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:

Section 1. Section 396-r of the general business law, as amended by chapter 90 of the laws of 2020, is amended to read as follows:

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

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

2. During any abnormal disruption of the market for goods and services vital and necessary for the health, safety and welfare of consumers or the general public, no party within the chain of distribution of such goods or services or both shall sell or offer to sell any such goods or services or both for an amount which represents an unconscionably excessive price. For purposes of this section, the phrase "abnormal disruption of the market" shall mean any change in the market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market [~~which results in the declaration of a state of emergency by the governor~~]. For the purposes of this section, the term goods and services 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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primarily for personal, family or household purposes, (b) essential medical supplies and services used for the care, cure, mitigation, treatment or prevention of any illness or disease, and (c) any other essential goods and services used to promote the health or welfare of the public. This prohibition shall apply to all parties within the chain of distribution, including any manufacturer, supplier, wholesaler, distributor or retail seller of goods or services or both sold by one party to another when the product sold was located in the state prior to the sale. Goods and services shall also include any repairs made by any party within the chain of distribution of goods on an emergency basis as a result of such abnormal disruption of the market.

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

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

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately.