

# STATE OF NEW YORK

3081--A

Cal. No. 461

2021-2022 Regular Sessions

## IN SENATE

January 27, 2021

Introduced by Sens. SALAZAR, BIAGGI, BRISPORT, GIANARIS, JACKSON, KRUEGER, LANZA, REICHLIN-MELNICK, SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 manufacturer, supplier, wholesaler, distributor or retail seller  
12 of any drug subject to a shortage shall sell or offer to sell any such  
13 drug subject to a shortage for an amount which represents an unconscion-  
14 ably excessive price.

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

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

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

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

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1 (ii) that there was an exercise of unfair leverage or unconscionable  
2 means; or

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

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

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

13 (ii) the amount charged grossly exceeded the price at which the same  
14 or similar drug subject to a shortage was readily obtainable by other  
15 purchasers in the trade area.

16 (c) A defendant may rebut a prima facie case with evidence that:

17 (i) the increase in the amount charged preserves the margin of profit  
18 that the defendant received for the same drug subject to a shortage  
19 prior to the onset of the shortage; or

20 (ii) additional costs not within the control of the defendant were  
21 imposed on the defendant for the drug subject to a shortage.

22 4. (a) Where a violation of this section is alleged to have occurred,  
23 the attorney general may apply in the name of the People of the State of  
24 New York to the supreme court within the judicial district in which such  
25 violation is alleged to have occurred, on notice of five days, for an  
26 order enjoining or restraining commission or continuance of the alleged  
27 unlawful acts. In any such proceeding, the court shall impose a civil  
28 penalty in an amount not to exceed twenty-five thousand dollars per  
29 violation or three times the gross receipts for the relevant drug  
30 subject to the shortage, whichever is greater, and where appropriate,  
31 order restitution to aggrieved parties.

32 (b) In addition to any action brought by the attorney general pursuant  
33 to paragraph (a) of this subdivision, a person injured by a violation of  
34 this section may bring an action to recover damages. The court may also  
35 award reasonable attorneys fees to a prevailing plaintiff.

36 § 2. This act shall take effect immediately.