

STATE OF NEW YORK

8511--A

2019-2020 Regular Sessions

IN ASSEMBLY

August 7, 2019

Introduced by M. of A. EPSTEIN, D'URSO, REYES, MOSLEY, GOTTFRIED, SEAWRIGHT -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the county law and the New York city charter, in relation to the docketing of adjudications of certain violations of laws enforced by the New York city department of consumer affairs

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

1 Section 1. Subdivision 4 of section 918 of the county law, as separately amended by chapters 419 and 473 of the laws of 1988, is amended to read as follows:

2 4. Any other laws to the contrary notwithstanding, the county clerk in
3 each of the counties within the city of New York is authorized and
4 empowered to maintain separate judgment docket volumes containing the
5 printed transcript or transcripts, in strict alphabetical order of judgment made, entered and docketed in the civil court of the city of New
6 York against individuals, corporations, and other entities on behalf of
7 the parking violations bureau, the environmental control board, the taxi
8 and limousine commission, the department of consumer affairs and the
9 commissioner of jurors of the city of New York, provided that the judgments made, entered and docketed in the civil court of the city of New
10 York against individuals, corporations, and other entities on behalf of
11 the department of consumer affairs shall be limited to final decisions
12 and orders that either (a) award restitution, or monetary damages, to a
13 consumer or worker; or (b) award such restitution, or monetary damages,
14 to a consumer or worker, together with civil penalties or equitable
15 relief. These volumes may be maintained in the form of computer print
16 outs which shall contain the date of judgment, the name and address of
17 the judgment debtor or debtors, the amount of the judgment and other
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 information which the county clerk may deem necessary to sufficiently
2 describe the parties to the action or proceeding or nature or the manner
3 of the entry of the judgment. [~~Provided, however, with respect to judgments on behalf of the parking violations bureau the~~] The county clerk
4 may, in his or her discretion, in lieu of such volumes, maintain the
5 aforementioned data in a micrographic or computer retrievable format.
6 With respect to judgments on behalf of the parking violations bureau
7 such volumes or other format shall be maintained pursuant to this subdivision
8 for only those individuals, corporations, and other entities
9 having vehicles registered in the counties within the city of New York.

10 § 2. Section 918 of the county law is amended by adding a new subdivision
11 5 to read as follows:

12 5. Any other laws to the contrary notwithstanding, the department of
13 consumer affairs may file a certified copy of the final decision or
14 order of such department, provided that such final decision or order
15 either: (a) awards restitution, or monetary damages, to a consumer or
16 worker; or (b) awards such restitution, or monetary damages, to a
17 consumer or worker together with civil penalties or equitable relief,
18 with the county clerk of any county within the city of New York where a
19 respondent resides or has a place of business, or, if the respondent is
20 a non-resident of the city of New York and no longer has a place of
21 business within the city of New York at the time such department seeks
22 to file such certified copy, the department of consumer affairs may file
23 such certified copy of such final decision or order with the county
24 clerk of the county in which the department of consumer affairs is
25 located. Such consumer or worker may file a certified copy of such
26 final decision or order provided that such person has been assigned such
27 final decision or order or a portion of such final decision or order
28 authorizing restitution, imposing monetary damages or providing equitable
29 relief to such person. The filing of such final decision or order
30 shall have the full force and effect of a judgment duly docketed in the
31 office of such clerk. The final decision or order may be enforced by and
32 in the name of the department, or by a person who has been assigned such
33 decision or order or a portion thereof, in the same manner and with like
34 effect as that prescribed by the civil practice law and rules for the
35 enforcement of a money judgment.

36 § 3. Subdivision (h) of section 2203 of the New York city charter, as
37 amended by local law number 46 of the city of New York for the year
38 2013, is amended to read as follows:

39 (h) (1) Notwithstanding any inconsistent provision of law, the department
40 shall be authorized, upon due notice and hearing, to impose civil
41 penalties for, and to order restitution or other forms of equitable
42 relief, and payment of monetary damages, to a consumer or worker in
43 connection with the violation of any laws or rules the enforcement of
44 which is within the jurisdiction of the department pursuant to this
45 charter, the administrative code or any other general, special or local
46 law. The department shall have the power to render decisions and orders
47 and to impose civil penalties for all such violations, and to order
48 equitable relief for and payment of monetary damages in connection with
49 enforcement of chapter 8 of title 20 of the administrative code. Except
50 to the extent that dollar limits are otherwise specifically provided,
51 such civil penalties shall not exceed five hundred dollars for each
52 violation. All proceedings authorized pursuant to this subdivision shall
53 be conducted in accordance with rules promulgated by the commissioner.
54 The remedies and penalties provided for in this subdivision shall be in
55 addition to any other remedies or penalties provided for the enforcement

1 of such provisions under any other law including, but not limited to,
2 civil or criminal actions or proceedings.

3 (2) All such proceedings shall be commenced by the service of a notice
4 of violation. The commissioner shall prescribe the form and wording of
5 notices of violation. The notice of violation or copy thereof when
6 filled in and served shall constitute notice of the violation charged,
7 and, if sworn to or affirmed, shall be prima facie evidence of the facts
8 contained therein. The notice of violation shall contain information
9 advising the person charged of the manner and the time in which such
10 person may either admit or deny the violation charged in the notice.
11 Such notice of violation shall also contain a warning to advise the
12 person charged that failure to plead in the manner and time stated in
13 the notice may result in a default decision and order being entered
14 against such person. The original or a copy of the notice of violation
15 shall be filed and retained by the department and shall be deemed a
16 record kept in the ordinary course of business.

17 (3) Where a respondent has failed to plead within the time allowed by
18 the rules of the commissioner or has failed to appear on a designated
19 hearing date or a subsequent date following an adjournment of a
20 violation, such failure to plead or appear shall be deemed, for all
21 purposes, to be an admission of liability for the purposes of such
22 violation and shall be grounds for rendering a default decision and
23 order imposing a penalty up to the maximum amount prescribed under law
24 for the violation charged. For purposes of this subdivision, "designated
25 violation" means:

26 (A) any violation of title 20 of the administrative code or of any law
27 or rule, the enforcement of which is within the jurisdiction of the
28 department, to the extent any final decision or order relating to such
29 violation authorizes restitution, imposes an award of monetary damages
30 or provides equitable relief to a consumer or a worker;

31 (B) any violation of subchapters 1, 7, 11, 22, 29, 30, 31 or 35 of
32 chapter 2 of title 20 of the administrative code or of chapters 8 or 12
33 of title 20 of the administrative code or of article eleven of the
34 general business law, including any rules or regulations promulgated
35 thereunder, to the extent any final decision or order relating to such
36 violation imposes both civil penalties and restitution, monetary damages
37 or equitable relief to a consumer or a worker; or

38 (C) any violation of subchapters 1, 8 or 14-a of chapter 5 of title 20
39 of the administrative code, including any rules promulgated under such
40 subchapters, to the extent any final decision or order relating to such
41 violation imposes civil penalties for two or more violations and the
42 aggregate penalty for such violations exceeds five thousand dollars and
43 the final decision or order imposes restitution, monetary damages or
44 equitable relief to a consumer.

45 (4) At the request of a consumer or a worker, the department shall
46 assign, without consideration or liability, a final decision or order,
47 provided that such decision or order solely authorizes restitution,
48 imposes an award of monetary damages or provides equitable relief to
49 such consumer or a worker, or that portion of such award that authorizes
50 restitution, imposes an award of monetary damages or provides equitable
51 relief to such consumer or a worker. After such assignment, the depart-
52 ment shall not be required to take any further action to enforce such
53 restitution, award of monetary damages or equitable relief to such
54 consumer.

55 (5) Any final decision or order of the department relating to a desig-
56 nated violation, whether the adjudication was had by hearing or upon

1 default or otherwise, shall constitute a judgment that may be entered
2 and docketed in the civil court of the city of New York or any other
3 place provided for the entry and docketing of civil judgments within the
4 state and may be enforced without court proceedings in the same manner
5 as the enforcement of money judgments entered and docketed in civil
6 actions.

7 (6) Notwithstanding paragraph five of this subdivision, before a judg-
8 ment based upon a default may be so entered and docketed, the department
9 must have notified the respondent in accordance with this paragraph. The
10 commissioner shall determine the form of such notice. If the respondent
11 is a licensee of the department, notice shall be provided by first class
12 mail or hand delivery to the address the licensee has filed with the
13 department pursuant to section 20-112 of the administrative code. For
14 all other respondents, the notice shall be served by first class mail or
15 hand delivery to the address where the decision or order was sent to the
16 respondent by the department. Such notice shall state that:

17 (A) a decision and order of default was issued against the respondent
18 by the department and the amounts of the penalty, restitution, or other
19 monetary relief imposed;

20 (B) a judgment will be entered and docketed in the civil court of the
21 city of New York or any other place provided for the entry of civil
22 judgments within the state of New York; and

23 (C) entry and docketing of such judgment may be avoided by requesting
24 a stay of default for good cause shown and either requesting a new hear-
25 ing or entering a plea pursuant to applicable rules within thirty days
26 of the mailing or hand delivery date of such notice.

27 (7) The department shall not enter any final decision or order pursu-
28 ant to this subdivision unless the notice of violation shall have been
29 served as follows:

30 (A) for any respondent that is a licensee of the department, the
31 department shall serve a notice of violation of a designated violation
32 in one of the following ways:

33 (i) by mailing a copy of such notice to the address the licensee has
34 filed with the department pursuant to section 20-112 of the administra-
35 tive code; or

36 (ii) by personally serving the respondent or delivering the notice of
37 violation to a person of suitable age and discretion employed by the
38 respondent at the premises at which the respondent conducts the business
39 the operation of which gave rise to the violation. In the case of a
40 business that is carried out at large and not at a fixed place of busi-
41 ness or that has filed with the department an out-of-state address
42 pursuant to section 20-112 of the administrative code, the department
43 shall also serve a licensee or employee of such business at the location
44 which gave rise to the violation, the secretary of state pursuant to
45 section three hundred four of the business corporation law or an agent
46 designated for service pursuant to rule three hundred eighteen of the
47 civil practice law and rules or section three hundred five of the busi-
48 ness corporation law.

49 (B) For any respondent that is not a licensee of the department, the
50 department shall serve a notice of violation of a designated violation
51 in one of the following ways:

52 (i) by serving the respondent in the same manner as is prescribed for
53 service of process by article three of the civil practice law and rules
54 or article three of the business corporation law;

1 (ii) by delivering such notice to a person of suitable age and
2 discretion employed by the respondent at the premises where the respond-
3 ent is operating;

4 (iii) by affixing such notice in a conspicuous place to the premises
5 where the respondent is operating and delivering such notice by first
6 class mail to the address of such premises;

7 (iv) by sending such notice by certified mail, return receipt
8 requested, to the respondent's last known business address, provided
9 that delivery of such notice shall be restricted to the respondent; or

10 (v) by sending such notice by electronic mail to the respondent's
11 electronic mail address, provided that the department has received
12 communication from such electronic mail address in the one year prior to
13 the electronic mailing of such notice, and provided further that service
14 in the manner prescribed by clauses (i) through (iv) of this subparagraph
15 are impracticable.

16 (8) Service by certified mail pursuant to clause (iv) of subparagraph
17 B of paragraph seven of this subdivision shall be deemed complete upon
18 the mailing of the notice of violation described in such clause, unless
19 the notice of violation is returned to the sender by the United States
20 postal service for any reason other than refusal of delivery. Service
21 by electronic mail pursuant to clause (v) of subparagraph B of paragraph
22 seven of this subdivision shall be deemed complete upon the electronic
23 mailing of the notice of violation described in such clause unless the
24 department receives an electronic message that its electronic mailing of
25 the notice of violation was undeliverable.

26 (9) Proof of service made pursuant to paragraph seven of this subdivi-
27 sion shall be maintained by, and preserved within, the department for at
28 least six years following the date of the final decision or order relat-
29 ing to the adjudication of the subject notice of violation.

30 (10) Entry and docketing of a judgment shall not limit the application
31 of any other remedies or penalties provided for the enforcement of laws
32 or rules under the jurisdiction of the department.

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

37 ~~[(4)]~~ (12) Notwithstanding any other inconsistent provision of law,
38 powers conferred upon the department by this subdivision may be exer-
39 cised by the office of administrative trials and hearings consistent
40 with orders of the mayor issued in accordance with subdivisions two and
41 three of section one thousand forty-eight of this charter.

42 § 4. This act shall take effect immediately and shall only apply to
43 decisions or orders issued on or after such effective date.