

STATE OF NEW YORK

1461

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. DINOWITZ, RICHARDSON, COOK, GALEF, SIMON, ABINANTI, J. RIVERA, GOTTFRIED, SEAWRIGHT -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, ENGLEBRIGHT, GLICK, THIELE -- 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 90 of the laws of 2020, is amended to read as follows:

3 § 396-r. Price gouging. 1. Legislative findings and declaration. The
4 legislature hereby finds that during periods of abnormal disruption of
5 the market caused by strikes, power failures, severe shortages or other
6 extraordinary adverse circumstances, some parties within the chain of
7 distribution of goods have taken unfair advantage of the public by
8 charging grossly excessive prices for essential goods and services.

9 In order to prevent any party within the chain of distribution of any
10 goods from taking unfair advantage of the public during abnormal
11 disruptions of the market, the legislature declares that the public
12 interest requires that such conduct be prohibited and made subject to
13 civil and criminal penalties.

14 2. During any abnormal disruption of the market for goods and services
15 vital and necessary for the health, safety and welfare of consumers or
16 the general public, no party within the chain of distribution of such
17 goods or services or both shall sell or offer to sell any such goods or
18 services or both for an amount which represents an unconscionably exces-
19 sive price. For purposes of this section, the phrase "abnormal
20 disruption of the market" shall mean any change in the market, whether
21 actual or imminently threatened, resulting from stress of weather,
22 convulsion of nature, failure or shortage of electric power or other
23 source of energy, strike, civil disorder, war, military action, national
24 or local emergency, or other cause of an abnormal disruption of the
25 market [~~which results in the declaration of a state of emergency by the~~
26 ~~governor~~]. For the purposes of this section, the term goods and services
27 shall include (a) consumer goods and services used, bought or rendered

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

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1 primarily for personal, family or household purposes, (b) essential
2 medical supplies and services used for the care, cure, mitigation,
3 treatment or prevention of any illness or disease, and (c) any other
4 essential goods and services used to promote the health or welfare of
5 the public. This prohibition shall apply to all parties within the chain
6 of distribution, including any manufacturer, supplier, wholesaler,
7 distributor or retail seller of goods or services or both sold by one
8 party to another when the product sold was located in the state prior to
9 the sale. Goods and services shall also include any repairs made by any
10 party within the chain of distribution of goods on an emergency basis as
11 a result of such 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 goods or services were
26 sold or offered for sale by the defendant in the usual course of busi-
27 ness immediately prior to the onset of the abnormal disruption of the
28 market; or

29 (ii) the amount charged grossly exceeded the price at which the same
30 or similar goods or services were readily obtainable in the trade area.

31 (c) A defendant may rebut a prima facie case with evidence that (1)
32 the increase in the amount charged preserves the margin of profit that
33 the defendant received for the same goods or services prior to the
34 abnormal disruption of the market or (2) additional costs not within the
35 control of the defendant were imposed on the defendant for the goods or
36 services.

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

39 5. Where a violation of this section is alleged to have occurred, a
40 district attorney may file an accusatory instrument with a criminal
41 court within the judicial district in which such violations are alleged
42 to have occurred, and the attorney general may apply in the name of the
43 People of the State of New York to the supreme court of the State of New
44 York within the judicial district in which such violations are alleged
45 to have occurred, on notice of five days, for an order enjoining or
46 restraining commission or continuance of the alleged unlawful acts. In
47 any such proceeding, the court shall impose a civil penalty in an amount
48 not to exceed twenty-five thousand dollars per violation or three times
49 the gross receipts for the relevant goods or services, whichever is
50 greater and, where appropriate, order restitution to aggrieved parties.

51 [~~5-~~] 6. The attorney general may promulgate such rules and regulations
52 as are necessary to effectuate and enforce the provisions of this
53 section.

54 § 2. This act shall take effect immediately.