

3656

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

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
23 actual or imminently threatened, resulting from stress of weather,
24 convulsion of nature, failure or shortage of electric power or other
25 source of energy, strike, civil disorder, war, military action, national
26 or local emergency, or other cause of an abnormal disruption of the

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

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

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

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

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

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

29 (ii) the amount charged grossly exceeded the price at which the same
30 or similar goods or services were readily obtainable by other consumers
31 in the trade area.] FOR PURPOSES OF THIS SECTION, "UNCONSCIONABLE EXCES-
32 SIVE PRICE" MEANS A PRICE THAT IS EXCESSIVE AS COMPARED TO THE PRICE AT
33 WHICH THE CONSUMER GOOD OR SERVICE WAS SOLD OR OFFERED FOR SALE BY THE
34 SELLER IN THE USUAL COURSE OF BUSINESS IMMEDIATELY PRIOR TO THE STATE OF
35 EMERGENCY. A PRICE SHALL BE DEEMED EXCESSIVE IF:

36 (A) THE PRICE EXCEEDS BY MORE THAN TEN PERCENT THE PRICE AT WHICH THE
37 GOOD OR SERVICE WAS SOLD OR OFFERED FOR SALE BY THE SELLER IN THE USUAL
38 COURSE OF BUSINESS IMMEDIATELY PRIOR TO THE STATE OF EMERGENCY, UNLESS
39 THE PRICE CHARGED BY THE SELLER IS ATTRIBUTABLE TO ADDITIONAL COSTS
40 IMPOSED BY THE SELLER'S SUPPLIER OR OTHER COSTS OF PROVIDING THE GOOD OR
41 SERVICE DURING THE STATE OF EMERGENCY;

42 (B) IN THOSE SITUATIONS WHERE THE INCREASE IN PRICE IS ATTRIBUTABLE TO
43 ADDITIONAL COSTS IMPOSED BY THE SELLER'S SUPPLIER OR ADDITIONAL COSTS OF
44 PROVIDING THE GOOD OR SERVICE DURING THE STATE OF EMERGENCY, THE PRICE
45 REPRESENTS AN INCREASE OF MORE THAN TEN PERCENT IN THE AMOUNT OF MARKUP
46 FROM COST, COMPARED TO THE MARKUP CUSTOMARILY APPLIED BY THE SELLER IN
47 THE USUAL COURSE OF BUSINESS IMMEDIATELY PRIOR TO THE STATE OF EMERGEN-
48 CY.

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

52 4. Where a violation of this section is alleged to have occurred, the
53 attorney general may apply in the name of the People of the State of New
54 York to the supreme court of the State of New York within the judicial
55 district in which such violations are alleged to have occurred, on
56 notice of five days, for an order enjoining or restraining commission or

1 continuance of the alleged unlawful acts. In any such proceeding, the
2 court shall impose a civil penalty in an amount not to exceed twenty-
3 five thousand dollars and, where appropriate, order restitution to
4 aggrieved consumers.

5 S 2. This act shall take effect immediately.