



ATTORNEY GENERAL WILLIAM TONG
STATE OF CONNECTICUT

House Bill 5307: *An Act Concerning Price Gouging*

Chairman D'Agostino, Ranking Member Rutigliano, Chairman Maroney, Ranking Member Witkos and distinguished members of the General Law Committee, thank you for the opportunity to testify before you today in strong support of HB 5307, *An Act Concerning Price Gouging*.

During Governor Lamont's declared civil preparedness and public health emergencies related to the Covid-19 pandemic, the Office of the Attorney General's enforcement of Connecticut's price gouging statute, Conn. Gen. Stat. Sec. 42-230, revealed three shortcomings that limited the statute's effectiveness: it applies only to retail sales; it does not adequately define price gouging; and it does not clearly state that it applies to leases and rental items.

As we all have learned, there is nothing like a global pandemic to highlight the areas where our laws and systems fall short. Nevertheless, Connecticut has pivoted in remarkable ways, devising creative and thoughtful solutions to these new challenges. In that same spirit, we submit to you our proposal to address these three problem areas, with the singular goal of protecting consumers.

Expanding Beyond Retail

Currently, Section 42-230 only applies to retail sales; neither wholesale sales, nor sales within the supply chain are covered by Connecticut's price gouging statute. This limitation severely limits our Office's ability to combat price gouging behavior.

For example, during the pandemic many of our investigations of alleged price gouging behavior revealed that although the retail price of the item in question had increased, sometimes dramatically, the retail seller was not responsible for that increase. Rather, the cost of the item charged by the wholesaler to the retailer had increased, forcing the retailer to raise the price at the point of sale. In many cases, Connecticut retailers reduced their normal mark-ups in an effort to keep retail prices lower.

Amending Sec. 42-230 to apply up and down the entire supply chain will better protect consumers by expanding and strengthening our ability to combat price gouging behavior. Comparing Connecticut's experience with that of other states – including our neighboring states of New Yorkⁱ and Massachusettsⁱⁱ – highlights the shortcomings of our price gouging statute. Both New York and Massachusetts' statutes apply to the entire supply chain, and as such, they were able to actively enforce their respective laws by bringing numerous cases. Comparatively, although we responded to 750 individual price gouging complaints over the past year, we were not able to bring any enforcement actions.



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Clearly Defining Price Gouging Behavior

Currently, Sec. 42-230 defines price gouging as the “increase the price of any item” during a declared emergency, unless the increases are due to, “fluctuation[s] in the price of items sold at retail which occur[] during the normal course of business.” Our position is that this language does not offer clear guidance to consumers, businesses, or our Office as to what may constitute price gouging behavior that is prohibited in Connecticut.

Compare this to Sec. 42-234, concerning energy resources during emergencies, which offers a clearer and more effective definition of price gouging behavior. Section 42-234(b) states that no seller during a declared “abnormal market disruption . . . shall sell or offer to sell an energy resource for an amount that represents an unconscionably excessive price.”ⁱⁱⁱ Section 42-234(c) then defines two circumstances that constitute a prima facie case that a price is unconscionably excessive:

- (1) the amount charged represents a “gross disparity” between the price of the energy resource that is the subject of the inquiry and the price at which that resource was sold immediately prior to the event or when the event was reasonably anticipated;
- (2) the amount charged by the seller was not attributable to additional costs incurred in connection with the sale of that resource.

The New York price gouging statute applies a similar definition. It prohibits the sale of certain goods or services “for an amount which represents an unconscionably excessive price.” It then provides two ways that the New York Attorney General can make a prima facie case: by showing a gross disparity between the price and the price immediately prior to the abnormal market disruption; or by showing that the price grossly exceeded prices charged by others in the trade area.^{iv}

We propose amending Sec. 42-230 to define price gouging in a manner similar to the language used in Sec. 42-234 and by New York. This approach has been used in Connecticut statutes already, is well recognized by our courts and is less inherently arbitrary and significantly more flexible than a specified percentage price increase.

Including Rentals and Leases

While § 42-230 states that “[n]o person, firm or corporation shall increase the price of *any item*.” (emphasis added), questions remained as to whether it applied only to items sold or whether it also applied to rentals and leases. By clarifying the applicability of the statute here, we will be joining other states that specify it is unlawful to rent or lease products and services at an unconscionable price.

For all the foregoing reasons, I ask for your support of expanding consumer data protections through HB 5310. Thank you once again for the opportunity to offer testimony and please do not hesitate to contact me with any questions or concerns.



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ⁱ New York’s price gouging law, Sec. 396-r of the general business law, prohibits any party within the chain of distribution from selling or offering to sell goods or services for unconscionably excessive prices during abnormal market disruptions. New York defines unconscionably excessive prices as a question of law based on factors including the amount of excess is unconscionably extreme, that there was an exercise of unfair leverage or unconscionable means, or both. Note that New York recently, on January 6, 2021, amended this statute to expand its application beyond consumer goods to include medical supplies and other essential goods and services.

<https://ag.ny.gov/press-release/2020/attorney-general-james-price-gouging-authority-strengthened-after-governor-cuomo>.

Although New York’s statute did not apply to medical supplies during much of the Covid-19 emergency, its statute provided for significant enforcement activity, often against producers and wholesalers. <https://ag.ny.gov/press-release/2020/attorney-general-james-sues-wholesaler-price-gouging-during-coronavirus-pandemic>

ⁱⁱ The Massachusetts price gouging law did not apply to consumer goods at the start of the Covid-19 emergency; it applied only to gasoline and other petroleum products. In response, in March 2020, the Massachusetts Attorney General proposed an emergency regulation to prohibit price gouging of essential products and services during the Covid-19 emergency. <https://www.mass.gov/news/ag-healey-issues-emergency-regulation-prohibiting-price-gouging-of-critical-goods-and-services>. That regulation, as proposed, prohibited the sale or offer to sell of any goods or services necessary for the health, safety or welfare of the public at any point within the chain of distribution for an unconscionably high price. The regulation defined unconscionably high as a gross disparity between the price at which the good or service was offered prior to the emergency or the price that the same product is available from others, and that the disparity is not attributable to increased costs. Again, this language is superior Connecticut’s existing price gouging law and is consistent with our proposed amendments thereto.

ⁱⁱⁱ Under Sec. 42-234(d)(1), during the abnormal market disruption, the Attorney General must post an internet notice on the office website regarding the inception, end date of any disruption, or duration of “the reasonable anticipation of any abnormal market disruption.” Within the notice provision, the statute describes a 90-day period where “increases by an amount equal to or greater than fifteen per cent on any day...” marks an abnormal market disruption.

^{iv} N.Y. Gen. Bus. Law Sec. 396-r(2) (McKinney 2020). Other state price gouging statutes define price gouging behavior more broadly. For example, Sec. 17.46(b) of the Texas Deceptive Trade Practices and Consumer Protection Act prohibits taking advantage of a Governor-declared disaster by selling certain goods at an exorbitant or excessive price. The Kansas statute discusses unjustifiably increasing prices during a time of disaster, K.S.A. Sec. 50-6, 106, while the Indiana statute defines unconscionable fuel prices as amounts that “grossly exceed[]” the average price sold in the retailer’s area seven days before the declared emergency. IC Sec. 4-6-9.1-2.