

# STATE OF NEW YORK

8787

## IN SENATE

July 15, 2020

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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  
18 information which the county clerk may deem necessary to sufficiently  
19 describe the parties to the action or proceeding or nature or the manner  
20 of the entry of the judgment. [~~Provided, however, with respect to judgments on behalf of the parking violations bureau the~~] The county clerk  
21 may, in his or her discretion, in lieu of such volumes, maintain the  
22 aforementioned data in a micrographic or computer retrievable format.  
23  
24  
25  
26  
27

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

LBD13287-08-0

1 With respect to judgments on behalf of the parking violations bureau  
2 such volumes or other format shall be maintained pursuant to this subdi-  
3 vision for only those individuals, corporations, and other entities  
4 having vehicles registered in the counties within the city of New York.

5 § 2. Section 918 of the county law is amended by adding a new subdivi-  
6 sion 5 to read as follows:

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

31 § 3. Subdivision (h) of section 2203 of the New York city charter, as  
32 amended by local law number 46 of the city of New York for the year  
33 2013, is amended to read as follows:

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

53 (2) All such proceedings shall be commenced by the service of a notice  
54 of violation. The commissioner shall prescribe the form and wording of  
55 notices of violation. The notice of violation or copy thereof when  
56 filled in and served shall constitute notice of the violation charged,

1 and, if sworn to or affirmed, shall be prima facie evidence of the facts  
2 contained therein. The notice of violation shall contain information  
3 advising the person charged of the manner and the time in which such  
4 person may either admit or deny the violation charged in the notice.  
5 Such notice of violation shall also contain a warning to advise the  
6 person charged that failure to plead in the manner and time stated in  
7 the notice may result in a default decision and order being entered  
8 against such person. The original or a copy of the notice of violation  
9 shall be filed and retained by the department and shall be deemed a  
10 record kept in the ordinary course of business.

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

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

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

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

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

49 (5) Any final decision or order of the department relating to a desig-  
50 ated violation, whether the adjudication was had by hearing or upon  
51 default or otherwise, shall constitute a judgment that may be entered  
52 and docketed in the civil court of the city of New York or any other  
53 place provided for the entry and docketing of civil judgments within the  
54 state and may be enforced without court proceedings in the same manner  
55 as the enforcement of money judgments entered and docketed in civil  
56 actions.

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

10  
11 (A) a decision and order of default was issued against the respondent  
12 by the department and the amounts of the penalty, restitution, or other  
13 monetary relief imposed;

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

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

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

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

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

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

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

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

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

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

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

4 (v) by sending such notice by electronic mail to the respondent's  
5 electronic mail address, provided that the department has received  
6 communication from such electronic mail address in the one year prior to  
7 the electronic mailing of such notice, and provided further that service  
8 in the manner prescribed by clauses (i) through (iv) of this subparagraph  
9 are impracticable.

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

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

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

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

31 ~~[(4)]~~ (12) Notwithstanding any other inconsistent provision of law,  
32 powers conferred upon the department by this subdivision may be exer-  
33 cised by the office of administrative trials and hearings consistent  
34 with orders of the mayor issued in accordance with subdivisions two and  
35 three of section one thousand forty-eight of this charter.

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