

4094

2009-2010 Regular Sessions

I N S E N A T E

April 9, 2009

Introduced by Sens. SCHNEIDERMAN, ADAMS, BRESLIN, DIAZ, DUANE, HASSELL-THOMPSON, KLEIN, KRUEGER, KRUGER, MONTGOMERY, PARKER, SAMPSON, SERRANO, STACHOWSKI, STAVISKY, THOMPSON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to price gouging

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 396-r of the general business law, as amended by
2 chapter 510 of the laws of 1998, subdivision 4 as amended by chapter 224
3 of the laws of 2008, is amended to read as follows:

4 S 396-r. Price gouging. 1. Legislative findings and declaration. The
5 legislature hereby finds that during periods of abnormal disruption of
6 the market caused by strikes, power failures, severe shortages or other
7 extraordinary adverse circumstances, some parties within the chain of
8 distribution of consumer goods have taken unfair advantage of consumers
9 by charging grossly excessive prices for essential consumer goods and
10 services.

11 In order to prevent any party within the chain of distribution of any
12 consumer goods from taking unfair advantage of consumers during abnormal
13 disruptions of the market, the legislature declares that the public
14 interest requires that such conduct be prohibited and made subject to
15 civil AND CRIMINAL penalties.

16 2. During any abnormal disruption of the market for consumer goods and
17 services vital and necessary for the health, safety and welfare of
18 consumers, no party within the chain of distribution of such consumer
19 goods or services or both shall sell or offer to sell any such goods or
20 services or both for an amount which represents an unconscionably exces-
21 sive price. For purposes of this section, the phrase "abnormal
22 disruption of the market" shall mean any change in the market, whether
23 actual or imminently threatened, resulting from stress of weather,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 convulsion of nature, failure or shortage of electric power or other
2 source of energy, strike, civil disorder, war, military action, national
3 or local emergency, or other cause of an abnormal disruption of the
4 market [which results in the declaration of a state of emergency by the
5 governor]. For the purposes of this section, the term consumer goods and
6 services shall mean those used, bought or rendered primarily for
7 personal, family or household purposes. This prohibition shall apply to
8 all parties within the chain of distribution, including any manufactur-
9 er, supplier, wholesaler, distributor or retail seller of consumer goods
10 or services or both sold by one party to another when the product sold
11 was located in the state prior to the sale. Consumer goods and services
12 shall also include any repairs made by any party within the chain of
13 distribution of consumer goods on an emergency basis as a result of such
14 abnormal disruption of the market.

15 3. Whether a price is unconscionably excessive is a question of law
16 for the court.

17 (a) The court's determination that a violation of this section has
18 occurred shall be based on any of the following factors: (i) that the
19 amount of the excess in price is unconscionably extreme; or (ii) that
20 there was an exercise of unfair leverage or unconscionable means; or
21 (iii) a combination of both factors in subparagraphs (i) and (ii) of
22 this paragraph.

23 (b) In any proceeding commenced pursuant to subdivision [four] FIVE of
24 this section, prima facie proof that a violation of this section has
25 occurred shall include evidence that

26 (i) the amount charged represents a gross disparity between the price
27 of the goods or services which were the subject of the transaction and
28 their value measured by the price at which such consumer goods or
29 services were sold or offered for sale by the defendant in the usual
30 course of business immediately prior to the onset of the abnormal
31 disruption of the market or

32 (ii) the amount charged grossly exceeded the price at which the same
33 or similar goods or services were readily obtainable by other consumers
34 in the trade area. A defendant may rebut a prima facie case with
35 evidence that additional costs not within the control of the defendant
36 were imposed on the defendant for the goods or services.

37 4. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE
38 GUILTY OF A VIOLATION.

39 5. Where a violation of this section is alleged to have occurred, A
40 DISTRICT ATTORNEY MAY FILE AN ACCUSATORY INSTRUMENT WITH A CRIMINAL
41 COURT WITHIN THE JUDICIAL DISTRICT IN WHICH SUCH VIOLATIONS ARE ALLEGED
42 TO HAVE OCCURRED, AND the attorney general may apply in the name of the
43 People of the State of New York to the supreme court of the State of New
44 York within the judicial district in which such violations are alleged
45 to have occurred, on notice of five days, for an order enjoining or
46 restraining commission or continuance of the alleged unlawful acts. In
47 any such proceeding, the court shall impose a civil penalty in an amount
48 not to exceed twenty-five thousand dollars and, where appropriate, order
49 restitution to aggrieved consumers.

50 S 2. This act shall take effect immediately.