



Legislation Text

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Int. No. 1622

By Council Members Chin, Ayala, Rosenthal, Brannan, Adams, Levine, Powers, Cabrera, Gibson, Salamanca, Dromm, Lander, Rivera, Reynoso, Kallos, Barron and Rose (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to remedying fraudulent, deceptive and unconscionable business practices

Be it enacted by the Council as follows

Section 1. Subdivision a of section 20-701 of the administrative code of the city of New York is amended to read as follows:

§ 20-701 Definitions. a. Deceptive trade practice. Any false, falsely disparaging, or misleading oral [or], written, digital, or electronic statement, visual description or other representation or omission of any kind made in connection with the sale, lease, rental, or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services, or in the extension of consumer credit or in the collection of consumer debts, which has the capacity, tendency or effect of directly or indirectly deceiving or misleading consumers. Deceptive trade practices include but are not limited to: (1) representations that goods or services have sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; the supplier has a sponsorship, approval, status, affiliation, or connection that he or she does not have; goods are original or new if they are deteriorated, altered, damaged, reconditioned, reclaimed, or secondhand; or, goods or services are of a particular standard, quality, grade, style, or model, if they are of another; (2) the use, in any [oral or written] representation, of exaggeration, innuendo, or ambiguity as to a material fact, or the failure to state a material fact, if such use of, or failure to state, a material fact deceives or

tends to deceive; (3) disparaging the goods, services, or business of another by false or misleading representations or omissions of material facts; (4) offering goods or services with intent not to sell them as offered, including by failing to disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications, or conditions on such offer; (5) offering goods or services with intent not to supply reasonable expectable public demand, unless the offer discloses [to] a limitation of quantity; [and] (6) making false or misleading representations of fact, or omitting material facts, concerning the reasons for, existence of, or amounts of price reductions, or price in comparison to prices of competitors or one's own price at a past or future time; (7) stating that a consumer transaction involves consumer rights, remedies, or obligations that it does not involve; (8) falsely stating that services, replacements or repairs are or are not needed [if they are not]; [and] (9) falsely stating the reasons for offering or supplying goods or services at scale discount prices; and (10) failing to provide a complete and accurate translation of all documents related to a consumer transaction in a language other than English, if such consumer transaction was primarily negotiated in such language.

§ 2. Section 20-703 of the administrative code of the city of New York is amended to read as follows:

§ 20-703 Enforcement. a. The violation of any provision of this subchapter or of any rule [or regulation] promulgated thereunder[,], shall be punishable [upon proof thereof,] by [the payment of] a civil penalty [in the sum] of [fifty dollars to three hundred and fifty dollars, to be recovered in a civil action] not less than \$350 nor more than \$2,500.

b. Each individual representation or omission described in subdivision a of section 20-701 in a single communication constitutes a distinct and independent violation.

c. Each day on which an individual representation or omission described in subdivision b is distributed, broadcast, posted, published, or otherwise exposed to the public shall give rise to a single separate violation; provided, however, that (1) if the department produces evidence sufficient to show that a representation or omission was distributed, broadcast, posted, published, or otherwise exposed to the public on more than one

occasion in a single day, each such exposure constitutes a separate violation or (2) if the department produces evidence sufficient to show the number of consumers reached by a representation or omission, there shall be a separate violation for each individual consumer reached by such representation or omission.

[b.] d. The knowing violation, or the third violation within a three-year period, provided that such violations were set forth in separate guilty pleas, decisions, or settlement agreements, of any provision of this subchapter or of any rule [or regulation] promulgated thereunder[,] shall be punishable [upon conviction thereof, by]:

1. [the payment of] by a civil penalty [in the sum] of [five hundred dollars, or as a violation for which a fine in the sum of five hundred dollars shall be imposed, or both] \$3,500; or

2. as a violation for which a fine of \$3,500 shall be imposed; or

3. both by a civil penalty and as a violation with a fine as provided in paragraphs 1 and 2 of this subdivision.

e. Whenever any person has engaged in any act or practice which constitutes a violation of any provision of this subchapter or of any rule promulgated thereunder, the city may make application to the supreme court by action or proceeding or the commissioner may commence a proceeding by service of a notice of violation returnable to any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings.

f. An application to the supreme court made pursuant to subdivision e may seek an order:

1. enjoining such acts or practices, including by granting a temporary or permanent injunction or a restraining order;

2. imposing civil penalties pursuant to this section;

[c. Upon a finding by the commissioner of repeated, multiple or persistent violation of any provision of

this subchapter or of any rule or regulation promulgated thereunder, the city may, except as hereinafter provided, bring an action to compel the] 3. compelling a defendant [or defendants in such action to pay in court] to make restitution of all monies, property, or other things of value, or proceeds thereof, received directly or indirectly as a result of any such violations;

[to direct] 4. directing that the amount of money or the property or other things of value recovered be paid into an account established pursuant to section [two thousand six hundred one] 2601 of the civil practice law and rules from which shall be paid over to any and all persons who purchased the goods or services during the period of violation such sum as was paid by them in a transaction involving the prohibited acts or practices, plus any costs incurred by such claimants in making and pursuing their complaints; provided that if such claims exceed the sum recovered into the account, the awards to consumers shall be prorated according to the value of each claim proved;

[to direct the] 5. directing a defendant [or defendants, upon conviction,] to pay to the city the costs[,] and disbursements of the action or proceeding and [pay to the city for the use of the commissioner] the costs of [his or her] the city's investigation leading to the judgment; or if not recovered from [defendants] a defendant, such costs are to be deducted by the city from the grand recovery before distribution to the consumers;

[and to direct] 6. directing that any money, property, or other things of value in the account described in this subdivision and unclaimed by any persons with such claims within [one year] six years from creation of the account, be paid to the city[, to be used by the commissioner for further consumer law enforcement activities]; and

7. granting all other appropriate relief.

g. Consumers making claims against an account established pursuant to [this] subdivision f shall prove their claims to the commissioner in a manner and subject to procedures established by the commissioner [for that purpose]. The procedures established in each case for proving claims shall not be employed until approved

by the court, which shall also establish by order the minimum means by which the commissioner shall notify potential claimants of the creation of the account. Restitution pursuant to a judgment in an action or proceeding under this subdivision shall bar, [pro tanto,] to the extent permitted by law, the recovery of any damages in any other action or proceeding against the same defendant [or defendants] on account of the same acts or practices which were the basis for such judgment, up to the time of the judgment, by any person to whom such restitution is made. Restitution under this subdivision shall not apply to transactions entered into more than five years prior to commencement of an action by the commissioner. Before instituting an action or proceeding under [this] paragraphs 3 through 6 of subdivision f, the commissioner shall give the prospective defendant written notice of the possible action[, and an opportunity to demonstrate in writing within five days, that no repeated, multiple, or persistent violations have occurred] or proceeding at least five days prior to such action or proceeding.

[d. Whenever any person has engaged in any acts or practices which constitute violations of any provision of this subchapter or of any rule or regulation promulgated thereunder, the city may make application to the supreme court for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order, or other order enjoining such acts or practices.]

h. A proceeding by service of a notice of violation returnable to any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings, made pursuant to subdivision e, may seek an order:

1. granting all applicable civil penalties pursuant to this section;
2. compelling a defendant to make restitution of all monies, property, or other things of value, or proceeds thereof, received directly or indirectly as a result of any such violations, to all affected consumers whether named or unnamed; and
3. granting all other appropriate relief.

[e.] i. To establish a cause of action under this section it need not be shown that consumers are being or were actually injured.

§ 3. Subdivision a of section 20-704 of the administrative code of the city of New York is amended to read as follows:

a. In lieu of instituting or continuing an action or proceeding pursuant to this subchapter, the commissioner may accept written assurance of discontinuance of any act or practice in violation of this subchapter from [the] a person [or persons] who [have] has engaged in such acts or practices. Such assurance may include a stipulation for voluntary payment by the violator of the costs of investigation by the commissioner and may also include a stipulation for the restitution by the violator to consumers, of money, property, or other things of value received from them directly or indirectly in connection with a violation of this subchapter, including money necessarily expended in the course of making and pursuing a complaint to the commissioner. All settlements shall be made a matter of public record. If [such] a stipulation applies to [consumers who have been affected by the violator's practices but have not yet complained to the commissioner,] potential claimants, the assurance [must be approved by the court, which shall direct] may specify the minimum means by which [potential] such claimants shall be notified of the stipulation. A consumer need not accept restitution pursuant to such a stipulation; his or her acceptance shall bar, to the extent permitted by law, recovery of any other damages in any action or proceeding by him or her against [the] a defendant [or defendants] on account of the same acts or practices.

§ 4. This local law takes effect immediately.

CJA
2/26/2019