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Title: A Local Law to amend the administrative code of the city of New York, in relation to licensing and regulating furniture retail stores

Sponsors: Rafael L. Espinal, Jr., Daniel Dromm

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Int. No. 1414

By Council Members Espinal and Dromm

A Local Law to amend the administrative code of the city of New York, in relation to licensing and regulating furniture retail stores

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 35 to read as follows:

SUBCHAPTER 35

FURNITURE RETAIL STORES

- § 20-560 Definitions.
- § 20-560.1 License required.
- § 20-560.2 Application; fee; term.
- § 20-560.3 Issuance of license.
- § 20-560.4 Renewal, suspension and revocation of licenses.
- § 20-560.5 Transferability.
- § 20-560.6 Duties of licensees.
- § 20-560.7 Violations.
- § 20-560.8 Exemptions.

§ 20-560.9 Construction.

§ 20-560.10 Powers of the commissioner.

§ 20-560 Definitions. For the purposes of this subchapter, the following terms have the following meanings:

Custom ordered furniture. The term “custom ordered furniture” means any item of furniture that is manufactured in accordance with customer selected options and in the exact quantity ordered by such customer.

Damaged or defective. The term “damaged or defective” means a flawed or blemished appearance, or other inadequacy resulting in the loss of value or impairment in the usefulness of an item of furniture.

Door to door. The term “door to door” means a sale, lease or rental of furniture in which the seller or a representative personally solicits the sale, including those sales made in response to or following an invitation by the buyer, where the buyer's agreement or offer to purchase is made at a place other than the main or permanent branch office or local address of the seller. The term "door to door sale" does not include a transaction:

(a) Made pursuant to prior negotiations in the course of a visit by the buyer to a commercial establishment having a fixed permanent location where furniture is exhibited or offered for sale on a continuing basis;

(b) Conducted and consummated entirely by mail or telephone, and without any other contact between the buyer and the seller or its representative, other than at the main or permanent branch office or local address of the seller, prior to the delivery of the furniture; or

(c) In which the buyer has initiated the contact and specifically requested the seller to visit his or her home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller offers the buyer the right to receive additional furniture other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of the additional furniture shall not fall within this exclusion.

Display space. The term “display space” means the area of a commercial establishment in which

merchandise is publicly exhibited and offered for sale.

Estimated delivery date. The term “estimated delivery date” means the specific date or range of dates that furniture is scheduled to be delivered.

Fixtures. The term “fixtures” means pieces of physical property, including counters, cabinets, shelving, sinks and built in appliances that are permanently attached to real property and would damage the real property if removed.

Furniture. The term “furniture” means any article used to furnish a house, apartment or place of business or accommodation, including but not limited to chairs, tables, cabinets, sofas, carpets, rugs, curtains, bedsteads and chests; provided, however, that such term shall not mean any article which is in substantial part custom-made or custom finished. Furniture shall not include lamps or lighting fixtures, nor shall it include fixtures as defined in this section.

Furniture retail store. The term “furniture retail store” means a commercial establishment that sells or leases, or offers to sell or lease, furniture to the general public, and shall include any business that engages in any door to door sale of furniture in the city.

In line goods. The term “in line goods” means items of furniture regularly produced pursuant to a schedule determined by the manufacturer and in quantities that are determined by such manufacturer which are in excess of any specific customer orders.

Materially dissimilar. The term “materially dissimilar” means failing to correspond, in a relevant and significant manner, with the description provided on the sales receipt required by paragraph 6 of subsection c of section 20-560.6 of this subchapter.

Seller. The term “seller” means any person, partnership, corporation or association engaged in the door-to-door sale of furniture.

Stock merchandise furniture. The term “stock merchandise furniture” means furniture available for immediate delivery from a furniture store or warehouse or available at the factory of a manufacturer that

supplies furniture to such furniture store.

§ 20-560.1 License required. No person may establish, maintain or operate a furniture retail store without having obtained a license therefore issued pursuant to this subchapter.

§ 20-560.2 Application; fee; term. a. An application for a license required under this subchapter or for any renewal thereof shall be made to the commissioner in such form and manner as the commissioner prescribe by rule.

b. There shall be a biennial fee of \$350 for a license to establish, maintain or operate a furniture retail store.

§ 20-560.3 Issuance of license. A license to maintain or operate a furniture store shall be granted in accordance with the provisions of this subchapter and any rules promulgated by the commissioner thereunder.

The commissioner may refuse to issue to

an applicant any license required under this subchapter based upon a determination made after due notice and opportunity to be heard that such applicant has engaged in conduct that would constitute a basis for license suspension or revocation as set forth in section

20-254 of this subchapter.

§ 20-560.4 Renewal, suspension and revocation of licenses. In addition to any powers of the commissioner pursuant chapter 1 of title 20 of the code, the commissioner may refuse to renew any license required under this subchapter and may suspend or revoke any such license, after due notice and opportunity to be heard, when the person holding a license to establish, maintain or operate a furniture retail store or, where applicable, any of such person's officers, principals, directors, employees, or stockholders owning more than 10 percent of the outstanding stock of the corporation:

1. Has been found to have violated any provision of this title, or any rules promulgated thereunder, or any orders of the commissioner issued pursuant thereto, or to have knowingly caused, permitted, aided, or abetted another in committing such violation;

2. Has made a material false statement or concealed a material fact in connection with the filing of any application pursuant to this subchapter or has been found to have committed fraud or misrepresentation upon a customer;

3. Has been found to have engaged in untrue, misleading or deceptive advertising, or deceptive or unconscionable trade practices as described in chapter five of this title and any rules promulgated thereunder;

4. Has not paid, within the time permitted by law, any civil penalty or judgment duly imposed pursuant to the provisions of this title or any rule promulgated thereunder;

5. Has been adjudged by a court of competent jurisdiction to have failed to perform his or her obligations under any express, implied, or written warranty for furniture made as part of his or her contract with a consumer; or

6. Has failed to pay or satisfy any final judgment secured against him or her by anyone who purchased furniture from a furniture retail store licensed hereunder, provided that such final judgment was secured in a court of competent jurisdiction against the licensee for acts of commission or omission with regard to the business maintained, operated or conducted by him or her pursuant to the license issued hereunder.

7. Has open and outstanding any final judgments of liability in a civil, criminal or administrative action involving nonpayment or underpayment of wages or any other illegal act or omission bearing a direct relationship to the fitness of the applicant to conduct the business for which the license or renewal is sought; except that the commissioner shall consider mitigating factors, including (i) passage of time since such determination of liability of the underlying illegal act or omission, (ii) severity of the illegal act or omission underlying such final determination of liability, (iii) whether any such determination of liability or other illegal act or omission has been appealed and whether the appeal is pending and (iv) any change in circumstances that might reduce the likelihood of the illegal act or omission underlying any such determination during the period of licensure.

§ 20-560.5 Transferability. No license issued pursuant to this subchapter shall be transferred or assigned

to any person or used by any person other than the licensee to whom it was issued.

§ 20-560.6 Duties of Licensee. a. Posting of license. A licensee shall conspicuously post such license in such store in a form and manner as prescribed by the commissioner.

b. Disclosure of selling price. 1. All furniture displayed or offered for sale at retail in a furniture retail store shall conspicuously display, at the point of exposure or offering for sale, the total selling price, exclusive of sales tax, by means of a stamp, tag or label attached to the item, or a sign at the point of display which indicates the item to which the price refers, provided that such stamp, tag, label or sign is plainly visible. This paragraph shall not apply to furniture displayed in the window of a furniture retail store.

2. Every furniture retail store shall make available for viewing upon request a list, or other written or printed material including fliers, posters, catalogs, books or brochures, that indicates in a clear and conspicuous manner the current total selling price, exclusive of sales tax, of any furniture offered for sale in such store that is not publicly displayed.

3. Notwithstanding the provisions of section 20-560.7 of this subchapter, the civil penalties imposed for a violation of this subdivision shall be the same as those provided for violations of section 20-708 of this title.

c. Written receipt to be provided. A store licensed pursuant to this subchapter shall provide a written receipt to the customer for the retail purchase of any furniture at the time of purchase. Such written receipt shall clearly state the following information:

1. The amount of money paid for each item;

2. The total amount of money paid, including a separate statement of tax;

3. The date of the purchase;

4. The name and address of the furniture retail store as listed on such store's license;

5. The license number of such store;

6. A full and accurate description of each item purchased, including, where applicable, (i) the type of material, such as whether an item is made wholly or partially of authentic wood or a composite material and

finished with a veneer simulating the appearance of authentic wood; (ii) the fabric, such as whether the item is made of cloth, leather, suede or a type of material simulating the appearance of such fabric and the texture of the fabric; (iii) the color and size of the item; (iv) the style or model number and year; (v) the brand name and manufacturer's name; and (vi) any other information reasonably necessary to accurately identify the item;

7. The estimated delivery date; and

8. Whether the item purchased is stock merchandise furniture, in line goods, or custom ordered furniture, with each such description initialed by the customer, provided, however, that furniture not so designated or initialed shall be deemed to be stock merchandise furniture.

d. Late or partial delivery of goods. 1. If a licensee is unable, or reasonably expects to be unable, to deliver stock merchandise furniture by the latest estimated delivery date the licensee shall immediately notify the customer in writing of the delay and the customer's rights and options as set forth in paragraph 2 of this subdivision.

2. When a licensee is unable to deliver stock merchandise furniture by the latest estimated delivery date the customer shall have the right, at the customer's option, to:

(a) Cancel the entire order and if such request is made in writing, receive, at the customer's option, a refund or credit for the full amount paid;

(b) Negotiate a new estimated delivery date as defined by paragraph 3 of subsection g of this section;

(c) Accept as a partial delivery any items which the licensee will be able to deliver by the latest estimated delivery date and either: (A) negotiate a new delivery date or range of delivery dates for the remaining items at no additional charge; or (B) cancel the order with regard to the remaining items and if such request is made in writing, receive a full refund for any amounts paid for such undelivered items; or

(d) Select new merchandise of equal value to replace those items which the licensee will be unable to deliver by the latest estimated delivery date and receive delivery of those items at no additional charge.

3. The customer shall not have the rights and options enumerated in paragraph 2 of this subdivision

when the delay in delivery is caused entirely by the customer.

4. If the customer accepts a partial delivery of goods itemized on a written receipt or in a written confirmation issued pursuant to paragraph 3 of subdivision g of this section, and the customer subsequently receives notice from the licensee that such licensee will be unable to deliver, or if the licensee fails to deliver, any or all of the remaining goods itemized on the written receipt or written confirmation by the estimated delivery date, the customer shall have the right upon request, to return the items accepted as a partial delivery, cancel the entire order, and receive a full refund. Such request shall be made in writing.

5. If the customer exercises his or her right to cancel an undelivered order and receive a refund or credit of the amount paid, the licensee shall give the customer such refund or credit within 20 days of the date of the customer's written request.

e. Late delivery of in line goods. 1. If a manufacturer notifies a licensee within 15 days of the order date of in line goods that one or more items of in line goods cannot be delivered to the licensee by the latest estimated delivery date, the licensee shall notify the customer within 15 days of the order date of such in line goods that such delivery is delayed.

2. If the delayed in line goods can be delivered to the customer within 15 days of the latest estimated delivery date, the licensee may extend the estimated delivery date for up to 15 days without consequence, provided the licensee provides the customer with the written confirmation required by paragraph 3 of subdivision g of this section.

3. If the delayed in line goods cannot be delivered to the customer within 15 days of the latest estimated delivery date, the licensee shall notify the customer in writing that he or she has the right to cancel the order and receive, at the customer's option, a refund or credit for the full amount paid, provided the customer cancels his or her order and requests such refund or credit in writing within 14 days of the date of such notification. The licensee shall state in such notification that if the customer fails to cancel within the time allowed, such licensee may extend the estimated delivery date by up to six weeks from the latest estimated delivery date, provided that

the licensee provides the customer with the written confirmation required by paragraph 3 of subdivision g of this section.

4. If the licensee will be unable to deliver in line goods to the customer by the latest estimated delivery date, the provisions contained in paragraph two of subdivision d of this section shall apply.

f. Late delivery of custom ordered furniture. 1. Except as otherwise provided in paragraph 2 of this subdivision, if the licensee is unable to deliver custom ordered furniture by the latest estimated delivery date, the provisions in subdivision e of this section shall apply.

2. A licensee may notify a customer up to 15 days before the latest estimated delivery date that the licensee will be unable to deliver one or more items of custom ordered furniture by the estimated delivery date and may extend the estimated delivery date for up to 15 days without consequence, provided that the licensee furnishes the customer with the written confirmation required by paragraph 3 of subdivision g of this section.

3. If a licensee does not or is unable to notify the customer more than 15 days in advance of the latest estimated delivery date that one or more items of custom ordered furniture cannot be delivered by the estimated delivery date, the licensee shall notify the customer, in writing: (i) of the customer's right to cancel the order and receive, at the customer's option, a refund or credit for the full amount paid; (ii) of the fact that such request to cancel the order and receive a refund or credit shall be made by the customer in writing within 14 days of the date of the licensee's notification of the right to cancel the order; (iii) that if the customer fails to cancel within the time allowed, the licensee may extend the estimated delivery by up to eight weeks, provided that the licensee supplies the customer with the written confirmation required by paragraph 3 of subdivision g of this section.

g. General provisions pertaining to delayed delivery of furniture. 1. The licensee is not required to notify the customer of a delay in delivery of furniture if the delay is caused entirely by the customer.

2. When a delay in delivery of furniture is caused by a strike, the latest estimated delivery date shall be extended by an amount of time equal to the duration of the strike or 30 days, whichever is less.

3. If a customer negotiates a new estimated delivery date for any items that are not delivered by the latest estimated delivery date, the licensee shall furnish the customer with a written confirmation that contains the following information with respect to each item that is to be delivered:

- (a) The number of the original receipt or order;
- (b) A full and complete description of each of the undelivered items;
- (c) The price of each undelivered item; and
- (d) The new estimated delivery date for the undelivered items.

h. Damaged or defective merchandise. 1. At the time of delivery, a customer may refuse delivery of any item or items that are damaged, defective, or in a form as to be materially dissimilar from the item or items ordered.

2. Upon the refusal of any customer to accept delivery of any item or items for the reasons specified in paragraph 1 of this subdivision, the licensee shall notify the customer within 10 days of such refusal of the customer's right to choose, at the customer's option, either a full refund of the purchase price of the item or items, including any applicable taxes and delivery charges, or a suitable replacement item or items at no additional cost to the customer. Such replacement shall be delivered at no additional cost to the customer.

i. Failure to provide refund or credit. The commissioner may order any licensee under this subchapter who has been found by the commissioner to have failed to provide, in the prescribed manner and within the prescribed time, any refund or credit to which a customer is entitled under this subchapter, to pay to the customer the full amount of the refund or credit that was due plus an amount equal to the lesser of: (i) twice the amount of the full refund or credit that was due; or (ii) \$1,000. The remedies in this subdivision are in addition to any other remedies to which the customer may be entitled under applicable law.

j. Records. Every licensee shall maintain records, ledgers, receipts, bills and such other written records as the commissioner may prescribe by rule. Such records shall be made available for inspection by the commissioner at his or her request during reasonable business hours at either the licensee's place of business or

at the offices of the department.

§ 20-560.7 Violations. a. The civil penalties imposed pursuant to this section shall be in addition to any other sanctions and orders which may be imposed by the commissioner pursuant to this title including, but not limited to, such sanctions and orders which may be imposed pursuant to section 20-105 of this code.

b. Notwithstanding the provisions of subdivisions a and b of section 20-106 of this code, any person who violates any provision of this subchapter or any rules promulgated thereunder shall be subject to a civil penalty of not less than \$250 nor more than \$2,000 for each violation, to be recovered in a civil action or in an administrative tribunal with jurisdiction.

§ 20-560.8 Exemptions. a. The provisions of this subchapter shall not apply to any store which uses less than 20 percent of its display space, as measured by linear feet and not square feet, for the display of furniture, provided, however, that this exemption shall not apply to any business that engages in any door-to-door sale in the city.

b. The burden of proof that the provisions of this subchapter do not apply pursuant to subsection a of this section shall be upon the store asserting the same.

§ 20-560.9 Construction. The provisions of this subchapter shall not be construed to affect, alter or amend the provisions of article 10-A of the personal property law, except that to the extent that any of the provisions contained in this subchapter relating to refund policies afford the buyer greater protection than the provisions contained in article 10-A of the personal property law, such provisions shall supersede the provisions contained in article 10-A of the personal property law.

§ 20-560.10 Powers of the commissioner. The authority and power of the commissioner pursuant to this subchapter and chapter one of this title shall extend to all sales and advertising activities of a furniture retail store and shall not be limited to sales and advertising activities relating to fixtures as described in section 20-260 of this subchapter or to merchandise described in any rules of the commissioner promulgated under this subchapter.

§ 2. This local law shall take effect 120 days after becoming law, provided that the commissioner of consumer affairs may take such actions as necessary for the implementation of this local law, including the promulgation of rules, prior to such effective date.

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