aaron Jones

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**From:** Carlene Peterson <carlenebp@yahoo.com>  
**Sent:** Wednesday, February 17, 2021 7:12 PM  
**To:** Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones  
**Subject:** SB 138

I strongly oppose SB 138. This bill would impose price controls on businesses during a state of emergency, preventing them from responding to market forces, and would further restrict supplies in a time when we need them the most.

*Carlene Peterson  
Gilford, NH*

**Aaron Jones**

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**From:** Anthony Amato <tunewriter44@gmail.com>  
**Sent:** Wednesday, February 17, 2021 8:10 PM  
**To:** Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones  
**Subject:** SB 138

I want SB 138 ITL'D.  
I want NO MORE COVID LEGISLATION.

## Aaron Jones

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**From:** maximledoux <maximledoux@protonmail.com>  
**Sent:** Thursday, February 18, 2021 12:27 PM  
**To:** Bob Giuda; Sharon Carson; William Gannon; Jeb Bradley; Erin Hennessey; Harold French; Aaron Jones; Donna Soucy; Kevin Cavanaugh  
**Subject:** Oppose SB 138

I strongly oppose SB 138 and think it is dangerously misguided. This is not the Soviet Union. We should not be imposing price controls. Such top-down government control never works.

The price of a good or commodity is, and should always be understood to be, what someone is willing to sell it for combined with what another person is willing to buy it for.

When government interferes in this basic concept, bad things happen, such as starvation in North Korea and slave labor in China.

Please abandon this misguided bill.

Kind Regards,  
Maxim Ledoux  
Tuftonboro

## Aaron Jones

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**From:** Peter Buckley <buckmeisterq@gmail.com>  
**Sent:** Thursday, February 18, 2021 2:22 PM  
**To:** Donna Soucy; Harold French; Jeb Bradley; Kevin Cavanaugh; William Gannon; Aaron Jones  
**Subject:** Please stop SB138

Let's drop this terrible bill - the governor needs less power, not more (as well evidenced by his grotesque, corrupt, and illegal seizures of power while claiming ends justify means and hiding behind the veil of "for public health benefits"). We need less regulation of businesses and less government involvement that impedes the enormous benefits of free enterprise.

Sincerely,  
Peter Buckley  
Salem NH

--  
Check my availability or book time at <https://calendly.com/peterbuckley>



## NEW HAMPSHIRE RETAIL LUMBER ASSOCIATION

March 16, 2021

Senator Harold French, Chair  
Senator Bill Gannon, Vice Chair  
Senate Commerce Committee Members

Dear Chair French and Members of the Committee

On behalf of the New Hampshire Retail Lumber Association (NHRLA), which represents 69 independent lumber and building material dealers, manufacturers, wholesalers, distributors, and other associated businesses in the state of New Hampshire and as a significant employer of New Hampshire residents, we would like to express our opposition to Senate Bill 138, which prohibits profiteering in necessities during a declared abnormal market disruption. SB 138 specifically includes building materials in the definition of "necessities".

The NHRLA appreciates and understands the intent of this legislation as consumers continue to adapt to the financial hardships created by the COVID-19 pandemic. As reported in a March 25, 2020 press release issued by the Office of the Attorney General, "New Hampshire does not have a specific anti-price gouging statute; however, state law does prohibit unfair and deceptive conduct and the Attorney General's Office vigorously enforces New Hampshire consumer protection laws."<sup>1</sup>

Although we wholeheartedly support the notion that price gouging amidst a market disruption, should be discouraged, there are categories that should be identified as "At risk", and others that that should be considered, "less likely" to be abused during these periods.

We have learned volumes of late that necessary items during a time of crisis, such as medicine, surgical gloves, masks, gasoline, etc., should not be used as an inflated profit center to benefit only those who have stockpiles. These are items that tend to be manufactured, stocked and warehoused in large volumes for distribution. Lumber and Building materials are not. These items are often traded on a weekly basis with price fluctuations just as often. Many of the items we distribute are manufactured on or after the time of order. This creates price variations from one day to the

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<sup>1</sup> <https://www.doj.nh.gov/news/2020/20200325-price-gouging.htm#:~:text=New%20Hampshire%20does%20not%20have,New%20Hampshire%20consumer%20protection%20laws.>



next, as well as one retailer to the next. The opportunity for price gouging is negated by the competitive nature of the Retail Community and the myriad of locations one can shop.

Despite the unlikelihood of price gouging within our industry, the average consumer has no way of judging how our products are priced. The cost of goods in the LBM industry is not published in the back of a newspaper or on the nightly news. In the last few months, any consumer shopping for framing lumber might just assume there is gouging and file a claim with the proposed bill as written. This could stand to open a large door of frivolous litigation that none of us have the time or resources to combat. There have been no examples of price gouging during a market disruption within our industry, with the checks and balances responsible for this still fully in place.

As drafted, the bill seems to allow for increases in cost to the seller that only will come in to play in response to a lawsuit. This bill proposes to put that language into RSA 358-A and therefore susceptible to private right-of-action. Businesses in the throes of economic hardship due to the pandemic would have to spend precious resources defending against any person who feels a price is "too high", even when in the end they can defend their prices legally under the provisions of this bill.

Another complication is if that person did not offer a particular product prior to a declared market disruption, then the formula relies upon the price charged by a separate entity.

It is also important to note that these types of price caps can exacerbate the very problem of low supply due to artificially low prices. In the end, market disruption legislation does not always help or protect the very people it seeks to assist during an emergency.

If there are any questions, please feel free to contact Curtis Barry, NHRLA Lobbyist, at 603-496-4564 or email him at [curtis@barrygr.com](mailto:curtis@barrygr.com).

Sincerely,

New Hampshire Retail Lumber Association

Enclosure: NHLRA Membership Lis

March 25, 2020, Office of the Attorney General Price Gouging Press Release



585 North Greenbush Road, Rensselaer, NY 12144  
Phone 518.286.1010 or 800.292.6752 • Fax 518.286.1755 • [www.nrla.org](http://www.nrla.org)



# The New Hampshire Retail Lumber Association

The New Hampshire Retail Lumber Association (NHRLA) has 69 member locations and represents independent lumber and building material dealers, manufacturers, wholesalers, distributors, and other associated businesses in the state of New Hampshire. The lumber and building materials industry employs nearly 17,500 New Hampshire residents.

## NHRLA Members

- A&B Lumber Company:** Moultonborough, Pembroke  
**Acadia Insurance Company:** Manchester  
**Alton Home & Garden Center:** Alton  
**Ashland Lumber Company Inc.:** Ashland  
**Beau-Trusses:** Boscawen  
**Belletetes Inc.:** Andover, Jaffrey, Nashua, Peterborough, Sunapee  
**Benson Lumber & Hardware:** Derry, Londonderry  
**Boise Cascade:** Greenland  
**Boulia-Gorrell Lumber Co. Inc.:** Laconia  
**Brock's Plywood Sales Inc.:** Rochester  
**Caron Building Center Inc.:** Berlin  
**Coastal Forest Products, Inc.:** Bedford  
**Country 3 Corners Building Center:** Weare  
**Cushman Lumber Co., Inc.:** Charlestown  
**Cyr Lumber Company Inc.:** Tilton, Warner, Windham  
**Di Prizio Pine Sales:** Middleton  
**Durgin and Crowell Lumber Co.:** New London  
**East Coast Lumber:** East Hampstead  
**Fairview Millwork Inc.:** Amherst, Seabrook  
**Feuer Lumber Inc.:** Atkinson  
**Fogg's Hardware and Building Supplies:** Woodsville  
**Friend Lumber Co.:** Hudson  
**Gilford Home Center:** Gilford  
**Goodfellow, Inc.:** Manchester  
**Hamshaw Lumber Inc.:** Keene  
**Hancock Lumber Company:** North Conway  
**Huttig Building Products:** Hooksett  
**Jackson Lumber & Millwork Co.:** Raymond  
**LaValley Building Supply Inc.:** Claremont, Newport, Walpole, West Lebanon  
**Lumber Barn:** Bradford, Goshen, Newbury  
**Mast Road Grain & Bldg. Mtl:** Manchester  
**Middleton Building Supply:** Dover, Hampton, Meredith, Middleton  
**Milford Lumber Company Inc.:** Milford  
**Moynihan Lumber Company:** Plaistow  
**Nitco:** Concord  
**P.J. Currier Lumber Co. Inc.:** Amherst  
**Pelham Building Supply:** Pelham  
**Perras Ace, Inc.:** Lancaster  
**Petrocelli Marketing Group:** Merrimack  
**PPG Industries, Inc.:** Milford  
**Preferred Building Systems:** Claremont  
**Quickrete-Boston:** Brentwood  
**R.P. Williams & Sons Inc.:** Bristol  
**Reeds Ferry Lumber Corporation:** Merrimack  
**Ricci Lumber:** Portsmouth  
**Seacoast Mills Building Supply, Inc.:** Brentwood  
**Selectwood:** Portsmouth  
**Skehan Home Center Inc.:** Center Ossipee  
**The Rowley Agency:** Concord  
**Varney-Smith Lumber Co. Inc.:** Lisbon  
**Wallboard Supply Company, Inc., U.S. LBM, LLC:** Londonderry  
**White Mountain Lumber:** Berlin



585 North Greenbush Road, Rensselaer, NY 12144  
Phone 518.286.1010 or 800.292.6752 • Fax 518.286.1755 • [www.nrla.org](http://www.nrla.org)

**Aaron Jones**

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**From:** PickettFamily <pickettfamily@protonmail.com>  
**Sent:** Friday, February 26, 2021 12:09 AM  
**To:** Bob Giuda; Sharon Carson; Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; ODonna.Soucy@leg.state.nh.us; Aaron Jones  
**Subject:** OPPOSE SB138 & HB493 VOTE NO.

Dear Representatives of New Hampshire

I am going to make it clear and simple. Please go read 1984, written by George Orwell. Please go to your local library where my tax dollars are being used to pay a librarian that my children and I can go in because of unconstitutional mask mandates. My children don't need to wear a mask. They are young, and science has proven they are the least acceptable to COVID.

Please oppose SB 138 and HB493 and stop trying to give the government and our governor more control, e.g., making SB138 or HB493 into law.

**Written more than 70 years ago, 1984 was George Orwell's Orwell's chilling prophecy about the future. And while 1984 has come and gone, his dystopian vision of a government that will do anything to control the narrative is timelier than ever...**

Make sure to wear the mask that supposedly protects you if you go to the library because this is the only way you can get in or an appointment. My kids and the books will get some form of COVID when I there alone by appointment.

I am not allowed to go to the local library because of the mask mandate with my kids under the age of 8 because of the lies you tell people about COVID-19 vs. COVID. My husband is a researcher and truly understands numbers.

I am asking you to stop trying to pass ridiculous lockdown bills amid a "so-called crisis," attacking businesses and people's freedom to be taken away by trying to give any current or future governor more power to create unconstitutional lockdown, all for the sake of "safety." The Nazis said this to the Jews, and let's remember the Holocaust.

You can technically argue the State of Emergency is a form of abuse. Legislature representatives are "neglecting" to look at the data that Renew NH is presenting and make a sound decision together to keep our small businesses and schools open; instead, they focus on proposing unconstitutional laws like SB155.

Suppose New Hampshire representatives continue to refuse to look at the data that Renewed NH presents and other organizations like the Great Barrington Declaration and vote differently for upcoming bills SB138 & HB493 and allow the families, people, and business to serve the community in the way they know BEST a support "HCR2" the resolution to END THE STATE OF EMERGENCY.

In that case, I will vote differently in upcoming elections. My husband and I we will not forget.

My husband and I look at New Hampshire representatives' policies "they vote on" and "not the letter behind the political party affliction." We will drain the swamp if necessary by looking at policies that are being voted on.

Family/people's business our stake, and their financial livelihoods are at stake. Not government power is at stake.



COVID stimulus will not help. COVID stimulus packages will continue to put future generations in debt, and giving the governor more power will not help, and we all know it.

I have a unique background. I am Latina and White. Proud to be White and Latina who speak English and Spanish. My grandparents are Spaniard immigrants who left SOCIALISM. I am the daughter of a Veteran whose father fought in wars for our FREEDOM. I am a veteran myself, and I can go on and on. I am a wife and mom of three young kids, all under the age of eight. I am a clinical social worker, a researcher, a registered play therapist supervisor, and a business owner; I will have my voice heard about freedoms being taken away for the sake of "safety." Nazi Germany.

Vote opposition against SB138 & HB493 and support freedom. Remember Nazi Germany "All for your safety." Millions of Jews died and please read or reread 1984 George Orwell. History and wisdom from my father and grandparents who have shared their sad stories of losing their freedoms and fighting for our supposed freedoms we died in war.

Respectfully,  
Adaris Pickett

Sent with [ProtonMail](#) Secure Email.

**Aaron Jones**

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**From:** DONNA Beatrice <donnabeatrice13@gmail.com>  
**Sent:** Sunday, March 7, 2021 6:10 PM  
**To:** Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones  
**Subject:** SB138

**Dear Committee Members,**

**Please oppose SB138, which would impose price controls on businesses during a state of emergency to prevent them from responding to market forces, which would further restrict supplies in a time when we need them the most.**

**Thank you,  
Donna and John Beatrice**



March 16, 2021

Testimony of Brian Moran  
Director of Government Affairs, New England Convenience Store & Energy Marketers Association

New Hampshire General Court  
Senate Commerce Committee

**SB 138 – An Act relative to consumer protections against profiteering in necessities.**

Chairman French, Vice Chair Gannon, and Members of the Committee:

The New England Convenience Store & Energy Marketers Association (NECSEMA) represents convenience store and gasoline retailers, independent transportation fuel distributors, and the businesses which supply them. According to the National Association of Convenience Stores, there are almost 900 convenience stores in New Hampshire (655 of which sell motor fuels) that employ over 14,000 people.

As proposed SB 138 would upon a market disruption declaration by the Governor, either local or remote, make it illegal to sell products or services more than 15% of the price of the product or necessity was offered prior to the disruption.

**NECSEMA opposes SB 138.** We appreciate the desire to hold persons choosing to profiteer accountable. Early on during the pandemic there were several egregious examples, mainly thru online sellers, where desirable products were offered for sale at outrageous margins. In general, we find price gouging or profiteering legislation, that involve hard pricing benchmarks often end up creating more problems than they solve, especially on those not seeking to profiteer.

Given our year-long experience with the pandemic, temporary shortages of essential products have occurred, and some essential product prices have increased. However, most essential products have remained available, at numerous outlets, and customers were not beholden to shop at any one retailer. Despite the pandemic, the marketplace worked. Competition worked, giving customers choices, and isolating and minimizing those seeking to profiteer. Retailers also helped stem shortages by discouraging hoarding and limiting purchase quantities. Not to be underestimated, a consumer also knows a fair or unfair price when they see it, and in a competitive marketplace they have options to shop elsewhere.

NECSEMA retailers have little control over the costs imposed by manufacturers and wholesalers on the products we sell that our customers want. However, the bill as written would preclude any justifiable price increases above 15% throughout the entire supply chain during a declared disruption, including those costs necessary by manufacturing, wholesale suppliers, and retailers. We believe setting a threshold such as this, sets a dangerous precedent that is unwarranted, unrealistic, highly subjective, and largely ignores supply and demand economic principles with which our local, regional, national, and international economy operates. Such a threshold may also catalyze or exacerbate supply disruptions as retailer cannot pass through any added costs

1044 Central Street, Suite 203  
Stoughton, MA 02072  
(781) 297 – 9600

above 15% without operating at a loss. Retail pricing is complex and highly variable, and dependent on the retailers purchasing power of a product, or lack thereof, their suppliers' costs, including product availability and manufacturer supply, and transportation costs. It is complex and retailer specific, and best evaluated on a case-by-case basis as opposed to a subjective pricing threshold.

We note, in addition to NH, both the Massachusetts and Connecticut state legislature are addressing this similar issue. Neither state, has chosen a path to define an unconscionable price at 15%.

Thank you for your thoughtful consideration of our position, and we sincerely hope the Committee votes that SB 138 "ought not to pass".

Respectfully,



Director Government Affairs  
brian@necsema.net | 781-297-9600 x5

## Aaron Jones

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**From:** Dan McGuire <danmcguire@gmail.com>  
**Sent:** Monday, March 15, 2021 10:53 PM  
**To:** Aaron Jones  
**Cc:** Ray F. Chadwick  
**Subject:** Senate Commerce -- SB 138

To members of the Senate Commerce Committee:

On Tuesday, I will testify against SB 138, *relative to consumer protections against profiteering in necessities* on behalf of Granite State Taxpayers, our premier taxpayer association.

SB 138 forbids prices of goods from rising more than 15% during an emergency. The consequence will be to encourage hoarding and to reduce or eliminate supplies of key necessities such as water, milk, fuel, generators, construction materials, and yes, toilet paper, when they are needed most.

Rising prices serve two complementary functions during shortages; they discourage demand (hoarding) and they encourage supply. Prices rise only until equilibrium is restored. When demand abates and supply increases, prices fall.

Imagine if this law applied to wages. After a severe storm wrecks power lines, we need a large influx of electrical workers from other states to restore power. If companies were not allowed to pay overtime, how many workers from Buffalo or Cleveland are going to hop in their trucks and drive all night to help us out?

It is not just labor that is needed when power lines are down. Trucks, chainsaws and generators must have fuel. Stoves need wood. People and pets need drinking water. Prices must rise after a disruption to quickly restore supplies, and keep them available for the most productive uses.

Here are some short economics articles that reinforce this point:

[Hurricanes Don't Blow Away Economic Law](#) by Steven Horwitz  
[On Price Gouging](#) by Donald J. Boudreaux  
[How Price Gouging Helped My Family During a Storm](#) by Mark Steckbeck  
[Anti-Price Gouging Legislation Endangers Floridians](#) by Tricia Beck-Peter  
[A Poll of Economists on Price Gouging](#) by David Henderson  
[If You Hate Empty Store Shelves, You Should Love "Price Gouging"](#) by Anthony Rozmajzl

Yours,  
Dan McGuire  
Epsom  
603-782-4918  
[danmcguire@gmail.com](mailto:danmcguire@gmail.com)

**Aaron Jones**

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**From:** Peter de Bruyn Kops <dbk@acugen.com>  
**Sent:** Tuesday, March 16, 2021 1:12 AM  
**To:** ~Senate Commerce Committee  
**Subject:** rec SB138 ITL

Mr. Chairman and members of the committee

My name is Peter de Bruyn Kops and I am a resident of Amherst, NH. I own and operate a food-producing business in New Hampshire and I am a board member of Granite State Taxpayers. Thank you for reading my testimony.

Government intervention in the economy has both intended and unintended effects.

Price control laws are a good example, even if they are dressed up as responding to an "abnormal market disruption".

This bill is especially objectionable because we have been living under a state of emergency for close to a year now. What is to stop a governor who is fond of dictatorial powers from declaring an abnormal market disruption under this bill every 61 days?

I can imagine scenarios under SB138 where I would need to stop selling my food products in-state in order to preserve my working capital.

Regarding I(d)(2) of SB138, my method of pricing is not a function just of my costs. I price based on my view of the market-clearing price and my expectations of how my customers will react to that price. To the extent I consider my costs, it is over a long time horizon and considers future costs. As a farmer, I produce in one season and sell for four seasons. I need to make sure I have adequate working capital, in real terms, in order to produce and harvest next year's crop.

We live in inflationary times, with massive deficit spending and money creation, combined with government inflation statistics that are engineered to mask the level of price increases. What is to stop a governor from declaring high price inflation to be an "abnormal market disruption"? That could put farmers out of business and the governor would then be tempted to micromanage price increases above 15% as necessary exceptions.

Take a moment to think about how the NH agriculture sector has responded to the emergency over the past year. We have continued to produce, continued to serve customers and continued to deliver to stores. Those are not things we can do over Zoom. Judging from the behavior of many members of the NH House and Senate, we are doing things they consider too dangerous. And now comes this bill which could really mess things up for us. Maybe we should retire.

Please vote SB138 ITL.

Peter de Bruyn Kops  
dbk @ acugen.com  
603-673-3551

## Aaron Jones

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**From:** GRC and CGC <cgccahoon@aol.com>  
**Sent:** Tuesday, March 16, 2021 3:24 PM  
**To:** Aaron Jones  
**Subject:** SB 138

I am writing to voice my support for SB 138. As the owner/ administrator of a small assisted living home, Friendship Manor in New Ipswich NH, I was appalled by what I had to pay for sanitizing materials and PPE in March, April and May of last year. Two examples: I spent \$320.00 for 4 gallons of hand sanitizer ( 3 to 4 times the normal price) and \$99 for 8 refills for canisters of sanitizing wipes ( at least 5 times the normal price). Hopefully the passage of SB 138 will prevent this kind of profiteering in the future.

Respectfully submitted,  
Gary Cahoon  
Administrator  
Friendship Manor

**The COVID Alliance Senior Support Team (SST) of New Hampshire**  
Statement to the Senate Commerce Committee on SB138  
2021 March 16th

*Thank you to Chairman French and the members of the committee for the opportunity to present today.*

Presenters:     Senator Tom Sherman, District 24  
                  Daniel Curtis, Executive Director of the SST  
                  Judith Joy, PhD, RN, Statewide Coordinator of the SST

The mission of the Senior Support Team (SST) is to support assisted living facilities, skilled nursing facilities, and other senior residential facilities in New Hampshire by providing actionable information when they need it, monitoring their status daily, and advocating for any supplies or services that might make COVID-19 outbreaks in their facilities less likely. We are an all-volunteer team that operates 100% remotely.

Our volunteers have communicated daily with the leaders of 60+ senior residential facilities all around New Hampshire since we began our operations on April 13th, 2020.

Throughout this time, we've collected dozens of both prompted and unprompted notes from our facilities about their experiences with price gouging in essential supplies, especially PPE. We began routinely and specifically asking about price gouging in early July.

We have notes on what happens when untested new vendors enter the market for medical supplies, cleaning supplies, and PPE. Several of our facilities sought out new vendors and placed substantial orders last April and May at exorbitant prices for essential supplies like masks, gowns, and gloves. We documented several cases where the facility supply manager paid up front at a high markup, then in some cases received nothing at all. Now they have twice as much work and less time for it. They still need their supplies, and now they have to figure out if it's viable to take legal action and get their money back. Having additional tools to discourage this type of bad behavior right from the beginning of an emergency would help keep buyers like long-term care facilities well away from scenarios where this type of problem might affect the quality of care they can provide. Knowing that price gouging is off-limits and will be followed-up on by the state will help keep both new and established suppliers honest.

We want the market for medical supplies and PPE to work. We want supplies and PPE to get where they're needed as efficiently as possible to preserve the health and safety of all New Hampshire residents, including the vulnerable elder community in senior care facilities. The team that worked on the concept for this bill sought out examples with fair provisions for suppliers, and the bill we ended up with here includes a broad provision that allows suppliers of products under the market disruption declaration to document increased costs from upstream in the supply chain and increase their prices accordingly. I fully expect that many of the price increases we have observed in the markets for PPE and medical supplies over the last year could actually be justified under this provision. For suppliers conducting business honestly, nothing at all would change.

The market for PPE and other essential supplies was, for many months at least during the last year, unable to respond and continue functioning well under the new circumstances of the COVID pandemic. We know bad actors were out there taking advantage of that, and we know that made it even more difficult for some of our facilities, on the front lines, caring for our most vulnerable seniors, to get the supplies they needed. We don't want that to happen next time.



We compiled data on the conversations our Liaisons had with our facilities during 2020:

- 17 distinct facilities among our participants in some way discussed PPE prices, expenses, or price gouging with our Liaisons in 45 calls.
  - That's 31% of the facilities we serve.
- 12 distinct facilities indicated that they believe they were price gouged when purchasing PPE from private vendors. That's We've been asking specifically about this since the beginning of July.
  - That's 22% of our facilities.
- We had at least 6 notes indicating that facility contacts asked Liaisons for contact info to report price gouging.
- We know at least 1 facility among our members that has gone through the full process of reporting price gouging to the federal District Attorney. That was back in late June.
- Most notes on price gouging concern PPE and cleaning products. One mentions contract agency nurses. We've received a couple of newer notes from this year about a sharp increase in the price of liability insurance for senior care facilities and reductions in the range of coverage offered.
- We have specific examples of up to a 1000% markup that is unconscionable for a senior care facility in the midst of a pandemic.

Make no mistake, senior care is a business, a business that must sustain itself financially or cease to operate. If we fail to acknowledge the struggle of these essential services for seniors in our state I shudder to think of the cost to our citizens and our state if many of them, or even some, elect to close. As a nurse the worst possible scenario is, they remain open and the services they provide fail to meet expectations.

## Aaron Jones

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**From:** Shelly M C Kayser <s.kayser@comcast.net>  
**Sent:** Tuesday, March 16, 2021 4:46 PM  
**To:** Harold French; William Gannon; Kevin Cavanaugh; Jeb Bradley; Donna Soucy; Aaron Jones  
**Subject:** SB 138 Support

Hi everyone,

I am writing to express my support for SB 138 with regard to price gouging. As a nurse, I think it is extremely important that health care facilities are protected from price gouging. As we've seen during the current COVID-19 crisis, at least in the beginning, there was an extreme PPE shortage. I have been volunteering helping long-term care facilities across the state for the last year and have seen quite a few instances of very high prices for gloves in particular. I'm sure there are many other instances out there. We need to make sure this does not happen again. Long-term care facilities are struggling financially and do NOT have the funds to pay exorbitant prices for basic things such as PPE. Reasonable limits on prices, which this bill suggests, are exactly what the state of NH needs. I don't think this bill is too restrictive on the free market as some might argue. It simply protects those that may be impacted during an extreme emergency situation such as COVID-19. Health care facilities need this.

Thank you and I urge to support the passage of this bill.

Shelly Coddington-Kayser, MSN, RN  
Amherst, NH

# Voting Sheets

**Senate Commerce Committee**  
**EXECUTIVE SESSION RECORD**  
*2021-2022 Session*

Bill # SB 138

Hearing date: 3/16/21

Executive Session date: 3/23/21

Motion of: AMENDMENT (0873s) Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: OTP-A Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: CONSENT Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reported out by: SEN. FRENCH

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Tuesday, March 23, 2021

THE COMMITTEE ON Commerce

to which was referred **SB 138**

AN ACT

relative to consumer protections against  
profiteering in necessities.

Having considered the same, the committee recommends that the Bill

ought to pass with amendment

by a vote of: 5-0

Amendment # 0979s

Senator Harold French  
For the Committee

As introduced, this bill would have allowed the New Hampshire Department of Justice to prohibit profiteering on certain products during an emergency. Some members of the Committee felt that Section 1 of the underlying bill needed additional work to address concerns raised during the public hearing. As amended, this bill would allow investment metals and investment gems to be physically delivered to banks, depositories, or storage facilities outside of New Hampshire. Currently, under RSA 421-B:1-102, (32)(B)(iii), these items must be physically delivered to the purchaser or to a designated New Hampshire bank or licensed broker dealer. As a result, New Hampshire consumers must pay expenses, such as shipping and insurance, which they wouldn't have to pay if they could store their metals or gems in a depository outside of the state.

Aaron Jones 271-4063

FOR THE CONSENT CALENDAR

**COMMERCE**

**SB 138**, relative to consumer protections against profiteering in necessities.

Ought to Pass with Amendment, Vote 5-0.

Senator Harold French for the committee.

As introduced, this bill would have allowed the New Hampshire Department of Justice to prohibit profiteering on certain products during an emergency. Some members of the Committee felt that Section 1 of the underlying bill needed additional work to address concerns raised during the public hearing. As amended, this bill would allow investment metals and investment gems to be physically delivered to banks, depositories, or storage facilities outside of New Hampshire. Currently, under RSA 421-B:1-102, (32)(B)(iii), these items must be physically delivered to the purchaser or to a designated New Hampshire bank or licensed broker dealer. As a result, New Hampshire consumers must pay expenses, such as shipping and insurance, which they wouldn't have to pay if they could store their metals or gems in a depository outside of the state.

**Docket of SB138****Bill Title:** (New Title) relative to the definition of an "investment metal contract".*Official Docket of SB138.:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
2/3/2021	S	<b>Introduced</b> 01/06/2021 and Referred to Commerce; <b>SJ 3</b>
3/9/2021	S	Remote <b>Hearing:</b> 03/16/2021, 09:00 am; Links to join the hearing can be found in the Senate Calendar; <b>SC 15</b>
3/9/2021	S	Remote <b>Hearing:</b> 03/16/2021, 09:15 am, on proposed amendment <b>#2021-0543s</b> ; Links to join the hearing can be found in the Senate Calendar; <b>SC 15</b>
3/23/2021	S	Committee Report: Ought to Pass with Amendment <b>#2021-0979s</b> , 04/01/2021; Vote 5-0; CC; <b>SC 17</b>
4/1/2021	S	Sen. Sherman Moved to Remove SB 138 from the Consent Calendar; 04/01/2021; <b>SJ 10</b>
4/1/2021	S	Committee Amendment <b>#2021-0979s</b> , RC 23Y-1N, AA; [&]; <b>SJ 10</b>
4/1/2021	S	Sen. Sherman Floor Amendment <b>#2021-1061s</b> , RC 7Y-17N, AF; 04/01/2021; <b>SJ 10</b>
4/1/2021	S	<b>Ought to Pass with Amendment</b> 2021-0979s, RC 24Y-0N, MA; OT3rdg; 04/01/2021; <b>SJ 10</b>
4/13/2021	H	Introduced (in recess of) 04/09/2021 and referred to Commerce and Consumer Affairs <b>HJ 7 P. 100</b>
4/21/2021	H	Public Hearing: 04/27/2021 10:00 am Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/96624100489">https://www.zoom.us/j/96624100489</a> / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
5/5/2021	H	Executive Session: 05/13/2021 10:00 am Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/93883325643">https://www.zoom.us/j/93883325643</a>
5/26/2021	H	Committee Report: Ought to Pass (Vote 19-0; CC) <b>HC 26 P. 5</b>
6/3/2021	H	<b>Ought to Pass:</b> MA VV 06/03/2021
7/1/2021	H	Enrolled (in recess of) 06/24/2021
7/1/2021	S	Enrolled Adopted, VV, (In recess 06/24/2021); <b>SJ 20</b>
7/13/2021	S	Signed by the Governor on 07/09/2021; Chapter 0120; Effective 01/01/2022



# Other Referrals

**Senate Inventory Checklist for Archives**

Bill Number: SB 138

Senate Committee: Commerce

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

**Bill Hearing Documents: (Legislative Aides)**

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

**Committee Action Documents: (Legislative Aides)**

All amendments considered in committee (including those not adopted):

- amendment # 21-05435  - amendment # 21-09798

- amendment # 21-0873 - amendment # \_\_\_\_\_

Executive Session Sheet

Committee Report

**Floor Action Documents: (Clerk's Office)**

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # 1061s \_\_\_\_\_ - amendment # \_\_\_\_\_

\_\_\_\_\_ - amendment # \_\_\_\_\_ \_\_\_\_\_ - amendment # \_\_\_\_\_

**Post Floor Action: (if applicable) (Clerk's Office)**

\_\_\_\_\_ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

\_\_\_\_\_ Enrolled Bill Amendment(s)

\_\_\_\_\_ Governor's Veto Message

**All available versions of the bill: (Clerk's Office)**

as amended by the senate \_\_\_\_\_ as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Aaron Jones  
Committee Aide

7/21/21  
Date

Senate Clerk's Office [Signature]