

STATE OF NEW YORK

10410

IN ASSEMBLY

May 4, 2020

Introduced by M. of A. GARBARINO -- read once and referred to the
Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to price gouging,
fraud, and deceptive acts involving medical supplies related to a
public health emergency

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

1 Section 1. The general business law is amended by adding a new section
2 396-rrr to read as follows:

3 § 396-rrr. Price gouging; medical supplies during a public health
4 emergency. 1. For the purposes of this section, the following terms
5 shall have the following meanings:

6 (a) "public health emergency" shall mean a period of time during which
7 the governor has made a state declaration of disaster emergency pursuant
8 to section twenty-eight of the executive law.

9 (b) "consumer goods and services" shall mean any goods and services
10 vital and necessary for the health, safety and welfare of consumers.

11 2. No manufacturer, supplier, wholesaler, distributor, or retail sell-
12 er of consumer goods and services or any other individual, corporation,
13 partnership, joint venture, or business entity who sells consumer goods
14 and services shall:

15 (a) sell or offer for sale any such consumer goods or services for an
16 amount which represents an unconscionably excessive price during a
17 public health emergency; or

18 (b) knowingly defraud an individual in relation to the quality, price,
19 quantity, or any other characteristic of any consumer goods or services.

20 3. Where a violation of this section is alleged to have occurred, the
21 attorney general may apply in the name of the people of the state of New
22 York to the supreme court of the state of New York within the judicial
23 district in which such violations are alleged to have occurred, on
24 notice of five days, for an order enjoining or restraining commission or
25 continuance of the alleged unlawful acts. In any such proceeding, the
26 court shall impose a civil penalty in an amount not to exceed seventy-
27 five thousand dollars and, where appropriate, order restitution to

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

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1 aggrieved consumers. In any such proceeding where the court finds the
2 violation occurred willfully, intentionally, or deliberately, the court
3 shall impose a civil penalty not to exceed the greater of seventy-five
4 thousand dollars or three times the amount of actual damages.

5 § 2. The general business law is amended by adding a new section 350-
6 f-2 to read as follows:

7 § 350-f-2. Deceptive acts involving coronavirus disease 2019 (COVID-
8 19). 1. As used in this section:

9 (a) "Medical supplies" shall mean goods and products used, bought or
10 rendered for the care, cure, mitigation, treatment, or prevention of
11 illnesses or diseases including, but not be limited to: bandages, gauze,
12 or dressings; hand sanitizer, antibiotic ointment, rubbing alcohol,
13 hydrogen peroxide, saline solution; medical or surgical masks; medical
14 or surgical gloves; tissues; over-the-counter medications; and any other
15 goods or products identified in emergency regulations promulgated by the
16 commissioner of the department of health during a public health emergen-
17 cy.

18 (b) "Substandard medical supplies" shall mean medical supplies which
19 fail to meet quality standards, specifications, or both.

20 (c) "Falsified medical supplies" shall mean medical supplies that:

21 (i) appear to be, without authorization, identical to, or substantial-
22 ly similar to, genuine medical supplies of the manufacturer; or

23 (ii) are held out to be helpful in any way against the coronavirus
24 disease 2019 (COVID-19) without having a medical basis for such claims.

25 (d) "Person" shall mean any person, partnership, firm, corporation,
26 company, trust, association, or other entity or any agent or employee
27 thereof.

28 2. (a) It shall be unlawful for any person to knowingly:

29 (i) make, offer to distribute or distribute, offer to sell or sell
30 substandard or falsified medical supplies;

31 (ii) obtain patient information for coronavirus disease 2019 (COVID-
32 19) testing and then use such information to fraudulently bill for other
33 tests and procedures;

34 (iii) seek donations for non-existent charitable organizations which
35 purport to be involved in any way with coronavirus disease 2019 (COVID-
36 19);

37 (iv) violates section three hundred ninety-b of this chapter while
38 using the coronavirus disease 2019 (COVID-19) in any electronic message;
39 or

40 (v) creates or operates a website or application which purports to
41 provide information on the coronavirus disease 2019 (COVID-19) but which
42 actually is used to steal from or extort the website's or application's
43 users.

44 (b) Any violation of this section shall constitute a deceptive act or
45 practice within the meaning of section three hundred forty-nine of this
46 article.

47 § 3. This act shall take effect immediately.