

S 396-rr. Price gouging; milk.

1. Definitions. For the purposes of this section, the following terms shall have the following meanings:
 - (a) "Person" shall mean the owner or owners, including any individual, partnership, association, firm, or corporation, of an establishment engaged in the retail sale of milk;
 - (b) "Commissioner" shall mean the commissioner of agriculture and markets; and
 - (c) "Fluid milk" shall mean milk, skim milk or lowfat milk in consumer sized packages sold or offered for sale for off premise consumption.
2. Whenever the commissioner has established a minimum price for milk paid to producers pursuant to section two hundred fifty-eight-m of the agriculture and markets law and such state ordered minimum price is higher than the price set for milk within the state pursuant to the New York-New Jersey milk marketing order, or at any time when the retail price of fluid milk exceeds two hundred percent of the price for class I fluid milk, it shall be the responsibility of the commissioner in consultation with state and local agencies as the commissioner deems appropriate, to examine the price of fluid milk at retail to determine if the prices of fluid milk sold or offered for sale in the state or in any area thereof appear to the commissioner unconscionably excessive. Upon a determination by the commissioner that the price of fluid milk being sold or offered for sale appears unconscionably excessive in a particular area of the state, the commissioner shall, by written notice, provide any person found to be selling or offering for sale fluid milk at such price, an opportunity to discontinue such price levels or to demonstrate that it is not unconscionably excessive. Any person, so notified, who does not submit a written reply within three business days of the receipt of such notice, and who does not within such time satisfy the commissioner that the price level which resulted in the issuance of the notice is justifiable or has been terminated shall be identified in the commissioner's determination as a person apparently in violation of subdivision three of this section. Following such notice to and opportunity for such person to respond, the commissioner shall forward his or her determination, in writing, together with all supporting evidence, to the attorney general.
3. No person shall sell or offer for sale fluid milk for an amount which represents an unconscionably excessive price.
4. Whether a price is unconscionably excessive is a question of law for the court. Evidence that:
 - (a) the price charged at retail for fluid milk represents a gross disparity between the raw milk price paid to producers plus a reasonable handler's processing and distribution charge and the price at retail; or
 - (b) the price charged at retail for fluid milk increased a greater amount than the price increased for an equivalent volume paid to producers under an order or interim price of the commissioner pursuant to section two hundred fifty-eight-m of the agriculture and markets law; and
 - (c) in addition to paragraphs (a) and (b) of this subdivision, the increased price charged by the person was not attributable to additional charges imposed by its suppliers, or other charges beyond the control of the person, including the cost of labor, shall constitute prima facie proof of a violation of this section in any proceeding commenced by the attorney general pursuant to subdivision five of this section.

5. Where a determination and all supporting evidence have been forwarded from the commissioner, 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 determine the total excessive charge for fluid milk sold. In such proceeding, the court shall assess a civil penalty in the sum of the total excessive charge for fluid milk sold plus an amount not to exceed:
 - (a) one thousand dollars, where the aggregate amount of fluid milk sold is one thousand gallons or less per week; or
 - (b) five thousand dollars, where the aggregate amount of fluid milk sold exceeds one thousand gallons per week; and
 - (c) in addition to paragraphs (a) and (b) of this subdivision where appropriate, order restitution to aggrieved consumers.
6. The commissioner shall promulgate all rules and regulations to effectuate the purposes of this section.