

3751--A

Cal. No. 310

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 29, 2013

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Introduced by M. of A. CRESPO, RODRIGUEZ, RAMOS, MAISEL, DINOWITZ, SKOUFIS, ENGLEBRIGHT, MONTESANO, GIBSON, SCARBOROUGH, ROBERTS, GABRYS-ZAK, SANTABARBARA -- Multi-Sponsored by -- M. of A. ABINANTI, ARROYO, BOYLAND, BRAUNSTEIN, BRENNAN, CAMARA, COLTON, COOK, CROUCH, DUPREY, FINCH, GOTTFRIED, HEASTIE, HOOPER, MOSLEY, MOYA, PERRY, RIVERA, ROBINSON, ROSA, SCHIMEL, SEPULVEDA -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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

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

1     Section 1. The general business law is amended by adding a new section  
2     396-rrr to read as follows:  
3     S 396-RRR. PRICE GOUGING OF MEDICINE. 1. FOR THE PURPOSES OF THIS  
4     SECTION, "DRUG SUBJECT TO A SHORTAGE" SHALL MEAN ANY DRUG OR MEDICAL  
5     PRODUCT INTENDED FOR HUMAN USE PUBLICLY REPORTED AS BEING SUBJECT TO A  
6     SHORTAGE BY THE U.S. FOOD AND DRUG ADMINISTRATION ON ITS WEBSITE,  
7     PROVIDED, HOWEVER, THAT A DRUG OR MEDICAL PRODUCT SHALL ONLY BE CONSID-  
8     ERED A "DRUG SUBJECT TO A SHORTAGE" DURING THE PERIOD OF TIME THAT SUCH  
9     DRUG OR MEDICAL PRODUCT IS LISTED AS BEING SUBJECT TO A SHORTAGE ON SUCH  
10    WEBSITE.  
11    2. NO PARTY WITHIN THE CHAIN OF DISTRIBUTION OF ANY DRUG SUBJECT TO A  
12    SHORTAGE SHALL SELL OR OFFER TO SELL ANY SUCH DRUG SUBJECT TO A SHORTAGE  
13    FOR AN AMOUNT WHICH REPRESENTS AN UNCONSCIONABLY EXCESSIVE PRICE.  
14    3. WHETHER A PRICE IS UNCONSCIONABLY EXCESSIVE IS A QUESTION OF LAW  
15    FOR THE COURT.  
16    (A) THE COURT'S DETERMINATION THAT A VIOLATION OF THIS SECTION HAS  
17    OCCURRED SHALL BE BASED ON ANY OF THE FOLLOWING FACTORS:

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

LBD02559-03-3

1 (I) THAT THE AMOUNT OF THE EXCESS IN PRICE IS UNCONSCIONABLY EXTREME;  
2 (II) THAT THERE WAS AN EXERCISE OF UNFAIR LEVERAGE OR UNCONSCIONABLE  
3 MEANS; OR

4 (III) A COMBINATION OF BOTH FACTORS IN SUBPARAGRAPHS (I) AND (II) OF  
5 THIS PARAGRAPH.

6 (B) IN ANY PROCEEDING COMMENCED PURSUANT TO SUBDIVISION FOUR OF THIS  
7 SECTION, PRIMA FACIE PROOF THAT A VIOLATION OF THIS SECTION HAS OCCURRED  
8 SHALL INCLUDE EVIDENCE THAT:

9 (I) THE AMOUNT CHARGED REPRESENTS A GROSS DISPARITY BETWEEN THE PRICE  
10 OF THE DRUG SUBJECT TO A SHORTAGE WHICH WAS THE SUBJECT OF THE TRANS-  
11 ACTION AND THEIR VALUE MEASURED BY THE PRICE AT WHICH SUCH DRUG WAS SOLD  
12 OR OFFERED FOR SALE BY THE DEFENDANT IN THE USUAL COURSE OF BUSINESS  
13 IMMEDIATELY PRIOR TO THE ONSET OF THE SHORTAGE; AND

14 (II) THE AMOUNT CHARGED GROSSLY EXCEEDED THE PRICE AT WHICH THE SAME  
15 OR SIMILAR DRUG SUBJECT TO A SHORTAGE WAS READILY OBTAINABLE BY OTHER  
16 PURCHASERS IN THE TRADE AREA. A DEFENDANT MAY REBUT A PRIMA FACIE CASE  
17 WITH EVIDENCE THAT ADDITIONAL COSTS NOT WITHIN THE CONTROL OF THE  
18 DEFENDANT WERE IMPOSED ON THE DEFENDANT FOR THE DRUG SUBJECT TO A SHORT-  
19 AGE.

20 4. WHERE A VIOLATION OF THIS SECTION IS ALLEGED TO HAVE OCCURRED, THE  
21 ATTORNEY GENERAL MAY APPLY IN THE NAME OF THE PEOPLE OF THE STATE OF NEW  
22 YORK TO THE SUPREME COURT OF THE STATE OF NEW YORK WITHIN THE JUDICIAL  
23 DISTRICT IN WHICH SUCH VIOLATIONS ARE ALLEGED TO HAVE OCCURRED, ON  
24 NOTICE OF FIVE DAYS, FOR AN ORDER ENJOINING OR RESTRAINING COMMISSION OR  
25 CONTINUANCE OF THE ALLEGED UNLAWFUL ACTS. IN ANY SUCH PROCEEDING, THE  
26 COURT SHALL IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED ONE  
27 HUNDRED THOUSAND DOLLARS AND, WHERE APPROPRIATE, ORDER RESTITUTION TO  
28 AGGRIEVED CONSUMERS.

29 S 2. This act shall take effect immediately.