S T A T E O F N E W Y O R K

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:

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

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

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

2. During any abnormal disruption of the market for consumer goods and services vital and necessary for the health, safety and welfare of consumers, no party within the chain of distribution of such consumer goods or services or both shall sell or offer to sell any such goods or 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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source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market [which], WHERE SUCH ABNORMAL DISRUPTION results in the declaration of a state of emergency by the governor. For the purposes of this section, the term consumer goods and services shall mean those used, bought or rendered primarily for personal, family or household purposes. This prohibition shall apply to all parties within the chain of distribution, including any manufacturer, supplier, wholesaler, distributor or retail seller of consumer goods or services or both sold by one party to another when the product sold was located in the state prior to the sale. Consumer goods and services shall also include any repairs made by any party within the chain of distribution of consumer goods on an emergency basis as a result of such abnormal disruption of the market.

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

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

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

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

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

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

(I) IT IS TEN PERCENT OR LESS ABOVE THE SELLER'S PRICE FOR THAT PRODUCT IMMEDIATELY PRIOR TO THE DECLARATION OF THE STATE OF EMERGENCY BY THE GOVERNOR;

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

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

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

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

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

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

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

S 2. This act shall take effect immediately.