

SENATE No. 640

The Commonwealth of Massachusetts

PRESENTED BY:

Gale D. Candaras

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act punishing the exploitation of emergency or major disaster victims.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Gale D. Candaras

First Hampden and Hampshire

Bruce E. Tarr

First Essex and Middlesex

SENATE No. 640

By Ms. Candaras, a petition (accompanied by bill, Senate, No. 640) of Gale D. Candaras and Bruce E. Tarr for legislation relative to the exploitation of emergency or major disaster victims. The Judiciary.

The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen
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An Act punishing the exploitation of emergency or major disaster victims.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 266 of the General Laws is hereby amended by inserting after section
2 33A the following section:-

3 Section 33B. (a) For the purposes of this subsection, the following words shall
4 have the following meaning:

5 “Benefit”, any record, voucher, payment, good, service, right, privilege, money
6 or thing of value provided by the United States, a state or local government or other entity.

7 “Declared emergency or disaster”, an event or serious of events, subsequent,
8 during or in advance thereof, which precipitated a gubernatorial proclamation of a state of
9 emergency pursuant to 639 of the acts of 1950 or a presidential declaration pursuant to Title IV
10 or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C.
11 §§401, et seq. and §§501, et seq.

12 “Emergency or disaster area”, an area subject to a proclamation issued by the
13 governor pursuant to chapter 639 of the acts of 1950 or an area subject to a presidential
14 declaration pursuant to Title IV or Title V of the Robert T. Stafford Disaster Relief and
15 Emergency Assistance Act, 42 U.S.C. §§401, et seq. and §§501, et seq.

16 “Emergency or major disaster assistance benefit”, any benefit authorized,
17 transported, transmitted, transferred, disbursed or paid pursuant to chapter 639 of the acts of
18 1950 or Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance
19 Act, 42 U.S.C. §§401, et seq. and §§501, et seq.

20 “Property” that which is the subject of the larceny or conversion and which shall
21 bear a nexus to the declared disaster or emergency and may include money or other thing of
22 value to purchase a service; provided, however, that such service shall bear a nexus to the
23 declared disaster or emergency.

24 “Victim”, a person who, as the proximate cause of a declared emergency or
25 disaster, suffered property loss or physical injury or the parent, guardian or caretaker of a person
26 who, as the proximate cause of a declared emergency or disaster, suffered physical injury.

27 (b) Whoever steals, or with intent to defraud obtains by a false pretense, or
28 whoever unlawfully, and with intent to steal or embezzle, converts, secretes, unlawfully takes,
29 carries away or conceals any emergency or major disaster assistance benefit, regardless of value,
30 whether such emergency or major disaster assistance benefit is, or is not, in his possession at the
31 time of such conversion or secreting, shall be punished by imprisonment in the house of
32 correction for not more than 2½ years or in state prison for not more than 30 years or by a fine of
33 not more than \$1,000,000 or by both such fine and imprisonment.

34 (c) (i) Whoever steals, or with intent to defraud obtains by a false pretense,
35 property of a victim during the period commencing on the first day the declared emergency or
36 disaster was in effect to 90 days from the date the declared emergency or disaster expires,
37 inclusive, whether such property is, or is not, in his possession at the time of such conversion or
38 secreting shall be punished by imprisonment in the house of correction for not more than 2½
39 years or in state prison for not more than 30 years or by a fine of not more than \$1,000,000 or by
40 both such fine and imprisonment.

41 (ii) Whoever unlawfully, and with intent to steal or embezzle, converts, secretes,
42 unlawfully takes, carries away or conceals property of a victim during the period commencing on
43 the first day the declared emergency or disaster was in effect to 90 days from the date the
44 declared emergency or disaster expires, inclusive, whether such property is, or is not, in his
45 possession at the time of such conversion or secreting shall be punished by imprisonment in the
46 house of correction for not more than 2½ years or in state prison for not more than 30 years or by
47 a fine of not more than \$1,000,000 or by both such fine and imprisonment.

48 (d) (i) Whoever: (1) with the intent to exploit a victim, steals, or with intent to
49 defraud obtains by a false pretense, property of a victim during the period commencing 91 days
50 from the date the declared emergency or disaster expires to 3 years from the date the declared
51 emergency or disaster expires, inclusive, whether such property is, or is not, in his possession at
52 the time of such conversion or secreting shall be punished by imprisonment in the house of
53 correction for not more than 2½ years or in state prison for not more than 30 years or by a fine of
54 not more than \$1,000,000 or by both such fine and imprisonment.

55 (ii) Whoever: (1) with the intent to exploit a victim, unlawfully, and with intent to steal
56 or embezzle, converts, secretes, unlawfully takes, carries away or conceals property of a victim

57 during the period commencing 91 days from the date the declared emergency or disaster expires
58 to 3 years from the date the declared emergency or disaster expires, inclusive, shall be punished
59 by imprisonment in the house of correction for not more than 2½ years or in state prison for not
60 more than 30 years or by a fine of not more than \$1,000,000 or by both such fine and
61 imprisonment.

62 (f) Whoever violates this section and such violation was committed by means of
63 the provision of services, or the failure to provide services, for which such violator is licensed,
64 the licensing authority thereof may suspend or revoke such license in addition to any other
65 penalty that may be imposed by this statute.

66 (g)(1) Any contractor or subcontractor who violates this section shall be
67 prohibited from contracting, directly or indirectly, with the commonwealth or any of its agencies
68 or political subdivisions for the construction of any public building or other public works, or
69 from performing any work on the same as a contractor or subcontractor, for a period of 5 years
70 from the date of such conviction.

71 (2) Any person aggrieved by an order issued pursuant to this subsection may appeal such
72 order by filing a notice of appeal with the division of administrative law appeals within 10 days
73 of the receipt of the order. Any such appellant shall be granted a hearing before the division of
74 administrative law appeals in accordance with chapter 30A. The hearing officer may affirm or if
75 the aggrieved person demonstrates by a preponderance of evidence that the order was
76 erroneously issued, vacate, or modify the order. Any person aggrieved by a decision of the
77 hearing officer may file an appeal in the superior court pursuant to said chapter 30A.

78 (3) If the decision of the hearing officer of the division of administrative law appeals is to
79 debar or suspend an employer, such suspension or debarment shall not take effect until 30 days
80 after the issuance of such order; provided, however, that the employer shall not bid on the
81 construction of any public work or building during the aforementioned 30 day period unless the
82 superior court temporarily enjoins the order of debarment or suspension.

83 (4) After final conviction and disposition of a violation of this section in any court, the
84 clerk of such court shall send a notice of such conviction to the attorney general, who shall
85 publish written notice to all departments and agencies of the commonwealth which contract for
86 public construction and to the appropriate authorities of counties, authorities, cities and towns
87 that such person is prohibited from contracting, directly or indirectly, with the commonwealth or
88 any of its authorities or political subdivisions for the period of time required under this
89 subsection. The attorney general may take such action as may be necessary to enforce the
90 provisions of this subsection, and the superior court shall have jurisdiction to enjoin or invalidate
91 any contract award made in violation of this subsection.

92 (h) A complaint or indictment issued for a violation of this section may be
93 issued in any county wherein the defendant had possession of the property alleged to have been

94 stolen or in the county where the work was performed or in the county where the employer,
95 contractor, or subcontractor has a principal place of business. In the case of an employer,
96 contractor, or subcontractor who has his principal place of business outside the commonwealth, a
97 complaint or indictment may be sought either in the county wherein the work was performed or
98 in Suffolk county.