

STATE OF NEW YORK

7739

IN SENATE

February 12, 2020

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to investigating critical prescription drug pricing

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

1 Section 1. The insurance law is amended by adding a new section 344 to
2 read as follows:

3 § 344. Investigation by the superintendent with respect to critical
4 prescription drugs. (a) Whenever it shall appear to the superintendent,
5 either upon complaint or otherwise, that in the advertisement, purchase
6 or sale within this state of any critical prescription drug, that the
7 price of that critical prescription drug has increased over the course
8 of any twelve months by more than the increase of the cost of living
9 index for the list price of that critical prescription drug, or if it is
10 suspected that any person, partnership, corporation, company, trust or
11 association, or any agent or employee thereof has sold or offered for
12 sale or is attempting to sell or is offering for sale any critical
13 prescription drug for which the price of that drug has increased over
14 the course of any twelve months by more than the increase of the cost of
15 living index for the list price of that drug, or if the superintendent
16 believes it is to the public interest to investigate, the superintendent
17 shall require such person, partnership, corporation, company, trust or
18 association, or any agent or employee thereof, to file with the depart-
19 ment a statement in writing under oath or otherwise as to all the facts
20 and circumstances concerning the price increase and for that purpose may
21 prescribe forms upon which such statements shall be made.

22 (b) In addition to any other power granted by law, the superintendent,
23 his or her deputy or other officer designated by the superintendent is
24 empowered to subpoena witnesses, compel their attendance, examine them
25 under oath and require the production of any books or papers which he or
26 she deems relevant or material to the inquiry. Such power of subpoena
27 and examination shall not abate or terminate by reason of any action or
28 proceeding brought by the attorney general.

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

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1 (c) No person shall be excused from attending such inquiry in
2 pursuance to the mandates of a subpoena, or from producing a paper or
3 book, or from being examined or required to answer a question on the
4 ground of failure of tender or payment of a witness fee and/or mileage,
5 unless at the time of such appearance or production, as the case may be,
6 such witness makes demand for such payment as a condition precedent to
7 the offering of testimony or production required by the subpoena and
8 unless such payment is not thereupon made. The provisions for payment of
9 witness fee and/or mileage shall not apply to any officer, director or
10 person in the employ of any person, partnership, corporation, company,
11 trust or association whose conduct or practices are being investigated.

12 (d) If a person subpoenaed to attend such inquiry fails to obey the
13 command of a subpoena without reasonable cause, or if a person in
14 attendance upon such inquiry shall without reasonable cause refuse to be
15 sworn or to be examined or to answer a question or to produce a book or
16 paper when ordered so to do by the officer conducting such inquiry, or
17 if a person, partnership, corporation, company, trust or association
18 fails to perform any act required by this section to be performed, he or
19 she shall be guilty of a misdemeanor and shall be subject to a civil
20 penalty as set forth in subsection (e) of this section.

21 (e) (1) If after an investigation authorized under this section the
22 superintendent determines that the increase in the price of the critical
23 prescription drug is unjustified, the superintendent may, after notice
24 and a hearing, levy a civil penalty not to exceed the greater of:

25 (A) five thousand dollars for each offense;

26 (B) a multiple of two times the aggregate damages attributable to the
27 offense; or

28 (C) a multiple of two times the aggregate economic gain attributable
29 to the offense.

30 (2) If any person, partnership, corporation, company, trust or associ-
31 ation, that fails to submit a written statement required by the super-
32 intendent under subsection (a) of this section or violates subsection
33 (d) of this section, the superintendent may, after notice and a hearing,
34 levy a civil penalty not to exceed to one thousand dollars per day that
35 such failure continues.

36 (f) For the purposes of this section, a "critical prescription drug"
37 shall be defined as one necessary to prevent or treat a disease or state
38 in which death is possible or imminent.

39 § 2. This act shall take effect immediately.