

# 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 excessive price. For purposes of this section, the phrase "abnormal  
19 disruption of the market" shall mean any change in the market, whether  
20 actual or imminently threatened, resulting from stress of weather,  
21 convulsion of nature, failure or shortage of electric power or other  
22 source of energy, strike, civil disorder, war, military action, national  
23 or local emergency, or other cause of an abnormal disruption of the  
24 market [~~which results in the declaration of a state of emergency by the~~  
25 ~~governor~~]. For the purposes of this section, the term goods and services  
26 shall include (a) consumer goods and services used, bought or rendered  
27

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

LBD05314-01-1

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.