

STATE OF NEW YORK

94

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. DINOWITZ, COOK, SIMON, SEAWRIGHT -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, GLICK -- 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, subdivision 2 as amended by chapter 725
3 of the laws of 2023, is amended to read as follows:

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

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

15 2. (a) During any abnormal disruption of the market for goods and
16 services vital and necessary for the health, safety and welfare of
17 consumers or the general public, no party within the chain of distrib-
18 ution of such goods or services or both shall sell or offer to sell any
19 such goods or services or both for an amount which represents an uncon-
20 scionably excessive price.

21 (b) For purposes of this section, the phrase "abnormal disruption of
22 the market" shall mean any change in the market, whether actual or immi-
23 nently threatened, resulting from stress of weather, convulsion of
24 nature, failure or shortage of electric power or other source of energy,

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

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1 strike, civil disorder, war, military action, national or local emergen-
2 cy, drug shortage, or other cause of an abnormal disruption of the
3 market [~~which results in the declaration of a state of emergency by the~~
4 ~~governor~~].

5 (c) For purposes of this section, the term "drug shortage" shall mean,
6 with respect to any drug or medical product intended for human use, that
7 such drug or medical product is publicly reported as being subject to a
8 shortage by the U.S. Food and Drug Administration.

9 (d) For the purposes of this section, the term "goods and services"
10 shall include (i) consumer goods and services used, bought or rendered
11 primarily for personal, family or household purposes, (ii) essential
12 medical supplies and services used for the care, cure, mitigation,
13 treatment or prevention of any illness or disease, and (iii) any other
14 essential goods and services used to promote the health or welfare of
15 the public.

16 (e) This prohibition shall apply to all parties within the chain of
17 distribution, including any manufacturer, supplier, wholesaler, distrib-
18 utor or retail seller of goods or services or both sold by one party to
19 another when the product sold was located in the state prior to the
20 sale. For the purposes of this subdivision, the term "goods and
21 services" shall also include any repairs made by any party within the
22 chain of distribution of goods on an emergency basis as a result of such
23 abnormal disruption of the market.

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

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

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

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

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

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

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

51 5. Where a violation of this section is alleged to have occurred, a
52 district attorney may file an accusatory instrument with a criminal
53 court within the judicial district in which such violations are alleged
54 to have occurred, and the attorney general may apply in the name of the
55 People of the State of New York to the supreme court of the State of New
56 York within the judicial district in which such violations are alleged

1 to have occurred, on notice of five days, for an order enjoining or
2 restraining commission or continuance of the alleged unlawful acts. In
3 any such proceeding, the court shall impose a civil penalty in an amount
4 not to exceed twenty-five thousand dollars per violation or three times
5 the gross receipts for the relevant goods or services, whichever is
6 greater and, where appropriate, order restitution to aggrieved parties.
7 ~~[5.]~~ 6. The attorney general may promulgate such rules and regulations
8 as are necessary to effectuate and enforce the provisions of this
9 section.
10 § 2. This act shall take effect immediately.