

# STATE OF NEW YORK

7028

## IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. BROOKS -- 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 § 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 exces-  
21 sive price. For purposes of this section, the phrase "abnormal  
22 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  
27 market [~~which results in the declaration of a state of emergency by the~~  
28 ~~governor~~]. For the purposes of this section, the term consumer goods and

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

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

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

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

18 (b) In any proceeding commenced pursuant to subdivision [~~four~~ **five** of  
19 this section, prima facie proof that a violation of this section has  
20 occurred shall include evidence that

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

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

32 4. Any person who violates the provisions of this section shall be  
33 guilty of a violation.

34 5. Where a violation of this section is alleged to have occurred, a  
35 district attorney may file an accusatory instrument with a criminal  
36 court within the judicial district in which such violations are alleged  
37 to have occurred, and the attorney general may apply in the name of the  
38 People of the State of New York to the supreme court of the State of New  
39 York within the judicial district in which such violations are alleged  
40 to have occurred, on notice of five days, for an order enjoining or  
41 restraining commission or continuance of the alleged unlawful acts. In  
42 any such proceeding, the court shall impose a civil penalty in an amount  
43 not to exceed twenty-five thousand dollars and, where appropriate, order  
44 restitution to aggrieved consumers.

45 § 2. This act shall take effect immediately.