



Legislation Details (With Text)

File #: Int 0394-2014 **Version:** * **Name:** Consolidating the tribunal of the department of consumer affairs into the office of administrative trials and hearings.

Type: Introduction **Status:** Filed (End of Session)

In control: Committee on Consumer Affairs

On agenda: 6/26/2014

Enactment date: **Enactment #:**

Title: A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to consolidating the tribunal of the department of consumer affairs into the office of administrative trials and hearings.

Sponsors: Vincent J. Gentile, Peter A. Koo, Julissa Ferreras-Copeland, Ydanis A. Rodriguez

Indexes:

Attachments:

Date	Ver.	Action By	Action	Result
6/26/2014	*	City Council	Introduced by Council	
6/26/2014	*	City Council	Referred to Comm by Council	
12/31/2017	*	City Council	Filed (End of Session)	

Int. No. 394

By Council Members Gentile, Koo, Ferreras-Copeland and Rodriguez

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to consolidating the tribunal of the department of consumer affairs into the office of administrative trials and hearings.

Be it enacted by the Council as follows:

Section 1. Subdivisions e and g of section 2203 of chapter 64 of the New York city charter are amended to read as follows:

e. The commissioner, in the performance of said functions, shall be authorized to hold public [and private] hearings, [administer oaths,] take testimony, serve subpoenas, receive evidence, and to receive, administer, pay over and distribute monies collected pursuant to a settlement agreement reached [in and] as a result of actions brought by the department to collect penalties or to provide redress for injuries to consumers for violations of laws relating to deceptive or unconscionable trade practices, or of related laws, or pursuant to a

bond or trust fund requirement established by law or rule, and to promulgate, amend and modify rules and regulations necessary to carry out the powers and duties of the department.

f. The commissioner shall exercise the powers of a commissioner of public markets under the agriculture and markets law with respect to open air markets.

g. (1) Notwithstanding any inconsistent provision of law, the [department] office of administrative trials and hearings shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The [department] office of administrative trials and hearings shall have the exclusive authority [power] to render decisions and orders and to impose civil penalties for all such violations. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the [commissioner] chief administrative law judge of the office of administrative trials and hearings pursuant to section 1049 of chapter 45-a of this charter. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(2) All such proceedings shall be commenced by the service of a notice of violation. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

(3) For the purposes of this subdivision, no act or practice shall be deemed a deceptive trade practice unless it has been declared a deceptive trade practice and described with reasonable particularity in a local law or in a rule or regulation promulgated by the commissioner.

(4) Notwithstanding the aforementioned, pursuant to subdivision c of section 2203 of this chapter the

commissioner shall have the authority to issue, renew, refuse to issue or renew, and upon notice and hearing suspend or revoke any license issued pursuant to title twenty of the administrative code of the city of New York [any other inconsistent provision of law, powers conferred upon the department by this subdivision may be exercised by the office of administrative trials and hearings consistent with orders of the mayor issued in accordance with subdivisions two and three of section one thousand forty-eight of this charter].

§ 2. Subdivisions d, e, f and g of section 20-104 of chapter one of title twenty of the administrative code of the city of New York are amended to read as follows:

d. The commissioner or the commissioner's designee shall be authorized to conduct investigations, to issue subpoenas, to receive evidence, to hear complaints regarding activities for which a license is or may be required, to take depositions on due notice, to serve interrogatories, to hold public [and private] hearings upon due notice, to take testimony and to promulgate, amend and modify procedures and practices governing such proceedings.

e. (1) The commissioner shall be authorized, upon due notice and hearing pursuant to subdivision g of section 2203 of chapter 64 of the New York city charter, to suspend, revoke or cancel any license issued by him or her in accordance with the provisions of chapter two and to bring an action that shall be adjudicated at the office of administrative trials and hearings to impose or institute fines or civil penalties for the violation of (i) any of the provisions of chapter two of this title and regulations and rules promulgated under chapter two of this title and (ii) any of the provisions of any other law, rule or regulation, the enforcement of which is within the jurisdiction of the department including but not limited to subchapter one of chapter five of this title (the consumer protection law) and subchapter two of chapter five (the truth in-pricing-law); provided that such violation is committed in the course of and is related to the conduct of the business, trade or occupation which is required to be licensed pursuant to chapter two of this title. Except to the extent that dollar limits are otherwise specifically provided such fines or civil penalties shall not exceed five hundred dollars for each violation.

(2) The commissioner may arrange for the redress of injuries caused by such violations, and may otherwise provide for compliance with the provisions and purposes of chapter two of this title.

(3) The commissioner or the commissioner's designee shall be authorized to suspend the license of any person pending payment of such fine or civil penalty or pending compliance with any other lawful order of the department.

(4) The commissioner shall be authorized to [impose a fine or civil penalty or to] suspend a license [or both] for [a] failure to appear at a hearing at the [department] office of administrative trials and hearings after due notice of such hearing. If a license has been suspended, it shall be returned to the department forthwith upon receipt of the order of suspension. Failure to surrender the license shall be grounds for a fine or civil penalty or revocation of the license.

(5) Any of the remedies provided for in this section shall be in addition to any other remedies provided under any other provision of law.

f. The commissioner, upon due notice and hearing pursuant to subdivision g of section 2203 of chapter 64 of the New York city charter, may require that persons licensed under chapter two of this title who have committed repeated, multiple or persistent violations of chapter two or any other law, rule or regulation the enforcement of which is within the jurisdiction of the department, conspicuously display at their place of business and in advertisements a notice (of a form, content and size to be specified by the commissioner), which shall describe the person's record of such violations; provided that, for each time such display is required, the commissioner may require that such notice be displayed for not less than ten nor more than one hundred days.

g. The commissioner may refuse to issue or renew any license issued in accordance with the provisions of chapter two of this title and may suspend or revoke any such license, after due notice and opportunity to be heard pursuant to subdivision g of section 2203 of chapter 64 of the New York city charter, upon the occurrence of any one or more of the following conditions:

1. Two or more judgments within a two-year period against the applicant or licensee for theft of identity as defined in section three hundred eighty-s of the general business law; or
2. One criminal conviction against the applicant or licensee for acts of identity theft or unlawful possession of personal identification information as defined in article one hundred ninety of the penal law; or
3. Two or more criminal convictions within a two-year period of any employees or associates of the applicant or licensee for acts of identity theft or unlawful possession of personal identification information as defined in article one hundred ninety of the penal law that are committed with the use of the applicant's or licensee's equipment, data, technology, or other similar resource. It shall be an affirmative defense that an applicant or licensee did not have reasonable grounds to believe the proscribed acts were taking place with the use of the licensee's equipment, data, technology, or other similar resource or that the proscribed acts were not taking place with the use of the applicant's or licensee's equipment, data, technology, or other similar resource.

§ 3. Subdivisions b, c, d, e, g and h of section 20-105 of chapter one of title twenty of the administrative code of the city of New York shall be amended to read as follows:

b. In addition to the enforcement procedures set forth in section 20-106 of this chapter, the [commissioner] chief administrative law judge of the office of administrative trials and hearings, after notice and a hearing shall be authorized:

1. to impose fines upon any person in violation of subdivision a of this section of one hundred dollars per violation per day for each and every day during which such person violates such subdivision.
2. to order any person in violation of subdivision a of this section immediately to discontinue such activity at the premises on which such activity is occurring.
3. to order that such premises on which such activity is occurring be sealed, provided that such premises are primarily used for such activity.
4. to order that any devices, items or goods sold, offered for sale available for public use or utilized in the operation of a business and relating to such activity for which a license is required but has not been obtained

pursuant to the provisions of chapter two shall be removed, sealed or otherwise made inoperable.

c. Orders of the [commissioner] chief administrative law judge of the office of administrative trials and hearings issued pursuant to this subdivision shall be posted at the premises on which unlicensed activity occurs in violation of this section.

d. Orders of the [commissioner] chief administrative law judge of the office of administrative trials and hearings issued pursuant to paragraph two, three or four of subdivision b of this section shall be stayed with respect to any person who, prior to service of the notice provided in subdivision b of this section, had submitted a full and complete application in proper form and accompanied by the requisite fee for a license or the renewal of a license while such application is pending.

e. Ten days after the posting of an order issued pursuant to paragraph two, three or four of subdivision b of this section and upon the written directive of the [commissioner] chief administrative law judge of the office of administrative trials and hearings, officers and employees of the department and officers of the New York city police department are authorized to act upon and enforce such orders.

f. Any devices, items or goods removed pursuant to the provisions of subdivision b of this section shall be stored in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such devices, items, or goods may be charged with reasonable costs for removal and storage payable prior to the release of such devices, items or goods to such owner or such other person.

g. The [commissioner] chief administrative law judge of the office of administrative trials and hearings shall order that any premises which are sealed pursuant to this section shall be unsealed and that any devices, items or goods removed, sealed or otherwise made inoperable pursuant to this section shall be released, unsealed or made operable upon:

1. payment of all outstanding fines and all reasonable costs for removal and storage, and
2. presentation of proof that a license has been obtained for such activity or, if such person or premises are for any reason ineligible to obtain a license, proof satisfactory to the [commissioner] chief administrative

law judge of the office of administrative trials and hearings that such premises, devices, items or goods will not be used in violation of this section.

h. It shall be a misdemeanor for any person to remove the seal on any premises or remove the seal or make operable any devices, items or goods sealed or otherwise made inoperable in accordance with an order of the [commissioner] chief administrative law judge of the office of administrative trials and hearings.

i. The owner or other person lawfully entitled to reclaim the devices, items or goods removed pursuant to this section shall reclaim such devices, items or goods. If such owner or such other person does not reclaim such devices, items or goods within ninety days of their removal, such devices, items or goods shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture the department shall, upon a public notice of at least five days, sell such forfeited devices, items or goods at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

j. In the event that any removal made pursuant to this section shall include any perishable items, goods or food products which cannot be retained in custody without such items, goods or food products becoming unwholesome, putrid, decomposed or unfit in any way, they may be delivered to the commissioner of health for disposition pursuant to the provisions of section 17-323 of this code.

k. The provisions of this section shall not be construed to apply to general vendors required to be licensed pursuant to subchapter twenty-seven of chapter two of this title.

§ 4. Subdivisions c and e of section 20-227.1 of subchapter six of chapter two of title twenty of the administrative code of the city of New York are amended to read as follows:

c. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivisions a or b of this section shall be commenced by service of a notice of violation which shall be returnable to the [adjudication division of the department] office of administrative trials and hearings. Such notice shall contain a statement that any hearing for a third violation or subsequent violations of this subchapter, the terms and

conditions of a license and/or a revocable consent or rules promulgated by the commissioner under this subchapter at the same place of business within a two-year period shall also constitute a hearing for the suspension or revocation of a license.

d. The penalties provided by subdivisions a and b of this section shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

e. In addition to any other enforcement procedures authorized by this subchapter or any other provision of law or rule, the [commissioner] chief administrative law judge of the office of administrative trials and hearings after notice and a hearing shall be authorized to order that any sidewalk café and the restaurant of which it is a portion be sealed for a period not to exceed thirty consecutive days. Such notice may be included with notice of any hearing for a second violation for operating an unlicensed sidewalk café as provided in subdivision a of this section, or a third violation of this subchapter, the terms and conditions of a license and/or a revocable consent or rules promulgated by the commissioner, as provided in subdivision b of this section. For purposes of this subdivision, any such violations at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises. The procedures provided for in subdivisions c and e through j of section 20-105 of this title shall apply to an order by the commissioner for sealing of a sidewalk café and the restaurant of which it is a portion.

§ 4. Section 20-232 of subchapter seven of chapter two of title twenty of the administrative code of the city of New York is amended to read as follows:

§ 20-232 Revocation. In addition to any other basis for revoking, a newsstand license may be revoked upon a finding by the [commissioner] chief administrative law judge of the office of administrative trials and

hearings that the location listed in the license was not utilized for a period of two consecutive months or more or that the licensee is not using the stand primarily for the sale of newspapers and periodicals.

§ 5. Subdivision two of section 20-616 of subchapter three of chapter four of title twenty of the administrative code of the city of New York is amended to read as follows:

2. Any person violating this subchapter shall be subject to a civil penalty of not less than one hundred dollars and not more than two hundred fifty dollars. A proceeding to recover any civil penalty pursuant to this subchapter shall be commenced by the service of a notice of hearing that shall be returnable to the office of administrative trials and hearings [tribunal of the department].

§ 6. Section 20-625 of subchapter three of chapter four of title twenty of the administrative code of the city of New York is amended to read as follows:

§ 20-265. Hearing authority. a. Notwithstanding any other provision of law, the [department] office of administrative trials and hearings shall be authorized upon due notice and hearing, to impose civil penalties for the violation of any provision of this subchapter and any rules promulgated thereunder. The [department] office of administrative trials and hearings shall have the power to render decisions and orders and to impose civil penalties not to exceed the amounts specified in section 20-624 of this subchapter for each such violation. All proceedings authorized pursuant to this section shall be conducted in accordance with rules promulgated by the [commissioner] chief administrative law judge of the office of administrative trials and hearings. The penalties provided for in section 20-624 of this subchapter shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

b. All such proceedings shall be commenced by the service of a notice of violation returnable to the office of administrative [tribunal of the department] trials and hearings. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts

contained therein.

§ 7. Subdivisions c, d and e of section 20-674 of subchapter five of chapter four of title twenty of the administrative code of the city of New York are amended to read as follows:

c. (1) If, after providing due notice and an opportunity to be heard, the [commissioner] chief administrative law judge of the office of administrative trials and hearings finds that a person has violated any of the provisions of section 20-673.2 of this subchapter or any rule or regulation promulgated thereunder, he or she shall be authorized to issue and serve upon such person an order requiring such person to cease and desist from engaging in the prohibited activity. Such order shall become final (i) upon the expiration of the time allowed for filing any administrative appeal which may be available and for commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules or (ii) upon the exhaustion of all appeals arising out of the proceedings described in item (i) of this paragraph. Any person who violates an order of the [commissioner] chief administrative law judge of the office of administrative trials and hearings issued hereunder after it has become final shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars for each violation.

(2) Any person who violates the provisions of section 20-673.2 of this subchapter or any rules or regulations promulgated thereunder with actual knowledge or knowledge fairly implied on the basis of objective circumstances that the act or practice underlying the violation is unfair or deceptive shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars; provided, however, that in order for any retailer to be held liable under this paragraph for violating any of the provisions of subdivisions d or e of such section 20-673.2, such retailer shall be shown to have had actual knowledge that the act or practice underlying the violation is unfair or deceptive. In determining the amount of any civil penalty imposed under this paragraph, the following shall be considered: the degree of culpability; any history of prior such conduct; ability to pay; effect on ability to continue to do business; and such other matters as justice may require.

d. In the case of a violation through continuing failure to comply with any of the provisions of this subchapter, any rules or regulations promulgated thereunder, or any order of the [commissioner] chief administrative law judge of the office of administrative trials and hearings issued pursuant to subdivision c of this section, each day of the continuance of such failure shall be treated as a separate violation.

e. The civil penalties prescribed by the provisions of this section may be imposed by the [commissioner] chief administrative law judge of the office of administrative trials and hearings after due notice and an opportunity to be heard have been provided or may be recovered in a civil action in the name of the city, commenced in a court of competent jurisdiction. In any civil action commenced to recover civil penalties for violation of a final order of the [commissioner] chief administrative law judge of the office of administrative trials and hearings issued pursuant to subdivision c of this section, the supreme court of New York is empowered to grant such injunctive or equitable relief as the court deems appropriate in the enforcement of such final order.

§ 8. Section 20-687 of subchapter eight of chapter four of title twenty of the administrative code of the city of New York is amended to read as follows:

§ 20-687. Powers of the commissioner. (a) The commissioner shall receive and evaluate complaints and initiate his or her own investigations relating to these matters and, upon due notice and hearing, the chief administrative law judge of the office of administrative trials and hearings may take appropriate action related thereto including stop-sale and stop-removal orders [where necessary and proper].

(b) The [commissioner] chief administrative law judge of the office of administrative trials and hearings shall have the power after reasonable notice and hearing, to determine the reasonableness of any statement or representation as to the date and conditions of storage affixed pursuant to section 20-685 of this subchapter.

§ 9. Section 20-699.6 of subchapter twelve of chapter four of title twenty of the administrative code of the city of New York is amended to read as follows:

§ 20-699.6. Hearing authority. Notwithstanding any other provision of law, the [department] office of

administrative trials and hearings shall be authorized[, after October 1, 2005,] upon due notice and hearing, to impose civil penalties for the violation of any provision of this subchapter. The [department] office of administrative trials and hearings shall have the power to render decisions and orders and to impose civil penalties not to exceed the amounts specified in section 20-699.2 of this subchapter for each such violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the [commissioner] chief administrative law judge of the office of administrative trials and hearings. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(2) All such proceedings shall be commenced by the service of a notice of violation returnable to the office of administrative [tribunal of the department] trials and hearings. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein. In addition to serving the notice on the person being charged, where written authorization is filed with the department, the department shall deliver by first class mail a copy of the notice to the corporate headquarters or wholesale supplier of such person.

§ 10. Subdivision c of section 20-703 of subchapter one of chapter five of title twenty of the administrative code of the city of New York is amended to read as follows:

c. Upon a finding by the [commissioner] chief administrative law judge of the office of administrative trials and hearings 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 defendant or defendants in such action to pay in court all monies, property or other things, or proceeds thereof, received as a result of such violations; to direct that the amount of money or the property or other things recovered be paid into an account established pursuant to section two thousand six hundred one 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 defendant or defendants, upon conviction, to pay to the city the costs, and disbursements of the action and pay to the city for the use of the commissioner the costs of his or her investigation leading to the judgment; or if not recovered from defendants, such costs are to be deducted by the city from the grand recovery before distribution to the consumers; and to direct that any money, property, or other things in the account and unclaimed by any persons with such claims within one year from creation of the account, be paid to the city, to be used by the commissioner for further consumer law enforcement activities. Consumers making claims against an account established pursuant to this subdivision 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 under this subdivision shall bar, pro tanto, the recovery of any damages in any other action 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 under this subdivision, 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.

§ 11. Subdivision c of section 20-760 of subchapter thirteen of chapter five of title twenty of the administrative code of the city of New York is amended to read as follows:

c. A proceeding to recover any civil penalty pursuant to this subchapter shall be commenced by the service of a notice of violation which shall be returnable to the office of administrative [tribunal of the department] trials and hearings. The office of administrative [tribunal of the department] trials and hearings shall have the power to impose civil penalties for violation of this subchapter.

§ 12. Subdivision c of section 20-762 of subchapter thirteen-A of chapter five of title twenty of the administrative code of the city of New York is amended to read as follows:

c. Any person who violates subdivision b of this section shall be liable for a civil penalty of one thousand dollars for a first violation and a civil penalty of two thousand dollars for each subsequent violation within one year. Each sale, lease or rental, or attempt to sell, lease or rent, a motorized scooter shall be deemed a separate violation. Authorized employees of the department, the police department, and of any other agency designated by the mayor, shall have the authority to enforce the provisions of this section. Such penalties shall be recovered in a civil action or in a proceeding commenced by the service of a notice of hearing that shall be returnable before the office of administrative [tribunal of the department] trials and hearings. In addition, such violation shall be a traffic infraction and shall be punishable in accordance with section eighteen hundred of the New York state vehicle and traffic law.

§ 13. Subdivision b of section 20-777 of subchapter fourteen of chapter five of title twenty of the administrative code of the city of New York is amended to read as follows:

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of this section shall be commenced by the service of a notice of violation that shall be returnable to the office of administrative [tribunal of the department of consumer affairs] trials and hearings.

§ 14. Section 20-784 of subchapter fifteen of chapter five of title twenty of the administrative code of the city of New York is amended to read as follows:

§ 20-784 Hearing authority. (1) Notwithstanding any other provision of law, the [department] office of administrative trials and hearings shall be authorized upon due notice and hearing, to impose civil penalties for

the violation of any provision of this subchapter. The [department] office of administrative trials and hearings shall have the power to render decisions and orders and to impose civil penalties not to exceed the amounts specified in section 20-783 of this subchapter for each such violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the [commissioner] chief administrative law judge of the office of administrative trials and hearings. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(2) All such proceedings shall be commenced by the service of a notice of violation returnable to the office of administrative [tribunal of the department] trials and hearings. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§ 15. Section 20-811 of subchapter sixteen of chapter five of title twenty of the administrative code of the city of New York is amended to read as follows:

§ 20-811 Hearing authority. a. Notwithstanding any other provision of law, the [department] office of administrative trials and hearings shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any provision of this subchapter and any rules promulgated thereunder. The [department] office of administrative trials and hearings shall have the power to render decisions and orders and to impose civil penalties not to exceed the amounts specified in section 20-810 of this subchapter for each such violation. All proceedings authorized pursuant to this section shall be conducted in accordance with rules promulgated by the [commissioner] chief administrative law judge of the office of administrative trials and hearings. The penalties provided for in section 20-810 of this subchapter shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or

criminal actions or proceedings.

b. All proceedings under this subchapter shall be commenced by the service of a notice of violation returnable to the office of administrative [tribunal of the department] trials and hearings. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§ 16. Section 20-819 of subchapter seventeen of chapter five of title twenty of the administrative code of the city of New York is amended to read as follows:

§ 20-819 Hearing authority. a. Notwithstanding any other provision of law, the [department] office of administrative trials and hearings shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of the provisions of this subchapter and any rules promulgated thereunder. The [department] office of administrative trials and hearings shall have the power to render decisions and orders and to impose civil penalties not to exceed the amounts specified in section 20-818 of this subchapter for each such violation. All proceedings authorized pursuant to this section shall be conducted in accordance with rules promulgated by the [commissioner] chief administrative law judge of the office of administrative trials and hearings. The penalties provided for in section 20-818 of this subchapter shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

b. All proceedings under this subchapter shall be commenced by the service of a notice of violation returnable to the office of administrative [tribunal of the department] trials and hearings. Notice of any third violation for engaging in a violation of section 20-816 shall state that premises may be ordered sealed after a finding of a third violation. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§ 17. Subdivision a of section 20-904 of chapter six of title twenty of the administrative code of the city of New York is amended to read as follows:

a. Any person who violates section 20-901 of this chapter shall be subject to a civil penalty of not less than one thousand dollars nor more than ten thousand dollars for each violation; provided, however, that the commissioner shall issue a written warning in lieu of a [civil penalty] violation where the commissioner finds that such person violated such section due to his or her reasonable belief that the percentage of billings for no-fault motor vehicle insurance medical claims filed by his or her clinic or clinics was not at or above fifty percent during the preceding twelve months.

§ 18. Subdivisions c and d of section 20-924 of chapter eight of title twenty of the administrative code of the city of New York are amended to read as follows:

c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the office of administrative [tribunal authorized to adjudicate violations of this chapter] trials and hearings.

d. The [department] office of administrative trials and hearings shall have the power to impose penalties provided for in this chapter and to grant an employee or former employee all appropriate relief. Such relief shall include: (i) for each instance of sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for each instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of section 20-915 of this chapter to make up for the

original hours during which such employee is absent pursuant to this chapter: five hundred dollars; (iii) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief, including reinstatement, as appropriate.

§ 19. This local law shall take effect one hundred twenty days after its enactment into law; provided, however, that the commissioner of the department of consumer affairs and the chief administrative law judge of the office of administrative trials and hearings shall take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

RC
LS 1087
5/20/14