

# STATE OF NEW YORK

256

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. KENNEDY -- 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 the price gouging of medicine

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 § 396-rrr. Price gouging of medicine. 1. For the purposes of this  
4 section, "drug subject to a shortage" shall mean any drug or medical  
5 product intended for human use publicly reported as being subject to a  
6 shortage by the U.S. food and drug administration on its website,  
7 provided, however, that a drug or medical product shall only be consid-  
8 ered a "drug subject to a shortage" during the period of time that such  
9 drug or medical product is listed as being subject to a shortage on such  
10 website.

11 2. No party within the chain of distribution of any drug subject to a  
12 shortage shall sell or offer to sell any such drug subject to a shortage  
13 for an amount which represents an unconscionably excessive price.

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

16 (a) The court's determination that a violation of this section has  
17 occurred shall be based on any of the following factors:

18 (i) that the amount of the excess in price is unconscionably extreme;

19 (ii) that there was an exercise of unfair leverage or unconscionable  
20 means; or

21 (iii) a combination of both factors in subparagraphs (i) and (ii) of  
22 this paragraph.

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

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

4 (i) the amount charged represents a gross disparity between the price  
5 of the drug subject to a shortage which was the subject of the trans-  
6 action and their value measured by the price at which such drug was sold  
7 or offered for sale by the defendant in the usual course of business  
8 immediately prior to the onset of the shortage; and

9 (ii) the amount charged grossly exceeded the price at which the same  
10 or similar drug subject to a shortage was readily obtainable by other  
11 purchasers in the trade area. A defendant may rebut a prima facie case  
12 with evidence that additional costs not within the control of the  
13 defendant were imposed on the defendant for the drug subject to a short-  
14 age.

15 4. Where a violation of this section is alleged to have occurred, the  
16 attorney general may apply in the name of the People of the State of New  
17 York to the supreme court within the judicial district in which such  
18 violation is alleged to have occurred, on notice of five days, for an  
19 order enjoining or restraining commission or continuance of the alleged  
20 unlawful acts. In any such proceeding, the court shall impose a civil  
21 penalty in an amount not to exceed one hundred thousand dollars and,  
22 where appropriate, order restitution to aggrieved consumers.

23 5. Prior to applying for an order from the supreme court pursuant to  
24 subdivision four of this section, the attorney general, in consultation  
25 with the department of health, shall consider the pricing dynamics  
26 unique to the small and independent distributors within the supply chain  
27 including, but not limited to, the price charged by the end use dispen-  
28 ser relative to its acquisition cost.

29 § 2. This act shall take effect immediately.