

PA13-175

SB0320

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HOUSE OF REPRESENTATIVES

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I pledge allegiance to the Flag of the United States of America and to the republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

SPEAKER SHARKEY:

Is there any business on the Clerk's desk?

THE CLERK:

Good morning. Yes, Mr. Speaker, there is. The business on the Clerk's desk is today's daily calendar for Saturday, June 1, 2013.

SPEAKER SHARKEY:

Thank you, sir.

Are there any announcements or introductions? Are there any announcements or introductions?

We have a few days left before adjournment so lots of work again to do, again, today. And, in that spirit let's get right to it.

Will the Clerk please call Calendar 542?

THE CLERK:

Yes, good morning, Mr. Speaker.

Page 21, Calendar 542, report of the joint standing committee on Judiciary, AN ACT PROHIBITING PRICE GOUGING DURING SEVERE WEATHER EVENTS.

SPEAKER SHARKEY:

SB 320

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Representative Dave Baram, the distinguished General Law chair, you have the floor, sir.

REP. BARAM (15th):

Good afternoon. Good afternoon, Mr. Speaker.

I move for acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER SHARKEY:

The question is acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

Will you remark, sir?

REP. BARAM (15th):

Thank you, Mr. Speaker.

Connecticut faced a number of terrific storms over a 16-month period. Those storms included Tropical Storm Irene in June and August of 2011, Storm Alfred in October of 2012, and Storm Sandy in 2012. And those storms resulted in massive power outages, significant damage to our homes and buildings and created much fear among our residents for their safety and welfare.

Unfortunately, during this period of time also there were unscrupulous individuals who price gouged, who increased their prices in an unconscionable and excessive

manner, taking advantage and preying on the fears of our consumers and so this bill is intended to prevent price gouging in the future.

The bill works as follows: first, the governor would declare a severe weather event emergency and that would be posted on the governor's website, as well as other publications; that is in recognition that with an adverse weather event it usually creates the very high and unusual demand for consumer goods.

The bill, then, goes on to define consumer goods in a very restrictive way, which indicates that they must be vital and necessary for the health, safety and welfare of consumers, and it must be used primarily for the personal, family household purposes. And it gives indications of what some of those might be, like snow removal, flood abatement, lodging, cleanup and repair.

The bill then goes on to discuss that during a severe weather event, no person within the chain of distribution can charge a price that is unconscionably excessive.

Whether a price is unconscionably excessive is determined by a few criteria: first, if the price is deemed by a court to be unconscionably excessive; and secondly, whether there was the exercise of unfair leverage or means or a combination of the two.

The bill also gives some prima facie evidentiary guidance as to what "unconscionably excessive" might be. For instance, it indicates that if there is a gross disparity in price by looking at the customary prices for 30 days preceding the severe weather storm and comparing it to the price charged during that period of time, and also whether the price grossly exceeded the similar price of goods and services within a trade area.

The defendant has an opportunity to rebut the prima facie evidence by showing that he or she had additional costs and if those costs were out of that person's control. A violation of this act results in an unfair trade practice.

This bill has received strong bipartisan support as it worked its way through the legislative process. In the General Law Committee it was voted on unanimously. In the Judiciary Committee, there was only one negative vote, and in the Senate there were only five negative votes.

I believe that this bill is a great consumer will go a long way to stop price gouging, has strong bipartisan support. It takes effect upon passage. It is strongly support by our Attorney General, and I would move passage of this bill.

SPEAKER SHARKEY:

Thank you, sir.

Do you care to remark? Do you care to remark further
on the bill that's before us?

Representative Carter of the 2nd District.

REP. CARTER (2nd):

Good morning, Mr. Speaker.

I have a few questions, through you, to the proponent
of the bill, please.

SPEAKER SHARKEY:

Please proceed, sir.

REP. CARTER (2nd):

Thank you, Mr. Speaker.

The bill talks about consumer goods and services.
Would that happen to mean something like medicine and
pharmaceuticals, as well?

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, I believe it would.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you, Mr. Speaker.

And also, one of the things that happens during a horrible storm or aftermath is a lot of folks who haven't planned get generators so it costs a lot of money to get those generators hooked into your panel.

Mr. Speaker, would that also be covered by this bill?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, I believe that it would.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you very much, Mr. Speaker.

Now in the bill it talks about the governor having the power to proclaim that the severe weather emergency exists and also when it ends. Is the intent for the requirement of this bill to only be in effect during that period of time?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, the bill is very clear that

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this can only occur during the severe weather event, which the beginning date is declared by the governor, and the governor would also have to declare and end date so any violation could only take place between those two dates.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you, Mr. Speaker.

It would stand to reason that after an event like this takes place that if there were a case against somebody for price gouging there would need to be some record as to when those dates or those times were in effect. Through you, Mr. Speaker, is the information being archived in some manner through that web site to show when the event began and when it ended?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, I've been assured that all of those dates will be archived.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you.

And, Mr. Speaker, through you, what exactly is "unconscionably excessive"? You know, we talk about it in the bill in a couple of places. I was wondering if the good colleague could enlighten me a little on that?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, unconscionably excessive is defined in several places. First, in the bill, it gives some guidance regarding looking at the price of goods within a 30-day period prior to the severe weather storm declaration. It also gives us guidance by looking at the customary and normal prices of goods and services within a trade area.

It's also important to note that there are other statutes and acts which also talk about excessive prices. For instance, there is a Fair Rent Commission Statute that looks at excessive rents.

Under CUTPA, there are a long line of cases discussing excessive charges and unconscionably. There's also lending and usury laws and there's also similar statute regarding energy sellers that also uses the language "unconscionably

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excessive" and has a list of cases, as well as Department of Consumer Protection regulations.

So using all of those, I feel comfortable that either a court or the Department of Consumer Protection would have enough information to determine on a case-by-case basis whether something was unconscionably excessive.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you very much, and I think those are excellent answers.

Through you, Mr. Speaker, the good colleague had mentioned there was a 30-day period. It sounds as if a snapshot will be taken of what those prices were, and this 30-day period is the month prior to the event.

Through you, Mr. Speaker, what happens if it's an event, like a freak snow storm in October, not that that would ever happen but imagine an event that happened that was significant in the month of October it would be very difficult to look at snow shoveling prices in the month of September.

Through you, Mr. Speaker, how are we going to handle that?

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, that's an excellent question. If this took place where there was no severe weather beforehand to compare, the courts and the DCP would look at other evidentiary factors. They might look at what goods were selling for in a normal course of business during the year. It might take a snapshot at what it was selling for the prior year. It might look at the trade area to determine what these goods and services normally sell for. So the statute in the proposed act does not limit the kinds of evidence that the court can do well. It sets up a standard prima facie evidence. It allows the court to go well beyond that.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you, Mr. Speaker.

Now, the colleague mentions evidence, and unfortunately, I'm not an attorney although I stayed at a Holiday Inn Express last night. Mr. Speaker, through you, can the colleague mention exactly is the price the only thing that's prima facie evidence in this bill?

Through you, Mr. Speaker.

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SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Well, in the act, through you, Mr. Speaker, in the act, there are two forms of prima facie evidence that are indicated. One is to look at the prices for the period of 30 days before the declaration; and secondly, to look at the normal and customary prices that occur at any time during a particular trade area.

The courts will also look on a case-by-case basis. To give you an example, in January of this year, the DCP had a complaint about a gas station increasing its gas price by 10 cents per gallon. There was an investigation of that and that was determined to be unconscionably excessive because the gas station for no apparent reason other than to take advantage of the weather event increased its gasoline price by 10 cents.

So, we have to defer to the judgment of the courts in determining on a case-by-case basis what constitutes sufficient evidence to determine that there has been an increase in price that is grossly excessive or unconscionably excessive.

SPEAKER SHARKEY:

Representative Carter.

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REP. CARTER (2nd):

Thank you very much.

And through you, Mr. Speaker, one of the things that came up in the bill that was worth understanding was the concept of unfair leverage. Is that concept spelled out somewhere else in the statute?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, leverage is another way of looking at unconscionability. When you look at whether a price is excessive, there are two ways of looking at it. One is the substance of what happened, the actual price increase itself, but leverage can look at the means that was taken to effectuate that price.

So, for instance, if somebody, an electrician, goes to somebody's home and is asked to reattach some wires that would normally cost, we'll say \$250, and they charge \$1,000, obviously, that is going to be grossly excessive, unconscionable, and bears no rhyme or reason to the what the customary price might be.

SPEAKER SHARKEY:

Representative Carter.

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REP. CARTER (2nd):

Thank you very much.

And, when you were talking about the -- that just sounds grossly unconscionable to go from 250 to 1,000, I would have to agree with that. Are you stating that if somebody comes out and does something like unhook your panel and then tries to leverage that against you, would that be unfair leverage?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, again, you have to take it in context. If you have a severe weather storm, somebody has lost their electricity, they have no heat, they have no lights -- and let's just take an extreme example, it's a family that has an elderly parent living with them, a newborn baby, they're going to do whatever they have to do to restore their electricity and heat. And if the only way they can do it is the electrician is saying it's going to cost \$2,000. He's taking undue advantage of this family and he has the leverage because they need, for their health and welfare, this service be restored. So, the leverage that's used in that instance would be unfair, unconscionable.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you very much, Mr. Speaker.

You know, one of the things when we're looking at free markets is always concerning is, you know, how much of the market are we going to affect with a policy like this. I noticed in the bill it talks about having trade areas.

Mr. Speaker, through you, can you explain to me how a trade area is defined or how it's determined?

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, I think that a court or the DCP would have discretion in determining what a trade area is. For instance, if you were selling a generator, the trade area might be a wider area because stores that sell generators, typically, sell to a larger consumer group.

For instance, if you take Sears, they might sell in the Greater Hartford area; whereas, if you look at a local electrician who works just in, let's say, the town of Bloomfield, the trade area might be more limited to the surrounding communities.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you, Mr. Speaker.

You know, as DCP develops these trade areas, I think the one thing we need to make sure that we keep a handle on also is, perhaps, the type of product we're talking about. As you mentioned, a generator, finding a large generator may be something that would have either fewer of them or harder to find. Maybe the trade area would be bigger, as opposed to trying to find, you know, a smaller thing that you're trying to use to dig yourself out, like a shovel or something like that. So I hope DCP pays attention to that as they develop these trade areas.

Through you, Mr. Speaker, I noticed that any seller of energy has been exempted from this bill.

Through you, Mr. Speaker, could you explain why that is?

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, there is an existing statute on the books that deals with energy resources so that statute governs anything that deals with energy resources, petroleum products, gas and the like.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you, Mr. Speaker.

And as I wrap up, one of the problems that we always look at in any law that we put in place is what exactly is going to be the repercussion or the penalty associated with this.

- Mr. Speaker, through you, the bill states that the violation of this subsection is going to constitute a unfair or deceptive trade practice by federal law. Mr. Speaker, through you, Mr. Speaker, could you explain exactly what kind of penalty might be associated with that?

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, yes. Under the Connecticut Unfair Trade Practice Act, there are various penalties and provisions that are set forth. For instance, if somebody goes to court, they can actually obtain actual damages, punitive damages and attorney's fees. There's also additional damages if somebody is willful in their act or violates a restraining order.

On the other hand, if somebody makes a complaint before the Department of Consumer Protection, my

understanding is that the only remedies would be restitution and entering into a consent agreement to make sure that this violation did not happen again.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you very much.

And through you, Mr. Speaker, the bill talks about having each violation on each day on which a violation occurs shall be a separate offense. So I just want to make sure I understand that, it's not going to be a double penalty by having a violation on -- you know, the violation itself and then once each day after. Could you explain how that works?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, it is my understanding that every act that results in an unconscionably excessive price can be a violation and that can occur on multiple days.

My experience and knowledge is that normally if somebody makes an error in judgment, the courts and the DCP tend to bundle that. I don't think their trying to take

advantage of somebody. But to go back to my example to the gasoline hike of 10 cents, what happened in a consent order is they added up the amount of gallons that the gas station sold over this period and figured out what the profit was, which was, I think, a couple of thousands of dollars, and the gas station had to return that money to the State of Connecticut.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

And through you, Mr. Speaker, one final question. Earlier my colleague alluded to the fact that there was different factors. In fact, I think the bill says that in termination of violation has occurred should be based on among other factors. What are the "other factors" that would determine whether a violation took place?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, again, the act creates some guidelines for the courts and the DCP to determine whether there had been violations. But the courts and the DCP can also look at the individual factors and circumstances

regarding a particular complaint, and they can also look at whether there were other costs that were associated with the provider of the goods and services so that if they increase their price in a reasonable way that might not be a violation.

So, again, there is some discretion and deference that one gives to the courts in looking through all the evidence and factors and circumstances, and the act makes it clear that they have the right to do that. They're not bound by any strict set of factors.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you, Mr. Speaker.

I thank the chair of the General Law Committee for all of his help and his answers to these questions. I really appreciate the time.

And ladies and gentlemen, as we go forth and talk about this bill further, I know there are some controversies because this is a chance for us to actually do something that might affect fair markets. One example that was brought up to me would be, you know, can Hurricane Katrina when things went south down there, everyone is looking for a generator. But because there was a free

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market involved what happened was there was incentive for people to bring generators from the outside and, this way, even through the generator prices went up in the beginning, by the time they had people driving up from, you know, Arkansas and Texas and everywhere else, those prices dropped.

So, in that instance, the free market is what took over and helped those folks, you know, get through that horrible tragedy.

I do have concerns with this. The same here, anytime we're affecting the markets, but I'm hopeful to give this a try. I'm hopeful that, you know, as DCP looks at this and establishes trade areas that they're reasonable. If not, I think I'll be the first back here trying to relook at this in the future but for now, Mr. Speaker, I urge my colleagues to support it. Thank you.

SPEAKER SHARKEY:

Thank you, sir.

Do you care to remark further on the bill as before us?

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker, if I may a couple of questions?

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SPEAKER SHARKEY:

Please proceed, sir.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

As I understand the bill, we have -- I understand the intent that we're trying to get at, and I just had a couple of questions on the definition of "unconscionably excessive." I see here that we have a couple of examples in lines 26 through -- somewhere around 36, which sort of set forth some of the reasons why something may be unconscionably excessive. And, then, I also see in this bill we have a section that allows for a defendant to rebut a prima facie case if certain circumstances are met.

And, my question is because this particular example is not enumerated in here, but there are circumstances where if there might be short supply of an item, especially, if there is a dramatic event, like a storm, and a company is trying to order generators, I think as we saw this past fall because they become in short supply, the manufacturers, say, from the Midwest or Texas or wherever they come from, might increase the price of the generator so that the store who's acquiring them is paying a higher wholesale price and, therefore, they then would increase their price to maintain their profit margin but to make up

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for that increased cost.

Under that type of example, would -- would that be able to fall into the determination under the definition of whether something is unconscionably excessive?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, the act does allow that the defendant could use that to show that there was an increase in price that was beyond his or her control and that they had nothing that they could do to effectuate that price. So the example given about a manufacturer that is, we'll say, out of state, where's there no control over the price, would probably be used by the court to justify that kind of an increase because, again, the provider of the services in Connecticut had no control over the event.

SPEAKER SHARKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

And so when the court is making that determination, would they be allowed to incorporate those factors in determining whether or not something is unconscionably

excessive?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, yes. I believe that the act encourages that the court or the DCP would consider those kinds of factors. There might be other circumstances, as well, that influenced. But if in your hypothetical, if that was the only reason for the price increase, the excess charge by the manufacturer, I believe that this act would give a valid defense to anybody who increased their price solely as a result of that event.

SPEAKER SHARKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

And then just moving to paragraph h, which is lines 49 through 54. Under current CUTPA laws is an individual able to bring a claim against a company under current law if something is priced in their mind at a extremely high amount of money?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, under CUTPA there is a private right for somebody to make a claim for anything that might be unfair, deceptive trade practice, and this act, in fact, indicates that this does not preclude somebody from bringing any other kind of claim under CUTPA that might be appropriate. But this particular act really only affects price gouging that occurs during the declaration of an extreme weather event. So if something happened outside that declaration, outside the beginning and end date, that person if they felt that they had been aggrieved would have to bring a normal CUTPA complaint and go through the normal evidentiary process.

SPEAKER SHARKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

So under paragraph h, we have language here that states that nothing shall be construed to limit the ability of DCP or the court to make a finding of an unfair trade practice even in the absence of severe weather. So is this provision meant to say that if somebody wants to pursue a claim under existing CUTPA law, they can do so under that

statute?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, that's correct. This does not limit anybody from bringing any other kind of a claim outside the declaration of a severe weather event.

SPEAKER SHARKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

So paragraph h is not meant to expand the current rights under CUTPA. It's merely acknowledging that an individual could utilize the existing CUTPA statutes if those elements, under existing law, may be satisfied to bring such a claim?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, that's current.

SPEAKER SHARKEY:

Representative Candelora.

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REP. CANDELORA (86th):

Thank you, Mr. Speaker.

And then, finally, we have very -- the definition is very broad of consumer goods and services, and I think I could envision it almost include anything. If there are items that might be collectables, things that normally would have sort of a varying price depending on, you know, the day of the week. You know, for instance, if you have, God willing, the Yankees win the World Series and those products increase in price because of that event and, therefore, the market increases. That type of situation, even if there's severe weather emergency declared by the governor, under that type of circumstance, this bill isn't meant to cover those types of circumstances?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

God willing, Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, I would just point out that the act talks about vital and necessary consumer services and goods that are necessary for the health, safety and welfare of the consumer.

So, in your example, where a particular baseball team wins an event and prices go up, I don't see that that would

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have any relationship to this act. It's not a -- at least I wouldn't consider it a vital and necessary consumer good for your welfare and protection.

SPEAKER SHARKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

I appreciate the answers to my questions. I always get a little bit concerned with our CUTPA statutes because it is really an extraordinary remedy that is afforded on individuals. And while it could be appropriate, it does provide for treble damages, and I think it really needs to be narrowly applied to acts that are truly rise to the level of being unfair or deceptive.

And I am sympathetic to situations where we do get into crisis and, certainly, we need to make sure that supplies are provided to our constituents during those times of crisis and at appropriate price levels. So I appreciate the answers that seem to suggest that this is narrowly construed and doesn't give more expansive rights under existing law.

Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark further on the bill as before us?

Representative Alberts.

REP. ALBERTS (50th):

Good afternoon, Mr. Speaker.

If I may a question to the chairman of General Law?

SPEAKER SHARKEY:

Please proceed, sir.

REP. ALBERTS (50th):

Thank you.

Lines 41 through 43 reference the seller of an energy resource, and I just wanted to make sure that I fully understood this because one of the complaints I heard as a result of that freak snowstorm that we've had in the past and I believe it was in October was that propane delivery charges seemed to be excessive according to some of my constituents. And when I talked to the propane suppliers, they told me that they have a standard rate that they provide the delivery service for, but if there are special runs that are made which are exclusive to one house or two households, something that happened much more deliberate as a result of an outage, that the rate would be higher for that. And I just wanted to make sure that I clarified for my understanding and the Assembly's understanding whether

or not this was excepted.

So, to the chairman of the General Law Committee, if a propane delivery firm charges, say, \$50 as an example, for regular propane delivery service as part of a route, but for emergency outages, they had a standard charge of, say, \$100 to make that delivery run and then in a time of emergency or a time of extreme weather situation they kept those same rates, their same standard rates. For purpose of legislative intent, would it be the Chairman's understanding that these, lines 41 through 43, would make that firm exempt from consideration for excessive charges?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, that's correct. I would just point out that there's an existing statute, 42-34, which talks about energy resources, and it does discuss propane as being part of that statute. And that statute uses many of the similar terminology: "Unconscionably excessive."

So while your example would not fall under the act that we're discussing today, it might very well fall under a different existing statute.

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SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

And to that point does the chairman think, based on his knowledge and I won't hold him fully accountable to it, does the chairman believe that if the same rate was applied in that particular scenario, say, \$50 for a regular service but, say, \$100 for something that was an exigent circumstance like a call for an emergency refill of propane? And that those same rates applied in a weather emergency, does the chairman believe that the dealer may run afoul of the statute that he just referenced?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Baram.

REP. BARAM (15th):

Thorough you, Mr. Speaker, it's difficult to speculate on a particular hypothetical. Personally, I don't find that to be excessive or unconscionable. Ultimately, that would have to be determined by DCP or a court of law.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker, and I thank the proponent for his answer.

SPEAKER SHARKEY:

Thank you, sir.

(Deputy Speaker Berger in the Chair.)

DEPUTY SPEAKER BERGER:

Representative Ackert.

REP. ACKERT (8th):

Thank you, Mr. Speaker.

A few questions, through you, to the proponent of the bill.

DEPUTY SPEAKER BERGER:

Please proceed.

REP. ACKERT (8th):

You had mentioned a gas station that had raised its rates for the price of gasoline. If by chance that gas station had bought services to remain open, maybe rent the large generator, had the electricians or somebody come in and tie that in and they tried to recoup the cost of that through the increase in their gas prices, would that fall under this legislation?

Through you, Mr. Speaker.

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DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, it's difficult to speculate on that to determine what all of the different prices are that go into justification for increasing a gas price. Oftentimes merchants, gasoline stations, include in their overall budget, items for those kinds of emergencies or unexpected issues. I think that would have to be decided by a court, but again, the way this act is written, I think, it allows reasonable discretion or court to take into account those kinds of exigent circumstances where a retailer or merchant is trying to stay open to provide services but may incur additional costs to do so and that's factored into their price.

DEPUTY SPEAKER BERGER:

Representative Ackert.

REP. ACKERT (8th):

Thank you, Mr. Speaker.

So going back to that a little bit, so if somebody is wanting to keep their gas station open, they're going to charge because they're renting some large generators to keep a commercial facility open is not cheap and the services that connect it, disconnect it. So if they had

multiple complaints, consumers in the area coming through and they said -- and so, then, DCP says, Hey, we're going to look into this --

Now's there court costs involved and then they find that -- so this gas station now has to go to court to defend itself. There's cost involved in that. So they're, essentially, putting their neck out on the line a little bit saying, Well, you know, I have to do this, but I want to make sure my customers -- it's an area maybe in a small town that only has one station.

How is recouping the court costs, if they are -- if there is no fault on their own. Would they, then, kind of sue to get reimbursement on their court costs?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, first of all, court costs would only be allowable if it went to a court and not to the DCP. And then it would be in the judge's discretion to determine whether or not they were going to award attorney's fees or reimbursement. And again, I think it would fall on a case-by-case circumstance to determine what were the actions that were taken, were they responsible and

justifiable or did they result in unscrupulous conduct. So it's difficult for us, in any hypothetical, to determine that. I think that we have to defer it to a court and a judge to make that assessment.

DEPUTY SPEAKER BERGER:

Representative Ackert.

REP. ACKERT (8th):

Thank you, Mr. Speaker.

Thank you to the good chairman. I happen to, like many of us, not living on a shoreline but have an affiliation with going down to the beaches, went down and saw Misquamicut and the damage that was ravaged on Misquamicut. And, it happened to be a late Sunday afternoon and there were bulldozers and payloaders working and Bobcats working, literally, round the clock to get the repairs done on there. So, in this case, whether it's through regular labor negotiations or through a contract with people, I am sure those rates were either doubled and/or triple to stay there that many hours, like any of us that work double-time or double time and a half when you're over, you know, 60, 70 hours in a week.

Would this -- and somebody had, you know, come through and said, you know I think I paid too much for this but the hourly wage was substantially higher and the use of the

equipment.

So, through you, Mr. Speaker, would that be a case that might fall under that legislation?

Through you.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, again, this particular bill only addresses consumer goods and services. So if your question is getting to the wages that a provider of, we'll say, services has to pay, again, that might be something that a court would say is out of their control and was expected in this kind of an emergency and the court would have to determine whether or not all of those factors were reasonably justified given the event, whether the increases mirrored the additional costs to the provider of services.

So, again, it's hard to speculate what a court would do. They would have to determine whether those were fair increases that were reflective of the increased cost to the provider.

DEPUTY SPEAKER BERGER:

Representative Ackert.

REP. ACKERT (8th):

Thank you, Mr. Speaker.

My question was actually of the service provider, not the individuals that are collecting pay. It was actually on the service provider. They're going in saying, Yeah, we're on 60 hours and this is our pay rate at this time.

And they're like, you know, I need my road fixed.

So it was the service provider that I was questioning, not the individuals getting paid for that question, because, you know, when you start to get into many, many hours, as companies do, especially, you know, with our utilities, but also the people that are following utilities, whether it's the electrician or the propane guys, whatever it may be that there is. In a 30-day lookback doesn't show, typically, in this economy, too much overtime or double time or double time and a half so that was what the question was more on for that case.

Now, if the individual walked up, brought a contract, had a contract signed saying this is the cost of the work that's required to be done on this project and then that individual, through you, Mr. Speaker, if that individual then said, Hey, you know what, the guy down the street without a storm related has had this work done, roof repair or something, but I signed a contract.

Through you, Mr. Speaker, would that contract be valid or would it be possibly if they said, you know, it was

double what my neighbor got without a storm or without the declaration of emergency.

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, if the contract preceded the severe weather declaration, that's a private contract between two parties. If the contract was entered into for work during the severe weather declaration, then the courts or DCP could look to determine whether the prices that were set forth in the contract were reflective of actual cost or whether they were excessive and unconscionable.

The fact that it's a written contract isn't the key point. The key point is what are the terms of the contract and if those terms were arrived at during the declaration period, then it would fall within the ambit of this statute to determine whether they were excessive or not.

DEPUTY SPEAKER BERGER:

Representative Ackert.

REP. ACKERT (8th):

Thank you, Mr. Speaker.

Thank you to the good chairman for his answers.

You know, I, like many of us, represent towns that

probably hired a lot of contractors to remove snow from roofs, local small individuals or stores that seemed as though they were overcharged and, literally, were brought in and said, you know, we had an agreement, there was a contract signed during the declaration of the emergencies and now we're being beat up by the people that hired us to reduce our costs and when you say, typically, to a contractor, Well, you know, we're going to take you to court on this, we're going to turn you into DCP, they cave in. They just don't have the funds to fight these, some of these so I do have concerns with this.

I think this is a consumer -- a good consumer bill, but I think sometimes, you know, there could be an issue with it down the road, but I thank the good chairman for his answers and his work on this.

DEPUTY SPEAKER BERGER:

Thank you, Representative.

Representative Srinivasan of the 31st, sir, you have the floor.

REP. SRINIVASAN (31st):

Good afternoon, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Good afternoon, sir.

REP. SRINIVASAN (31st):

Mr. Speaker, listening to this debate, I agree with the concept. Right from day one, it's solved. Gouging should never occur, should not happen. And when there is a natural disaster, what we need is a helping hand to help the people in need who are unfortunately affected by this disaster so not someone who is going to take advantage of the situation. But human nature being what it is and what one is supposed to do in a normal set of circumstances, even more so in these unfortunate emergency circumstances does not happen. And what happens, as the good chairman said and the point of what we're discussing here today, is unacceptable advantage being taken of the situation, which is, unfortunately, part and parcel of human nature.

So having said that and agreeing in principle in concept that such gouging should not occur at all and people who do this should be taken to task, through you, Mr. Speaker, some questions to the good chairman.

DEPUTY SPEAKER BERGER:

Please proceed, Representative.

REP. SRINIVASAN (31st):

There has been conversation already about line 19, you know, the unconscionable excessive cost. I want to tie that line 19 with 31 to 33, where you're looking at the rate of those services for the prior 30-day period.

So through you, Mr. Speaker, on line 19, which is considered excessive, 30, 33, which is the charge or the rate for those services for the past 30 days prior to the disaster. Is there, through you, Mr. Speaker, a formula or a ratio which is acceptable?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, this statute does not create any ratio or formula. Again, every circumstance would have to be considered individually by a court or the DCP. But to give them that ability to analyze and determine whether something is unconscionably excessive, it sets up two criteria: one, being to look at the cost of these goods and services in the 30-day period prior to the declaration to determine and compare those to what was charged during the declaration. And then, of course, as we previously discussed, to look at whether there were any other costs to the provider that were reasonable and justifiable or, perhaps, out of that person's control and that resulted in the increase in price.

So, again, it's giving the trier of the fact the opportunity to compare and look at that as a way of

determining whether something is excessive.

DEPUTY SPEAKER BERGER:

Representative Srinivasan.

REP. SRINIVASAN (31st):

So, through you, Mr. Speaker, so this excessive factor, which is the point of our conversation here, because we all realize and understand that it is going to be much more, whatever the services are prior to the 30 days because of the nature of the circumstances. But what does is acceptable and what is excessive is, obviously, the debate that we are having here this afternoon.

So if a broad outline of a formula is not there, then, through you, Mr. Speaker, who would then decide on the case-to-case basis as to what is acceptable and what has been excessive.

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, if the complaint is made to the Department of Consumer Protection, then the commissioner who hears these cases would make that determination. If it's filed in a court of law, of course, the judge would make that decision.

DEPUTY SPEAKER BERGER:

Representative Srinivasan.

REP. SRINIVASAN (31st):

So, through you, Mr. Speaker, then it is quite conceivable that for Situation A that particular rate, that particular price, may have been acceptable either by the Consumer Protection, by the commissioner or by the court. And for a similar service but the charges may be the same, could be slightly increased, that they may be considered excessive since we did not have a broad base so each case should be judged individually. And my concern, through you, Mr. Speaker, is in Situation A, it may be acceptable; and in Situation B for similar parameters, it might be considered excessive.

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, that hypothetical could happen in any situation, any court case. One judge makes a determination different than another judge, but we fortunately have a body of regulation and case law because the language in this statute is copied, in part, from other statutes, such as the petroleum resource statute that I

referred to earlier. So, if you went to a court of law, hopefully, a good lawyer would present some of the cases that were decided by both prior courts and the Department of Consumer Protection. And likewise, if you went to the Department, you would present court cases and regulatory cases to show the trier of the fact what courts and what the commissioner had done previously. So hopefully, given that variety of cases that we already have on the books, somebody could make a reasoned decision.

DEPUTY SPEAKER BERGER:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Through you, Mr. Speaker, in my constituent, I have a service that provides this service in an emergency basis. In talking extensively with him in both of these storms, unfortunately, that we have had in the last year, the feeling that they all have is when somebody makes a complaint against them, it is so time consuming, it's so labor intensive to go after and try to defend yourself against what the business owner thought was a reasonable price. And as was mentioned by one of the representatives earlier in the debate that they just decide to cave in and pay whatever the charges have been levied against them.

Through you, Mr. Speaker, that is why the idea that we

have some kind of rate structure, which we will feel is reasonable or acceptable so that when they are charged they feel that they are being well within their boundary and so feel comfortable in attempting, they may never be able to defend themselves and be successful but in attempting to defend themselves.

Right now, they feel they do not have that because it is, obviously, you know, an expensive thing to be able to defend themselves and that has been the concern of the businesses that we have in Glastonbury. What we've been told is the costs go up for these services. You know, labor is more expensive and the businesses provides the labor, labor is overtime, labor now has been working round the clock, two days, three days, you can just imagine the impact of that, the labor force that they have stay in hotels. We all know that the gas cost have gone up or will go up and, of course, the cost of daily meals, so on and so forth. So when you look at all of those various variables that are there in delivering the service now in the midst of a storm and what it was 15 days prior, 30-days prior, when that scenario was not there. That is their concern, that what might look like to us, to you and me as an outsider as price gouging, but when you add of these various factors, it really is not price gouging because

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that is the extra cost, the additional cost, to render that service under that very, very difficult trying circumstances being in the midst of a particular storm.

Through you, Mr. Speaker, would all of these various factors that I just outlined that increase the cost of delivering services now, will they all be a part of what the structure will be to decide whether this rate that was now charged by this service industry is reasonable or is it price gouging?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, it is my opinion that this statute was drafted to allow a court or the DCP to take into account other costs that were outside the control of the provider of the good or the service as long as it is reasonably reflected in the charges.

I think that anybody who brings a complaint, it's a major step forward, and I would like to think that nobody would bring something that was bogus or facetious that they would bring something that really had merit because there's a cost to anybody, whether it's a defendant or the plaintiff.

So, in answer to your question, I think all of those factors are legitimate factors to be considered by the trier of fact.

DEPUTY SPEAKER BERGER:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Through you, Mr. Speaker, since Connecticut has been unfortunate to have these two major storms affect us, through you, Mr. Speaker, do we have any idea as to in these two storms the number of claims that were made and, obviously, are still pending and not resolved yet. But, do we know, is there a huge outcry of people saying that, you know, price gouging occurred, or is it a possibility, no question about that at all, that it can occur, it probably did occur, but there are far and few cases.

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, to my knowledge there have not been an exorbitant number of cases. Many of the stories that we heard were things that were reported in newspapers and television. In the debate in the Senate, one of the Senators indicated that their neighbor was

quoted a thousand dollars to plow their driveway when normally it would be a hundred dollars or less. I can tell you a neighbor of mine, who actually lost some wires, was also quoted close to a thousand dollars where the charge would normally be a couple of hundred. She paid that charge because she was worried about her family. So it's, again, there are lots of stories, there were lots of reports, but complaints that were filed, there aren't a tremendous number of complaints and the whole intent of this statute is to provide warning to people that they could be held liable and it's preventative. It's to let people know don't take advantage of others because there are penalties to be had if you do.

So, hopefully, this statute will be preventative and will prevent these kinds of acts from occurring.

DEPUTY SPEAKER BERGER:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Through you, Mr. Speaker, I do want to thank the good chairman for sharing those stories that you know of personally because this is a very difficult bill to vote on this afternoon.

On the one hand, we have heard people that have been gouged, that have been fleeced, as you said, a thousand

dollars. And you do have to get out of your house and you have no choice in that particular situation or the wires so your heart goes out to those people that have paid excessively. There's no question about that at all.

And then you have on the other hand, the service industry, professional businesses. This is what they do day in and day out. They have gone out and done what they need and now they are in fear that these charges that they are going to levee against their customers, some customer or customers may decide it is excessive and, unfortunately, put them through the painful process and unnecessary painful process.

Mr. Speaker, I do want to thank the good chairman for his answers, and I will continue to listen to this debate. Thank you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Thank you, Representative.

Representative Sawyer of the 55th, madam, you have the floor.

REP. SAWYER (55th):

Thank you, Mr. Speaker. Good afternoon.

DEPUTY SPEAKER BERGER:

Good afternoon, madam.

REP. SAWYER (55th):

Representative Srinivasan brings up many points that I think are so relevant to this particular bill.

When you look at a storm impact across the state, you're going to find, perhaps, a wide variety of damage. Interestingly in the past five years, there have been times where there is great damage along the shoreline from snow, from heavy windstorms, from heavy rainstorms. Other times it's been inland where we've had tornados, where we've had heavy deep snow. So it's not necessarily one area or another but in a case where we had the 100-year storms and we've had a couple of them unsuspectingly in the last couple of years so we're off the hook, I hope, for a while, you look at the state and how it's had to gear up.

We look at our people who have the equipment. We look to the people who have the laborers and often times it's not enough. When you look at a six-inch snowfall, it's pretty easy to get someone to come and remove the snow out of your yard, even up to a 15-inch snowfall. When we had the surprising 16-inch snowfall overnight in my area, it was a little harder to find someone to come clear it. But, Mr. Speaker, when we had 34 inches, that was significant. Snowplows didn't do it. Snow blowers didn't do it. And in some cases because of the drafting, we had to get payloaders to come in and remove the snow.

Mr. Speaker, there's a big difference in cost between using a snow blower and having to get a payloador or a bucket loader to come in and then you have to find places to remove the snow. It's not like you can just push it over onto the grass. In many instances, it has to be removed so you have the removal costs.

And at that time, I know that we do have a special instance, an emergency instance, where the snow is allowed to be put in the Connecticut River by a special permit by DEEP on emergency basis.

So, yes, there's a way to do that but that requires then trucking as well so you need to think on that broader expanse of why some of these costs go up.

When the bill came up, I got an email from a gentleman and he does do emergency restoration and that is his business but, you know, he says it's different. If it is just a simple local issue where a tree has come down on a yard, that's one type of emergency, but when the tree comes down and crushes a garage, when it breaks through a house into a bedroom or a living room, when it crushes a few cars, when it brings down wires, when the damage goes all the way through the house and you have severe water damage, well, that's certainly an emergency for that family. There's no question and suddenly it needs to be dealt with

immediately.

But, this is his description as he sent it in the email and if I might, Mr. Speaker, I'll read just a couple of lines. And he talks about what happens during those circumstances in which it is storm, a storm time, a storm-related time.

He said, "From my experience, we raised our rates and took more time to complete the tasks because of the storm and its effect on resources. Our drivers had to drive further for fuel and materials. Roads were flooded, closed and washed out so we were not able to take our normal routes or use the normal resource facilities where they would get their materials. Due to high demand they paid higher prices for labor, if they could get it, and sometimes they had to pay extra to be able to lure them to come to work for them.

DEPUTY SPEAKER BERGER:

Representative Sawyer.

REP. SAWYER (55th):

Yes, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Were you going to read a couple of lines, Representative?

REP. SAWYER (55th):

Yes, Mr. Speaker, that was five lines.

DEPUTY SPEAKER BERGER:

Okay. Thank you, Representative.

REP. SAWYER (55th):

Thank you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

If you could consolidate the letter.

REP. SAWYER (55th):

Absolutely, sir.

But the other thing he describes further on in his correspondence is he talked about the risk and the increased insurance that he has because of the risks that his pool takes because they have to go into dangerous areas, post storm time, and sometimes, Mr. Speaker, during the storms so their costs are more.

You know, we heard the good chairman say that there was no formula for making the decisions about gouging. There was no ratio given to decide what would be the gouging. He said there was no business standard and if you look at this bill, from what I heard from my constituents, they were saying it has a chilling effect. A chilling effect as to go the extra mile, to push the extra harder to get the extra people to come in earlier to respond faster because it's going to cost more and they might be accused

of gouging.

I feel badly for people who have been taken for extra money, absolutely. But I also feel, Mr. Speaker, that it's important that we encourage businesses of this sort because they have the integrity to do the job, to do it right, do it well, and do it at an emergency time. So, Mr. Speaker, unfortunately, I will be voting against this bill.

DEPUTY SPEAKER BERGER:

Thank you, Representative.

Representative Carpino of the 32nd, madam, you have the floor. Please proceed.

REP. CARPINO (32nd):

Thank you, Mr. Speaker.

I have some questions for the proponent if I may.

DEPUTY SPEAKER BERGER:

Please proceed.

REP. CARPINO (32nd):

I'd like to ask him about two specific examples that I'm aware of and how they would be dealt with under this proposed bill.

In the event that there is a major snowstorm at the least expected time of year and a hardware store, shortly thereafter, is in short supply of roof rakes because all of their very loyal consumers and customers of this family-

owned business -- that's been there for decades -- is short on roof rakes and the majority of this particular community is in dire need and they're severely concerned for their roofs to be falling in with the additional weight of the snow.

This particular small businessman and his loyal employees rent a U-Haul truck, drive a day's distance to a state where they were in ready supply. They themselves pay a tremendous cost for the supplies, then they drive back.

So the business owner is faced with a number of additional costs and, therefore, they try to recoup the additional costs much to the surprise and applaud of their loyal customers because they know what this particular hardware store has gone through to get this.

How would those additional costs be treated under this proposed bill?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, it's my belief that this statute would allow a trier of fact to consider those additional costs as long as they were reasonable and they were incurred by the provider of the goods of services and

they were out of his control. So if all of those factors were relevant, it probably would be something that would not be unconscionable.

DEPUTY SPEAKER BERGER:

Representative Carpino.

REP. CARPINO (32nd):

Thank you.

And is that trier of fact, Consumer Protection?

Through you.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, it really depends where the consumer files the complaint. If they file the complaint with the department, it would be the Consumer, commissioner, Protection. If they filed it in court, then it would be a judge.

DEPUTY SPEAKER BERGER:

Representative Carpino.

REP. CARPINO (32nd):

Thank you.

So my concern here is that this loyal small business has gone out of their way for their customers and they could be faced with defending an action in court. Is that

an accurate possibility under this?

Through you.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, it is. It's no different than any claim made under the Connecticut Unfair Trade Practices Act. The individual has a choice of forum, either the department or the Court.

DEPUTY SPEAKER BERGER:

Representative Carpino.

REP. CARPINO (32nd):

Thank you, Mr. Speaker.

Through you, was there any considerations given to having these complaints decided by Consumer Protection and sparing our small businesses from dealing with the defense costs?

Through you.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, the act was modeled on the Connecticut Unfair Trade Practices Act, which now allows a choice of forums, and it's a, per se, violation that sends

it to the commissioner or the Court under the CUTPA Act.
So, again, it's the individual's choice as to where they
want to file the complaint.

DEPUTY SPEAKER BERGER:

Representative Carpino.

REP. CARPINO (32nd):

Thank you.

And we talked about a few moments ago you mentioned
costs under -- in this case, the hardware store's control.
In the event the hardware store pays a bonus to their
employees because they've been working 8 day's straight or
they've been paid overtime or they've been away from their
families for a prolonged period of time in order to obtain
these goods or provide these services, is that something
that is going to be deemed within the employer's control?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, again, it's a case-by-case
determination. But based on the hypothetical you gave me
where they had to hire people, pay more wages to get them
to come in, perhaps, they paid more for the goods that
they're selling because of the weather event, those I think

are all legitimate factors that a court would take into consideration and would be rebuttable evidence to any prima facie event.

DEPUTY SPEAKER BERGER:

Representative Carpino.

REP. CARPINO (32nd):

Thank you.

And I have no more questions for the good chairman of the General Law. I do have some concerns. I will continue listening to the debate. Nobody here wants to see a constituent taken advantage of or preyed upon but I do think that there may be some significant concerns with the language and we may be exposing our loyal business folks and the people who are going the extra mile and going out of their way to support a local consumer with defense costs that most certainly should be avoided. Thank you, sir.

DEPUTY SPEAKER BERGER:

Thank you, madam.

Representative D'Amelio, the pride of the 71st District, sir, you have the floor.

REP. D'AMELIO (71st):

Thank you, Mr. Speaker and good afternoon to you my good friend from Waterbury.

DEPUTY SPEAKER BERGER:

Good afternoon, sir.

REP. D'AMELIO (71st):

Through you, a quick question to the proponent of the bill.

DEPUTY SPEAKER BERGER:

Please proceed, Representative.

REP. D'AMELIO (71st):

Representative Baram, my question to you is if we brought that scenario that you mentioned, like, the driveway. Normally, it's a hundred dollars to have it plowed and they were requesting a thousand dollars because of the massive snow amount. And a complaint is being brought to Consumer Protection. Who will set that price down? Will Consumer Protection now tell the consumer what the consumer should pay to that plow service? Will they set that new rate to resolve the case?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, if a complaint is brought to the commissioner of Consumer Protection, presumably, there was a charge, there was a payment, and the commissioner has to decide whether that was unconscionably excessive. So

they will look at all of the factors that we've been talking about to determine whether that was the case.

DEPUTY SPEAKER BERGER:

Representative D'Amelio.

REP. D'AMELIO (71st):

Thank you, Mr. Speaker.

Through you, who will solve the case, though, I mean, who's going -- how will the case be resolved? I mean, will Consumer Protection say, Well, you know that driveway was really worth \$500 in this scenario, not \$1,000 so the consumer pays the plow driver \$500 and the case is resolved. Is that how this is going to work?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, if a complaint was filed with the commissioner of Consumer Protection, there are only two remedies that I'm aware of that the commissioner has: one is to enter into a consent agreement where the provider of the services would say, This won't happen again, I won't do it again; and secondly, the commissioner would have to determine what portion of that price that was paid was excessive or unconscionable, and then it would be

up to the commissioner to decide whether there should be restitution, whether the provider should pay that back to the consumer and what portion of it.

So those would be facts that would be determined by the commissioner.

DEPUTY SPEAKER BERGER:

Representative D'Amelio.

REP. D'AMELIO (71st):

Thank you, Mr. Speaker.

One other question, so let's stay with that scenario. Should the consumer not pay the vendor or would the vendor have to be paid and then the case be resolved or -- I'm not really sure how this is going to work.

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, just on my own personal experience, most vendors require payment at the time they give you the goods or the services so I would think that the majority of cases would exist where the consumer has already paid the price and now you're filing a complaint and you're asking for restitution.

DEPUTY SPEAKER BERGER:

Representative D'Amelio.

REP. D'AMELIO (71st):

And through you, Mr. Speaker, if that's determined by the commissioner that a fee was paid excessively, a refund would be requested on behalf of the consumer through the commissioner. And if that doesn't occur, then there's going to be a fine imposed on that vendor?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, to my knowledge, the commissioner has no authority to assess fines unless there is a willful violation or a violation of an existing restraining order. And that usually is done through the Attorney General's Office who has the ability to take it to court if there is a willful violation.

DEPUTY SPEAKER BERGER:

Representative D'Amelio.

REP. D'AMELIO (71st):

So, through you, Mr. Speaker, if it was found to be the consumer paid excessively, there's really nothing in this bill that says that the vendor, whoever provided the service, has to make a refund to the consumer; is that

correct?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, again, that would be determined by the trier of fact. The trier would determine whether or not there was an unconscionably excessive price charged and, if so, how much of the charge was excessive, and then the commissioner would have the authority to order reimbursement or restitution if they felt that was warranted.

DEPUTY SPEAKER BERGER:

Representative D'Amelio.

REP. D'AMELIO (71st):

Thank you.

One other question, if the volume of complaints does go up, is Consumer Protection in a position to handle increases and to resolve these cases in a timely manner?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Representative Baram.

REP. BARAM (15th):

Through you, Mr. Speaker, it is my understanding that

the Department has a \$5,000 threshold. So if somebody is bringing a complaint and let's just say they feel they've been damaged \$20,000, they go to court because they couldn't recoup anything over \$5,000 so, obviously, the commissioner, the intent is to take smaller cases and trying to resolve them in a more amicable way.

DEPUTY SPEAKER BERGER:

Representative D'Amelio.

REP. D'AMELIO (71st):

Thank you, Mr. Speaker, I appreciate the answers, and I'll continue to listen to the debate. Thank you.

DEPUTY SPEAKER BERGER:

Thank you, Representative.

Representative Sampson of the 80th, sir, you have the floor.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

I want to start by saying that I want to second the comments by Representative Sawyer who spoke a couple of people ago. I think she very eloquently stated the concerns that exist with this bill.

I think it's safe to say that there should be concerns about anyone that normally say our government takes far too much control in the private business of its citizens and

this is a perfect example in where the good intentions of our government may result in a bad result.

I would submit that it is precisely because of the desire of a business owner to make a profit that much-needed goods are even available when you have an emergency. I did a little bit of research online and was looking up Adam Smith's "Wealth of Nations," and there are many good examples in there of why the price of a free market is good in determining the amount of goods that are available to those who had purchased them.

But, I wanted to use an example that I actually found that was written by John Stossel, who some people know from TV. And in his example he says take the case of a drought where water might be hard to find. This is a case where raising the price actually protects society and could even save someone's life.

In the case of where price gouging is allowed, maybe a bottle of water that would normally cost a dollar, would now be \$20 dollars, but because of that fewer people are going to purchase it and people who need and want the water are going to be much more selective about it. And only those who truly, truly need to get that bottle of water are going to pay for it. But, consequently, it remains available to them because of it.

In a case where we might control price gouging and say you cannot charge more than that dollar, the first person that comes along is going to see the need for that water and buy them out. Furthermore, the situation exists that store owner has no desire to buy extra water in advance knowing a drought might be coming because he has little chance of making an additional profit.

So our actions, which are supposed to be good intentions, are going to end up changing the marketplace where supply and demand no longer have an effect. And for those reasons, Mr. Speaker, I am opposed.

DEPUTY SPEAKER BERGER:

Thank you, Representative.

Will you remark further on the bill before us? Will you remark further on the bill before us?

If not, will staff and guests please come to the well of the House. Will members please take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call.

Members to the chamber please. The House of Representatives is voting by roll call. Members to the chamber please.

DEPUTY SPEAKER BERGER:

Have all the members voted? Have all the members voted?

If all of the members have voted, if you could check the board to see if your vote has been properly cast.

If all of the members have voted, the machine will be locked and the Clerk will take the tally.

Will the Clerk please announce the tally.

THE CLERK:

Mr. Speaker, in concurrence with the Senate, Senate Bill 320

Total Number of Voting	137
Necessary for Passage	69
Those voting Yea	125
Those voting Nay	12
Those absent and not voting	13

DEPUTY SPEAKER BERGER:

The bill passes in concurrence with the Senate.

Representative Boukus, for what purpose do you rise, please.

REP. BOUKUS (22nd):

Thank you, Mr. Speaker.

Mr. Speaker, it's a pleasure to be here on this absolutely gorgeous Saturday afternoon. Visiting with us today from the great state of Wisconsin recently, and now

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GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
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Mr. Clerk.

THE CLERK:

On Page 42, Calendar 163, Senate Bill Number 320, AN
ACT PROHIBITING PRICE GOUGING DURING SEVERE EVENTS,
Favorable Report of the Committee on Judiciary.

THE CHAIR:

Good afternoon, Senator Doyle.

SENATOR DOYLE:

Good -- good afternoon, Madam President.

THE CHAIR:

Afternoon.

SENATOR DOYLE:

I move acceptance of the joint committee's Favorable
Report and passage of the bill.

THE CHAIR:

The motion is on passage. Will you remark, sir?

SENATOR DOYLE:

Yes. Thank you, Madam President.

This bill, an act prohibiting price gouging was passed
unanimously out of the General Law Committee, and it's
an issue that many of us are familiar with; we passed
it here, last year.

And what it does, under current law, consumers are
protected by unscrupulous contractors that may sell or
attempt to sell to individual -- to consumers, goods,
and this bill really adds to the -- the price-gouging
statute, services. And over the past several years,
we have seen so many severe weather events that it's
really brought to our attention that many of our
consumers are threatened by potential gouging or

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excessive-pricing events. So it's very important for us to pass this bill and try to get it through the entire process, to protect our consumers from gouging for services.

And I'll give the best example is, if you remember two winters ago, we had excessive snowstorms, in the month of January, and there were accumulation on all of our roofs. And we had a couple flat, commercial roofs collapsed, and it kind of led the press to cover many stories about roofs. And it led, even though there wasn't truly a threat on residential roofs, it -- it -- a lot of our consumers were concerned that their roof, too, would collapse, so that you'll remember there, the concept of the snow rakes came in and people started saying and fearing they need to get it clear or their roof will collapse. So a lot of our, several of our consumers were gouged in the sense that they went out with, you know, a person is in a situation where they fear for their safety, they'll -- they'll find the first contractor and say do it. And this person could take advantage of her with excessive prices. So that's a situation for services that this bill seeks to address.

And it -- it lays out that the Governor first must declare a severe weather emergency. So it's not year round, it's during a situation where the pressure is on and consumers cannot shop around, which is the normal situation. And in a situation when it, when a price quoted and given to a consumer is unconscionably excessive, then the consumer can report to the Department of Consumer Protection, and it, the Consumer Protection can investigate the situation, do its utmost to determine if, in fact, it was unconscionably excessive. If the Commissioner determines that, the Commissioner has certain rights under CUTPA to investigate, and the like, and then, you know, then penalize the unscrupulous contractor.

I think it's a good bill and I highly urge our committee to -- I mean the Chamber -- to approve it, so we can move forward to get this passed and so if there's another severe storm, later this year or next year, our consumers will be protected for services.

Thank you, Madam President.

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THE CHAIR:

Thank you.

Will you remark?

Senator Witkos.

SENATOR WITKOS:

Thank you, Madam President.

I also rise to support the bill. Who would have thought that Mother Nature would -- would levy such harsh weather situations on us that we've seen in historic proportions in the past few years in our state. And not to bring back nightmares for anyone, but we went through Storm Irene and then we had some folks call it "Storm Alfred," and then Storm Nemo and Hurricane Sandy. And then this past February 8th, you know, four feet of snow dumped down in -- in one Friday afternoon storm or Thursday-night-to-Friday-morning storm.

And the bill is before us for a very good reason, because people panic about protecting their property when something like this happens. And it's those few, unscrupulous folks that take advantage of people that are in emergency mode, if you will.

As the good Senator from Wethersfield stated, years ago when there -- we heard stories about roofs collapsing, and the Governor called on the National Guard to come out and help shovel some of the roofs of the schools. Well, they certainly couldn't go and shovel roofs of homes, and people were afraid. They heard noises. Their -- their ceilings were creaking, and they were going to do everything they could to protect the -- their -- most folks' largest investment they ever make in their lifetime is -- is their home. And their home is their castle and they want to protect it.

And they may go out and they may buy a -- a snowblower or a roof rake, and those products are already protected under our statute, saying you can't jack up

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the price because you know there's a -- a market out there that's going to buy them all up.

But they're getting around that. The unscrupulous ones say, well, guess what? You can buy the roof rake, but now, if you're elderly, you're not going to be able to climb up on your roof and take care of that, so we'll charge you a thousand dollars to go do that -- but normally we'd only charge you three hundred bucks -- because we know that you're living in fear, and we want to take advantage of that fear. So this bill goes to stop that from happening.

And through you, Madam President, I'd like to ask the proponent of a bill just a few questions, for legislative intent.

THE CHAIR:

Please proceed, sir.

SENATOR WITKOS:

Thank you; and through you, Madam President.

The -- to be determined whether it's unconscionable or not, what do they, what would somebody use as the parameter to determine if somebody jacked up the price? Shouldn't, in a free market, people -- people be able to set their price as to whatever they want to do?

THE CHAIR:

Senator --

SENATOR WITKOS:

Through you.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

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Through you, Madam President, the answer is yes, under normal circumstances. Our free-market economy says when a person is not under any undo pressure, the person, in theory, should shop around for prices. So, for instance, if a person is going to get a new roof, they shop around. They -- they go to two or three contractors, get a price, and figure out which is best for them.

In this situation, as we mentioned, there's the pressure of a storm and, whether legitimate or not, a fear of imminent harm on their home or their self, so their opportunity to shop around is not there. So the situation is they're fearful for their being or their -- their home, so they -- they just jump at the first offer, without having the flexibility to shop around.

And, basically, the -- the gauge to achieve it is whether it is unconscionably excessive, and the -- the bill states, provides details of how we can define what unconscionably excessive is.

Through you, Madam President.

THE CHAIR:

Senator Witkos.

SENATOR WITKOS:

Thank you; so through you, Madam President.

So, I'll -- I'll give an example. If we both run and operate a roof-clearing business, and I charge \$500 a roof during the normal course of business and you charge \$5000 a roof during the normal course of business, that's allowed under our statute; is that not correct under the current circumstances?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

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Yes; through you, Madam President.

The answer is yes, you can have disparity between, you know, existing prices.

Through you, Madam President.

THE CHAIR:

Senator Witkos.

SENATOR WITKOS:

Thank you.

So when a weather event occurs and the Governor declares and has to post on his office's web site that we are in an emergency status, basically, it is my understanding that I cannot, in turn now, increase the cost of my roof clearing to \$5000. Is that correct?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

That is correct and how it would be evidenced is in your hypothetical, you said a thousand. It was basically to -- to determine whether your pricing is unconscionable, you would look at the prior 30 days. And if you had estimates of a thousand dollars for the, you know, five times, the prior 30 day, then in this emergency situation you all of a sudden go up to 5000, that could be deemed unconscionably excessive.

Through you, Madam President.

THE CHAIR:

Senator Witkos.

SENATOR WITKOS:

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Thank you.

And through you, Madam President, what would happen in that case, if I was a homeowner and I said, well, I was going to use Witkos Roof Clearing and then his price was \$500 throughout the year and all of a sudden, now because we had this major snowstorm and the -- the Governor has declared a -- a state of emergency, he jacked up his prices because he's so busy, he can do that. What would be their redress for a consumer to levy against me?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

In your hypothetical, I would assume you're, the consumer is just, you know, the pressure is on so the consumer simply hires Witkos Roof Raking and gets it clean and then determines later on the wait-a-minute, and he learns from a friend and neighbor, by the way, I used that guy a couple weeks ago and it was \$1000 and they charged you \$5000. In that situation, the consumer would then file a complaint and contact Department of Consumer Protection, report the potential price-gouging event, and then the Commissioner would investigate the situation and we'd go from there.

Through you, Madam President.

THE CHAIR:

Senator Witkos.

SENATOR WITKOS:

Thank you, Madam President.

I thank the gentleman for his answers.

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So there are controls within the bill and it's in a limited time frame only, to get us through the emergency situation. So there's nothing that prevents a business owner from establishing whatever price they want to be; they can be as competitive as they want to be. They can be as low-priced or as high-priced as they want to be, but you can't toll on -- on a person's fear during emergency events.

And I -- I hope all the members in the Chamber can support today's bill.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Kane.

SENATOR KANE:

Thank you, Madam President. Good afternoon.

THE CHAIR:

Good afternoon, sir.

SENATOR KANE:

Madam President, to quote Yogi Berra, this feels like deja vu, all over again. This bill we've seen probably a couple times, and I'd like to ask the good Chairman of the General Law Committee about that, if I may, through you.

THE CHAIR:

Please proceed, sir.

SENATOR KANE:

Thank you, Madam President.

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What year -- well, actually, let me take a step back.
Is this our second, third; how many price-gouging
bills have we done in the last couple years?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yes. Through you, Madam President.

This is the third year in a row.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

And if Senator Doyle could speak to the first two, if
he may.

Through you.

THE CHAIR:

Senator Doyle, do you remember them?

SENATOR DOYLE:

Yes, I -- I mean, I -- I assume the question is why
didn't it pass, maybe. I'm not -- through you, Madam
President, I'm not sure what the question is about the
first two.

THE CHAIR:

And can you, Senator Kane --

SENATOR KANE:

Well, as I said --

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THE CHAIR:

-- (inaudible).

SENATOR KANE:

-- Madam President, it seems like here we are again and with another price-gouging bill. And I believe the good Chairman said that this is the third time we've taken this issue up, so I'm wondering if the first two times we had passage of legislation on this issue.

Through you.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yes; through you, Madam President.

Unfortunately it was not -- it was passed in the Senate, so your memory is a hundred percent correct; unfortunately, the House did not take it up either time.

This year, I'm optimistic on the third try. We're getting it out nice and early, and we're hoping we can persuade our colleagues in the House to take it up and pass it, because there really, since year one, we've had probably four extreme weather events. So I think the -- the knowledge and the concern from our consumers is there, and I think it's urgent we pass it this year.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

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I'm just, you know, what Senator Doyle said just struck another chord for me and I -- I have another question, from what you just said. But I'll stick with what we're talking about right now, which is maybe I'm confused, then.

Are you saying that the first two times we took this up, it died on the House Calendar or did not get passage? Have we not passed a bill through the both Chambers, in regards to price gouging?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

The last, the prior two years, this bill was brought up, debated, passed in the Senate with a wide margin. It was never taken up for a vote or -- or even debated in the House.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Okay. Yes; thank you, Madam President.

So we don't, we have not passed any legislation in regards to price gouging.

And the impetus of this legislation came about from which storm; was it the winter snowstorm of 2011, I believe; was it Sandy; was it Irene? Senator Witkos mentioned Nemo. I mean, which storm was the impetus of this idea?

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Through you.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

To the best of my recollection, it was the heavy snowstorms of the winter of 2011. It was brought to our attention, primarily through media reports, where I -- I saw stories and Senator Looney saw stories of consumers being gouged by a minority, but some contractors that unfortunately took advantage of our consumers.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

So then -- thank you, Madam President.

So then this legislation, this idea, this proposal came about due to a snowstorm, a freak snowstorm, let's say -- because it was October; it was Halloween of 2011 -- and the bill never passed. We never got the legislation through, yet we survived. Connecticut somehow made it through; we made it through the snowstorm. The consumers survived. The contractors survived. Everybody is okay. So if that's the case, then why do we need it now?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you; through you, Madam President.

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Because I believe it's the responsibility of myself, as an elected official and the other elected officials in the State of Connecticut to protect our consumers. Now, while they survived -- you are correct -- I believe it's -- it's my duty to ensure they're protected and they're not taken advantage of by unscrupulous contractors. So while you're correct, they -- we survived, I don't think it's fair or appropriate to, for some of our consumers statewide to be taken advantage of.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Well, thank you, Madam President.

But what makes us think that they're not protected already? I mean, what, you know, we had a snowstorm and it was 2011. Here we are in May of 2013, and you've used the word "urgent." You said we have to urgently pass this legislation, two years after we had this freak snowstorm, and we need to protect our consumers. But I don't see the need for the protection, when we already stated that the snowstorm happened two years ago. Everyone survived from it, and the contractors are still in business. People still have their homes.

So we're looking for a problem for a solution, if you will; you know what I mean? We're -- we're, you know, all we want to do is legislate every single thing that takes place in our lives. And I'm trying to understand where the urgency is when we know that we've had storms since and nothing has come about, yet we need to be urgent today, May 8th, and get this legislation passed.

Through you, Madam President.

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Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

With all due respect, you know, the -- the good Senator is emphasizing we survived. And I don't deny that. My -- my concern is protecting our consumers from unscrupulous contractors.

And I, it's my understanding Senator Gerratana had a constituent from Berlin that -- and this is why; it's triggering my memory -- that a resident from Berlin got gouged on a roof. And I think it's -- it's the good Senator's and our responsibility if a person is gouged and has -- has to spend their -- their hard-earned money in an excessive way, I think it's the responsibility of the General Law Committee and us to protect them. They ultimately -- you know, we could have a philosophical dispute of the role of government. I happen to think if it's clear consumers are getting ripped off, I think it's an appropriate role for government, through an appropriate, reasonable statute to get protected. And I think that is why it is urgent to pass it today, because unfortunate, the past three years have, once or twice a year we're having these extreme storms that deem -- I just want to minimize consumers getting ripped off.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

So why, you know, let -- let me ask you a couple, simple questions, if you will, through you to the Chairman of the General Law Committee.

Do you think there are unscrupulous contractors out there in the world, and regardless of the industry?

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Through you.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yes. Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

And do you also think -- Madam President, through you -- that people get priced gouged on any number of issues?

Through you.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President, yes.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

And it's like buying air conditioners in July; right? I mean, it's a hundred degrees. We -- we're complaining. You know, your wife is telling you, oh, my God, I can't take it in here anymore. We, you know, the heat is just unbearable; go out and buy an air conditioner. And all of a sudden, the price of air conditioners is -- is higher, certainly; wherein December, if you looked at that same air conditioner, they probably had a sale on them. They're going to

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unload their inventory because the supply and demand is just off.

So how, you know, when we say we need to protect our consumers, you can argue that about every single daily transaction that takes place in America; you know? And what -- what I don't understand when we keep proposing this legislation over and over and over is what's the difference between the snowstorm and everyday occurrence that may occur? Because people need to be good consumers; they need to understand supply and demand. They need to understand timing. They need to understand if -- if some, if the market and if people are busy and if you can't get an electrical contractor or you can't find a plumber, whatever it may be, these things are going to happen. So do we have to protect our people from every single thing that comes around the corner? I mean is it -- it just seems to me that we're trying to legislate every aspect of a person's life.

Through you, Madam President.

I don't know if there was a question in there or not, but it was probably more philosophical or a hypothetical. But if -- if the Chairman of the General Law Committee wants to address it, please do.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

There was a -- I perceived a question in the statement, so I'll answer it.

I respectfully disagree, because what this legislation does, it first of all does not set a year round standard for protection for shop -- for people shopping around. It -- this -- this legislation imposes, it maintains the duty for me to shop around when I want to have my roof done or I want to buy a -- even if it's a -- a hot period, if I have to buy an air conditioner. I do have to -- it's their -- we

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impose a duty to shop around and get prices at different stores.

What's the unique situation here is we're talking about an extreme weather event, where there's pressure on consumers, where the Governor of the State of Connecticut has said this severe weather event exists, just during a limited period, during the storm, where people at risk. So there's pressure on them in the hypothetical that I've previously disclosed, where, you know, I believe it was not valid, but there was a fear of their roof collapsing, where they were just so fearful for their being that they said they'd say yes to anyone. And they don't have the -- the normal time to stop around.

So it's, we are not changing the -- the means of purchasing 365 days a year, we're -- we're changing it, maybe once or -- once a year, depending; I hope. I hope we don't have any more severe weather events in the near future, but when the Governor determines we're in it, that's the only time we're going to protect the consumers. And that limited exception, which is before us today, I think makes good sense.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

Well, I guess you said something interesting there. You said the only time we're going to protect consumers; well, what about the other 364 days a year? You know, it's like it's okay that buyer beware, come July.

I mean, I can't do it as well as Senator Kissel, but let me just, let me just take you down a little path here. So picture us in the middle of July and we get a week of heat, severe heat wave, drought; it's a hundred degrees, and the Governor comes on the TV and he says, well, don't water your lawns. Try to

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conserve water. It's very dangerous; bring your kids inside, your pets. Try to conserve. It's a hundred degrees every day and it's a severe weather event, because of the drought.

So you go to Sears or Wal-Mart or Joe's Air Conditioner Supply, and air conditioners are normally three hundred bucks; they're four or five, six hundred bucks. Are we then going to say, well, that was a severe weather event and you're price gouging because supply and demand -- well, we were going to put that aside -- now you're price gouging.

Through you, Madam President.

SENATOR DOYLE:

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

First, there's a few components here. First of all, I'm not sure the hypothetical clearly stated, but if the hypothetical contains a declaration by the then-Governor of the State of Connecticut over heat -- and I guess it's conceivable it could happen; I'm not sure it has happened -- but if the Governor determined we had electrical, you know, discharge problems and people are out of power, he could -- he or she could, in theory, declare that. If that happens, under current law, your hypothetical would be covered and be protected for gouging. So this bill deals with services, so I answered your question but it would already -- that's under -- goods are already, you know that air conditioners are goods, so under current law, that's already protected. But in your hypothetical, you still need -- clearly, the Governor of the State of Connecticut would have to declare a severe weather emergency.

Through you, Madam President.

THE CHAIR:

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Senator Kane.

SENATOR KANE:

Thank you, Madam President.

So now I'm confused, because I thought earlier we said there were a couple price-gouging bills that we took up but never passed. Are you now saying that there was a price-gouging bill we did under products and/or goods and this is now related to services?

Through you.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

Just to clarify, my -- my interpretation of your question was: Over the past few years, have we dealt with this issue? And since I've been around -- I've been Chair of the General Law Committee, four years -- this is my third try and I hope we'll be successful. And maybe both of us can speak to the House and get them to take it up, but so far -- for this piece of legislation, the -- this is the third time.

Twenty-seven years ago, that then Legislature -- believe it or not, I wasn't even around then -- twenty-seven years ago, that Legislature -- maybe Senator Looney was; who knows? He was; Senator Looney was. He was a proponent of this bill today. They passed legislation for price gouging for goods only, so back then, you know, predating my tenure, that was passed. So that covers the hypothetical you presented about air conditionings in the summer.

Here, again, this is the third try to get services. And, trust me, we're going to work extra hard to get our friends in the House to pass it. So I'm hoping this is it and the consumers will be protected.

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Through you, Madam President.

THE CHAIR:

Thank you.

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

So, I remember the debate, a couple years ago, and it was all about the roof racks or whatever they were called. And I thought that was part of the debate, because they seemed to have a higher price, based on all the snow that was taking place. So it wasn't just services; it -- it was some products. Am I incorrect in that?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

I mean, during the debate, it's -- through you, Madam President -- during the debate, I'm sure roof --

SENATOR KANE:

-- rake.

SENATOR DOYLE:

-- rake, roof rakes came up, but they would have been covered. So the confusion is the rakes are irrelevant; it's really the services, the person using the roof rakes that was really at issue, you know, and maybe somebody going on the roof of whatever. But it's a -- it's always, the last three years, the issues have been services, and I hope this year we'll get it passed.

Through you, Madam President.

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THE CHAIR:

Senator Kane.

SENATOR KANE:

Okay. Then thank you for that clarification.

So using my earlier example but not making it an air conditioner but air conditioning service, would then that be under this bill?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yes. In your earlier hypothetical, if the Governor declares a weather event and then the air conditioning service providers charge unconscionably excessive rates, yes.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

So what is "unconscionably excessive?"

Through you.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

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Unconscionably excessive is defined in the, in the bill, around Lines 20 to 26, but basically it's a -- it's unconscionably excessive is a term of art that is throughout our -- our Connecticut General Statutes. And, basically, our piece of legislation provides details of how we want it defined in this thing, but there is case law on what it is. But, basically, we're saying unconscionably excessive is a determination by the courts that the price for the consumer goods or services were sold was unconscionably excessive and there was an exercise of unfair leverage or unconscionable means, which basically means what I've been trying to emphasize, the pressure. The consumer doesn't have the ability to reasonably, calmly shop around.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

So now we're determining if the person is calmly shopping. Is that, is that what you said?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, I said "calmly shopping," yes.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

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If you saw some people shop, they're not necessarily calm during the night before Thanksgiving or beyond, so let alone during a severe weather event, but that's interesting.

You mentioned 27 years ago, I think you said, that the price-gouging bill went into effect. Since that bill has been put into effect, that law, how many complaints have we had over -- over the term of -- of the life of that term?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

I, unfortunately, don't have the answer before me.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

How many -- through you, Madam President -- how many people were penalized or fined, based on that original law?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

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I think the number -- there isn't a significant number, but, again, I don't have the specific answer to that question.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

And, you know, you mentioned Senator Gerratana had a constituent, but, I mean, how many? How many constituents came and said this is an issue?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Yeah, over the past three years, I believe there were numerous filed. Again, I don't have the exact number, and I apologize, but I know complaints were filed at the Department of Consumer Protection.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

Well, when you say "numerous," is it five; is it ten; is it a hundred?

Through you, Madam President.

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Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

Again, I do not have the specific number, so I don't want to put on the record a number that I don't -- a false number.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

So, I guess the -- the reason I'm asking that question is because, you know, we, again -- I'm trying to make that point -- that we're trying to legislate something for a problem that really doesn't exist. And we had a constituent, we had a, numerous people; there, we don't know how many people were fined. We don't know how many people and -- and during these years made actual complaints.

Where's the urgency, again; where's the -- the need for this legislation, when we don't even have a problem? I mean, we had a one-time, freak snowstorm. We had a hundred-year storm, in Sandy, and everything else seems to be the normal course of our weather events. I mean, we have four seasons here in the State of Connecticut. We, you know, we know in the summer it's extremely hot and we know in the winter we're going to get snowstorms. And somewhere, in between, we may have a hurricane, because we're by the Atlantic Ocean.

But, you know, I don't -- still, you haven't convinced me, with all due respect to the Chairman of the General Law Committee, why we need this legislation when, in fact, there's really no need for it, based -- based on a few people talked about it or it was we saw it on the news or, you know, where are the people up

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in arms that they're getting gouged so blatantly in the State of Connecticut?

Through you, Madam President.

THE CHAIR:

Sorry; Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

I respectfully disagree because I think there is a significant need for it and there is more than just one of two complaints. There have been complaints, and I reference one; I -- I'll grant you that. But there's, over the past three years, with the numerous storms, there are people who were taken advantage of. And in my mind, maybe we can -- we -- we, you know, minds can disagree. I think there is a significant need and demand for this, and it's a -- I think it's a sound consumer protection law.

It's not -- now, if -- if this said price gouging is (inaudible) year round, I think you'd have a -- a stronger argument. It's very narrowly tailored to protect our consumers. I think it's a very sound piece of legislation.

Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

I -- I thank the Chairman of the General Law Committee for answering my questions.

I do respect him and his committee and the work he does, but I obviously disagree. I -- I don't think that we need this piece of legislation. I don't think there is an issue in regards to this. I don't think

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the people are blatantly out there, you know, price gouging consumers, based on the fact that they take advantage of a snowstorm.

I mean, I -- I would imagine contractors have very great difficulty, just like you and I, during that same snowstorm, probably getting people to work, probably getting out to their jobs, probably trying to satisfy the number of calls that they receive during an emergency. We all know that, you know, a lot of people wait until the last minute to do all types of different things. And, you know, you may not get to that right away because you have to work, your wife has to work, your kids are here, everything is going on.

I mean, I just don't see this price gouging, this -- this protection for consumers that is needed when it's -- it's not really happening. And we had a couple of snowstorms that -- that -- we had one snowstorm; I shouldn't even say that -- that was a freak occurrence in October. And all of a sudden, we've been trying to pass legislation for years in regards to a problem that doesn't exist.

And I think we try to do that in this building all the time. We try to legislate every single thing in people's lives; whereas let people live without the burden of the State of Connecticut telling them what to do. I just don't think it's right.

So, Madam President, it's obvious that I will be voting against this legislation. I don't believe we need this legislation, and I would encourage my colleagues as well.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Slossberg.

SENATOR SLOSSBERG:

Yes; thank you, Madam President.

I rise in support of this piece of legislation, and I thank the good Chairman of the General Law Committee and the members of the General Law Committee for bringing this forward and for continuing to persist with this.

And I -- I listened to the discussion and some of the questions, and one of the questions that came up is that there was no urgency here. Well, I find that there is a very significant urgency. There was a storm that we seem to have forgotten in this past February, in the beginning of this year, a very significant blizzard, where my community got hit with 40 inches of snow. And I can tell you, the snowplows were in our -- from our public works -- were working around the clock. But because of the -- the, for how fast the snow was falling and the winds and the visibility, they could not clear the roads fast enough. And this was a -- a really significant problem, with after days and days, we were still not dug out.

And I can tell you, from first-hand experience, in my neighborhood, we were not dug out. And we have some elderly neighbors, where there was a concern after a couple of days that one of the, one of the, our senior citizens couldn't get out of the house and needed medicine, and nobody could get out of the neighborhood. And lo and behold, someone showed up in the neighborhood with a -- a Cat on the back of their truck. And that's what they did, and they used that for their nursery and landscaping. And they somehow managed to navigate through the parts of the road that were plowed and then come into the back. And -- and we flagged them down and said, Please, can you come and -- and remove the snow from the driveway so we can get our neighbor out to be able to get medicine? And it's a very short driveway; it's not one of those big, long driveways. And they said, oh, no problem; we'll come by. It's going to be a thousand dollars.

My driveway can get shoveled by people for nothing. Sometimes a kid will come by, and you would pay him 20 bucks. A thousand dollars. A thousand dollars; we paid it. We paid it, because you know what? Her life was in danger, as least we felt that it was a

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significant enough concern that, you know -- or actually, I should say my neighbor paid it. My neighbor paid it, but the reality is that was one person.

In Milford, in this snowstorm, we had a 15-year-old die. It was a horrible, horrible thing. No one could get to that house because they couldn't get the snow removal to be working. And so this family was left in distress, in a horrible situation. And when you ask a contractor to come and help you under those circumstances, and they charge you 10, 15, 20 times what is a reasonable and not -- amount, someone needs to be standing up for people. That's what this bill does. This protects our homeowners.

And I'll tell you something. We had somebody come by, and I said, Can you come and help us with our driveway? I want to get to work. And they -- they said to me, oh, it's going to be \$500 for your driveway. I said are you kidding me? That's outrageous. Have you ever heard of price gouging? And they said, oh, all right, we'll do it for a hundred bucks.

You know, this is the market, and I understand that. Sometimes, that's just what the market bears. But the reality is, the reality is you do have people who are unscrupulous, who will take advantage under those difficult storm occasions which do happen and seem to be happening more frequently than ever. And the urgency is, that last big storm we had was in October, and so now is the time for us to be passing it.

And I thank the General Law Committee for passing a very narrowly, clearly focused piece of legislation that will actually protect consumers from price gouging, allow our contractors to, you know, change the price as necessary for reasonable circumstances but to not take advantage of severe weather events where someone's life could actually be in danger.

So I will be supporting this legislation.

Thank you.

THE CHAIR:

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Thank you.

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President.

I have a few questions, through you, to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR KELLY:

Thank you, very much.

I supported this initiative in years past and also in committee, and I'd just like to narrow down and -- and drill down on issues for legislative intent.

You indicated that the content, the -- the concept of, for the term "unconscionable excessive" is delineated in statute and case law, and I understand that. But I'd really like to focus on in this bill where we talk about the evidence that -- the prima facie evidence, in particular. It states under Section (A), actually Subsection (2), evidence that (A) the price for which consumer goods and services were sold or offered to be sold represents a gross disparity between the price of goods or services that were subject of this transaction and their value, measured by the average price at which such consumer goods or services were sold or offered to be sold by the defendant in the usual course of business during the 30-day period prior to the severe weather event.

Now, when we talk about that gross disparity, we heard Senator Witkos gave you the example of 5000 versus 1000. But in this context, what we're really looking at is somebody's services, their labor, if you will. And when we look at that gross disparity, we're looking back at a 30-day period prior to the severe weather event, when people, I'm going to say, are in

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their customary activity. But just as an individual who works overtime might get time-and-a-half or double-time, in a situation like this where you're not just doing your normal eight-hour shift, you might be working 24 hours a day, would something like two times your normal customary rate be deemed unconscionably excessive?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

I mean, that's a good question. Now, this is a question for the trier of fact, you know, not me, so we're trying to get some legislative history. But I -- the main thrust of your question, as I understand it, you know, it's you -- the question is Senator Witkos had a clear example, one-to-five thousand; well, it's a -- it's a broad spectrum and that's fairly an easy question. Once you get to a thousand, is the standard rate and it's a thousand, you know, a couple extra hundred dollars, is that unconscionably excessive because a person is working overtime? You know, again, I can't be the final determination.

It's my belief that it wouldn't necessarily have to be the strict thousand in the hypothetical. There can be some increase for the circumstances, if a person is working, like, overtime and in a pressure of a situation. The key is the trier is going to make the determination using their good judgment; is it, is it significantly different? Not a, not -- if it's a small portion, I think it's acceptable. But here we're talking about a significant price differential.

Through you, Madam President.

THE CHAIR:

Senator Kelly.

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SENATOR KELLY:

Thank you.

And I'm not trying to be difficult but, you know, I -- I understand that, you know, it's -- what we're looking at is something that's reasonable, and we don't want to go excessive. But it's where is that line drawn? When somebody works overtime, you know, in -- in excess of their 40 hours, we recognize, okay, they might get time-and-a-half or -- or double-time. So in this case, if we're using a thousand-dollar yardstick, would it be 1500 or 2000 would not be, but if we went, let's say 2500 or three, it would? And I understand it's an issue for trier of the fact, but I'm trying to help that trier of the fact when an issue would -- would be presented to -- to a court.

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

You know, the trier of fact is going to have on the table the -- the figures for the prior 30 days, and hopefully that person will do investigation to get the rate. So the question is -- they're also going to get the rates, if they're doing their job, they're going to try to determine what other contractors were charging during the significant snow event. So if -- if it's a thousand dollars and the, and, you know, for -- you're looking back but you also could look current -- and if it's not a significant amount -- I mean, it's hard for me to say, to make a determination, an exact number. But I do recognize that this law is not imposing the absolute same price to be charged during the prior 30 days. So, you know, the -- the average price of 30 days is a thousand dollars. I'm not saying if it's a thousand and one dollars, that's price gouging. The question is, it's really looking at the entire factual situation.

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And Senator Slossberg presented a -- a gouging situation where they offered a thousand dollars, they quickly receded back to a hundred dollars, so it was ten times greater. But, again, that to me is gouging. If it's the traditional price is a hundred dollars and they charge, you know, a hundred and fifty; is that gouging? You know, maybe not. But, again, I'm -- we're -- we're trying to give some legislative intent, but I can't specifically determine, without me seeing the entire factual situation.

Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you.

Getting back to the, once again, the legislative intent, one of the concerns that I have deals with the defendant may rebut a prima facie case with evidence that additional cost, not within the control of the defendant, were imposed on the defendant for such goods or services. And it really doesn't articulate the ability to demonstrate other services.

So, for instance, the concern that I would have is an individual who may have other contracts, you know, using the snowplow example. And maybe under those other contracts, he's going to get \$2000 as a fee. Now, a private resident may come up and say, well, I'll give you, you know, I'm looking for 1500 to plow the driveway, not 2000. But in order for him to do that, he's got to forego that contract. Would the evidence see, because we don't have the rebuttable presumption for one's labor here, would that be evidence that could rebut this prima facie evidence of unconscionable that one could offer, in other words, other jobs, contracts that allow for a higher rate?

Through you, Madam President.

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Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

I'll try to answer the question as I understand. First of all, the question of other costs and events, I think that's -- is part of -- of if I'm -- if you're representing the contractor that's being, you know, investigated, that would be presented on the table. I don't think that's part of -- of the prima facie case of Lines 38 through 40.

What I think that's addressing is -- and it's my interpretation -- I think it's addressing you're doing the job and your price went up because the price of gasoline was -- somebody was violating another statute. They were, they had to pay excessive prices for gasoline; you know what I mean? The sense that it went from a traditional \$3, you had to pay \$10 a gallon, that's beyond his control. In that situation, that's a whole nother problem for the -- because that -- that would mean the gasoline dealer is violating another statute of gouging. But in that situation, what -- where this person has to get gasoline to do the job and he's now paying \$10, that could legitimately be imported into his price here, because he was gouged, technically. And, in theory, the -- the gasoline, that -- that was beyond his control. So I think that's what it's getting at, but -- for the prima facie case there.

But in terms of -- I think the contractor clearly has the right to present any and all facts that he may present in terms of prices, quotes that he's getting during this period to try to rebut and say, listen, my price was reasonable.

Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

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Yeah. I think that's the -- the point that I'm -- I'm getting at is that I have 24 hours to do a job; I mean, that -- that's all you've got in a day. And at some point, you can't -- if -- if you've got a number of other contracts -- I just get to everything. But if I want to keep going and -- and take on new business at the risk of losing other business, would that be -- in other words, I'm going -- I've got a \$2000 job but I'll do yours, if you really want, but I might charge you more than the 2000, because I'm going to forego that work to get this work; you know, will you pay me 2200, for instance? And would that be, if -- if brought before court -- because my normal, customary rate during the 30-day prior was a thousand dollars, now I'm up to 22 -- I, for -- would -- would the fact that I had another job that would pay 2000 be my rebuttable -- if I were a defendant -- be my rebuttable evidence to this prima facie case that I didn't price gouge before there was somebody else willing to pay that?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

Now I think I understand. An answer is no. I don't think you could bring in -- it's -- it's really supposed to be a statute that focuses on the price. And if I understand your question, you're saying the fact that I foregoed another job to do -- to your -- to do this job, can I then price-gouge you? And I think the answer is no.

SENATOR KELLY:

Okay.

SENATOR DOYLE:

I mean -- and through you, Madam President. I think I answered it.

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Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Yes. Thank you, very much.

And -- and my last question is just with regards to the Governor's stated emergency, when there's the proclamation that a severe weather emergency may -- event, and the penalty is not just limited; it's for each violation in each day on which the violation occurs. Are those days strictly limited to the duration of the Governor's proclamation?

Through you, Madam President.

THE CHAIR:

Senator Doyle.

SENATOR DOYLE:

Through you, Madam President.

The answer is yes. You know, the Governor is going to declare it a weather emergency, set a window of -- I don't know, ten days -- whatever the Governor deems appropriate. You can only be charged with a price-gouging event during the days the Governor sets. So if it's ten days and it's day eleven, it would not be; it's definitely got to be in the window the Governor determines through his declaration.

Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President.

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And thank you, Senator Doyle, for your -- your questions. I appreciate it. Thank you.

THE CHAIR:

Will you remark? Will you remark?

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, speaking in support of the bill, I wanted to thank Senator Doyle and his Co-chair, Representative Baram, and the members of the General Law Committee, and Senator Witkos for his good work on this, on this bill.

With each passing year and each passing season, the need for this measure becomes increasingly evident. As Senator Doyle said, first offered in 2011, in the wake of the two, major snowstorms that year, when people were concerned about the cost of removing snow from roofs, and people were hearing creaky roofs. And the key of this measure is to try to protect people who are in extremis, who are not in an equal bargaining position as you would be under normal conditions where you have the luxury to perhaps accept an offer, shop around, not under time pressure, and to do the due diligence that you normally would have as a, as a consumer.

This is to protect people in circumstances where you have unscrupulous contractors, in effect, acting in a predatory way to take advantage of the, of -- of the fear and the vulnerability of consumers under these particular circumstances. So we had those two storms in January of 2011, and then we had the terribly disruptive storms, of loss of power in August of 2011, October 2011, and then Storm Sandy, the terrible storm in October 2012, and then the 40-inch snowstorm in -- in this past winter of 2013. So we have had about six significant weather events, just in the last, a little over two years, where occasions of this kind have arisen.

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Now, as we mentioned earlier, the original price-gouging statute came in the wake of Hurricane Gloria, which occurred in September of 1985. In the wake of that, there was a significant heat wave that occurred after that hurricane, and there was a great deal of concern at the time about price gouging regarding dry ice and air conditioners and fans and other things to deal with the heat in the wake of -- of the sudden heat that came after that storm, when people were without power. So the 1986 General Assembly passed the law dealing with price gouging for goods and products of that kind, as Senator Witkos and -- Senator Doyle and Senator Witkos said.

What we're looking to do in this, in this bill is to move beyond that statute and to look at services as well, and that is exactly what -- just as -- as the General Assembly recognized in 1986, that the public needed to be protected from price gouging regarding goods and products, so the same rationale applies to protect people from price gouging on services as well. And that's what we've been trying to do since 2011, on the bill.

Now, the -- Senator Kane, in his comments seemed to me that that was setting an -- an unacceptably low level of public protection when he said that well, didn't -- didn't people survive without this bill for the last couple of years. Well, if that's the threshold, you could say, well, we don't really need to -- to do anything about protecting the air from having toxins released into it or the water from having toxins released into it, as long as people were able to survive it. I don't think that's the standard we should be setting here:

There is a certain threshold for public protection, and that's what we're trying to do in this bill. It is something that is important to consumers who do not have the -- the opportunity for equal bargaining power, as you would normally have in a commercial transaction where -- where each party has reasonable other options. And this is for the circumstance where -- where the balance of power in the negotiation is not equal.

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Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

If not, Mr. Clerk, will you call for a roll call vote,
and the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Senators please return to the Chamber. Immediate roll
call has been ordered in the Senate.

THE CHAIR:

The machines will be closed, if all members have
voted.

Mr. Clerk, will you please call a tally.

THE CLERK:

Senate Bill Number 320.

Total Number Voting	36
Those voting Yea	31
Those voting Nay	5
Absent and not voting	0

THE CHAIR:

Bill passes.

Senator Looney.

SENATOR LOONEY:

Thank you. Thank you, Madam President.

To mark some additional Calendar items before moving
to the call of the Calendar.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**GENERAL
LAW
PART 3
580 - 891**

2013

SENATOR DOYLE: Thank you.

Unrelated question and you're here, so you get to answer. How's the Connecticut Wine Trail is that -- you mentioned that. Do you know how's that going? Is there much success with it, much interest statewide? Any thoughts on that?

JAMIE JONES: Yes. I'd say it's been a very successful marketing amongst all the wineries. It's kind of unique. Instead of, kind of, competing with each other, it's more synergistic. The more wineries we can add to it, the more -- the more draw we can get. We recognize that we bring a number of tourists in from outside of the state is an activity that can provide for visitors.

SENATOR DOYLE: Okay. Good thank you.

Any further questions from the committee?
Seeing none, thank you.

JAMIE JONES: Thank you for your time.

SENATOR DOYLE: Next speaker is Senator Looney. After Senator Looney is Ken Skovron, Art DeSisto, Chuck Bowe, Mike Scalise, David Leon, Larry Cass, Bill Boucher, Bob Langer.

Senator Looney.

SENATOR LOONEY: Thanks, Mr. Chairman.

Good afternoon, Senator Doyle, Representative Baram, members of the -- of the committee -- the committee on General Law. Thank you for the opportunity to testify in support of Senate Bill 320, AN ACT PROHIBITING PRICE GOUGING DURING SEVERE WEATHER EVENTS. I'm Martin Looney,

senator for the 11th District, representing New Haven, Haddam, and North Haven.

And the goal of this bill is to provide what we believe is much-needed protection for Connecticut consumers by broadening the scope of our price gouging laws. This is a bill that has passed the Senate in each of the last two sessions. The Senate Co-Chair, Senator Doyle, has been the leader on this -- on this issue, pleased to work on it with him once again. And also, we believe that the need to significantly expand the circumstances under which price gouging for services is prohibited under Connecticut Law.

Over the past two and a half years, our state has unfortunately been struck by a pattern of extreme weather events that have threatened, not only our own sense of well-being but in many cases our homes, themselves. We've experienced the damaging effects of the historic repeated snowfalls throughout the winter of 2011 and, of course, the recent storm in February of 2013. The landfalls of hurricanes, Irene and Sandy, two consecutive devastating, October snowstorms that deprived thousands upon thousands of Connecticut homes with electricity for extended periods. And a byproduct of the vulnerabilities exposed by these storms was our evidence and heightened need for emergency services provided by others. For example, the need to have snow removed from the roofs of our homes and businesses during the winter of 2011 and, again, in the wake of the storm two weeks ago; the need for lodging services during the extended power outages during each of the past two Octobers; and the need for flood abatement services.

With such widespread weather-related vulnerabilities and needs come an opportunity for those service providers who would be unscrupulous to price gouge. And each storm brought with it

numerous reports of price gouging for vital and necessary services. Unfortunately, it's our strong belief that Connecticut's current statutory scheme on price gouging is woefully inadequate as it relates to price gouging for services and could be improved as it relates to vital and necessary consumer goods, as well.

Indeed the main price gouging statute, section 42-230, applies only to goods and not services. And this was one that was adopted after the hurricane in 1985, where there were reports about certain items that were in short supply after that hurricane, like air conditioners, fans, dry ice and things of that nature. And in the warm weather that -- that price gouging statute was adopted in the wake of those instances and focused only on goods, not services. Even that statute applies only during a disaster or civil preparedness emergency declaration by the governor or the President of the United States and only in the geographical area that's the direct subject of such declaration.

Section 42-232 does apply to services but only in a very rare event of the 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 it becomes a criminal, as well as a civil violation, to charge above market prices.

Finally, section 42-234 is our only price gouging statute that can be triggered short of formal civil preparedness, disaster supply or energy emergency declaration by the governor or President, but it only applies to the sale of petroleum products, like gasoline.

We believe our price gouging law should be expanded to one: cover both vital and necessary goods and services, equally; protect consumers

during very adverse weather conditions that can result in the exercise of unconscionably extreme leverage by contractors and retailers, even in situations that may not rise to the most extreme levels of the civil preparedness supply or energy emergency being declared in the State of Connecticut.

And the language for Senate Bill 320 is substantially similar to measures that -- that were passed in this committee and in the Senate, each of the past two years, both on bipartisan votes. And the bill provides price gouging equally for consumer goods and services that are vital and necessary for the health, safety and welfare of consumers, including, but not limited to, the provision of lodging, snow removal, flood abatement and other post storm clean up or repair services and such extra consumer protections would be triggered when the governor determines that adverse weather conditions have created an unusually high demand for vital and necessary consumer goods and services and that, therefore, a, quote, severe weather event emergency has occurred.

This type of proclamation by the governor could be short of a full blown supply emergency or civil preparedness emergency declaration. As mentioned, a supply emergency declaration brings with it rationing and heightened criminal violations and civil preparedness, and disaster declarations have various ramifications across a much wider breadth of our statutes.

And under the bill, vital and necessary consumer goods and services cannot be sold or offered for sale for a, quote, unconscionably excessive price during the time of the governor's proclamation and whether a price is unconscionably excessive would be determined by a court, taking into account whether there has been an exercise of

unfair leverage or unconscionable means. Or, quote, if the amount of excess of a price had been on unconscionably extreme.

Prima facie evidence that a violation has occurred includes whether there was a gross disparity in the average price of goods or services in the 30-day period before the weather event, emergency, and then during the emergency and also whether, quote, 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 would assert that adoption of this bill would greatly enhance consumer protection and look forward to working with you once again on this critical issue this session.

Thank you, Mr. Chairman.

SENATOR DOYLE: Thank you, Senator.

Representative Carter has a question.

REP. CARTER: Thank you, Mr. Chairman.

And thank you very much, Senator, for coming in and testifying.

We were talking about the -- the lodging issue. I noticed that some of these major storms have hit in the fall and one of my concerns is that sometimes in the fall or end of seasons are when hotels change general rates based on their season. Would it -- would it be reasonable to say if we're going to determine an average price of goods or services for lodging that we take a larger look at a period of time, perhaps, because I could see something happening like at the end of summer season, let's say September's the cut

off, and in October, hotels raise their rates or, actually, lower their rates or change them?

SENATOR LOONEY: Right.

REP. CARTER: I wonder if we can look at that more deeply.

SENATOR LOONEY: Well, I think you're -- that's absolutely right. I think we would need to look at what is the -- the typical rate for that period of time; that all of a sudden you'll see what we might potentially characterize as an unconscionable spike so that a rate that might be ordinarily higher or lower at one part of the year, you'd have to take into account the season, as well, and what was the typical rate offered and whether or not the spike that suddenly appears seems to be unconscionable.

REP. CARTER: And my other question, sir, is with looking at the -- so it'd be the Department of Consumer Protection would be the one making the decision on this, and I assume that we would have some sort of an appeal process also for -- for --

SENATOR LOONEY: Yes, that's the intent. Right.

REP. CARTER: Okay.

Thank you very much.

Thank you, Mr. Chairman.

SENATOR LOONEY: Thank you, Representative.

SENATOR DOYLE: Thank you.

Any further --

Representative D'Amelio.

REP. D'AMELIO: Thank you, Mr. Chairman.

Good afternoon to you, Senator.

SENATOR LOONEY: Good afternoon.

REP. D'AMELIO: I just need some clarification in my own mind. I mean we're talking about, you know, I agreed last year on the goods part of it, on the price gouging that was occurring during severe weather and stuff. But on services, for example, we just went through a major snow storm, and I know that, you know, like, my parking up went up five times when it would have normally have been to remove the snow from that because of the amount of snow.

Are you talking about the labor part, you know, when you're talking about services. Any kind of labor that's out there, the guy that's going to clean the roof off your house or -- or the snow removal or tree removal, you know, of a wind storm comes through and knocks down a lot of trees because I know the more of the demand is there for labor, it goes up, I mean, the price of that labor goes up. Are we trying to prevent that?

SENATOR LOONEY: Well, I think we're trying to look at what is reasonable as opposed to what is unconscionable under the circumstances. So, for instance, I know in New Haven a snow removal contractor in many cases that similar to what you cited, charged five times as much but that was certainly reasonable. I know of a contractor in New Haven that charges, like, \$40 for eight -- each eight inches of snow. So it's like \$40 for a snow ball up to eight inches and this case it was \$200 because it was, you know, more than five times that. That would certainly not be unconscionable. That's reasonable and given the volume of the work. But if suddenly the bill had

been 5 or 600 dollars, then maybe it would have been unconscionable.

So I think you have to take into account what is or is not, in effect, an excessive spike in the price, given all of the circumstances that and the level of work required to deal with the problem.

REP. D'AMELIO: Okay. So we're not setting -- We're not here trying to fix price, costs during a storm. I mean, people are going to be able to charge what they want --

SENATOR LOONEY: Right. People are going to --

REP. D'AMELIO: But if it's unreasonable charge --

SENATOR LOONEY: That's right. Only if it does amount to something that would be characterized as, in effect, unconscionable; that is, taking into account all of the -- the extremities of the situation, the extra work and labor involved and still having it be an unconscionable price beyond that would be what we're looking to get at in this circumstance.

SENATOR DOYLE: Any further questions?

I'd just like to make a comment, Senator.

You and I have worked on this for several years and let's hope we can get the other chamber to approve it. And I will say, since we've been working on this piece of legislation, the strange occurrences over the last few years, you've had a significant -- a number of significant weather events so, hopefully, if we can get this passed this year, we can reduce the number of significant weather events.

SENATOR LOONEY: Well. That's right. It seems that we should maybe it'll be a good luck charm if the General Assembly passes the bill this year because when we first had the bill in 2000 -- 2011, we were looking at the snow storms that occurred in 2011, on the issue about the -- charging for removing snow from roofs. Last year, we were looking at in the wake of the two October storms that had occurred or the summer and fall of 2011, and now we're looking at it in the wake of this year's 35- to 40-inch snowstorm, as well. So you're right every time we propose the bill, there were specific recent examples that we can point to as -- as extreme conditions.

SENATOR DOYLE: So maybe that's one of our other issues in -- in substantiations we pass along to the House.

SENATOR LOONEY: That's right.

SENATOR DOYLE: Thank you, Senator.

SENATOR LOONEY: Thank you, Senator.

SENATOR DOYLE: Any further questions?

Thank you very much.

SENATOR LOONEY: Thank you very much.

SENATOR DOYLE: Next speaker is Ken Skovron, Art DeSisto, Chuck Bowe, Mike Scalise, David Leon, Larry Cass, Bill Boucher, Brian Langer, I think Susan Giacalone, oh, from the IAC.

Ken.

KEN SKOVRON: Good afternoon, Senator Doyle --

SENATOR DOYLE: -- from the cheese industry --

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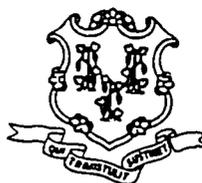
*TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE GENERAL LAW COMMITTEE
FEBRUARY 26, 2013*

I appreciate the opportunity to support SB 320, *An Act Prohibiting Price Gouging During Severe Weather Events*. I strongly support this proposal and urge the committee to report favorably upon it. As you all are aware, Connecticut residents have endured several severe weather events over the past several years. High energy bills are bad enough for consumers. But unusually severe weather events, including tropical storms, hurricanes, and freakishly heavy snowfalls created burdens that were too much for some consumers -- and their homes and businesses -- to bear. There were massive and prolonged power outages, downed trees and power lines, collapsed roofs, flooded basements, spoiled food and much, much more. As broadcast and published reports showed, the prices consumers were charged for some of the essential goods and services associated with these events, such as clearing heavy snow from rooftops, staying in hotels, buying generators, and having trees removed varied widely.

Legitimate businesses have a right to make a profit for their work and we all know that when demand for services go up, so does the price. But unscrupulous businesses should not be permitted to exploit consumers by charging unconscionably high prices during public emergencies for goods and services that are essential to the public health, safety and welfare.

This bill will help protect consumers from such business practices. Basically, it says that during a severe weather event, no one in the distribution chain for consumer goods and services that are essential to the public health, safety and welfare shall sell such goods and services at an unconscionably excessive price. The question of whether a price is unconscionably excessive will be determined by the courts on a case by case basis by resorting to a number of factors set out in the proposed bill, including: a comparison of the prices charged for the same goods and services before a severe weather event and after its onset and an examination of whether the same goods and services are available at much lower prices from other sellers in the same area.

Under ordinary circumstances, consumers have a responsibility to use common sense: to compare prices for goods and services and whenever possible to get written estimates for work that needs to be done. As we have learned during the past year, however, it becomes far more difficult to exercise good judgment when the goods and services in question are in acute need and are vital to the public safety and welfare. This bill will give my office an important tool to deter unscrupulous businesses from charging unconscionably high prices during such times.



State of Connecticut

SENATE DEMOCRATS
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591

Senator Donald Williams
Senate President Pro Tempore
And
Senator Martin Looney
Senate Majority Leader

On

Senate Bill 320: An Act Prohibiting Price Gouging During Severe Weather Events

Committee on General Law

February 26, 2013

Senator Doyle, Representative Baram and members of the committee, thank you for this opportunity to testify in support of Senate Bill 320: *An Act Prohibiting Price Gouging During Severe Weather Events*. The goal of this bill is to provide what we believe is much-needed protection for Connecticut consumers, by broadening the scope of our price gouging laws. In particular, we believe we need to significantly expand the circumstances under which price gouging for services is prohibited under Connecticut law.

Over the past two and a half years, our state has been struck by a pattern of extreme weather events that have threatened not only our sense of well-being, but in many cases our homes themselves. We have experienced the damaging effects of historic, repeated snowfalls throughout the winter of 2011; the historic snowstorm earlier this month; the landfalls of Hurricanes Irene and Sandy; and two consecutive devastating October snowstorms that deprived thousands upon thousands of Connecticut homes of electricity for extended periods. A by-product of the vulnerabilities exposed by these storms was our evident and heightened need for emergency services provided by others; for example the need to have snow removed from the roofs of our homes and businesses during the winter of 2011, the need for lodging services during the extended power outages during each of the past two Octobers, and the need for flood abatement services. With such widespread weather-related vulnerabilities and needs come an opportunity for those service providers who would be unscrupulous to price gouge, and each storm brought with it numerous reports of price gouging for vital and necessary services.

Unfortunately, it is our strong belief that Connecticut's current statutory scheme on price gouging is woefully inadequate as it relates to price gouging for services, and could be improved as it relates to vital and necessary consumer goods as well. Indeed, the main price gouging statute, section 42-230, applies only to goods, and not services. Even then, it applies only during a disaster or civil preparedness 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 it becomes a criminal as well as a civil violation to charge above market prices. Finally, section 42-234 is our only price gouging statute that can be triggered short of a formal civil preparedness, disaster, supply or energy emergency declaration by the governor or President, but it only applies to the sale of petroleum products like gasoline.

We believe our price gouging laws should be expanded to 1) cover both vital and necessary goods and services equally, and 2) protect consumers during very adverse weather conditions that can result in the exercise of unconscionably extreme leverage by contractors and retailers, even in situations that may not rise to the most extreme levels of a civil preparedness, supply, or energy emergency being declared in the State of Connecticut.

The language in Senate Bill 320 is substantially similar to measures that passed both this committee and the Senate each of the past two years, in bi-partisan fashion. The bill prohibits price gouging equally for consumer goods *and services* that are vital and necessary for the health, safety and welfare of consumers, including but not limited to the provision of lodging, snow removal, flood abatement and other post-storm cleanup or repair services. Such extra consumer protections would be triggered when the governor determines that adverse weather conditions have created an unusually high demand for vital and necessary consumer goods and services, and that therefore a "severe weather event emergency" has occurred. This type of proclamation by the governor could be short of a full blown supply emergency or civil preparedness emergency declaration. As mentioned, a supply emergency declaration brings with it rationing and heightened criminal violations, and civil preparedness and disaster declarations have various ramifications across a much wider breadth of our statutes.

Under the bill, vital and necessary consumer goods and services cannot be sold or offered for sale for "an unconscionably excessive price" during the time of the governor's proclamation. Whether a price is "unconscionably excessive" would be determined by a 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 average price of goods or services in the 30 day period before the severe weather event emergency, and then during the emergency, 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."

We respectfully assert that adoption of this bill would greatly enhance our consumer protection laws. We look forward to working with you on this critical issue this session.

Thank you