

STATE OF NEW YORK

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2025-2026 Regular Sessions

IN ASSEMBLY

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Introduced by M. of A. LASHER -- (at request of the Attorney General) --
read once and referred to the Committee on Consumer Affairs and
Protection

AN ACT to amend the general business law, in relation to enacting the
"fostering affordability and integrity through reasonable (FAIR) busi-
ness practices act"

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "fostering
2 affordability and integrity through reasonable (FAIR) business practices
3 act".

4 § 2. Article 22-A of the general business law is amended by adding a
5 new section 348 to read as follows:

6 § 348. Purpose and intent of article. The legislature declares that
7 the state has a responsibility to protect New Yorkers from unfair,
8 deceptive and abusive business acts and practices (known as UDAP stat-
9 utes). The legislature recognizes the limitations of the current state
10 law, which prohibits only the use of deceptive business acts and prac-
11 tices, and has proven insufficient to satisfy the state's responsibil-
12 ities to protect New Yorkers and the New York economy from unfair,
13 deceptive, and abusive business practices. For too long, New Yorkers,
14 especially New Yorkers with limited income, communities of color,
15 seniors, veterans, and immigrant populations, have been left vulnerable
16 to unscrupulous business practices ranging from wasting a customer's
17 time as a business tactic to avoid giving customers the products or
18 services they are entitled to receive, to misleading or harmful prac-
19 tices by employers, including deceptive marketing or contract terms,
20 forcing workers into undesirable work conditions, to distributing and
21 selling toxic and otherwise harmful products during public health emer-
22 gencies and natural disasters. It is time for New York to move forward
23 and join all but a handful of New York's fellow states and the District

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

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1 of Columbia, by adopting a comprehensive UDAP statute that gives govern-
2 ment and private parties the tools to address these harms. The state
3 must achieve the goal of deterring and remedying a broad range of
4 unfair, deceptive, and abusive business practices, and leveling the
5 playing field for the state's many honest businesses and non-profits who
6 treat their customers fairly. To that end, this article defines unfair
7 and abusive acts and practices expansively to reach harmful conduct that
8 is unfair or abusive but arguably not deceptive.

9 The state must also ensure the most meaningful and effective
10 protection to New Yorkers against harmful commercial conduct. This arti-
11 cle therefore eliminates atextual exceptions imposed by courts over the
12 last five decades that have limited prohibited conduct to acts that are
13 "consumer oriented" conduct that has an impact on the public at large,
14 or acts that are part of a broader, or recurring, pattern. These court-
15 imposed limitations have been used to bar relief to New Yorkers victim-
16 ized by deceptive acts and practices in a variety of contexts, including
17 small businesses tricked into predatory loans, individuals defrauded in
18 landlord-tenant transactions, vulnerable communities victimized by toxic
19 or otherwise harmful products, and victims of conduct that affected a
20 single individual or concerned a single transaction, product, or
21 service.

22 The legislature confirms that this article protects businesses and
23 non-profits as well as individuals. Businesses and non-profits, partic-
24 ularly small businesses and non-profits, are themselves a class of
25 consumers. There is no reason to believe that a small entity is any
26 better able to defend itself from unfair, abusive, and deceptive conduct
27 than a consumer, or needs the protections of this article any less than
28 a consumer does. The market and wider society is harmed by the negative
29 consequences that flow from unfair, deceptive, and abusive practices
30 even if those acts and practices have not been understood as "consumer
31 oriented".

32 The underlying concern motivating the courts to create the narrower
33 "consumer oriented" doctrine in the first place--a desire to ensure that
34 the statute is not misapplied to high-value sophisticated private
35 commercial disputes for which New York is one of the world's premiere
36 forums--is addressed by new provisions that provide a defense excluding
37 the application of such section from deals made by large businesses and
38 high-value sophisticated transactions made between individuals and small
39 entities without affecting the broad protections New Yorkers need
40 against unfair, deceptive, and abusive business acts and practices. It
41 is the intention of the legislature that this article be applied expan-
42 sively, with limits imposed only in accordance with its text, without
43 additional restrictions.

44 § 3. The article heading of article 22-A of the general business law,
45 as amended by chapter 43 of the laws of 1970, is amended to read as
46 follows:

47 [CONSUMER] PROTECTION FROM
48 UNFAIR, DECEPTIVE, OR ABUSIVE ACTS AND
49 PRACTICES

50 § 4. Section 349 of the general business law, as added by chapter 43
51 of the laws of 1970, subdivision (h) as amended by chapter 157 of the
52 laws of 1984 and subdivision (j) as added by section 6 of part HH of
53 chapter 55 of the laws of 2014, is amended to read as follows:

54 § 349. [Deceptive] Unfair, deceptive, or abusive acts and practices
55 unlawful. (a) [Deceptive] Unfair, deceptive, or abusive acts or prac-
56 tices in the conduct of any business, trade or commerce or in the

1 furnishing of any service in this state are hereby declared unlawful.

2 For the purposes of this section:

3 (1) An act or practice is unfair when it causes or is likely to cause
4 a person substantial injury which is not reasonably avoidable by such
5 person and is not outweighed by countervailing benefits to consumers or
6 to competition.

7 (2) An act or practice is deceptive when the act or practice misleads
8 or is likely to mislead a reasonable person in the relevant market
9 acting reasonably under the circumstances.

10 (3) An act or practice is abusive when:

11 (i) it materially interferes with the ability of a person to under-
12 stand a term or condition of a product or service; or

13 (ii) it takes unreasonable advantage of:

14 (A) a lack of understanding on the part of a person of the material
15 risks, costs, or conditions of a product or service;

16 (B) the inability of a person to protect their interests in selecting
17 or using a product or service; or

18 (C) the reasonable reliance by a person on a person covered by this
19 section to act in the relying person's interests.

20 (4) An unlawful act or practice is actionable under this section
21 regardless of whether or not that act or practice is consumer-oriented,
22 has a public impact or impact on consumers, poses a risk of harm to the
23 public health or interest, is only or primarily directed at or only or
24 primarily affects businesses or not-for-profit organizations, affects
25 the consuming public at large, concerns employment or the furnishing of
26 goods or services, is unique to the parties, or involves an economically
27 modest transaction, consumer goods or their equivalent, or the offering
28 of goods, services, or property for personal, family, or household
29 purposes.

30 (5) For purposes of this article, the term "injury" means any impair-
31 ment of a person's interests, and the term "substantial injury" means
32 any substantial impairment of a person's interests, whether or not such
33 impairments or substantial impairments to interests are quantifiable,
34 economic, or monetary in nature, including but not limited to loss of
35 time, loss of privacy, or loss of security.

36 (b) Whenever the attorney general shall believe from evidence satis-
37 factory to ~~him~~ the attorney general that any person, including but not
38 limited to an individual, firm, corporation, company, partnership or
39 association, or agent or employee thereof, has engaged in or is about to
40 engage in any of the acts or practices stated to be ~~unlawful he~~
41 unfair, deceptive, or abusive, the attorney general may bring an action
42 or proceeding in the name and on behalf of the people of the state of
43 New York to enjoin such unlawful acts or practices and to obtain resti-
44 tution of any moneys or property obtained directly or indirectly by any
45 such unlawful acts or practices. In such action or proceeding, prelimi-
46 nary relief may be granted under article sixty-three of the civil prac-
47 tice law and rules. The attorney general may bring such an action or
48 proceeding against any person conducting any business, trade or commerce
49 or furnishing a service in this state, whether or not the person is
50 without the state, and any person in the state conducting any business,
51 trade, or commerce or furnishing a service, whether or not the business
52 or service is conducted or furnished without the state.

53 (c) Before ~~any violation of this section is sought to be enjoined~~
54 commencing an action or proceeding pursuant to this section, the attor-
55 ney general shall be required to give the person against whom such
56 proceeding is contemplated notice by certified mail and an opportunity

1 to show in writing within five business days after receipt of notice why
2 [~~proceedings~~] an action or proceeding should not be instituted against
3 [~~him~~] such person, unless the attorney general shall find, in any case
4 in which [~~he~~] the attorney general seeks preliminary relief, that to
5 give such notice and opportunity is not in the public interest.

6 (d) In any such action or proceeding it shall be [~~a complete~~] an
7 affirmative defense that the act or practice is [~~, or if in interstate~~
8 ~~commerce would be, subject to and complies with~~] required or specif-
9 ically authorized by the rules and regulations of, and the statutes
10 administered by, the federal trade commission or any official depart-
11 ment, division, commission or agency of the United States [~~as such~~
12 ~~rules, regulations or statutes are interpreted by the federal trade~~
13 ~~commission or such department, division, commission or agency or the~~
14 ~~federal courts~~] or this state.

15 (e) Nothing in this section shall apply to any television or radio
16 broadcasting station or to any publisher or printer of a newspaper,
17 magazine or other form of printed advertising, who broadcasts,
18 publishes, or prints the advertisement.

19 (f) In connection with any proposed action or proceeding under this
20 section, the attorney general is authorized to take proof and make a
21 determination of the relevant facts, and to issue subpoenas in accord-
22 ance with the civil practice law and rules.

23 (g) This section shall apply to all [~~deceptive~~] unfair, deceptive, or
24 abusive acts or practices [~~declared to be unlawful~~], whether or not
25 subject to any other law of this state, and shall not supersede, amend
26 or repeal any other law of this state under which the attorney general
27 or any other party is authorized to take any action or conduct any
28 inquiry. This section shall be liberally construed, and its exceptions
29 and defenses narrowly construed, so as to effectuate its remedial and
30 protective purposes. This section is intended to expand and not take
31 away any statutory or common law rights.

32 (h) (1) In addition to the right of action granted to the attorney
33 general pursuant to this section, any person who has been injured by
34 reason of any violation of this section may bring an action in [~~his~~]
35 such person's own name to enjoin such unlawful act or practice, an
36 action to recover [~~his actual damages or fifty dollars, whichever is~~
37 ~~greater, or both such actions~~] one thousand dollars in statutory damages
38 and the person's actual damages, if any. The court [~~may, in its~~
39 ~~discretion,~~] shall increase the award of damages to [~~an amount not to~~
40 ~~exceed~~] three times the [~~actual~~] damages [~~up to one thousand dollars,~~]
41 awarded if the court finds the defendant willfully or knowingly violated
42 this section. The court [~~may~~] shall award reasonable attorney's fees,
43 expenses including expert witness fees, and costs to a prevailing plain-
44 tiff.

45 [~~(j)~~] (2) (i) It shall be an affirmative defense to any action brought
46 pursuant to this subdivision that the plaintiff is a person other than
47 an individual or small entity. For purposes of this subparagraph, a
48 "small entity" shall mean a person other than an individual, including
49 but not limited to a business or professional corporation or company, a
50 not-for-profit corporation, an unincorporated association, or a partner-
51 ship, that: (A) is independently owned and operated; (B) is not dominant
52 in its field; (C) is either a not-for-profit corporation or employs
53 three hundred or fewer persons; (D) received in the past fiscal year
54 gross revenue and support in an amount less than five hundred million
55 dollars; and (E) possessed total assets in the last fiscal year of not
56 more than two hundred fifty million dollars.

1 (ii) It shall be an affirmative defense to any action brought pursuant
2 to this subdivision that the act or practice complained of is redressa-
3 ble pursuant to federal securities or intellectual property laws, or
4 that the act or practice arose in the course of a high-value experienced
5 commercial transaction and was directed exclusively to the parties to
6 that transaction. This defense shall not apply to acts or practices that
7 arise in the context of a residential housing matter.

8 For purposes of this subparagraph:

9 (A) an act or practice is "redressable pursuant to federal securities
10 or intellectual property laws" only if: (I) the plaintiff may remedy
11 the injury arising or alleged to arise from the act or practice by use
12 of the private rights of action contained in the Securities Act of 1933,
13 15 U.S.C. Section 77a et seq., or the Securities Exchange Act of 1934,
14 15 U.S.C. Section 78a et seq., or regulations promulgated thereunder; or
15 (II) the plaintiff may remedy the injury arising or alleged to arise
16 from the act or practice by use of the private rights of action
17 contained in title 35 of the United States Code, or the Trademark Act of
18 1946, 15 U.S.C. Section 1051 et seq., or the Defend Trade Secrets Act of
19 2016, 18 U.S.C. Section 1836, et seq., of the Copyright Act of 1976, 17
20 U.S.C. Section 101 et seq., or regulations promulgated thereunder;

21 (B) a "high-value experienced commercial transaction" is a transaction
22 the value of which exceeds one million dollars and where all parties to
23 the transaction have extensive commercial experience with the subject
24 matter of such transaction; provided that the experience or otherwise of
25 the defendant shall not be considered in making this determination;

26 (C) a person other than an individual has "extensive commercial expe-
27 rience" in the subject matter of the transaction if the individuals who
28 control that person have extensive commercial experience in the subject
29 matter of the transaction;

30 (D) "residential housing" means any residential real property, includ-
31 ing but not limited to rental housing, one-to-four family dwellings,
32 condominium units, cooperative apartments, lots in manufactured home
33 parks, or securities that entitle the holders thereof to possession or
34 occupancy of such housing; and

35 (E) a "residential housing matter" is one that concerns the
36 construction, renovation, sale or rent of residential housing used,
37 occupied, or intended to be occupied as a home or residence by one or
38 more parties to the transaction or individuals owning or controlling one
39 or more parties to the transaction, or credit extended to one or more
40 persons to purchase, refinance, repair, or improve such residential
41 housing, or credit secured by a person's equity in such residential
42 housing.

43 (3) (i) Standing to bring an action under this section, including but
44 not limited to organizational standing and third-party standing, shall
45 be liberally construed and shall be available to the fullest extent
46 otherwise permitted by law.

47 (ii) A court may enjoin an act or practice found to be unlawful in an
48 action brought pursuant to this subdivision notwithstanding the plain-
49 tiff or plaintiffs' failure to demonstrate that they will suffer future
50 harm as a result.

51 (4) (i) Notwithstanding section nine hundred one of the civil practice
52 law and rules or any other applicable provision of law, any person enti-
53 tled to bring an action under this article may, if the prohibited act or
54 practice has caused damage to others similarly situated, bring an action
55 on behalf of such person and others similarly situated to recover actu-
56 al, statutory or punitive damages or obtain other relief as provided for

1 in this article. Statutory damages under this section shall be limited
2 to (i) such amount for each named plaintiff as could be recovered under
3 paragraph one of this subdivision; and (ii) such amount as the court may
4 allow for all other class members without regard to a minimum individual
5 recovery, not to exceed the lesser of one million dollars or two per
6 centum of the gross value of the defendant.

7 (ii) As applied to a class action or proposed class action, the term
8 "plaintiff" as used in the defenses provided by paragraph two of this
9 subdivision shall mean only the named or representative plaintiff or
10 plaintiffs and not the proposed or certified members of the class.

11 (5)(i) At least thirty days before bringing an action pursuant to this
12 subdivision, a complainant must send the respondent notice in writing to
13 the respondent's place of business. Such notice must reasonably describe
14 the unfair, deceptive, or abusive acts or practices at issue, state a
15 demand for relief, and include the complainant's mailing address or
16 e-mail address. For the purposes of this paragraph, the term "complain-
17 ant" shall mean a person who may bring an action pursuant to this subdivi-
18 vision. For the purpose of this paragraph, the term "respondent" shall
19 mean a person against whom an action is contemplated.

20 (ii) A respondent receiving a notice required to be sent pursuant to
21 this paragraph may, within ten days of delivery of such notice, make a
22 written tender of settlement by postal mail or by e-mail, if provided in
23 the notice. If such tender is rejected, in any subsequent action by the
24 complainant arising out of the conduct described in the complainant's
25 notice, the respondent may file the written tender of settlement with an
26 affidavit concerning its rejection and proof that the tender was filed
27 with the attorney general. If such settlement is deemed complete relief
28 by the court, the court shall limit any recovery to the relief tendered
29 therein.

30 (iii) A tender of settlement shall be deemed complete only if the
31 respondent unconditionally: (A) tenders an amount equal to actual and
32 statutory damages, as applicable, (B) makes a binding undertaking to
33 correct and permanently cease such acts or practices described in the
34 notice as to the complainant and all other impacted persons, and (C)
35 files the notice and tender of settlement with the attorney general in
36 accordance with paragraph six of this subdivision.

37 (iv) In making such a tender of settlement, a respondent shall not be
38 deemed to have conceded any factual or legal matter stated in the notice
39 or to have undertaken any obligations other than, if the tender is
40 accepted or the court so orders, the payment of the monetary amounts
41 specified in the tender and the correction and permanent cessation of
42 the acts or practices described in the notice. Except as this paragraph
43 otherwise provides, a tender of settlement shall be deemed an offer to
44 compromise subject to article forty-five of the civil practice law and
45 rules.

46 (v) An accepted tender of settlement shall be deemed a settlement of
47 an action to recover damages for purposes of article fifty of the civil
48 practice law and rules.

49 (vi) For the purposes of computing the period of limitation under
50 article two of the civil practice law and rules, an action pursuant to
51 this subdivision shall be deemed timely if the complainant's notice to
52 the respondent was sent on or before the date on which the statute of
53 limitations would have expired without regard to the date of that notice
54 or any other notice made pursuant to this paragraph, and the action is
55 commenced no later than forty days following the date on which the
56 complainant's notice was sent to the respondent.

1 (vii) A notice pursuant to this paragraph shall not be required prior
 2 to the filing of an action if:

3 (A) such action is brought as a counterclaim or crossclaim;

4 (B) the sending of such notice would cause immediate and irreparable
 5 injury, loss, or damages;

6 (C) the person bringing the action is not represented by an attorney;

7 (D) a mailing address for the respondent is not reasonably discerni-
 8 ble;

9 (E) the respondent, or any entity owned or controlled by the one or
 10 more of the same persons that own or control or ultimately own or
 11 control the respondent, has previously been the subject of an action or
 12 proceeding by the attorney general for substantially similar conduct;

13 (F) the respondent, or any entity owned or controlled by one or more
 14 of the same persons that own or control or ultimately own or control the
 15 respondent, has already received a notice pursuant to this paragraph for
 16 substantially similar conduct; or

17 (G) there are other exigent circumstances or the court otherwise finds
 18 that the notice requirement should be waived in the interests of
 19 justice.

20 (6) (i) Any respondent that delivers a tender of settlement pursuant
 21 to paragraph five of this subdivision shall file with the attorney
 22 general a prescribed form that includes a copy of the complainant's
 23 notice and the respondent's written tender of settlement. The attorney
 24 general shall publish all such filings.

25 (ii) The attorney general may commence an action or proceeding against
 26 any respondent who fails to make a filing required by paragraph six of
 27 this subdivision within thirty days of the acts giving rise to the
 28 requirement. A failure to file the required statement on time shall be
 29 subject to a civil penalty not to exceed five hundred dollars for each
 30 day such violation continues, in addition to any other penalties or
 31 remedies provided under this section or any other section of this chap-
 32 ter or the executive law.

33 (i) Notwithstanding any law to the contrary, all monies recovered or
 34 obtained under this article by a state agency or state official or
 35 employee acting in their official capacity shall be subject to subdivi-
 36 sion eleven of section four of the state finance law.

37 § 5. Section 349-c of the general business law, as added by chapter
 38 687 of the laws of 1996 and renumbered by chapter 189 of the laws of
 39 1999, is amended to read as follows:

40 § 349-c. Additional civil penalty for [~~consumer frauds~~] unfair, decep-
 41 tive, or abusive practices against [~~elderly~~] vulnerable persons. 1.
 42 Definition. As used in this section [~~elderly person means~~] "vulnerable
 43 person" means (a) a person who is under eighteen years of age or sixty-
 44 five years of age or older; (b) a person who is on active duty in, or a
 45 veteran of, the United States Armed Forces; (c) a person who has a phys-
 46 ical or mental impairment that substantially limits one or more major
 47 life activities; or (d) a person with limited English proficiency.

48 2. Supplemental civil penalty. [~~(a)~~] In addition to any liability for
 49 damages or a civil penalty imposed pursuant to sections three hundred
 50 forty-nine, three hundred fifty-c and three hundred fifty-d of this
 51 [~~chapter~~] article, regarding unfair, deceptive, or abusive practices and
 52 false advertising, and subdivision twelve of section sixty-three of the
 53 executive law, regarding proceedings by the attorney general for equita-
 54 ble relief against fraudulent or illegal [~~consumer fraud~~] acts, a person
 55 or entity who engages in any conduct prohibited by said provisions of
 56 law, and whose conduct is perpetrated against one or more [~~elderly~~]

1 vulnerable persons, [~~may~~] shall be liable for an additional civil penal-
 2 ty not [~~to exceed~~] less than five thousand dollars or greater than ten
 3 thousand dollars[~~, if the factors in paragraph (b) of this subdivision~~
 4 ~~are present~~] for each such vulnerable person substantially injured by
 5 the unlawful conduct.

6 [~~(b) In determining whether to impose a supplemental civil penalty~~
 7 ~~pursuant to paragraph (a) of this subdivision, and the amount of any~~
 8 ~~such penalty, the court shall consider, in addition to other appropriate~~
 9 ~~factors, the extent to which the following factors are present:~~

10 ~~(1) Whether~~] 3. Rebuttal of supplemental civil penalty. The additional
 11 penalty provided by subdivision two of this section shall not be imposed
 12 on a defendant who proves that, with respect to each violation to which
 13 the penalty would otherwise apply:

14 (a) the defendant [~~knew~~] did not know or have reason to know that the
 15 defendant's conduct was [~~directed to one or more elderly~~] perpetrated
 16 against vulnerable persons; or [~~whether~~]

17 (b) the [~~defendant's~~] defendant used its best efforts, within the
 18 limits of economic feasibility and commercial reasonability, to ensure
 19 that vulnerable people were not disproportionately affected by the
 20 conduct [~~was in willful disregard of the rights of an elderly person,~~].

21 [~~(2) Whether the defendant's conduct caused an elderly person or~~
 22 ~~persons to suffer severe loss or encumbrance of a primary residence,~~
 23 ~~principal employment or source of income, substantial loss of property~~
 24 ~~set aside for retirement or for personal and family care and mainte-~~
 25 ~~nance, substantial loss of payments received under a pension or retire-~~
 26 ~~ment plan or a government benefits program, or assets essential to the~~
 27 ~~health or welfare of the elderly person or whether one or more elderly~~
 28 ~~persons were substantially more vulnerable to the defendant's conduct~~
 29 ~~because of age, poor health, infirmity, impaired understanding,~~
 30 ~~restricted mobility, or disability, and actually suffered physical,~~
 31 ~~emotional, or economic damage resulting from the defendant's conduct.~~

32 ~~3.]~~ 4. There is hereby established in the state treasury a special
 33 fund to be known as the [~~elderly~~] vulnerable victim fund, which shall
 34 consist of and into which shall be paid all moneys derived from supple-
 35 mental civil penalties imposed pursuant to this section. The moneys in
 36 such fund shall be administered by the department of law and shall be
 37 expended solely for the investigation of and prosecution of [~~consumer~~
 38 ~~frauds~~] unfair, deceptive, or abusive acts against [~~elderly~~] vulnerable
 39 persons. The moneys in the fund shall be paid out on the audit and
 40 warrant of the comptroller on vouchers certified or approved by the
 41 attorney general. Notwithstanding any other provision of law to the
 42 contrary, any balance in the said fund on March thirty-first of any
 43 fiscal year shall not revert to the general fund of the state.

44 [~~4.]~~ 5. Restitution to be given priority. Restitution ordered pursuant
 45 to the provisions of law listed in subdivision two of this section shall
 46 be given priority over the imposition of civil penalties designated by
 47 the court under this section.

48 § 6. Section 350-c of the general business law, as amended by chapter
 49 65 of the laws of 1989, is amended to read as follows:

50 § 350-c. Notice of proposed action. Before the [~~attorney-general~~]
 51 attorney general commences an action or proceeding pursuant to section
 52 three hundred fifty-d of this article [~~he~~] the attorney general shall be
 53 required to give the person against whom such action or proceeding is
 54 contemplated [~~appropriate~~] notice by certified mail and an opportunity
 55 to show[~~, either orally or~~] in writing[~~,~~] within five business days
 56 after receipt of notice why such action should not be commenced, unless

1 the attorney general shall find, in any case in which the attorney
2 general seeks preliminary relief, that to give such notice and opportu-
3 nity is not in the public interest. In such showing, said person may
4 present, among other things, evidence [~~that the advertisement is subject~~
5 ~~to and complies with the rules and regulations of, and the statutes~~
6 ~~administered by, the Federal Trade Commission or any official depart-~~
7 ~~ment, division, commission or agency of the state of New York~~] probative
8 of any affirmative defense said person may raise in such an action or
9 proceeding.

10 § 7. Section 350-d of the general business law, as amended by chapter
11 803 of the laws of 2022, is amended to read as follows:

12 § 350-d. Civil penalty. [~~(a)~~] 1. Any person, firm, corporation or
13 association or agent or employee thereof who engages in any of the acts
14 or practices stated in this article to be unlawful shall be liable to a
15 civil penalty of not more than five thousand dollars for each
16 violation[~~, which~~] or the greater of fifteen thousand dollars or three
17 times the gross value of restitution for each violation if the court
18 finds either that the defendant willfully or knowingly violated this
19 article, or violated this article in connection with or during an abnor-
20 mal disruption of the market, as defined by section three hundred nine-
21 ty-six-r of this chapter, or both. Such penalty shall accrue to the
22 state of New York and may be recovered in a civil action or proceeding
23 brought by the attorney general.

24 2. In any such action or proceeding it shall be [~~a complete~~] an affir-
25 native defense that the advertisement, act or practice is [~~subject to~~
26 ~~and complies with~~] required or specifically authorized by the rules and
27 regulations of, and the statutes administered by, the Federal Trade
28 Commission or any official department, division, commission or agency of
29 the United States or this state [~~of New York~~].

30 [~~(b) Notwithstanding subdivision (a) of this section, any firm, corpo-~~
31 ~~ration or association or agent or employee thereof who engages in any of~~
32 ~~the acts or practices stated in section three hundred forty nine of this~~
33 ~~article to be unlawful in connection with or during an abnormal~~
34 ~~disruption of the market shall be liable to a civil penalty of not more~~
35 ~~than fifteen thousand dollars for each violation or three times the~~
36 ~~actual restitution needed, whichever is greater, which shall accrue to~~
37 ~~the state of New York and may be recovered in a civil action brought by~~
38 ~~the attorney general. In any such action it shall be a complete defense~~
39 ~~that the advertisement is subject to and complies with the rules and~~
40 ~~regulations of, and the statutes administered by the Federal Trade~~
41 ~~Commission or any official department, division, commission or agency of~~
42 ~~the state of New York. For the purposes of this subdivision, "abnormal~~
43 ~~disruption of the market" shall mean any change in the market, whether~~
44 ~~actual or imminently threatened, resulting from stress of weather,~~
45 ~~convulsion of nature, failure or shortage of electric power or other~~
46 ~~source of energy, strike, civil disorder, war, military action, national~~
47 ~~or local emergency, or other cause of an abnormal disruption of the~~
48 ~~market which results in the declaration of a state of emergency by the~~
49 ~~governor.]~~

50 § 8. Severability. If any clause, sentence, paragraph, subdivision,
51 section or part of this act shall be adjudged by any court of competent
52 jurisdiction to be invalid, such judgment shall not affect, impair, or
53 invalidate the remainder thereof, but shall be confined in its operation
54 to the clause, sentence, paragraph, subdivision, section or part thereof
55 directly involved in the controversy in which such judgment shall have
56 been rendered. It is hereby declared to be the intent of the legislature

1 that this act would have been enacted even if such invalid provisions
2 had not been included herein.
3 § 9. This act shall take effect on the sixtieth day after it shall
4 have become a law.