

3656--A

2013-2014 Regular Sessions

I N S E N A T E

February 8, 2013

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 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 actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other

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

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

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: (i) that the
18 amount of the excess in price is unconscionably extreme; or (ii) that
19 there was an exercise of unfair leverage or unconscionable means; or
20 (iii) a combination of both factors in subparagraphs (i) and (ii) of
21 this paragraph.

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

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

31 (ii) the amount charged grossly exceeded the price at which the same
32 or similar goods or services were readily obtainable by other consumers
33 in the trade area.]

34 (A) A PRICE IS NOT AN "UNCONSCIONABLY EXCESSIVE PRICE" IF ANY ONE OF
35 THE FOLLOWING APPLIES:

36 (I) IT IS TEN PERCENT OR LESS ABOVE THE SELLER'S PRICE FOR THAT PROD-
37 UCT IMMEDIATELY PRIOR TO THE DECLARATION OF THE STATE OF EMERGENCY BY
38 THE GOVERNOR;

39 (II) IT IS TEN PERCENT OR LESS ABOVE CURRENT PRICES FOR THAT PRODUCT
40 IN ANY AREA OUTSIDE THE GEOGRAPHIC SCOPE OF THE DECLARATION OF THE STATE
41 OF EMERGENCY OR AN ADJOINING STATE, TAX-ADJUSTED;

42 (III) IT IS TEN PERCENT OR LESS ABOVE THE SUM OF THE SELLER'S: (A)
43 ACQUISITION OR REPLACEMENT COST, WHICHEVER IS HIGHER; PLUS (B) THE MARK-
44 UP CUSTOMARILY APPLIED BY THE SELLER IN THE USUAL COURSE OF BUSINESS
45 IMMEDIATELY PRIOR TO THE DECLARATION OF THE STATE OF EMERGENCY BY THE
46 GOVERNOR;

47 (IV) IT IS ATTRIBUTABLE TO FLUCTUATIONS IN APPLICABLE REGIONAL OR
48 NATIONAL SPOT OR COMMODITY MARKETS; OR

49 (V) IT IS A CONTRACT PRICE OR PRICE FORMULA AGREED TO PRIOR TO THE
50 DECLARATION OF THE STATE OF EMERGENCY BY THE GOVERNOR.

51 (B) A defendant may rebut a prima facie case with evidence that addi-
52 tional costs not within the control of the defendant were imposed on the
53 defendant for the goods or services.

54 4. Where a violation of this section is alleged to have occurred, the
55 attorney general may apply in the name of the People of the State of New
56 York to the supreme court of the State of New York within the judicial

1 district in which such violations are alleged to have occurred, on
2 notice of five days, for an order enjoining or restraining commission or
3 continuance of the alleged unlawful acts. In any such proceeding, the
4 court shall impose a civil penalty in an amount not to exceed twenty-
5 five thousand dollars and, where appropriate, order restitution to
6 aggrieved consumers.

7 S 2. This act shall take effect immediately.