

Proposed Local Law Number 4 Of 2020

County of Ulster

A Local Law Establishing Certain Consumer Protection Practices In Ulster County And Penalties For Violating Same

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. UNFAIR TRADE PRACTICES PROHIBITED.

No person shall engage in any Deceptive or Unconscionable trade practices in the sale, lease, rental or loan, or in the offering for sale, lease, rental or loan of any consumer goods or services within the County of Ulster.

SECTION 2. DEFINITIONS.

A. “**Person**” shall mean any individual, corporation, unincorporated association, firm, partnership, limited liability company, organization or other entity.

B. “**Deceptive trade practices**” shall mean any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind, which has the capacity, tendency or effect of deceiving or misleading consumers and is made in connection with the sale, lease, rental or loan of consumer goods or services; the offering for sale, lease, rental or loan of consumer goods or services; or the extension of consumer credit. Deceptive trade practices include but are not limited to:

(1) representations that:

(a) goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not actually have;

(b) the Seller has a sponsorship, approval, status, affiliation, or connection that the Seller does not actually have;

(c) goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, or second-hand;

(d) goods or services are of a particular standard, design, quality, grade, style, value, or model, if they are of another.

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- (2) A false representation as to a material fact;
- (3) failure to state a material fact if such use or failure deceives or tends to deceive;
- (4) offering goods or services without intent to sell them;
- (5) advertising goods or services without the intent to supply the reasonably expectable public demand, unless the offer disclosed the limitation; a Seller must show dated proof the Seller has ordered, in time to arrive by the beginning of sale, more than normal everyday supply.
- (6) making false or misleading representations of fact concerning; the reason for, existence of, or amounts of, price reductions; or the price in comparison to prices of competitors or one's own price at a past or future time;
- (7) falsely stating that a consumer transaction involves consumer rights, remedies or obligations that it does not actually involve;
- (8) falsely stating that services, replacements or repairs are needed if they are not;
- (9) falsely stating the reasons for offering or supplying goods or services at sale or discount prices;
- (10) abandonment or willful failure to perform any home improvement contract or project engaged in or willful deviation from or disregard of plans or specifications in any material respect without the consent of the home owner; and
- (11) failure to complete a Consumer contract, service, or project in a workman like manner or failure to return and perform repairs under warranty.

C. **“Unconscionable trade practice”** shall mean any act or practice which unfairly takes advantage of the lack of knowledge, ability, experience or capacity of the Consumer of which results in a gross disparity between the value received by a Consumer and the price paid by the Consumer, **for any Consumer goods and services**, and shall also mean any instance in which a Seller sets a price **for Essential goods and services immediately after, or during the pendency of, any declared state of emergency impacting Ulster County by any Federal, State or County**

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authority that is ~~more than Ten Percent (10%)~~ higher than the price set immediately prior to the declaration of **the state of emergency** ~~any state of emergency impacting Ulster County by any Federal, State or County authority,~~ **in accord with the following sliding scale:**

Essential Goods and Services Price Set Immediately Prior to Declaration of State of Emergency:	Any Price Increase Immediately After Or During A Declared State of Emergency In Excess Of The Percentage Specified Herein Will Create A Rebuttable Presumption of an Unconscionable Trade Practice
Less than \$499.99	25%
\$500.00 - \$2,499.99	15%
\$2,500.00 - \$9,999.99	10%
\$10,000.00 - \$99,999.99	5%
\$100,000 or more	2%

provided that ~~this definition shall not apply~~ **it shall not be an Unconscionable Trade Practice to set prices in excess of those specified in the sliding scale specified herein** where the Seller can show evidence satisfactory to the Director that any ~~greater than 10%~~ **such** price increase was solely due to additional costs not within the control of the Seller that were imposed on the Seller.

D. **“Consumer goods and services”** shall mean any goods or services, including contracts, projects, credit or debt primarily used or applied for personal or residential household or property improvements or personal or family purposes.

E. **“Consumer”** shall mean an individual who buys or leases or agrees to buy or lease consumer goods or services or procures credit including as a co-guarantor or surety.

F. **“Seller”** shall mean a manufacturer, supplier, merchant, contractor, lessor, creditor or person making consumer goods or services available to Consumers, either directly or indirectly.

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G. **“Director”** means director of the Ulster County Bureau of Weights and Measures.

H. “Essential goods and services” shall mean goods, services or products used, bought or rendered primarily for personal, family, or household purposes immediately after or during the pendency of any declared state of emergency and such term shall include, but not be limited to, bandages, gauze, or dressings; hand sanitizer and wipes, antibiotic ointment, rubbing alcohol, hydrogen peroxide, saline solution; medical or surgical masks; medical or surgical gloves; tissues, paper towels and toilet paper; bottled water; foodstuffs, fuel, batteries; over-the-counter medications; household cleaning supplies and wipes, and any other goods, services or products that may be identified as “Essential” by the Director, in consultation with the Ulster County Commissioner of Health, during the pendency of a declared state of emergency.

SECTION 3. REGULATIONS.

The Director may, after a public hearing, adopt such rules and regulations as may be necessary to effectuate the purposes of this local law, including regulations defining specific deceptive or unconscionable trade practices. Prior notice of such a public hearing shall be published according to law in the official newspapers of the County. A copy of all rules and regulations promulgated hereunder and any amendments thereto shall be filed in the office of the Clerk of the Ulster County Legislature. No such regulation or rule shall become effective unless first approved by Resolution of the Ulster County Legislature.

SECTION 4. ENFORCEMENT.

The Director of the Ulster County Bureau of Weights and Measures shall have the responsibility of enforcing this local law.

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SECTION 5. CIVIL ACTION AUTHORIZED, PENALTIES AND SETTLEMENTS.

A. A violation of any provision of this local law or any rule or regulation promulgated hereunder shall be punishable upon proof thereof, by the payment of a civil penalty in the sum of not less than two hundred and fifty (\$250.00) dollars nor more than five thousand (\$5,000.00) dollars per day for each such violation, to be recovered in a civil action as provided for herein.

B. Upon finding a violation of this local law or any rules and regulations promulgated pursuant thereto, the Director shall expeditiously cause the same to be corrected, or where there is evidence of intent to defraud, refer evidence of any such violation to the District Attorney of Ulster County for prosecution, or in the absence of intent to defraud, refer to the Ulster County Attorney for commencement of a civil action in the name of the County to recover a civil penalty in the amounts prescribed. A cause of action for recovery of such penalty may be released, settled or compromised by the Director before the matter is referred to the County Attorney or thereafter by the County Attorney.

C. Whenever any person has engaged in any acts or practices which constitute repeated or persistent violations of any provision of this local law or any rule or regulation promulgated hereunder, the County Attorney, upon the request of the Director may commence an action in the name of the County for a restraining order, temporary or permanent injunction or other equitable relief.

D. In lieu of instituting or continuing an action pursuant to this local law, the Director may accept written assurance of the actual discontinuance of any act or practice that is in violation of this act. Such assurance may include a stipulation for the voluntary payment by the alleged violator for the costs of investigation and the restitution, by the alleged violator, to Consumers of money, property, or other things received from such Consumers in connection with a violation of this local law.

E. an assurance entered into pursuant to this section shall not be deemed to admit the violation unless it does so by its terms.

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F. a violation of an assurance entered into pursuant to this section shall be treated as a violation of this local law and shall be subject to all the penalties provided for therein.

SECTION 6. EXCLUSIONS.

Nothing in this local law shall apply to any internet platform, television, or radio broadcasting station or to any publisher or printer of a newspaper, magazine or other form of printed advertising, who merely hosts, broadcasts, publishes or prints the advertisement.

SECTION 7. SEVERABILITY.

If any provision of this local law or the application thereof to any person or circumstance is held unconstitutional or otherwise unlawful, the remainder of this local law and the application of such remaining provision(s) to other persons or circumstances shall not be affected thereby.

SECTION 8. REPORTS.

The Director shall render to the Ulster County Legislature and the County Executive an annual report of all activities under this law no later than June 1st of each year.

SECTION 9. EFFECTIVE DATE.

This Local Law shall take effect upon filing with the Secretary of State of the State of New York.