STATE OF NEW YORK

1739

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

Introduced by Sens. RAMOS, BRISPORT, HARCKHAM, JACKSON, RIVERA, SALAZAR, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 2

AN ACT to amend the general city law, the criminal procedure law, the charter of the city of New York and the administrative code of the city of New York, in relation to the regulation of street vendors in cities with a population of one million or more; and to repeal certain provisions of the administrative code of the city of New York relating thereto

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

Section 1. Legislative findings and declaration. The legislature finds and declares that street vending plays a crucial role in New York City's small business landscape, allowing immigrants, military veterans, and others to create a foothold in the City's economy. Street vendors contribute significantly to the vibrancy of the City's streetscape and add a visible cultural representation of the City's inhabitants. However, street vendors in New York City have historically faced several barriers to business viability as a result of antiquated City laws, rules, and policies limiting the number of vending permits and licenses, as well as the criminalization of vending by the New York City Police Department and other agencies. To effectuate the removal of these barriers, the legislature finds and declares that there should be no limit on the number of street vending permits and licenses that can be issued in the City. Artificially created limits on the number of street vendors only forces the creation of underground markets, as well as vendors operating without licenses or permits outside the regulatory system. Street vendors should receive the basic opportunities to open small businesses to further stimulate the City's economy as well as provide economic viability and mobility for entrepreneurship.

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

LBD04807-01-3

Furthermore, the legislature finds and declares that the New York City Police Department should be prohibited from enforcing all street vendor laws and regulations. Street vendors deserve the same respect and expectations as other small businesses and should be regulated solely by civilian agencies without fear of criminal justice consequences.

§ 2. The general city law is amended by adding a new section 18-e to read as follows:

§ 18-e. Street vendors. 1. For the purposes of this section, the following definitions apply:

a. "Street vendor" means a person who sells goods and services from a food truck, pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, other nonmotorized conveyance, or from one's person, upon a public street, sidewalk or other pedestrian path.

b. "Local legislative body" means the legislative body of a city with a population of one million or more.

2. a. A local legislative body in a city with a population of one million or more shall not regulate street vendors except in accordance with subdivision three, four or five of this section.

b. Nothing in this section shall be construed to affect the applicability of any laws, rules, or regulations pertaining to food safety to a street vendor who sells food.

c. Nothing in this section shall be construed to require a local legislative body to adopt a new program to regulate street vendors if the local legislative body has established an existing program that substantially complies with the requirements of this section.

3. a. A local legislative body may adopt a program to regulate street vendors in compliance with this section.

b. A local legislative body's street vending program shall comply with all of the following standards:

(i) A local legislative body shall not require a street vendor to operate within specific parts of the public right-of-way, except when such restriction is directly related to objective health, safety, or welfare concerns.

(ii) (A) A local legislative body shall not prohibit a street vendor from selling food or merchandise in a park owned or operated by the city, except the local legislative body may prohibit stationary street vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding clause (A) of this subparagraph, a local legislative body may adopt additional requirements regulating the time, place, and manner of street vending in a park owned or operated by the city if the requirements are any of the following:

(1) Directly related to objective health, safety, or welfare concerns;

(2) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; or

(3) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(iii) A local legislative body shall not require a street vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(iv) A local legislative body shall not restrict street vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(v) A local legislative body shall not restrict the overall number of street vendors permitted to operate within the jurisdiction of the local legislative body.

c. A local legislative body may, by law, ordinance or resolution, adopt additional requirements regulating the time, place, and manner of street vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

(i) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for street vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street;

(ii) Requirements to maintain sanitary conditions;

(iii) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards;

(iv) Requiring the street vendor to obtain from the local legislative body a permit for street vending or a valid business license, provided that the local legislative body issuing the permit or business license accepts a New York driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local legislative body otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order;

(v) Requiring the street vendor to possess a valid seller's permit or license;

(vi) Requiring additional licenses from other state or local agencies to the extent required by law;

(vii) Requiring compliance with other generally applicable laws; or

(viii) Requiring a street vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the street vendor;

(B) A description of the merchandise offered for sale or exchange;

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true;

(D) The New York state tax number, if any, of the street vendor; or

(E) If the street vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

d. Notwithstanding paragraph b of this subdivision, a local legislative body may restrict or prohibit street vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local legislative body, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local legislative body's temporary special permit are also provided to any street vendors specifically permitted to operate in the area, if applicable. For the purposes of this paragraph, a temporary special permit is a permit issued by the local legislative body for the temporary use of, or encroachment on, the street, sidewalk, or other public area, including, but not limited to an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A

prohibition of street vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

e. For the purposes of this section, perceived community animus or economic competition shall not constitute an objective health, safety, or welfare concern.

4. All enforcement and inspection of this section shall be carried out by the commissioner of a civilian department that is tasked with protecting and enhancing the daily lives of New Yorkers to create thriving communities by overseeing and enforcing key consumer protection, licensing, and workplace laws in businesses across dozens of industries. The health commissioner may designate the director of environmental health of such district as an additional person authorized to enforce and perform inspections pursuant to this section.

5. a. (i) A violation of a local legislative body's street vending program that complies with subdivision three of this section is punishable only by the following:

(A) A fine not exceeding one hundred dollars for a first violation.

(B) A fine not exceeding two hundred dollars for a second violation within one year of the first violation.

(C) A fine not exceeding three hundred dollars for each additional violation within one year of the first violation.

(ii) A local legislative body may rescind a permit issued to a street vendor for the term of that permit upon serious repeated and persistent violations of any of the requirements of subdivision three of this section, and after notice and an opportunity for a hearing has been provided by the permit-issuing official.

(iii) (A) If a local legislative body requires a sidewalk vendor to obtain a street vending permit from the local legislative body, vending without a street vending permit may be punishable by the following in lieu of the fines set forth in subparagraph (i) of this paragraph:

(1) A fine not exceeding two hundred dollars for a first violation.

(2) A fine not exceeding three hundred dollars for a second violation within one year of the first violation.

(3) A fine not exceeding four hundred dollars for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local legislative body, the fines set forth in this paragraph shall be reduced to the fines set forth in subparagraph (i) of this paragraph, respectively.

b. The proceeds of a fine assessed pursuant to paragraph a of this subdivision shall be deposited in the general fund of the local legislative body.

c. Failure to pay a fine pursuant to paragraph a of this subdivision shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in paragraph a of this subdivision shall not be assessed.

d. (i) A violation of a local legislative body's street vending program that complies with subdivision three of this section, or a violation of any rules or regulations adopted prior to the effective date of this section, that regulate or prohibit street vendors in the jurisdiction of a local legislative body, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any such provisions shall not be subject to arrest except when permitted under law.

(ii) Notwithstanding any other law to the contrary, subparagraph (i) of this paragraph shall apply to all pending criminal prosecutions under any law, ordinance or resolution regulating or prohibiting street

vendors. Any such criminal prosecutions that have not reached final judgment shall be dismissed.

e. A local legislative body that has not adopted rules or regulations by law, ordinance or resolution that comply with subdivision two of this section shall not cite, fine, or prosecute a street vendor for a violation of any law, rule or regulation that is inconsistent with the standards described in paragraph b of subdivision three of this section.

f. (i) When assessing a fine pursuant to paragraph a of this subdivision, the adjudicator shall take into consideration the person's ability to pay the fine. The local legislative body shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(ii) The local legislative body may allow the person to complete community service in lieu of paying the total fine, may waive or reduce the fine, or may offer an alternative disposition.

g. (i) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for street vending, whether by trial or by open or negotiated plea, who would not have been guilty of such offense under this section had this section been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(ii) Upon receiving a petition under subparagraph (i) of this paragraph, the court shall presume the petitioner satisfies the criteria in subparagraph (i) of this paragraph unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subparagraph (i) of this paragraph, the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(iii) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under subparagraph (i) of this paragraph.

(iv) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(v) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(vi) Nothing in this paragraph or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this section.

§ 3. Subparagraph (vi) of paragraph (k) of subdivision 3 of section 160.50 of the criminal procedure law is renumbered subparagraph (vii) and a new subparagraph (vi) is added to read as follows:

(vi) the conviction was for an offense defined in subchapter two of chapter three of title seventeen or subchapter twenty-seven of chapter two of title twenty of the administrative code of the city of New York; or

§ 4. Paragraph (k) of subdivision 1 of section 440.10 of the criminal procedure law, as amended by chapter 92 of the laws of 2021, is amended to read as follows:

(k) The judgment occurred prior to the effective date of the laws of two thousand [~~twenty-one~~] twenty-three that amended this paragraph and is a conviction for an offense as defined in subparagraphs (i), (ii), (iii) [~~or~~], (iv) and (vi) of paragraph (k) of subdivision three of section 160.50 of this part, in which case the court shall presume that a conviction by plea for the aforementioned offenses was not knowing, voluntary and intelligent if it has severe or ongoing consequences, including but not limited to potential or actual immigration consequences, and shall presume that a conviction by verdict for the aforementioned offenses constitutes cruel and unusual punishment under section five of article one of the state constitution, based on those consequences. The people may rebut these presumptions.

§ 5. Section 436 of the New York city charter, as amended by local law number 102 of the city of New York for the year 1977, is amended to read as follows:

§ 436. Powers over certain trades. The commissioner shall possess powers of general supervision and inspection over all licensed or unlicensed pawnbrokers, [~~vendors,~~] junkshop keepers, junk boatmen, [~~cartmen,~~] dealers in second-hand merchandise and auctioneers within the city; and in connection with the performance of any police duties he shall have power to examine such persons, their clerks and employees and their books, business premises, and any articles of merchandise in their possession. A refusal or neglect to comply in any respect with the provisions of this section on the part of any pawnbroker, [~~vendor,~~] junkshop keeper, junk boatman, [~~cartman,~~] dealer in second-hand merchandise or auctioneer, or any clerk or employee of any thereof shall be triable by a judge of the criminal court and punishable by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both.

§ 6. Subdivision a of section 17-311 of the administrative code of the city of New York, as amended by local law number 108 of the city of New York for the year 2017, is amended to read as follows:

a. Each food vendor shall carry his or her license upon his or her person and it shall be exhibited upon demand to any [~~police officer,~~] public health sanitarian or other authorized officer or employee of the city other than a police officer.

§ 7. Sections 17-313 and 17-322 of the administrative code of the city of New York are REPEALED.

§ 8. Subdivision b of section 17-314 of the administrative code of the city of New York, as amended by local law number 15 of the city of New York for the year 1995, is amended to read as follows:

b. Provide to the commissioner or any other authorized officer or employee of the city, other than a police officer, the addresses and names of the owners of such service rooms, commissaries or distributors from whom such licensee receives his or her food and also the address at which such vendor stores his or her food and vehicle or pushcart;

§ 9. Subdivision j of section 17-315 of the administrative code of the city of New York is amended to read as follows:

j. Where exigent circumstances exist and [~~a police officer or other~~] an authorized officer or employee of the city, other than a police officer, gives notice to a food vendor to temporarily move from a location such vendor shall not vend from such location. For the purpose of this subdivision, exigent circumstances shall include but not be limited to, unusually heavy pedestrian or vehicular traffic, existence of any obstructions in the public space at or near such location, an accident, fire or other emergency situation at or near such location, or a parade,

demonstration, or other such event or occurrence at or near such location.

§ 10. Section 17-321 of the administrative code of the city of New York, subdivision c as amended by local law number 9 of the city of New York for the year 2008, subdivision d as amended by chapter 11 of the laws of 2004, subdivision e as amended by local law number 18 of the city of New York for the year 2021, is amended to read as follows:

§ 17-321 Enforcement. a. Public health sanitarians or other authorized officers or employees of the department [~~and~~], **, other than** police officers**,** shall have the power to enforce all laws, rules and regulations relating to food vendors. This provision shall in no way restrict any other power granted by law to any officer or employee of the city**, other than a police officer**.

b. If a food vendor does not move his or her vehicle or pushcart when directed to do so by [~~a police officer or other~~] **an** authorized officer or employee of the city**, other than a police officer,** in compliance with the provisions of subdivision k of section 17-315 of this subchapter, such officer or employee may provide for the removal of such vehicle or pushcart to any garage, automobile pound or other place of safety, and the owner or other person lawfully entitled to the possession of such vehicle or pushcart may be charged with reasonable costs for such removal and storage, payable prior to the release of such vehicle or pushcart.

c. An officer or employee**, other than a police officer,** designated in subdivision a of this section may seize any vehicle or pushcart which (i) does not have a permit or (ii) is being used to vend on property owned by the city and under the jurisdiction of a city agency including, but not limited to, the department of parks and recreation or the department of small business services, without the written authorization of the commissioner of such department, or (iii) is being used by an unlicensed vendor, or (iv) is being used to vend in the area including and bounded on the east by the easterly side of Broadway, on the south by the southerly side of Liberty Street, on the west by the westerly side of West Street and on the north by the northerly side of Vesey Street, or (v) is selling food not authorized by the permit, and may seize any food sold or offered for sale from such vehicle or pushcart. Such vehicle, pushcart or food shall be subject to forfeiture as provided in [~~section 17-322 of~~] this subchapter. If a forfeiture proceeding is not commenced, the vendor may be charged with the reasonable costs for removal and storage payable prior to the release of such food, vehicle or pushcart unless the charge of vending without a permit or vending without a license or vending without the authorization of such commissioner is dismissed.

d. If a food vendor operates any food vending business on any street at any time where and when the operation of any food vending business is prohibited pursuant to the provisions of section 20-465.1 of the code and any rules promulgated pursuant thereto, or if a food vendor operates a food vending business in the area including and bounded on the east by the easterly side of Broadway, on the south by the southerly side of Liberty Street, on the west by the westerly side of West Street and on the north by the northerly side of Vesey Street, any authorized officer or employee of the city [~~or member of the New York city police department~~]**, other than a police officer,** is authorized to provide for the removal of such food vendor's food, vehicle or pushcart to any garage, automobile pound or other place of safety, and the owner or other person

lawfully entitled to the possession of such vehicle or pushcart or food may be charged with reasonable costs for removal and storage.

e. Any notice of violation issued to a food vendor by an officer or employee described in subdivision a of this section, other than a police officer, that is returnable to a tribunal established within the office of administrative trials and hearings or within any agency of the city of New York designated to conduct such proceedings, or to any court of competent jurisdiction, shall state the permit number of the vehicle or pushcart associated with such notice of violation. Any penalty duly imposed by such tribunal, and any fine or penalty imposed by such court, shall be considered to have been issued against the permittee associated with such permit number for the purposes of the non-issuance or renewal of a food vendor permit pursuant to subdivision b of section 17-317 of this subchapter.

§ 11. Subdivision a and paragraph 1 of subdivision c of section 17-325 of the administrative code of the city of New York, paragraph 1 of subdivision c as amended by local law 80 of the city of New York for the year 2021, are amended to read as follows:

a. Any person who violates the provisions of subdivision a, b, or c of section 17-307 of this subchapter shall be [~~guilty of a misdemeanor,~~] liable only for a civil violation punishable by a fine of not [~~less than one hundred fifty dollars nor~~] more than [~~one thousand dollars,~~] two hundred fifty dollars [~~or by imprisonment for not more than three months or by such fine and imprisonment~~].

1. In addition to the penalties prescribed by subdivision a of this section, any person who violates, or any person aiding another to violate, the provisions of subdivision a, b, or c of section 17-307 of this subchapter shall be liable for only a civil penalty of not [~~less than one hundred fifty dollars nor~~] more [~~than one thousand dollars together with a penalty of one hundred dollars per day for every day during which the unlicensed business operated~~] than two hundred fifty dollars.

§ 12. Section 17-325.1 of the administrative code of the city of New York, as added by local law number 19 of the city of New York for the year 1994, is amended to read as follows:

§ 17-325.1 Failure to display and produce license or permit; presumptive evidence of unlicensed or unpermitted activity. a. In any civil [~~or criminal~~] action or proceeding, failure by a food vendor who is required to be licensed pursuant to the provisions of this chapter to display and exhibit upon demand a food vendor's license in accordance with the provisions of this chapter to any [~~police officer,~~] public health sanitarian or other authorized officer or employee of the department or other city agency, other than a police officer, shall be presumptive evidence that such food vendor is not duly licensed.

b. In any civil [~~or criminal~~] action or proceeding, the failure of any vehicle or pushcart which is required to be permitted pursuant to the provisions of this chapter to have a permit plate affixed thereto in accordance with the provisions of this chapter shall be presumptive evidence that such vehicle or pushcart is not duly permitted.

§ 13. Subdivision a of section 20-461 of the administrative code of the city of New York is amended to read as follows:

a. Each general vendor shall carry his or her license on his or her person and it shall be exhibited upon demand to any [~~police officer,~~] authorized officer or employee of the department or other city agency, other than a police officer.

§ 14. Sections 20-463 and 20-474 of the administrative code of the city of New York are REPEALED.

§ 15. Subdivisions a and b of section 20-464 of the administrative code of the city of New York, subdivision b as amended by local law 112 of the city of New York for the year 1989, are amended to read as follows:

a. Permit regular inspections by the department or any authorized city agency**, other than the police department,** of any goods, vehicle, push-cart or stand used in the operation of the vending business, and of any premises used by him or her for the storage or preparation of goods intended to be vended in such business;

b. Provide to the commissioner, or other authorized officer or employee of a city agency**, other than a police officer,** requesting such information, on a semi-annual basis, or more often if required by regulation promulgated by the Commissioner, the address and name of the owners or the manufacturers, suppliers or distributors from whom the licensee receives his or her goods and also the address at which the licensee stores his or her goods or any vehicle, pushcart or stand used in the operation of the vending business;

§ 16. Subdivision k of section 20-465 of the administrative code of the city of New York is amended to read as follows:

k. Where exigent circumstances exist and [~~a police officer or other~~] **an** authorized officer or employee of any city agency**, other than a police officer,** gives notice to a general vendor to temporarily move from any location such general vendor shall not vend from such location. For the purposes of this subdivision, exigent circumstances shall include, but not be limited to, unusually heavy pedestrian or vehicular traffic, existence of any obstructions in the public space, an accident, fire or other emergency situation, a parade, demonstration or other such event or occurrence at or near such location.

§ 17. Subdivisions a and b of section 20-468 of the administrative code of the city of New York are amended to read as follows:

a. Authorized officers**, other than police officers,** and employees of the department [~~and members of the police department~~] shall have the power to enforce all laws, rules and regulations relating to general vendors. This provision shall in no way restrict any other power granted by law to an officer or employee of any city agency**, other than police officers**.

b. If a general vendor does not move his or her goods, vehicle, push-cart or stand when directed to do so by [~~a police officer or other~~] **an** authorized officer or employee of the city**, other than a police officer,** in compliance with the provisions of subdivision k of section 20-465 such officer or employee is authorized to provide for the removal of such goods, vehicle, pushcart or stand to any garage, automobile pound or other place of safety, and the owner or other person lawfully entitled to the possession of such vehicle, pushcart, stand or goods may be charged with reasonable costs for removal and storage payable prior to the release of such goods, vehicle, pushcart or stand.

§ 18. Subdivisions c, d, e, and f of subdivision 20-468 of the administrative code of the city of New York are REPEALED.

§ 19. Section 20-472 of the administrative code of the city of New York, subdivision a as amended by local law number 63 of the city of New York for the year 1990, subdivision b as amended by local law number 38 of the city of New York for the year 2013, subdivision c as amended by local law number 80 of the city of New York for the year 2021, and

subdivision e as amended by local law number 14 of the city of New York for the year 1995, is amended to read as follows:

§ 20-472 Penalties. a. Any person who violates the provisions of sections 20-453 and 20-474.1 of this subchapter shall be [~~guilty of a misdemeanor~~] **liable for only a civil violation** punishable by a fine of not [~~less~~] **more** than two hundred fifty dollars [~~nor more than one thousand dollars, or by imprisonment for not more than three months or by both such fine and imprisonment. In addition, any police officer may seize any vehicle used to transport goods to a general vendor, along with the goods contained therein, where the driver is required to but cannot produce evidence of a distributor's license. Any vehicle and goods so seized may be subject to forfeiture upon notice and judicial determination. If a forfeiture proceeding is not commenced, the owner or other person lawfully entitled to possession of such vehicle and goods may be charged with the reasonable cost for removal and storage payable prior to the release of such vehicle and goods, unless the charge of unlicensed distributing has been dismissed~~].

b. Except as provided in subdivision a of this section, a person who violates any provision of this subchapter or any of the rules or regulations promulgated hereunder shall be guilty of an offense punishable by the court as follows:

1. For the first violation, a fine of not less than twenty-five nor more than fifty dollars.

2. For the second violation issued for the same offense within a period of two years of the date of a first violation, a fine of not less than fifty dollars nor more than one hundred dollars.

3. For a third violation issued for the same offense within a period of two years of the date of a first violation, a fine of not less than one hundred dollars nor more than two hundred [~~and~~] fifty dollars.

4. For any subsequent violations issued for the same offense within a period of two years of the date of a first violation, a penalty of not more than five hundred dollars.

c. 1. [~~In addition to the penalties prescribed by subdivision a of this section, any person who violates, or any person aiding another to violate, the provisions of section 20-453 of this subchapter shall be liable for a civil penalty of two hundred fifty dollars together with a penalty of two hundred fifty dollars per day for every day during which the unlicensed business operated; except that a person who violates, or any person aiding another to violate, the provisions of section 20-453 of this subchapter by engaging in continued unlicensed activity as defined by the commissioner, considering factors including but not limited to the frequency and duration of such unlicensed activity, shall be liable for a civil penalty of one thousand dollars together with a penalty of two hundred fifty dollars per day for every day during which the unlicensed business operated.~~

~~2.~~] In addition to the penalties prescribed by subdivision b of this section, any person who violates any of the provisions of this subchapter, other than section 20-453, or any of the rules and regulations promulgated hereunder shall be liable for a civil penalty as follows:

(a) For the first violation, a penalty of twenty-five dollars.

(b) For the second violation issued for the same offense within a period of two years of the date of a first violation, a penalty of fifty dollars.

(c) For the third violation issued for the same offense within a period of two years of the date of a first violation, a penalty of **not less than** one hundred dollars **nor more than two hundred fifty dollars**.

(d) For any subsequent violations issued for the same offense within a period of two years of the date of a first violation, a penalty of [~~two hundred and fifty~~] not more than five hundred dollars.

[~~3.~~] 2. Notwithstanding any inconsistent provision of this subdivision, a person shall be subject to a civil penalty of zero dollars for a first violation of subdivision b of section 20-461 of this subchapter or any rule or regulation promulgated thereunder. The notice of violation for such first violation shall inform the respondent of the provision of law or rule that the department believes the respondent has violated, describe the condition or activity that is the basis for the notice of violation, and advise the respondent that the law authorizes civil penalties for such violation and that subsequent violations may result in the imposition of such civil penalties. Any person who violates subdivision b of section 20-461 of this subchapter or any rule or regulation promulgated thereunder shall be subject to a civil penalty of twenty-five dollars for a second violation and a civil penalty of fifty dollars for a third or subsequent violation.

d. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision c of this section shall be commenced by the service of a notice of violation which shall be returnable to the environmental control board. The board shall have the power to impose the penalties prescribed by subdivision c of this section.

e. Any person who violates the provisions of sections 20-465 and 20-465.1 of this subchapter and any rules promulgated thereunder shall be [~~guilty of a misdemeanor~~] liable for only a civil violation punishable by a fine of not more than [~~five hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment~~] two hundred fifty dollars.

§ 20. Section 20-474.3 of the administrative code of the city of New York, as added by local law number 19 of the city of New York for the year 1994, is amended to read as follows:

§ 20-474.3 Failure to produce license; presumptive evidence of unlicensed activity. a. In any civil [~~or criminal~~] action or proceeding, failure by a general vendor who is required to be licensed pursuant to the provisions of this subchapter to exhibit upon demand a general vendor's license in accordance with the provisions of this subchapter to any [~~police officer or~~] authorized officer or employee of the department or other city agency, other than a police officer, shall be presumptive evidence that such general vendor is not duly licensed.

b. In any civil [~~or criminal~~] action or proceeding, failure by any person who is required to obtain a distributor's license pursuant to the provisions of this subchapter, or failure by the driver of such person, to exhibit upon demand a distributor's license in accordance with the provisions of this subchapter to any [~~police officer or~~] authorized officer or employee of the department or other city agency, other than a police officer, shall be presumptive evidence that such person is not duly licensed.

§ 21. This act shall take effect immediately.