

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. SQUADRON -- 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 excessive price. For purposes of this section, the phrase "abnormal disruption of the market" shall mean any change in the market, whether
21 actual or imminently threatened, resulting from stress of weather,
22 convulsion of nature, failure or shortage of electric power or other
23 source of energy, strike, civil disorder, war, military action, national

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

LBD00240-01-3

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

13 3. Whether a price is unconscionably excessive is a question of law
14 for the court.

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

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

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

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

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

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

48 S 2. This act shall take effect immediately.