

# STATE OF NEW YORK

334

2017-2018 Regular Sessions

## IN ASSEMBLY

January 5, 2017

Introduced by M. of A. BRAUNSTEIN, THIELE, HEVESI, GUNTHER, M. G. MILLER, STIRPE -- Multi-Sponsored by -- M. of A. LUPINACCI -- read once and referred to the Committee on Consumer Affairs and 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 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

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

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

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

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

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

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

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

33 (a) A price is not an "unconscionably excessive price" if any one of  
34 the following applies:

35 (i) it is ten percent or less above the seller's price for that prod-  
36 uct immediately prior to the declaration of the state of emergency by  
37 the governor;

38 (ii) it is ten percent or less above current prices for that product  
39 in any area outside the geographic scope of the declaration of the state  
40 of emergency or an adjoining state, tax-adjusted;

41 (iii) it is ten percent or less above the sum of the seller's: (A)  
42 acquisition or replacement cost, whichever is higher; plus (B) the mark-  
43 up customarily applied by the seller in the usual course of business  
44 immediately prior to the declaration of the state of emergency by the  
45 governor;

46 (iv) it is attributable to fluctuations in applicable regional or  
47 national spot or commodity markets; or

48 (v) it is a contract price or price formula agreed to prior to the  
49 declaration of the state of emergency by the governor.

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

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

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

6 § 2. This act shall take effect immediately.