

Senator Martin Looney
Senate Majority Leader

On

Raised Bill 1089: An Act Prohibiting Price Gouging During Severe Weather Events And Making Minor And Technical Revisions To The Uniform Administrative Procedure Act And Department Of Consumer Protection Statutes.

Committee on General Law

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Senator Doyle, Representative Taborsak and members of the committee, thank you for this opportunity to testify in support of Raised Bill 1089: *An Act Prohibiting Price Gouging During Severe Weather Events And Making Minor And Technical Revisions To The Uniform Administrative Procedure Act And Department Of Consumer Protection Statutes*. The goal of the first section of this bill is to provide what I believe is much-needed protection for Connecticut consumers, by broadening the scope of our price gouging laws. In particular, I believe we need to significantly expand the circumstances under which price gouging for services is prohibited under Connecticut law.

It is no coincidence that this proposal comes at the tail end of the record-breaking winter of 2011. This winter not only brought us unprecedented extreme weather conditions. It also gave rise to unprecedented needs on the part of our consumers -- for vital services, and goods, to protect themselves from the dangerous effects of the many storms. For the first time in memory, the real dangers of widespread roof collapse made roof snow removal a service that was vital and necessary for public health and safety. The "snow rake", an item most of us had never heard of before, suddenly became a potentially critical tool for homeowners to protect themselves. The extreme cold led household water pipes to burst. And now, as we head into spring, the effects from this winter have continued, with ample flooding during melting.

This all has led to what I believe is an alarming increase in Connecticut consumers' vulnerability to price gouging, particularly for services. Fortunately, the vast majority of contractors in Connecticut clearly are honest and hard working. Unfortunately, however, this winter's conditions obviously gave the few contractors who are unscrupulous very powerful leverage to attempt to charge unconscionably high prices for their vital and necessary services.

The most glaring example of these dangers of price gouging for services was for snow removal from roofs. This was illustrated by an excellent February 1, 2011 article in the Hartford Courant, entitled "What's a Fair Price to Clear Off a Roof of Ice and Snow?" The article discussed a homeowner in Berlin who received a quote from a snow removal

company for \$3,650 to clear the roof of her 2,000 square foot home. When she demurred the contractor immediately lowered its quote by a thousand dollars, but luckily she still said no. This was while others were paying just a few hundred dollars for the same services. Another glaring example came last month from our neighboring state of Massachusetts, where it was reported that a 78-year-old homeowner had paid \$4,800 to have his roof cleared. Luckily, in that case the man's daughter called the police, who somehow convinced the contractors to return the money and settle for only \$250, which was the fair market price for their services.

As the Massachusetts example illustrates, there are times when overcharging for services or goods may be punishable by laws other than our price gouging statutes. For example, if overt fraud or misrepresentation occurs our criminal statutes may be triggered, as well as our general Connecticut Unfair Trade Practices statute. However, in many of these unfortunate cases, the problem is not overt lies by a contractor but instead his or her unconscionable exertion of bargaining leverage during extreme conditions. In those cases, I believe we need our price gouging laws to offer adequate protection to Connecticut consumers.

Unfortunately, in my opinion our experience this winter exposed some glaring weaknesses in our price gouging statutes. Section 42-230 only applies to goods, and not to services. Even then, it only applies during a disaster emergency declaration by the governor or President of the United States, and only in the geographical area that is the direct subject of such declaration. Section 42-232 does apply to services, but only in the very rare event of a supply emergency or energy emergency declaration by the governor. These declarations are so extreme that they give the governor the power to order rationing, and charging above market price becomes a criminal as well as a civil violation. Finally, section 42-234 is the only price gouging statute that can be triggered short of a formal emergency declaration by the governor or President, but it only applies to the sale of petroleum products like gasoline.

I believe we need to expand our price gouging laws to 1) cover both goods and services equally, and 2) protect consumers during very adverse conditions that can result in the exercise of unconscionably extreme leverage by contractors and retailers, regardless of whether there has been an official declaration of a civil preparedness, supply, or energy emergency in the State of Connecticut. This winter – with no supply or energy emergencies declared -- proved beyond a doubt that gouging for services can occur in their absence.

The preliminary language included in Raised Bill 1089 prohibits price gouging equally for consumer goods and services, including snow removal, during a "severe weather event". In order for this statute to be triggered as it is currently drafted, the Governor would have to issue a "severe weather event declaration". Presumably, this declaration would be appropriate in less adverse conditions than those that would trigger a full blown civil preparedness emergency under section 28-9. However, even though adoption of this language would result in better, more comprehensive price gouging laws than we have presently, I believe there may be an even better option. Instead, I urge this Committee to

adopt language similar to that found in New York State's price gouging law, General Business Law 396-r, a copy of which I have appended to my testimony. This statute has been in successful operation for over 30 years.

New York's successful price gouging law is not tied to any formal declaration by anyone. Instead, the statute is triggered when, in the opinion of a Court, there is an "abnormal disruption of the market" for "goods and services vital and necessary for the health, safety and welfare of consumers", caused by "any change in the market, whether actual or imminently threatened, resulting from the 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 that results in the declaration of a state of emergency by the governor." New York case law makes it clear that, while an emergency declaration by the New York Governor is a sufficient trigger for this statute, it is not a necessary one.

Under the New York statute, when such an abnormal market disruption occurs, such vital goods and services cannot be sold or offered for sale for "an unconscionably excessive price". Whether a price is "unconscionably excessive" would be determined by a New York Court, taking into account whether there had been "an exercise of unfair leverage or unconscionable means" or "if the amount of the excess in price" had been "unconscionably extreme". Prima facie evidence that a violation has occurred includes whether there was a "gross disparity" in the price of goods or services immediately before and then during the abnormal market disruption, and also whether "the amount charged grossly exceeded the price at which the same or similar goods or services were readily obtainable by other consumers in the trade area."

I respectfully assert that adoption of this proven approach would greatly enhance our consumer protection laws. While the New York law contemplates certain court involvement, however, I believe we can adopt these standards while still punishing the price gouging under our existing CUTPA laws. This would continue to empower the Department of Consumer Protection as the primary enforcement agency, while authorizing the Commissioner of Consumer Protection to enlist the services of the Office of the Attorney General. Moreover, were these provisions passed into law, the enhanced penalties that apply when a supply or energy emergency has been declared by the Connecticut Governor would not have to be repealed. This new law could supplement those already existing provisions, providing expanded protection for Connecticut consumers.

I look forward to working with you on this critical issue this session.

Thank you.

§ 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 consumer goods have taken unfair advantage of consumers by charging grossly excessive prices for essential consumer goods and services.

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

2. During any abnormal disruption of the market for consumer goods and services vital and necessary for the health, safety and welfare of consumers, no party within the chain of distribution of such consumer 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 consumer goods and services shall mean those used, bought or rendered primarily for personal, family or household purposes. This prohibition shall apply to all parties within the chain of distribution, including any manufacturer, supplier, wholesaler, distributor or retail seller of consumer goods or services or both sold by one party to another when the product sold was located in the state prior to the sale. Consumer goods and services shall also include any repairs made by any party within the chain of distribution of consumer 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 consumer 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 by other consumers in the trade area. A defendant may rebut a prima facie case with evidence that additional costs not within the control of the defendant were imposed on the defendant for the goods or services.

4. Where a violation of this section is alleged to have occurred, 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 and, where appropriate, order restitution to aggrieved consumers.