

8182--B

I N S E N A T E

August 26, 2016

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

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

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; PHARMACEUTICALS. 1. FOR THE PURPOSES OF
4 THIS SECTION, "PHARMACEUTICALS" SHALL MEAN ANY COMPOUND MANUFACTURED FOR
5 SALE AS A MEDICINAL DRUG.
6 2. NO MANUFACTURER OR WHOLESALER OF PHARMACEUTICALS SHALL SELL OR
7 OFFER TO SELL PHARMACEUTICALS FOR AN AMOUNT WHICH REPRESENTS AN UNCON-
8 SCIONABLY EXCESSIVE PRICE. WHETHER A PRICE IS UNCONSCIONABLY EXCESSIVE
9 IS A QUESTION OF LAW FOR THE COURT.
10 3. THE COURT'S DETERMINATION THAT A VIOLATION OF THIS SECTION HAS
11 OCCURRED SHALL BE BASED ON ANY OF THE FOLLOWING FACTORS:
12 (A) THAT THE AMOUNT OF THE EXCESS IN PRICE IS UNCONSCIONABLY EXTREME;
13 (B) THAT THERE WAS AN EXERCISE OF UNFAIR LEVERAGE OR UNCONSCIONABLE
14 MEANS; OR
15 (C) A COMBINATION OF BOTH FACTORS.
16 4. IN ANY COURT PROCEEDING COMMENCED PURSUANT TO THIS SECTION, PROOF
17 THAT A VIOLATION OF THIS SECTION HAS OCCURRED SHALL INCLUDE EVIDENCE
18 THAT:
19 (A) THE AMOUNT CHARGED REPRESENTS A GROSS DISPARITY BETWEEN THE MARKET
20 PRICE OF THE PHARMACEUTICAL THAT LED TO THE ACTION UNDER THIS SECTION
21 AND THE PRICE OF THE SAME PHARMACEUTICAL OVER THE SIX MONTHS PRIOR TO
22 THE PRICE CHANGE THAT LED TO THE ACTION UNDER THIS SECTION; OR
23 (B) THE AMOUNT CHARGED GROSSLY EXCEEDED THE PRICE AT WHICH THE PHARMA-
24 CEUTICALS WERE READILY OBTAINABLE BY OTHER PURCHASERS.

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

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1 5. A DEFENDANT MAY REBUT A PRIMA FACIE CASE WITH EVIDENCE THAT ADDI-
2 TIONAL COSTS NOT WITHIN THE CONTROL OF THE DEFENDANT WERE IMPOSED ON THE
3 DEFENDANT.

4 6. WHERE A VIOLATION OF THIS SECTION IS ALLEGED TO HAVE OCCURRED, THE
5 ATTORNEY GENERAL MAY APPLY IN THE NAME OF THE PEOPLE OF THE STATE OF NEW
6 YORK TO THE SUPREME COURT WITHIN THE JUDICIAL DISTRICT IN WHICH SUCH
7 VIOLATION IS ALLEGED TO HAVE OCCURRED, ON NOTICE OF FIVE DAYS, FOR AN
8 ORDER ENJOINING OR RESTRAINING COMMISSION OR CONTINUANCE OF THE ALLEGED
9 UNLAWFUL ACTS. IN ANY SUCH PROCEEDING WHERE A VIOLATION IS FOUND TO HAVE
10 OCCURRED, THE COURT SHALL IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO
11 EXCEED ONE MILLION DOLLARS AND, WHERE APPROPRIATE, ORDER RESTITUTION TO
12 AGGRIEVED CONSUMERS.

13 S 2. This act shall take effect immediately.