

GENERAL BUSINESS LAW

Laws 1909, Chap. 25.

AN ACT relating to general business, constituting chapter twenty of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor.
Passed, three-fifths being present.

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

CHAPTER 20 OF THE CONSOLIDATED LAWS

GENERAL BUSINESS LAW

- Article 1. Short title (§ 1).
2. Sabbath (§ 2-17).
3. Auctions and auctioneers (§§ 21-28).
4. Peddlers (§§ 32--35-a).
- 4-A. Itinerant vendors (§§ 37-39).
5. Collateral loan brokers (§§ 40-55).
- 5-A. Commercial installment sales (§ 56).
6. Junk dealers (§§ 60-64).
- 6-A. Convict made goods (§ 69).
- 6-B. Sale of goods produced with child labor
(§§ 69-a--69-d).
- 6-C. Scrap processors (§§ 69-e--69-h).
- 6-D. Business of installing security or fire alarm systems
(§§ 69-l--69-z).
7. Private investigators, bail enforcement agents and
watch, guard and patrol agencies (§§ 70--89-a).
- 7-A. Security guard act (§§ 89-e--89-w).
8. Process servers (§§ 89-t--89-v).
- 8-A. Process servers and process serving agencies in cities
having a population of one million or more
(§§ 89-bb--89-ll).
- 8-B. Licensing of armored car carriers (§§ 89-aaa--89-nnn).
- 8-C. Training and registration of armored car guards
(§§ 89-ooo--89-zzz).
9. Bills of lading, warehouse receipts, other receipts
and vouchers (§§ 90-111).
- 9-A. Passage tickets (§§ 115-127).

- 9-B. Use of names and symbols (§§ 130-143).
- 9-C. Cyber piracy protections; domain names (§§ 146-149).
- 10. Shooting ranges (§ 150).
- 10-A. Truth in travel act (§§ 155--159-a).
- 10-B. Transmission of money to foreign countries (§§ 160-166).
- 11. Employment agencies (§§ 170-194).
- 11-A. Motor vehicle manufacturers (§§ 198-a--199).
- 11-B. Franchises for the sale of motor fuels (§§ 199-a--199-n).
- 11-C. Sale of zero-emission school buses (§§ 199-o--199-p).
- 12. Hotels and boarding houses (§§ 200--209-g).
- 12-B. Online retailers and mercantile establishments (§§ 217--218-aa).
- 12-C. Trampoline park safety (§§ 220-228).
- 13. Silver, gold and diamonds (§§ 229-a--229-j).
- 13-A. Platinum stamping (§§ 230-238).
- 13-B. Appraisers of jewelry, works of art, watches and objects made from or containing precious stones or metals (§§ 239--239-c).
- 14. Aircraft (§§ 240--251-c).
- 15. Specious cash sales (§§ 252-255).
- 16. Ice (§§ 260-265).
- 17. Milk cans (§§ 270-274).
- 17-A. Filing of names, marks and devices used on certain vessels, receptacles and utensils (§§ 275--279-i).
- 18. Freight and baggage (§§ 280-287).
- 19. Oil and distilled spirits (§§ 300-308).
- 20. Gas (§§ 320-323).
- 20-A. Petroleum well casings and pipes (§§ 324-327).
- 21. Publications (§§ 330-337).
- 21-A. Fraudulent transactions in securities (§§ 339--339-f).
- 22. Monopolies (§§ 340-347-a).
- 22-A. Consumer protection from deceptive acts and practices (§§ 349--350-f-1).
- 22-B. Water treatment units (§§ 350-g--350-i).

- 23. Bucket shops (§§ 351--351-e).
- 23-A. Fraudulent practices in respect to stocks, bonds and other securities (§§ 352--359-h).
- 23-B. Transactions with or by fiduciaries (§§ 359-i--359-l).
- 24. Trademarks (§§ 360--360-r).
- 24-A. Fair trade law (§§ 369-a--369-eee).
- 24-C. Tax Preparers (§§ 371-373).
- 24-D. Research relating to electronic cigarettes (§ 375).
- 25. Fair credit reporting act (§§ 380--380-v).
- 25-A. Articles of bedding (§§ 383--389-c).
- 25-B. Use of safety glazing materials (§§ 389-m--389-r).
- 25-C. Products containing lead (§§ 389-s--389-t).
- 26. Miscellaneous (§§ 390--399-zzzzz).
- 27. Licensing of nail specialty, natural hair styling, esthetics and cosmetology (§§ 400-417).
- 27-A. Licensing of coin processors (§§ 418-429).
- 28. Practice of barbering (§§ 430-447).
- 28-A. Cemetery property and funeral services (§§ 450--454-a).
- 28-B. Budget planning (§§ 455-457).
- 28-BB. Credit services business (§§ 458-a--458-k).
- 28-C. Immigrant assistance services (§§ 460-a--460-k).
- 28-D. Lasers, radiation, crane operators and blasters (§§ 480-486).
- 28-E. Children's product safety and recall effectiveness act of 2008 (§§ 490--490-h).
- 28-F. Crohn's and colitis fairness act (§§ 491-494).
- 28-G. Batteries for micromobility devices, bicycles with electric assist, and limited use motorcycles (§§ 495--495-d).
- 29. Manufacture, sale and introduction or movement in commerce of flammable wearing apparel, fabrics, related material and interior furnishings prohibited (§§ 500-509).
- 29-A. Unauthorized or improper use of credit cards and debit cards (§§ 511--520-e)
- 29-AAA. Credit card registration services (§§ 521--521-f).

- 29-B. Prohibited credit card practices involving providers of travel services (§§ 523-526).
- 29-BB. Prohibited service offer practices (§§ 527--527-a).
- 29-BBB. Credit and debit cards (§§ 529--529-a).
- 29-C. Radio and television tubes (§§ 532-537).
- 29-CC. Modem hijacking deterrence act (§§ 538--538-b).
- 29-D. Notes given for patent rights and for a speculative consideration (§§ 550-554).
- 29-E. Trading stamps (§§ 570-579).
- 29-F. Going out of business sales (§§ 580-596).
- 29-G. Receipts for personal property (§§ 597-598).
- 29-GG. Sale of traffic control devices (§§ 599--599-e).
- 29-H. Debt collection procedures (§§ 600-603).
- 29-HH. Debt collection procedures related to identity theft (§§ 604--604-b).
- 29-HHH. Actions involving coerced debts (§§ 604-aa--604-gg).
- 29-I. The Storage of Household Goods (§§ 605-610).
- 29-J. Film Rating Labeling (§§ 611-612).
- 29-K. Motor Vehicle Parts Warranty (§§ 616-619).
- 30. Health club services (§§ 620-631).
- 30-A. Home-use medical diagnostic device marketing practices (§ 640).
- 30-B. Weight loss services (§§ 641-645).
- 31. Membership campgrounds (§§ 650-660).
- 32. Video consumer privacy act (§§ 670-675)
- 32*. Wheelchair warranties (§ 670*2)
- 33. Franchises (§§ 680-695).
- 33-A. Dealer agreements for the sale of farm equipment (§§ 696-a--696-i).
- 33-B. Express consumer warranty on farm equipment (§§ 697--697-d).
- 34. Creditor billing errors (§§ 701-707).
- 34-A. Consumer credit balances (§§ 710-716).
- 34-B. Annual credit interest statements (§§ 717-719).
- 35. Warranties on mobile homes (§§ 720-724).
- 35-A. Aftermarket rustproofing warranties of new motor vehicles (§§ 730-735).

- 35-B. Automobile broker business (§§ 736-745).
- 35-C. Operation of pet cemeteries and pet crematoriums (§§ 750--750-w).
- 35-D. Sale of dogs and cats (§§ 751-755).
- 35-E. Construction contracts (§§ 756-758).
- 35-F. Fire sprinkler information (§§ 759--759-a).
- 36. Protection of underground facilities (§§ 760-767).
- 36-A. Home improvement contracts (§§ 770-776).
- 36-B. Warranties on sales of new homes (§§ 777--777-b).
- 36-C. Down payments in the purchase and sale of residential real estate (§§ 778--778-a).
- 36-D. Home heating system conversion (§ 778-aa).
- 36-E. Prohibition of unfair real estate service agreements (§§ 778-aaa--778-eee).
- 37. Deposits on construction of new homes (§§ 779-785).
- 37-A. Registration of hearing aid dealers (§§ 788-805).
- 38. Vessel dealer agreements (§§ 810-816).
- 38-A. Sale of outdated and label obstructed over-the-counter drugs and cosmetic products (§§ 820-821).
- 38-B. Products sold for human consumption (§§ 830-834).
- 39. Drug-related paraphernalia (§§ 850-853).
- 39-A. Merchants of Torah scrolls (§§ 855-864).
- 39-B. Imitation weapons (§§ 870-873).
- 39-BB. Preventing the unlawful sale of firearms, rifles, and shotguns to individuals with a criminal record (§§ 875-a--875-i).
- 39-C. Imitation hypodermic instruments (§§ 880-882).
- 39-D. Auto Equity Promoters (§§ 890-893).
- 39-DD. Sale of firearms, rifles or shotguns at gun shows (§§ 895-897).
- 39-DDD. Private sale or disposal of firearms, rifles and shotguns (§ 898).
- 39-DDDD. Sale, manufacturing, importing and marketing of firearms (§§ 898-a--898-e).
- 39-E. Uniform Athlete Agents Act (§§ 899--899-p).
- 39-F. Notification of unauthorized acquisition of private information (§ 899-aa).

- 39-FF. New York child data protection act
(§§ 899-ee--899-mm).
- 39-G. Document destruction contractors
(§§ 899-aaa--899-bbb).
- 39-H. Third party litigation financing
(§§ 899-ccc--899-mmm).
- 40. Peer-to-peer car sharing programs (§§ 900-920).
- 41. Combative sports (§§ 1000-1022).
- 42. Social media terms of service (§§ 1100-1104).
- 43. New York state secure choice savings program
(§§ 1300-1316).
- 44. Regulation of surrogacy programs and assisted
reproduction service providers (§§ 1400-1404).
- 44-A. Freelance isn't free act (§§ 1410-1415).
- 44-B. Responsible AI safety and education (RAISE) act
(§§ 1420-1429).
- 45. Safe for kids act (§§ 1500-1508).
- 45-A. Warning labels for addictive feature platforms (§§
1520-1526).
- 45-B. Safe by design act (§§ 1539-1547).
- 46. Laws repealed; when to take effect (§§ 1600-1601).
- 47. Artificial intelligence companion models (§§
1700-1704).

ARTICLE 1

SHORT TITLE

Section 1. Short title.

§ 1. Short title. This chapter shall be known as the "General Business Law."

ARTICLE 2

SABBATH

Section 2. The Sabbath.

3. Sabbath breaking.
4. Punishment for Sabbath breaking.
5. Labor prohibited on Sunday.
6. Persons observing another day as a Sabbath.
7. Public sports and exercises on Sunday.
8. Trades, manufacturers, and mechanical employments prohibited on Sunday.
9. Public traffic on Sunday.
10. Prosecutions for conducting business on Sunday by certain persons.
11. Serving civil process on Sunday.
12. Forfeiture of commodities exposed for sale on Sunday.
13. Maliciously serving process on Saturday on persons who keep Saturday as holy time.
14. Processions and parades on Sunday.
17. Days of rest and recreation.

§ 2. The Sabbath. The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

§ 3. Sabbath breaking. A violation of the foregoing prohibition is Sabbath breaking.

§ 4. Punishment for Sabbath breaking. Sabbath breaking is a misdemeanor, punishable by a fine of not less than five dollars and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both, but for a second or other offense, where the party shall have been previously convicted, it shall be punishable by a fine not less than ten dollars and not more than twenty dollars or by imprisonment in a county jail not less than five nor more than twenty days, or both.

§ 5. Labor prohibited on Sunday. All labor on Sunday is prohibited, excepting the works of necessity and charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

§ 6. Persons observing another day as a Sabbath. It is a sufficient defense to a prosecution for work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons observing the first day of the week as holy time.

§ 7. Public sports and exercises on Sunday. All public sports, exercises or shows, except professional golf tournaments and games of the World University Games conducted in Erie, Genesee and Niagara counties in nineteen hundred ninety-three, upon the first day of the week, and all noise unreasonably disturbing the peace of the day are prohibited, except as hereinafter provided.

Notwithstanding the provisions of this section, it shall be lawful to conduct, witness, participate or engage in any form of public sports, exercises or shows which are conducted or engaged in primarily for the entertainment of spectators, not specifically prohibited by any provision of the law, on the first day of the week after five minutes past one o'clock in the afternoon, to witness which the public is invited or an admission fee is charged, either directly or indirectly, in a city, town or village as shall be permitted by local law or ordinance heretofore or hereafter adopted by the common council or other legislative body of the city, town or village permitting such public sports, exercises or shows on such day and after such hour provided, however, the failure of a city, town or village in which a municipally owned stadium, arena or facility is located, to adopt such a local law or ordinance shall not prohibit such public sports, exercises or shows beginning after five minutes past one o'clock in the afternoon on the

first day of the week in any such stadium, arena or facility.

Nothing herein contained shall be deemed to prohibit private sports, games or recreational activities which are engaged in primarily for the personal enjoyment, recreation and health of the participants, on the first day of the week, conducted in a manner which does not constitute a serious interruption of the repose or religious liberty of the community.

Notwithstanding any other provision of this section, it shall be lawful for pari-mutuel facilities licensed in accordance with article two of the racing, pari-mutuel wagering and breeding law to conduct or engage in activities authorized under their licensure on the first day of the week after twelve o'clock post meridian.

§ 8. Trades, manufactures, and mechanical employments prohibited on Sunday. All trades, manufacturers, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

§ 9. Public traffic on Sunday. All manner of public selling or offering for sale of any property upon Sunday is prohibited, except as follows: 1. Articles of food may be sold, served, supplied and delivered at any time before ten o'clock in the morning:

2. Meals may be sold to be eaten on the premises where sold at any time of the day;

3. Caterers may serve meals to their patrons at any time of the day;

4. Prepared tobacco, bread, milk, eggs, ice, soda-water, fruit, flowers, confectionery, souvenirs, items of art and antiques, newspapers, magazines, gasoline, oil, tires, cemetery monuments, drugs,

medicine and surgical instruments may be sold and delivered at any time of the day.

5. Grocers, delicatessen dealers and bakeries may sell, supply, serve and deliver cooked and prepared foods, between the hours of four o'clock in the afternoon and half-past seven o'clock in the evening, in addition to the time provided for in subdivision one hereof, and, elsewhere than in cities and villages having a population of forty thousand or more, delicatessen dealers, bakeries and farmers' markets or roadside stands selling fresh vegetables and other farm produce, and fishing tackle and bait stores may sell, supply, serve and deliver merchandise usually sold by them, at any time of the day.

6. Persons, firms or corporations holding licenses and/or permits issued under the provisions of the alcoholic beverage control law permitting the sale of beer at retail, may sell such beverages at retail on Sunday before three antemeridian and after twelve noon for off-premises consumption to persons making purchases at the licensed premises to be taken by them from the licensed premises.

7. Sale at public auction of thoroughbred, standardbred and quarter horse racehorses.

The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods or meats, fresh or salt, at any hour or time of the day. Delicatessen dealers shall not be considered as caterers within subdivision three hereof.

§ 10. Prosecutions for conducting business on Sunday by certain persons.

Notwithstanding any other provision of law, it shall be a sufficient defense to a prosecution pursuant to this article, for conducting any trade or business or public selling or offering for sale of any property on Sunday, that the defendant

(1) as the proprietor of such business, uniformly keeps another day of the week as holy time and keeps his place of business closed on the seventh day of the week,

(2) does not himself labor, employ others to labor in, by or with another conduct a trade or publicly sell or offer for sale any property on the day he keeps as holy time,

(3) conducts such labor, trade or business in its normal course on Sunday by himself and members of his immediate family, and

(4) so conducts such trade, public selling or offer to sell any property on Sunday in such manner as not to disturb the religious observances of the community.

The term "day of the week" as used in this section shall mean and include the period of time of not less than twenty-four consecutive hours commencing at or before sundown on one day and terminating at or after sundown on the following day.

§ 11. Serving civil process on Sunday. All service or execution of legal process, of any kind whatever, on the first day of the week is prohibited, except in criminal proceedings or where service or execution is specially authorized by statute. Service or execution of any process upon said day except as herein permitted is absolutely void for any and every purpose whatsoever.

§ 12. Forfeiture of commodities exposed for sale on Sunday. In addition to the penalty imposed by section four, all property and commodities exposed for sale on the first day of the week in violation of the provisions of this article shall be forfeited. Upon conviction of the offender by a justice of the peace of a county, or by any police justice or magistrate, such officer shall issue a warrant for the seizure of the forfeited articles, which, when seized, shall be sold on one day's notice, and the proceeds paid to the overseers of the poor, for the use of the poor of the town or city.

§ 13. Maliciously serving process on Saturday on person who keeps Saturday as holy time. Whoever maliciously procures any process in a civil action to be served on Saturday, upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

§ 14. Processions and parades on Sunday. 1. All processions and parades on Sunday in any city, excepting only funeral processions for the actual burial of the dead, and processions to and from a place of worship in connection with a religious service there celebrated, are forbidden; and in such excepted cases there shall be no music, fireworks, discharge of cannon or firearms, or other disturbing noise. At a military funeral, or at the funeral of a United States soldier, sailor or marine, or of a national guardsman, or of a deceased member of an association of veteran soldiers, sailors or marines, or of a disbanded militia regiment, or of a secret fraternal society, or of an association of employees of the national, state, or municipal governments, music may be played while escorting the body; also in patriotic military processions on Sunday previous to Decoration day, known as memorial Sunday, to cemeteries or other places where memorial services are held, and also by organizations of the national guard or naval militia or of an association of employees of the national, state, or municipal governments, attending religious service on Sunday; but in no case within one block of a place of worship where service is then being celebrated. Music may also be played in any procession conducted by a religious organization or society in connection with a religious service or religious rally after one o'clock noon on Sunday.

2. Notwithstanding the provisions of this section, it shall be lawful to conduct, witness, participate or engage in processions or parades and to play music in any such procession or parade on Sunday after two o'clock in the afternoon, in a city, town or village, as shall be permitted by a local law or ordinance heretofore or hereafter adopted by the common council or other legislative body of a city, town or village

permitting such processions and parades on such day and after such hour.

3. This section shall not apply to a city with a population of one million or more; provided, however, that if a parade or procession is held in such city on Sunday before two o'clock in the afternoon there shall be no music, fireworks, discharge of cannon or firearms, or other disturbing noise in relation thereto within one hundred and fifty feet of a place of worship.

4. A person wilfully violating any provision of this section is punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days, or by both.

§ 17. Days of rest and recreation. a. One day a week may be set aside for rest and recreation.

b. A day of rest and recreation may be determined by the owners of a business or commercial enterprise, which shall include a sole proprietorship, partnership or corporation.

c. A retail merchants association or organization shall not have the right to determine a day of rest and recreation for any of its members.

d. Any person, corporation or association who knowingly attempts to force or coerce an owner or manager of a business to make a determination in violation of this section shall be fined not less than two hundred fifty dollars and not more than five hundred dollars and for a second or other offense, where the party shall have been previously convicted thereof, it shall be punishable by a fine of not less than one thousand dollars and not more than two thousand dollars.

e. No provision of this section shall be construed to prohibit any owner from doing business seven days a week, where any other general, special or local law, rule or regulation does not specifically prohibit such activity.

ARTICLE 3

AUCTIONS AND AUCTIONEERS

- Section 21. Commissions; penalty.
22. Power of common council of cities.
23. Automobile auctioneer.
24. Mock auction.
25. Records to be kept by auctioneers.
26. Record open to inspection.
27. Penalties.
28. Limitation.

§ 21. Commissions; penalty. An auctioneer in any county, other than New York or Kings, shall not, without a previous agreement in writing, with the owner or consignee of the goods sold, demand or receive a greater compensation for his services than a commission of two and one-half per centum on the amount of any sale, public or private, made by him. For a violation of this section he shall refund the moneys illegally received and forfeit two hundred and fifty dollars to each person from whom he demands or receives an unlawful compensation or commission.

§ 22. Power of common council of cities. Except as otherwise provided in the charter of the city, the common council of a city may designate such place within such city for the sale by auction of horses, carriages and household furniture, as it deems expedient.

§ 23. Automobile auctioneer. 1. Definitions. The term "automobile auctioneer" as used in this section means any person, not claiming title in himself, who sells or offers for retail sale more than five motor vehicles, motorcycles or trailers in any calendar year, or who displays or permits the display of three or more motor vehicles, motorcycles or trailers for retail sale in any one calendar month upon premises owned or controlled by him.

2. Title. An automobile auctioneer shall not sell a motor vehicle unless he has in his possession the currently valid certificate of title to that motor vehicle, or, if a certificate of title is not required, then he shall have in his possession the appropriate proof of ownership for such motor vehicle. Title or proof of ownership shall be delivered to the purchaser immediately upon acceptance of tender of payment.

2-a. Sale of vehicles. a. An automobile auctioneer shall not sell or offer for sale a motor vehicle unless such auctioneer is a dealer registered pursuant to article sixteen of the vehicle and traffic law.

b. Except as otherwise permitted by law, an automobile auctioneer shall not sell or offer for sale a motor vehicle on a sale basis of "as is" or "with all faults", or by using words of similar import at or prior to the time of sale.

3. Disclosure. a. No motor vehicle shall be sold by an automobile auctioneer unless he has disclosed the identity of the seller who is actually transferring title or proof of ownership. Such disclosure of the seller's identity shall be made by the auctioneer (i) in a written disclosure made in not less than ten-point bold face type and appearing on the front of the sales contract, receipt, invoice, or other document used in connection with the sale of the vehicle that shall set forth the seller's true legal name, complete street address and dealer facility identification number and that shall be captioned "Identity of Vehicle's Seller"; and (ii) by affixing a conspicuous sign to the windshield of each vehicle offered for sale, sold or made available for inspection prior to auction that shall disclose the seller's true legal name, complete street address and dealer facility identification number.

b. No used motor vehicle subject to the provisions of section one hundred ninety-eight-b of this chapter shall be sold or offered for sale by an automobile auctioneer unless such auctioneer discloses the Used Car Lemon Law Bill of Rights. Such disclosure shall be made in writing, in not less than ten-point bold face type and appearing on the front of the sales contract, receipt, invoice, or other document used in

connection with the sale of the vehicle, and shall be captioned "Used Car Lemon Law Bill of Rights".

c. No motor vehicle subject to the provisions of section one hundred ninety-eight-a of this chapter shall be sold or offered for sale by an automobile auctioneer unless such auctioneer discloses the New Car Lemon Law Bill of Rights. Such disclosure shall be made in writing, in not less than ten-point bold face type and appearing on the front of the sales contract, receipt, invoice, or other document used in connection with the sale of the vehicle, and shall be captioned "New Car Lemon Law Bill of Rights".

d. No used motor vehicle shall be sold or offered for sale by an automobile auctioneer unless such auctioneer provides the following notice, in writing, in not less than ten-point bold face type and appearing on the front of the sales contract, receipt, invoice or other document used in connection with the sale of the vehicle:

CERTIFICATION NOTICE FOR USED CAR BUYERS

1. NEW YORK STATE LAW REQUIRES A USED CAR DEALER TO CERTIFY IN WRITING TO THE BUYER THAT THE VEHICLE, AT THE TIME OF DELIVERY, IS IN CONDITION AND REPAIR TO RENDER, UNDER NORMAL USE, SATISFACTORY AND ADEQUATE SERVICE (VEHICLE AND TRAFFIC LAW SECTION 417-a).
2. IF THE DEALER REFUSES TO HONOR ITS LEGAL DUTY, COMPLAIN TO THE N.Y.S. DEPARTMENT OF MOTOR VEHICLES, DIVISION OF VEHICLE SAFETY SERVICES, EMPIRE STATE PLAZA, ALBANY, N.Y. 12228.

e. No used motor vehicle shall be sold or offered for sale by an automobile auctioneer, unless such auctioneer posts a conspicuous sign at each entrance to the auction used by the public, and in a place so situated as to be clearly visible to bidders at the auction. Such sign shall read as follows:

CERTIFICATION NOTICE FOR USED CAR BUYERS

1. NEW YORK STATE LAW REQUIRES A USED CAR DEALER TO CERTIFY IN WRITING TO THE BUYER THAT THE VEHICLE, AT THE TIME OF DELIVERY, IS IN CONDITION AND REPAIR TO RENDER,

UNDER NORMAL USE, SATISFACTORY AND ADEQUATE SERVICE.

2. IF THE DEALER REFUSES TO HONOR ITS LEGAL DUTY, COMPLAIN TO THE N.Y.S. DEPARTMENT OF MOTOR VEHICLES, DIVISION OF VEHICLE SAFETY SERVICES, EMPIRE STATE PLAZA, ALBANY, N.Y. 12228.

4. Warranties. a. Notwithstanding any provision of law to the contrary, in any contract of sale by an automobile auctioneer, there shall be a warranty that:

(1) the title or proof of ownership conveyed shall be good, and its transfer rightful; and

(2) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

b. Any waiver of the warranty provided for in paragraph a of this subdivision by a buyer shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by an automobile auctioneer to exclude or modify such warranties shall constitute a violation of this section.

5. Documentation of transactions. In addition to the records required to be kept by auctioneers pursuant to section twenty-five of this article, every sale by an automobile auctioneer shall be accompanied by an itemized receipt which shall contain the following information:

a. legal name, and trade name if different, of the automobile auctioneer;

b. address and telephone number of the automobile auctioneer;

c. name of the buyer;

d. make, year of manufacture, and identification number of said motor vehicle;

e. the amount of money paid; and

f. the date of delivery.

6. Certificate of prior use. a. Upon the sale or transfer of any passenger motor vehicle to an automobile auctioneer any transferer shall execute and deliver to the auctioneer an instrument in writing which shall set forth in nature of the principal prior use of such vehicle when the automobile transferer knows or has reason to know that such use was as a taxicab, rental vehicle, police vehicle, or driver education vehicle, or vehicle which has been repurchased pursuant to either section one hundred ninety-eight-a or one hundred ninety-eight-b of this chapter, a similar statute of another state, or an arbitration or alternative dispute procedure.

b. Upon the sale of any second-hand passenger motor vehicle, the automobile auctioneer shall execute and deliver to the buyer an instrument in writing which shall set forth the nature of the principal prior use of such vehicle when the automobile auctioneer knows or has reason to know that such use was as a taxicab, rental vehicle, police vehicle, or driver education vehicle, or vehicle which has been repurchased pursuant to either section one hundred ninety-eight-a or one hundred ninety-eight-b of this chapter, a similar statute of another state, or an arbitration or alternative dispute procedure.

7. Fraudulent representation. No automobile auctioneer, sales person employed by such auctioneer, or agent or representative thereof selling or offering for sale any motor vehicle, motorcycle, or trailer shall make or use any untrue or misleading representations nor engage, directly or indirectly, in any act or practice or course of business which operates or would operate as a fraud or deception upon any person.

8. Exceptions. The provisions of this section shall not apply to an auction or auctions at which only vehicles which are being sold pursuant to repossession, or foreclosure of a lien, or by or on behalf of an executor or administrator to settle an estate, or pursuant to a court order, or an auction conducted by the federal government, or the state, its agencies, bureaus, boards, commissions and authorities, or any

political subdivision of the state, or the agencies and authorities of any such subdivision, or an auction at which only vehicles which are being sold are owned by a regulated public utility or other business which maintains a fleet of twenty-five or more vehicles used in the ordinary course of business and not purchased for the purpose of resale, or at an auction conducted upon a farm in which the only vehicles being sold, excluding farm equipment, are vehicles formerly utilized for day to day farm business or personal use and such vehicles are not being sold for the purpose of resale, or at an auction at which bids are accepted only from registered motor vehicle dealers, registered vehicle dismantlers or certified scrap processors. Vehicles sold at such an auction shall not be included in determining the number of vehicles sold at auction for the purpose of determining whether a person is an auctioneer.

9. Action by the attorney general. a. Upon any violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution.

b. Whenever the court shall determine that a violation of this section has occurred, it may impose a civil penalty of not more than one thousand dollars for each violation. In connection with an application made under this subdivision, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

10. Additional remedies. In addition to the right of action granted to

the attorney general pursuant to subdivision nine of this section, any buyer injured by a violation of this section may bring an action in his own name to enjoin such unlawful practice, an action to recover his actual damages or five hundred dollars, whichever is greater, or both such actions. The court in its discretion may increase the award of damages to an amount not to exceed three times the actual damages. The court may award costs and reasonable attorney's fees to a prevailing plaintiff.

11. Burden of proof. In any proceeding involving this section, the burden of proving an exception or inapplicability for the definition of automobile auctioneer is upon the person claiming it.

12. Severability clause. If any provision of this section or if any application thereof to any person or circumstance is held invalid, the remainder of the section and the application of the provision to other persons and circumstances shall not be affected thereby.

§ 24. Mock auction. A person who buys or sells, or pretends to buy or sell, any goods, wares, or merchandise, or any species of property except ships, vessels, or real or leasehold estate, exposed for sale by auction, if an actual sale, purchase, and change of ownership therein does not thereupon take place, is guilty of a misdemeanor, punishable by imprisonment for thirty days, or by fine not exceeding one hundred dollars or both.

A person who obtains money or property from another, or obtains the signature of another to any writing, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is guilty of a misdemeanor; and in addition thereto he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as an auctioneer in this state.

§ 25. Records to be kept by auctioneers. Every auctioneer or person engaged in the business of selling goods at auction, whether acting in his own behalf or as the officer, agent or representative of another, shall, upon the receipt or acceptance by him of any goods for the purpose of sale at auction, and before offering the same or any part thereof for sale at auction, write or cause to be written in a book to be kept by him for the purpose, the name and address of the person who employed him to sell such goods at auction, the name and address of the person for whose benefit, behalf or account such goods are to be sold at auction; the name and address of the person from whom such auctioneer received or accepted such goods; the name and address of the person who was the owner, the authorized agent of the owner or the consignor of such goods immediately prior to the receipt or acceptance for the purpose of sale at auction of the same by such auctioneer; the location, with street and number, if any, of such goods immediately prior to the receipt or acceptance of the same by such auctioneer for the purpose of sale at auction; the date of the receipt or acceptance by such auctioneer of such goods for the purpose of sale at auction; the place, with street and number, if any, in which such goods are to be held, kept or stored until sold or offered for sale at auction; the place, with street and number, if any, in which such goods are to be sold or offered for sale at auction; a description of such goods, the quantity thereof and the distinctive marks thereon, if any; the terms and conditions upon which such auctioneer receives or accepts such goods for sale at auction. The expression "goods" as used in this section signifies any goods, wares, works of art, commodity, compound or thing, chattels, merchandise or personal property which may be lawfully kept or offered for sale, but shall not include goods damaged at sea or by fire and sold or to be sold for the benefit of the owners, insurers or for the account of whom it may concern or goods sold by virtue of judicial decree. The word "person" as used in this section includes a corporation, joint-stock association or copartnership. Nothing herein shall apply to the sale of real property at auction. The foregoing records shall be in addition to any other records required to be kept pursuant to the uniform commercial code.

§ 26. Record open to inspection. The said book and the entries therein, made as provided by the preceding section, shall, at all reasonable times, be open to the inspection of the mayor and the head of the police department of the city in which the auctioneer conducts his business, the district attorney of any county in which said city is located or which is a part of such city, and any person who shall be duly authorized in writing for that purpose by any or either of them and who shall exhibit such written authorization to such auctioneer.

§ 27. Penalties. Any person who violates or does not comply with the provisions of section twenty-five hereof, or any auctioneer or person engaged in the business of selling goods at auction who shall fail, neglect or refuse to permit or allow an inspection as required by section twenty-six hereof of the book, which he is required to keep according to the provisions of section twenty-five hereof, shall be guilty of a misdemeanor.

§ 28. Limitation. Sections twenty-five, twenty-six and twenty-seven hereof shall apply only to cities of the first class and do not repeal or supersede the provisions of chapter thirty-two, title B, article twenty-one of the administrative code of the city of New York.

ARTICLE 4

Peddlers

- Section 32. Licenses to veterans of the armed forces of the United States.
33. Penalties.
34. Arrest and conviction of offender.
35. Municipal regulations.
- 35-a. Veterans of the armed forces who vend in cities having a population of one million or more.

§ 32. Licenses to veterans of the armed forces of the United States.

1. Every member of the armed forces of the United States who (a) was honorably discharged from such service, or (b) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (c) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, and who is a resident of this state and a veteran of any war, or who shall have served in the armed forces of the United States overseas, and the surviving spouse of any such veteran, if a resident of the state, shall have the right to hawk, peddle, vend and sell goods, wares or merchandise or solicit trade upon the streets and highways within the county of his or her residence, as the case may be, or if such county is embraced wholly by a city, within such city, by procuring a license for that purpose to be issued as herein provided. No part of the lands or premises under the jurisdiction of the division of the state fair in the department of agriculture and markets, shall be deemed a street or highway within the meaning of this section.

2. Any such former member of the armed forces of the United States may present to the clerk of any county in which he has resided for a period of at least six months, his original certificate of release or discharge from active duty, or a copy thereof duly certified by the recording officer or a certificate in lieu of lost discharge issued by a department of the armed forces of the United States which shall show that the person presenting it is a veteran of any war, or that he has served overseas in the armed forces of the United States. He shall also fill out a blank which shall when filled out state his name, residence at the time of application, nature of goods to be sold, and if the applicant is working on commission or percentage for any person, firm or corporation, the name and business address of such person, firm or corporation. This statement shall be signed by the applicant in the presence of the county clerk, or a deputy designated by him, and the name on this application and on the original certificate of release or discharge from active duty shall be compared by the county clerk to ascertain if the person so applying is the same person named in the original certificate of release or discharge from active duty. Such

county clerk when so satisfied shall issue, without cost, to such former member of the armed forces of the United States, a license certifying him to be entitled to the benefits of this section.

3. A copy of this statement shall be attached to the license granted by the county clerk and shall remain attached thereto. On presentation to such clerk of the affidavit of such surviving spouse and two other residents of the county, that he or she is such surviving spouse, accompanied by such original certificate of release or discharge from active duty of his or her deceased spouse, and the filing of the statement hereinabove required, such county clerk shall issue, without cost to the surviving spouse, a license certifying the surviving spouse to be entitled to the benefits of this section.

4. The license provided for by this section shall be used and valid only for use in the county in which it was issued, except that if issued in a county embraced wholly by a city, it may be used within such city.

5. The application for the license herein provided shall be accompanied by a photograph of the applicant taken within thirty days prior to such application and upon the issuance of such license shall be attached thereto.

6. A license issued without cost, under the provisions of this section, shall be personal to the licensee and any assignment or transfer thereof shall be absolutely void. Upon satisfactory proof by affidavit of the loss or destruction of any license issued as herein provided, the county clerk shall issue a duplicate license for the one so lost or destroyed and in which event the word "duplicate" shall be legibly written in ink across the face thereof.

7. A person assigning or transferring, or attempting to assign or transfer any such license or using or attempting to use such license contrary to the provisions of this section shall be guilty of a misdemeanor.

8. Any provisions of this section to the contrary notwithstanding, any

city, village or town may, by local law or ordinance, require a person holding a license issued pursuant to the provisions of this section by the clerk of the county in which such city, village or town is located, to file a further application with such official of the city, village or town as is designated in such local law or ordinance, for the issuance of a local license and may prescribe the terms and conditions under which such local license may be issued and may prohibit the right to hawk, peddle, vend and sell goods, wares or merchandise or solicit trade upon the streets and highways within any such city, village or town under the provisions of this section unless such local license has been issued.

§ 33. Penalties. Every person found traveling and trading within this state contrary to the provisions of this article, or contrary to the terms of any license that may have been granted to him under this article, shall, for each offense, forfeit to the town in which the offense shall be committed the sum of twenty-five dollars, to be applied to the support of the poor of the town. Every person traveling or trading within this state, having a license, who refuses to produce a license as a peddler to any officer or citizen who demands the production of the same shall, for each offense, forfeit to the town in which the demand is made the sum of ten dollars, to be applied to the support of the poor thereof. The refusal of any such person to produce a license when demanded shall be presumptive evidence that he is traveling and trading without a license.

No action for the recovery of any penalty imposed by this article shall be maintained unless it be brought within sixty days after the commission of the offense charged.

§ 34. Arrest and conviction of offender. The public welfare officials shall see that the provisions of this article are enforced in their respective towns. Any citizen may arrest any person trading as a peddler who neglects or refuses to produce his license on demand, and shall immediately convey such person before some justice of the peace of the

county. If the fact that the person so arrested has traded without a license be proved to the satisfaction of the justice, he shall convict such person of an offense against this article and on such conviction shall issue his warrant to some constable of the county, commanding such constable to levy and collect from the personal property of the offender the sum of twenty-five dollars, with the costs of the proceeding, not exceeding five dollars. The penalty collected on such warrant shall be paid by the justice to the public welfare official of the town where the offense was committed.

If it appears in said proceeding that the person arrested refused to produce his license or to disclose his name when lawfully required, no costs shall be allowed such defendant, nor shall he maintain an action for false imprisonment.

§ 35. Municipal regulations. This article shall not affect the application of any ordinance, by-law or regulation of a municipal corporation relating to hawkers and peddlers within the limits of such corporations, but the provisions of this article are to be complied with in addition to the requirements of any such ordinance, by-law or regulation; provided, however, that no such by-law, ordinance or regulation shall prevent or in any manner interfere with the hawking or peddling, without the use of any but a hand driven vehicle, in any street, avenue, alley, lane or park of a municipal corporation, by any honorably discharged member of the armed forces of the United States who (1) was honorably discharged from such service, or (2) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (3) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, and who is physically disabled as a result of injuries received while in the service of said armed forces and the holder of a license granted pursuant to section thirty-two of this article.

§ 35-a. Veterans of the armed forces who vend in cities having a population of one million or more. Subject to the provisions of this section but notwithstanding any inconsistent provisions of any general, special or local law:

1. (a) In cities having a population of one million or more, the official designated by a local law or ordinance to issue a local license to hawk, peddle, vend and sell goods, wares or merchandise or solicit trade upon the streets and highways within such city shall issue specialized vending licenses to members of the armed forces of the United States who (i) were honorably discharged from such service, or (ii) have a qualifying condition, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable from such service, or (iii) are a discharged LGBT veteran, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable from such service, and who are physically disabled as a result of injuries received while in the service of said armed forces and who are eligible to hold licenses granted pursuant to section thirty-two of this article. Such specialized vending licenses shall authorize holders thereof to hawk or peddle within such city in accordance with the provisions contained in this section. Specialized vending licenses issued under this section shall permit the holders thereof to vend on any block face, and no licensee authorized under this section shall be restricted in any way from vending in any area, except as provided in this section.

(b) The official in such city responsible for issuing specialized vending licenses shall set forth by rule procedures for issuing specialized vending licenses pursuant to this section; such rules shall establish a priority system, based upon the date of application for specialized vending licenses issued pursuant to this section, provided, however, that any disabled veteran vendor holding a specialized vending license issued in such city prior to March first, two thousand three, shall be accorded a priority based upon the date of issuance of such specialized vending license.

2. In areas where general vending is authorized, outside of the area specified in subdivision seven of this section, all specialized vending

license holders, including those vendors authorized to vend in the area specified in subdivision seven of this section, shall be subject to those restrictions on the placement of vehicles, pushcarts and stands contained in any local law, ordinance, by-law, rule or regulation of a city having a population of one million or more, to the extent that such restrictions are not inconsistent with the provisions contained in subdivisions four, five, six and eight of this section.

3. Specialized vending licenses issued pursuant to this section shall authorize the holders thereof to vend on block faces, outside the area specified in subdivision seven of this section, on the days and at the times when other vending businesses have been prohibited on such block faces pursuant to any local law, ordinance, by-law, rule or regulation. Not more than two such specialized vending licensees shall be authorized pursuant to this subdivision per restricted block face, provided that no restriction shall apply to such licensees when vending on such block faces except as provided in paragraphs (e), (g), (h), (i), (j), (k) and (l) of subdivision seven of this section; and provided further no specialized vending licensee shall vend on any sidewalk unless such sidewalk has at least a ten-foot wide clear pedestrian path to be measured from the boundary of any private property to any obstructions in or on the sidewalk, or if there are no obstructions, to the curb. Where three or more specialized vending license holders attempt to vend simultaneously on the same block face, the two specialized vending license holders with the higher priority, as established pursuant to paragraph (b) of subdivision one of this section, shall have the exclusive right to vend on such block face, and any other specialized vending license holder vending on such block face shall be deemed to be vending without first having obtained a license.

4. Where exigent circumstances exist, a police officer of the city may order a specialized vending license holder to temporarily move from a location; for purposes of this subdivision, "exigent circumstances" shall mean an immediate threat to public safety caused by unusual and severe pedestrian congestion due to an impediment other than the specialized vending license holder, or by an accident, fire, parade, demonstration or other emergency situation. Nothing herein shall be

construed to limit such city's authority to place restrictions on vending in order to protect national security.

5. Specialized vending licenses to vend shall be accompanied by a photographic color coded identification which shall include the priority number established pursuant to paragraph (b) of subdivision one of this section, and shall be displayed by such specialized vending license holder.

6. Specialized vending licenses to vend shall not be loaned, leased, subcontracted or otherwise transferred except:

(a) Upon the death of the disabled veteran who held the license, the license shall be transferred by operation of law to the surviving spouse or, if there is no surviving spouse or the surviving spouse elects not to use the license, to the guardian of a minor child or children who may use the license for the support of the minor child or children. The license shall revert to the licensing agency for reassignment upon the death of the surviving spouse, if the surviving spouse remarries, when the youngest minor child reaches age eighteen, or when either the surviving spouse or guardian of the minor child or children elects not to use the license to vend in the city of New York or abandons the use of the license. Temporary periods when the spouse or guardian do not vend shall not cause the license to revert to the licensing agency in the absence of other evidence of an intent to abandon the use of the license; a period of six months or more in which the holder of the license does not vend shall create a rebuttable presumption that the spouse or guardian has abandoned the use of the license; and

(b) If the veteran who holds the license becomes totally and permanently disabled, the holder of the license may transfer it to the holder's spouse or, if the veteran has no spouse, to an adult child if the child assumes the duty to support the veteran. The license shall revert to the licensing agency when: (1) the veteran who held the license immediately before the transfer dies; (2) the spouse dies or divorces the veteran who held the license immediately before the transfer; or (3) the child to whom the license is transferred dies or renounces the obligation to support the veteran who held the license immediately before the transfer.

7. In the borough of Manhattan in the city of New York in the area bounded on the east by Second avenue, on the south by Thirtieth street, on the west by Ninth avenue and Columbus avenue and on the north by Sixty-fifth street, the following additional provisions shall apply to the issuance of specialized vending licenses to disabled veteran vendors pursuant to this section:

(a) such specialized vending license holders shall be prohibited from vending on Second avenue, Third avenue, Lexington avenue, Park avenue, Vanderbilt avenue, Madison avenue, Fifth avenue, Sixth avenue, Seventh avenue, Broadway, Eighth avenue, Amsterdam avenue, Ninth avenue, Columbus avenue, Thirty-fourth street between Lexington avenue and Seventh avenue, Forty-second street between Lexington avenue and Eighth avenue, Forty-ninth street between Lexington avenue and Seventh avenue, Fiftieth street between Lexington Avenue and Seventh avenue and Fifty-seventh street between Lexington Avenue and Seventh avenue;

(b) there shall be a limit of one authorized specialized vending license holder per block face;

(c) there shall be a limit of one hundred five specialized vending license holders authorized to vend within the area at any one time to be allocated as follows: sixty upon the effective date of the chapter of the laws of two thousand four which amended this paragraph, an additional fifteen commencing three months from the effective date of the chapter of the laws of two thousand four which amended this paragraph, and an additional ten in each of the succeeding three years commencing on January thirty-first, two thousand five;

(d) the rule set forth pursuant to paragraph (b) of subdivision one of this section shall establish, pursuant to the priority system, procedures for issuing specialized vending licenses pursuant to paragraph (c) of this subdivision; any dispute regarding the implementation of such procedure shall be subject to a prompt hearing before an administrative law judge with the New York state department of labor, provided that if such judge determines that a specialized vending license holder willfully violated such procedure, such specialized vending license holder shall be subject to a thirty day suspension of the specialized vending license to peddle in the area described in this subdivision; if any specialized vending license holder who has been

determined to have willfully violated such procedure is determined, in a subsequent proceeding, to have willfully violated such procedure at any time following the initial violation, such specialized vending license holder shall be subject to a one-year suspension of the specialized vending license to peddle in the area described in this subdivision; if such specialized vending license holder is determined for a third time to have willfully violated such procedure, such specialized vending license holder shall be subject to permanent revocation of the specialized vending license to peddle in the area described in this subdivision;

(e) specialized vending licensees under this section shall:

(i) permit regular inspections by the official in such city responsible for issuing specialized vending licenses or any authorized city agency of any goods, vehicle, pushcart, or stand used in the operation of the vending business, or any premises used by him or her for the storage or preparation of goods intended to be vended in such business; and

(ii) provide the official in such city responsible for issuing specialized vending licenses or other authorized officer of the city on a semi-annual basis, or more often if required by local law, by-law or regulation in such city, the address and name of the owners or the manufacturers, suppliers or distributors from whom the specialized vending licensee receives his or her goods and also the address at which the specialized vending licensee stores his or her goods or any vehicle, pushcart or stand used in the operation of the vending business;

(f) no specialized vending licensee shall vend on any sidewalk unless such sidewalk is at least ten feet in width;

(g) no vending vehicle, pushcart, stand, goods, or any other item related to the operation of a vending business shall touch, lean against or be affixed permanently or temporarily to any building or structure including, but not limited to, lamp posts, parking meters, mail boxes, traffic signal stanchions, fire hydrants, tree boxes, benches, bus shelters, refuse baskets or traffic barriers;

(h) no vending pushcart, stand or goods shall be located against display windows of fixed location businesses, nor shall they be within twenty feet from an entranceway to any commercial building or store, measured as a radius extending from the center of the doorway, except

where such doorways are within forty feet from each other, and in such case a vending pushcart, stand or goods shall be an equal distance from the center of the doorway of each such commercial business or store at the furthest possible distance on the sidewalk from the building line, and no vending pushcart, stand or goods shall be within sixty-five feet of the entranceway to any theater, movie house, indoor sports arena, or place of worship or school, measured as a radius extending from the center of such entranceway;

(i) no specialized vending licensee shall occupy more than eight linear feet of public space parallel to the curb in the operation of a vending business and, in addition, no specialized vending licensee operating any vending business on any sidewalk shall occupy more than three linear feet to be measured from the curb toward the property line;

(j) each specialized vending licensee who vends from a pushcart or stand in the roadway shall obey all traffic and parking laws, rules and regulations as now exist or as may be promulgated, but in no case shall a specialized vending licensee restrict the continued maintenance of a clear passageway for vehicles;

(k) no specialized vending licensee shall vend using the surface of the sidewalk, or a blanket or board placed immediately on the sidewalk or on top of a trash receptacle or cardboard boxes to display merchandise. No specialized vending licensee display may exceed five feet in height from ground level. The display may not be less than twenty-four inches above the sidewalk where the display surface is parallel to the sidewalk, and may not be less than twelve inches above the sidewalk where the display surface is vertical. Where a rack or other display structure is placed on top of or above a table or other base, the size of the base shall not be less than the size of the display structure placed thereon. Nothing shall be placed on the base so as to exceed the size limitations contained in this paragraph. No specialized vending licensee shall use any area other than that area immediately beneath the surface of the display space of the storage of items for sale; and

(l) no specialized vending licensee shall:

(i) vend within any bus stop or taxi stand or within ten feet of any driveway, any subway entrance or exit or any corner; provided, however, for the purpose of this subparagraph, ten feet from any corner shall be

measured from a point where the property line on the nearest intersecting block face, when extended, meets the curb, except when noncompliance with the ten foot limitation of this paragraph is due to the placement of an obstruction. In such case the specialized vending licensee may vend within ten feet; provided, however, that such licensee must vend as far as possible from the nearest such driveway, subway entrance or exit, or corner, and in no event within five feet of such driveway, subway entrance or exit, or corner;

(ii) vend on the median strip of a divided roadway unless such strip is intended for use as a pedestrian mall or plaza;

(iii) vend over any ventilation grill, cellar door, manhole, transformer vault, or subway access grating;

(iv) sell or offer for sale any item directly from any parked or double-parked motor vehicle;

(v) use electricity or oil or gasoline powered equipment devices or machinery of any kind; provided, however, that such specialized vending license holder shall be authorized to use self-contained battery packs not exceeding sixteen volts in total solely to provide lighting for their vending business;

(vi) vend within thirty feet of an entrance to a park or within a park under the jurisdiction of the agency in such city that is responsible for such city's parks and recreational areas unless written authorization therefor has been obtained from such agency;

(vii) vend within twenty feet of a sidewalk cafe;

(viii) vend within five feet from bus shelters, news stands, public telephones, or disabled access ramps; and

(ix) vend within ten feet from entrances or exits to buildings which are exclusively residential at street level.

7-a. In the borough of Manhattan in the city of New York, the following additional provisions shall apply to the issuance of specialized vending licenses to disabled veteran vendors pursuant to this section:

(a) such specialized vending license holders shall additionally be prohibited from vending on Broadway between Murray Street and Battery Place and on Park Row between Ann Street and Spruce Street;

(b) such specialized vending license holders shall additionally be

prohibited from vending 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.

8. Any dispute concerning the location of a vendor under subdivision three of this section shall be subject to a prompt hearing before an administrative law judge with the New York state department of labor, provided that if such judge determines that a specialized vending license holder willfully violated such procedure, such specialized vending license holder shall be subject to a thirty day suspension of the specialized vending license to peddle in the area and on the days and at the times described in subdivision three of this section; if any specialized vending license holder who has been determined to have willfully violated such procedure is determined, in a subsequent proceeding, to have willfully violated such procedure at any time following the initial violation, such specialized vending license holder shall be subject to a one-year suspension of the specialized vending license to peddle in the area and on the days and at the times described in subdivision three of this section; if such specialized vending license holder is determined for a third time to have willfully violated such procedure, such specialized vending license holder shall be subject to permanent revocation of the specialized vending license to peddle in the area and on the days and at the times described in subdivision three of this section; other disputes arising under this section, other than those disputes arising under paragraph (d) of subdivision seven of this section, shall be adjudicated in accordance with local laws, ordinances, by-laws or regulations concerning general vending.

9. There shall be established within the agency responsible for issuing specialized vending licenses in such city an advisory committee consisting of up to six disabled veteran vendors who shall consult with the official designated to issue specialized vending licenses under this section concerning the process by which specialized vending licenses are issued and the restrictions herein are enforced. The members of such committee shall be elected on or before August first, nineteen hundred ninety-eight by a majority of the disabled veteran vendors holding

general vending licenses in such city as of August fifteenth, nineteen hundred ninety-eight. The election of such members shall be by an election which shall be conducted by the state department of labor; provided, however, that if the majority of such disabled veteran vendors holding general vendor licenses in such city as of June fifteenth, nineteen hundred ninety-eight fail to select the members of such committee on or before August second, nineteen hundred ninety-eight, the agency responsible for issuing specialized vending licenses in such city may still establish procedures for issuing specialized vending licenses pursuant to this section no later than October first, nineteen hundred ninety-eight. In the event a committee member resigns or is unable to fulfill his or her duties, such member will be replaced by someone from the ranks of the disabled veteran vendors by consensus of veterans on the existing committee.

10. The agency responsible for issuing specialized vending licenses shall publish educational materials describing the provisions of state and local laws, rules and regulations governing disabled veteran vending in the city of New York and enforcement thereof for distribution to the public and appropriate city enforcement agencies.

11. Where the city of New York authorizes general vending, through permit, auction, lottery or any other method subsequent to the effective date of this subdivision other than temporary general vendor licenses issued in connection with street fairs on any block face, street or avenue specified in paragraph (a) of subdivision seven or subdivision seven-a of this section, the prohibitions and restrictions in this section on vending by specialized vending licensees shall not apply on such block face, street or avenue and the number of specialized vending licensees authorized per block face, street or avenue shall, at a minimum, be equal to the greatest number of any single type of other vendor including but not limited to food, general, or vendors of written matter and others similarly situated on such block face, street or avenue.

ARTICLE 4-A

ITINERANT VENDORS

Section 37. Definitions and application.

38. Prohibited sales.

39. Violations and penalties.

§ 37. Definitions and application.

1. For the purposes of this article, the term "itinerant vendor" shall mean a merchant, other than a merchant with an established retail store, who transports to a building, vacant lot, or other location, including a location where a fee is charged for the privilege of offering or displaying goods for sale and/or where a fee is charged to prospective buyers for admission to the area where goods are offered or displayed for sale, an inventory of goods for the purpose of offering or displaying such goods for sale, but shall not include persons who sell by sample, catalog or brochure for future delivery, or who make sale presentations pursuant to a prior invitation issued by the owner or legal occupant.

2. This article shall not be construed to pre-empt any municipality from adopting a local law, rules or regulations containing more stringent penalties than those provided in this article.

§ 38. Prohibited sales. No itinerant vendor, except for an authorized manufacturer's representative or authorized distributor, shall offer for sale any of the following items:

1. Food manufactured and packaged for sale for consumption by a child under the age of two years; or

2. Drugs as defined in section three thousand three hundred two of the public health law.

§ 39. Violations and penalties. 1. The provisions of this article may

be enforced by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawfully designated enforcement officer of a municipality or local government, and all monies collected thereunder shall be retained by such municipality or local government.

2. Under such procedures as may be established by a municipality or local government, whenever a violation of this article has occurred, the enforcement agency may impose a civil penalty of not more than one hundred dollars for each violation.

3. Each item offered for sale or sold in violation of section thirty-eight of this article shall constitute a separate violation.

ARTICLE 5

COLLATERAL LOAN BROKERS

Section 40. Licenses.

- 41. Licenses, how obtained; penalty for carrying on business without license.
- 41-a. Continuing education requirement.
- 42. Action on bond.
- 43. Certain entries to be made in book.
- 44. Memorandum to be given.
- 45. Book to be open to inspection.
- 46. Rate of interest.
- 47. Second-hand business.
- 47-a. Collateral loan broker dealing with a child.
- 48. Sale of unclaimed pledge by collateral loan broker.
- 49. Notice of such sale; report.
- 50. Disposition of proceeds.
- 51. Violation of this article.
- 52. Term "collateral loan broker," how to be construed.
- 53. Registration statements.
- 54. Violation of article.
- 55. Rules and regulations.

§ 40. Licenses. No person, corporation, partnership or firm shall hereafter carry on the business of collateral loan broker, without having first obtained from the mayor of the city or licensing authority of the local governing body where the business is to be carried on a license authorizing such person to carry on the same in the manner and upon the conditions stated in the succeeding sections of this article. In the city of New York such license may be issued by the commissioner of consumer affairs. Nothing herein shall be construed to prohibit a collateral loan broker from employing the title pawnbroker in connection with the collateral loan business. The title pawnbroker shall be used exclusively by a collateral loan broker.

§ 41. Licenses, how obtained; penalty for carrying on business without license. The mayor or such local licensing authority may from time to time grant, under his or her hand and the official seal of his or her office, to such citizens, or noncitizens lawfully admitted for permanent residence in the United States, as he or she shall deem proper and who shall produce to him satisfactory evidence of their good character, a license authorizing such person to carry on the business of a collateral loan broker, which license shall designate the house in which such person shall carry on said business, and no person, corporation, partnership or firm shall carry on the business of a collateral loan broker without being duly licensed, nor in any other house than the one designated in said license, under a penalty of one hundred dollars for each day he or they shall exercise or carry on said business without such license or at any other house than the one so designated. Any person receiving such license shall pay therefor the sum of five hundred dollars for the use of the city yearly where such business is to be conducted in a city with a population of more than one million persons, and where the business is to be conducted elsewhere the fee for such license shall not exceed two hundred fifty dollars yearly, and every such license shall expire one year from the date thereof, and may be renewed on application to the mayor or local licensing authority each and every year on payment of the same sum and upon performance of the other conditions herein contained. Every person so licensed shall, at

the time of receiving such license, file with the mayor or such local licensing authority granting the same a bond to the local authorities, to be executed by the person so licensed and by two responsible sureties, in the penal sum of ten thousand dollars, to be approved by such mayor or local licensing authority, which bond shall be conditioned for the faithful performance of the duties and obligations pertaining to the business so licensed, and the mayor or such local licensing authority shall have full power and authority to revoke such license for cause.

§ 41-a. Continuing education requirement. 1. Every person licensed as a collateral loan broker pursuant to this article shall, between June thirtieth, two thousand seven and June twenty-ninth, two thousand nine, and during every two year period thereafter, complete not less than twelve hours of continuing education instruction offered in a course or program approved by any mayor or licensing authority which licenses collateral loan brokers pursuant to this article. In cities having a population of one million or more, the commissioner of consumer affairs shall, on or before January thirty-first, two thousand seven, approve not less than one twelve hour continuing education instruction course or program for collateral loan brokers and not less than one eight hour continuing education instruction course or program for managers of collateral loan broker businesses, as required by subdivision two of this section. Every such course or program shall be made available through at least one distance learning methodology, such as written materials and questionnaires, internet courses or other electronic means and shall also be made available through seminars or workshops, commencing on or before June thirtieth, two thousand seven. Every mayor and licensing authority shall consult with one or more trade associations representing collateral loan brokers prior to approving any continuing education instruction course or program pursuant to this section.

2. Every collateral loan broker which employs more than three employees, shall designate one individual as the manager of the collateral loan broker business. Upon such designation the mayor or

licensing authority, which licenses the collateral loan broker, shall be provided notice by such broker of the individual who has been designated as manager of the business. Every individual designated as the manager of a collateral loan broker business shall, between June thirtieth, two thousand seven and June twenty-ninth, two thousand nine, and during every two year period thereafter, complete not less than eight hours of continuing education instruction for such managers offered in a course or program approved by any mayor or licensing authority which licenses collateral loan brokers pursuant to this article.

3. Each collateral loan broker shall designate a manager for each location at which such broker conducts business and employs more than three employees and every such manager shall comply with the provisions of subdivision two of this section.

4. Each approved provider of continuing education instruction pursuant to this section and each collateral loan broker shall maintain the records of the provision or receipts of such instruction for not less than four years.

5. The failure to comply with the provisions of this section shall be grounds for the suspension, revocation or refusal to issue any license issued pursuant to this article.

§ 42. Action on bond. If any person shall be aggrieved by the misconduct of any such licensed collateral loan broker, and shall recover judgment against him therefor, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon said judgment, maintain an action in his own name upon the bond of said collateral loan broker in any court having jurisdiction of the amount claimed, provided such court shall, upon application made for the purpose, grant such leave to prosecute.

§ 43. Certain entries to be made in book. Every such collateral loan broker shall keep a book in which shall be fairly written, at the time

of such loan, an account and description of the goods, articles or things pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on such loan, the name and residence of the person pawning or pledging the said goods, articles or things and a notation of whether the pledgor claims to be the owner, consignee or agent of the owner.

§ 44. Memorandum to be given. 1. Every such collateral loan broker shall at the time of each loan deliver to the person pawning or pledging any goods, article or thing, a memorandum or note signed by him containing the substance of the entry required to be made in his book by the last preceding section. Notwithstanding any general or special statutes, local laws and ordinances to the contrary, no collateral loan broker shall ask, demand or receive a service charge greater than ten dollars for loans equal to or greater than five hundred dollars, or seven dollars for loans equal to or greater than one hundred dollars but less than five hundred dollars for any such memorandum or note, provided that for loans less than one hundred dollars a service charge not greater than four dollars may be imposed. The holder of such memorandum or note shall be presumed to be the person entitled to redeem the pledge and the collateral loan broker shall deliver such article to the person so presenting such memorandum or note on payment of principal and interest. Should such ticket be lost or mislaid the pawnor shall at once apply to the collateral loan broker, in which case it shall be the duty of the collateral loan broker to permit such person to examine his books, and on finding the entry for said ticket, note or memorandum so lost and upon his giving to the collateral loan broker an exact description of the article pawned the collateral loan broker shall issue a second or stop ticket for the same, provided such person shall furnish to the collateral loan broker a lost instrument bond in an amount equal to the fair market value of the pledge or, in the alternative, pay a lost ticket charge of one percent of the amount of the loan, or five dollars, whichever is greater. In case such pawnor neglects to so apply and examine said books and receive such memorandum or note in the manner above stated, the collateral loan broker will be bound to deliver the pledge to any person producing such ticket for the redemption thereof.

This article is not to be construed as in any manner limiting or affecting such collateral loan broker's common law liability in cases where goods are stolen or other legal defects of title exist in the pledgor.

2. In addition to the information required to be furnished pursuant to subdivision one of this section a pawn ticket shall contain the following notice:

NOTICE OF ELECTION

(a) The holder of this ticket may redeem the article pledged at any time prior to sale at private sale or public auction first following default. The article pledged may not be sold at private sale or auction until it has remained four months in the collateral loan broker's possession.

(b) If the article pledged is sold at private sale or public auction, money, if any, in excess of the amount of the loan, interest, lawful auctioneer's commission, if applicable, lawful extra care charges and the expenses of the advertisement of sale, if applicable, shall be paid to the holder of the pawn ticket.

(c) If the collateral loan broker shall purchase the article pledged at auction the holder shall have an additional ten days to redeem the article pledged by paying to the collateral loan broker the amount of the loan, interest, lawful auctioneer's commission, lawful extra care charges and the expense of the advertisement of sale.

(d) A holder may sell this ticket to a third party at any time prior to private sale or auction, or he may sell this ticket to the collateral loan broker any time ninety or more days after the article was pledged.

(e) If this ticket is sold to a collateral loan broker the holder may redeem the ticket within ten days after the sale by paying to the collateral loan broker the amount paid for the ticket.

3. Notwithstanding any general, special or local law or ordinance to the contrary, if a collateral loan broker in good faith and without knowledge extends credit on a loan, the collateral for which was entrusted to the pledgor on consignment or was entrusted by a merchant dealing in goods of the kind pledged to the pledgor who was a merchant dealing in goods of the kind pledged, the collateral loan broker shall

be required to relinquish the collateral to the legal owner provided the amount of the loan and interest due is paid.

§ 45. Book to be open to inspection. The said book and any and all other books and records regularly kept by such collateral loan broker shall at all reasonable times be open to the inspection of the attorney general, the state comptroller, the mayor or local licensing authority, all judges of the criminal courts, the superintendent of police, police inspectors, captains of police and police justices of such cities, or any or either of them, or of any person who shall be duly authorized in writing for that purpose by any or either of them, and who shall exhibit such written authority to such collateral loan broker. The mayor or the licensing authority of any local governing body, the state comptroller, the attorney general and any person duly authorized by them shall have the power to administer oaths and to examine under oath any such collateral loan broker or any officer, or agent, of such collateral loan broker and any other person having custody or control of such books and records. Such books and records shall be retained in the possession of the collateral loan broker, in good condition and in an orderly fashion for at least a period of six years.

§ 46. Rate of interest. Notwithstanding any general or special statutes, local laws and ordinances to the contrary, no collateral loan broker shall ask, demand or receive any greater rate of interest than four per centum per month, or any fraction of a month, and a notice containing a list of such rates of interest as herein provided and in accordance with the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended shall be conspicuously displayed within the premises of such collateral loan broker. A minimum interest charge of twenty-five cents per month may be made on any loan.

No collateral loan broker shall receive or be entitled to any interest or charges as provided by this article on any loan for any period of time exceeding fifteen months from the date of the making of such loan,

provided however that where a loan is extended at the direct request of the pledgor, the collateral loan broker may receive and be entitled to any interest or charges provided by this article on such loan for any period of time not to exceed fifteen months from the date of such extension.

§ 47. Second-hand business. A collateral loan broker may purchase items of personal property in accordance with this section, provided however that a collateral loan broker shall not receive in pawn, as a pledge or as a purchase any instrument or weapon mentioned in section 265.05 of the penal law. A collateral loan broker may purchase back any pledge offered for sale by him or her at public auction and may thereafter sell such pledge if the pledgor fails to redeem within ten days or may purchase any pledge offered for sale by any other collateral loan broker at private sale or public auction. Nothing in this article shall prohibit a collateral loan broker from purchasing a pawn ticket from a pledgor, his or her heirs or assigns upon the request of such pledgor, heir or assign, ninety or more days after the item was pawned. If the pawn ticket is sold to a collateral loan broker the pledgor, his or her heirs or assigns shall be entitled to redeem said ticket within ten days thereafter by tendering to the collateral loan broker the amount paid by the collateral loan broker for the ticket. Nothing shall prohibit the sale of new or second-hand property upon the premises where such collateral loan business is conducted, nor the purchase of new or second-hand property, except as otherwise expressly prohibited herein. A person selling any item to a collateral loan broker, upon the premises of a collateral loan broker, may cancel the transaction within five business days, provided that the seller tenders the full purchase price, together with a cancellation fee not to exceed ten dollars for sales equal to or greater than five hundred dollars, seven dollars for sales equal to or greater than one hundred dollars but less than five hundred dollars, or four dollars for sales less than one hundred dollars. A person selling jewelry, watches, precious stones, precious metals or coins to a collateral loan broker shall be afforded the option of converting the sale to a loan, provided the option is exercised within fourteen days from the date of the sale (the loan shall be in the

principal amount of not less than eighty percent of the sale price).

A collateral loan broker engaged in the purchase or sale of second-hand articles, other than pledges or pawn tickets, shall comply with local laws or regulations governing dealers in second-hand articles. A collateral loan broker engaged in the purchase of second-hand articles shall provide the seller a receipt setting forth the item or items purchased and the purchase price for each item. Additionally, the receipt shall include a notice advising the seller of the option to cancel the transaction within five business days or convert the sale of jewelry, watches, precious stones, precious metals and coins to a loan within fourteen days of the sale in accordance with this section.

A collateral loan broker purchasing articles from the general public shall display in a conspicuous place, in his or her shop, a sign stating:

" PURSUANT TO ARTICLE 5 OF THE NEW YORK STATE GENERAL BUSINESS LAW A COLLATERAL LOAN BROKER IS AUTHORIZED TO PROVIDE LOANS ON ITEMS PLEDGED OR PURCHASE ITEMS OFFERED FOR SALE. YOU HAVE THE RIGHT TO USE AN ITEM AS COLLATERAL FOR A LOAN OR SELL THE ITEM IN ACCORDANCE WITH STATE AND LOCAL LAW. ALL SALES MAY BE CANCELLED WITHIN FIVE BUSINESS DAYS IN ACCORDANCE WITH SAID ARTICLE 5. A SALE OF JEWELRY, WATCHES, PRECIOUS STONES, PRECIOUS METALS OR COINS CAN BE CONVERTED TO A LOAN WITHIN 14 DAYS FROM THE DATE OF THE SALE."

Such sign shall be made of a durable material, with letters being at least one inch high and have a stroke of at least one-quarter inch. The letters and background shall be of contrasting colors.

§ 47-a. Collateral loan broker dealing with a child. No collateral loan broker or person in the employ of a collateral loan broker shall receive or purchase any goods, chattels, wares or merchandise from, or make any loan or advance or permit to be loaned or advanced to any child, actually or apparently under the age of eighteen years any money, or in any manner directly or indirectly receive any goods, chattels,

wares or merchandise from any such child in pledge for loans made or to be made to it or to any other person or otherwise howsoever. It shall be no defense to a prosecution for a violation of this section, that in the transaction upon which the prosecution is based the child acted as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another.

§ 48. Sale of unclaimed pledge by collateral loan broker. 1. No pawn or pledge made with a collateral loan broker shall be sold until the same shall have remained four months in his possession.

2. All sales of defaulted pledges shall be public or private with each such pledge being individually offered for sale.

(a) If at public sale, then it shall be by public auction, and shall be conducted by licensed auctioneers within the state of New York. All bids for the purchase of any defaulted pledge offered at such sale shall be oral, and expressed in dollars and cents without the use of any special signs, signals or motions, if less than eleven people attend such sale.

(b) A private sale may be at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable and conducted in conformity with applicable uniform commercial code provisions regarding the disposal of collateral after default.

(c) In addition to any other provision contained in this article and article twenty-two-A of this chapter, section three hundred forty-nine of this chapter shall apply to a violation of the private and public sale provisions of this article.

§ 49. Notice of such sale; report. 1. No pledge shall be sold unless written or printed notice of intention to sell with a statement of the article or articles to be sold has been first mailed by letter addressed to the pledgor at the address given at the time of pledging at least thirty days prior to the date of sale. If the sale shall be by public auction, then notice of every such sale shall be published for at least

six days previous thereto, in at least two of the daily newspapers printed in the city where the business shall be carried on, and also in two daily newspapers of the city where the sale is to take place and to be designated by said mayor, and such notice shall specify the time and place at which such sale is to take place and the name of the auctioneers by whom the same is to be conducted together with a statement of the class of pledges to be sold and the inclusive dates and numbers of the pawn tickets of the pledges to be sold. If the pledge, at such sale, shall be purchased back by the collateral loan broker, the pledgor shall be entitled to redeem same within ten days thereafter by tendering to the collateral loan broker the amount of the loan with the interest due thereon, the amount of the auctioneer's lawful commission, lawful extra care charges, and the expense of the advertisement of the sale.

2. Any collateral loan broker who sells defaulted pledges at public auction, pursuant to this article, shall file with the office of the local governing body issuing such license within thirty days after such sale, a verified report setting forth the name and address of the collateral loan broker, the date when and place where such sale was held, the name and address of the auctioneer that conducted such sale and shall include a schedule of each of the defaulted pledges offered at such sale, together with their pledge numbers, the amount received for each pledge and a statement that each of the pledges so listed were delivered over to the auctioneer and actually offered for sale at such auction, and in the event the collateral loan broker, during the course of such sale purchases back any such pledge, a statement setting forth which pledges were purchased back by the collateral loan broker. An affidavit of publication made by the newspaper in which the notice of each such sale was published, as provided by section fifty of this article, shall be annexed to every report filed pursuant to the provisions of this section.

§ 50. Disposition of proceeds. 1. The surplus money, if any, arising from any such sale, after deducting the amount of the loan, the interest then due on the same, the auctioneer's commissions, if applicable,

lawful extra care charges and the expense of the advertisement of the sale, if applicable, shall be paid over by the collateral loan broker to the person who would be entitled to redeem the pledge in case no such sale had taken place.

2. In the event there is any surplus money due to a pledgor after such sale, the collateral loan broker shall give the pledgor written notice thereof, by mailing to such pledgor, directed to him at the address given at the time of pledging or in the event such pledgor has notified the collateral loan broker, in writing, of a change of address, to such new address, within thirty days after such sale, a notice which shall state the name and address of the collateral loan broker, the number of the pledge, the date of sale and the amount of any surplus. In the event any person entitled to such surplus fails to make claim for the same within one year from the date of such sale, such surplus shall be paid over, by the collateral loan broker, to the state comptroller in accordance with the provisions of section one thousand three hundred one of the abandoned property law.

§ 51. Violation of this article. The mayor or local licensing authority so licensing such collateral loan broker shall have full power and authority after a hearing to impose fines and penalties of not less than twenty-five dollars nor more than one hundred dollars upon persons offending against any of the foregoing provisions of this article for each and every offense, excepting sections forty and forty-one, and may also suspend or revoke the license of the collateral loan broker willfully violating any of the aforesaid provisions.

§ 52. Term "collateral loan broker", how to be construed. The term "collateral loan broker" contained in this article shall be construed so as to include any person, partnership, or corporation: (1) loaning money on deposit or pledge of personal property, other than securities or printed evidences of indebtedness; or (2) dealing in the purchasing of personal property on condition of selling back at a stipulated price; or (3) designated or doing business as furniture storage warehousemen, and

loaning and advancing money upon goods, wares or merchandise pledged or deposited as collateral security.

§ 53. Registration statements. After September first, nineteen hundred sixty, no person, corporation, partnership, firm or association shall carry on the business of collateral loan broker within the state of New York unless and until such collateral loan broker shall have caused to be filed in the office of the state comptroller upon forms prescribed by him a statement, duly verified as hereinafter provided, to be known as "Collateral Loan Broker's Registration Statement" containing:

a. The name of such collateral loan broker.

b. The address of the principal office of such collateral loan broker, if any, wherever situated, and the address or addresses of the principal office of such collateral loan broker within this state, if any.

c. If such collateral loan broker be a partnership, the names, residences and business addresses of the partners, including special or limited partners, and of all other individuals participating as principals in the profits of such business, specifying as to each the nature of his relation to such business.

d. If such collateral loan broker be other than an individual or partnership, the name of the state where incorporated or organized and the names, residences and business addresses of its principal officers, wherever located, and all its officers in this state, specifying as to each the nature of his relation to such business.

e. The date on which such collateral loan broker acquired a license and the name and location of the local governing body under whose hand and seal or authority said license was obtained under the provisions of this article.

f. In the event that after any collateral loan broker shall have filed a statement as above, any change shall take place in the personnel of

the partners, principals, officers or in the location of the principal, such collateral loan broker shall file a statement with the state comptroller to be known as a "Collateral Loan Broker's Supplemental Registration Statement", duly verified as hereinafter provided, setting forth in full the details thereof.

g. Each such collateral loan broker statement and each collateral loan broker supplemental statement shall be verified by the collateral loan broker, or if such collateral loan broker be a partnership, by a general partner thereof, or, if such collateral loan broker be other than an individual or partnership, by a principal officer thereof, and shall state that the facts therein stated are true to his own knowledge; providing that in case of a statement or supplemental statement by a collateral loan broker other than an individual the person verifying the same may state on information and belief the facts therein included with respect to any other individual, if such collateral loan broker statement or supplemental statement shall have attached thereto an affidavit of such other individual stating that all facts contained in said collateral loan broker statement or supplemental statement with respect to him are true.

h. The state comptroller may in his discretion adopt forms for the use of collateral loan brokers for filing any statement with his department pursuant to the provisions of this section and furnish such forms to collateral loan brokers without charge or fee therefor. The state comptroller shall collect the following fees:

For filing each "Collateral Loan Broker's Registration Statement", five dollars; for filing each "Collateral Loan Broker's Supplemental Statement", two dollars and fifty cents.

The fees herein enumerated shall be payable at the time of filing and no filing shall be deemed effective within the meaning of this section until such fees have been paid.

i. Whenever a collateral loan broker shall have filed any registration statement or supplemental registration statement required to be filed

under the provisions of this section or shall have prepared in such registration statement or supplemental registration statement and have forwarded the same together with the fees required by subdivision h of this section, postage prepaid and properly addressed, to the office of the state comptroller in Albany, such collateral loan broker, as to the filing of such collateral loan broker's statement or supplemental registration statement shall be deemed to have complied with the requirements of this section.

§ 54. Violation of article. Any person, partnership, corporation, company or association who willfully violates any of the provisions of this article shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or imprisonment for not more than one year or both.

§ 55. Rules and regulations. The state comptroller is hereby authorized and empowered to require the keeping of such additional books, records, entries and reports as he may deem necessary and to determine the amount of the surplus payable as abandoned property in the event of non-compliance with the provisions of this article.

ARTICLE 5-A

COMMERCIAL INSTALLMENT SALES

Section 56. Limitation on refunds under commercial installment sales agreements.

§ 56. Limitation on refunds under commercial installment sales agreements. An agreement for the sale of equipment, machinery or the accessories or parts thereto to a commercial or business enterprise for its use or for the purpose of resale which provides for the financing of such purchase by an installment sale provision shall provide that any refund due as a result of an early termination of the agreement shall be determined according to a generally accepted actuarial method.

ARTICLE 6
JUNK DEALERS

Section 60. Definitions.

60-a. Licenses.

61. Persons not entitled to license.

62. Statement required from persons selling certain property.

63. Certain property to be kept in separate piles.

63-a. Purchasing property from a child.

64. Penalty.

§ 60. Definitions. As used in this article:

1. "Junk metal" means any product made of steel, copper, copper alloy, brass, aluminum, or aluminum alloy that is readily used or useable by a public utility, railroad, county, city or state highway department, public or private school, or an institution of higher education or which has an established market for resale to scrap processors as defined in section sixty-nine-e of this chapter.

2. "Junk dealer" means any individual, firm, corporation, limited liability company, or partnership engaged in the business of purchasing and reselling valuable metal either at a permanently established place of business or in connection with a business of an itinerant nature, including junk shops, junk yards, junk stores, auto wreckers, salvage yards, collectors of or dealers in junk and junk cars or trucks, but shall not include any individual, firm, corporation, limited liability company, or partnership duly licensed as a scrap processor as provided in article six-c of this chapter.

3. "Purchase" means acquiring a junk metal product or products by a junk dealer for a consideration, but does not include purchases between scrap processors.

§ 60-a. Licenses. It shall be unlawful for any person, association, partnership or corporation to engage in the business of buying or selling old metal, which business is herein designated junk business, and which person, association, partnership or corporation is herein designated junk dealer, unless such junk dealer shall have complied with the provisions of this article and obtained a license so to do from the mayor of the city, if the principal place of business of such junk dealer is in a city, or the mayor of the village if such place of business is in an incorporated village, otherwise from the supervisor of the town in which such place of business is located; for which license shall be paid such mayor or supervisor for the use of such city, village or town, the sum of five dollars, which license shall expire on June thirtieth of each year. The provisions of this article shall not apply to any person, association, partnership or corporation duly licensed and engaged in the business of scrap processing as provided in article six-C hereof.

§ 61. Persons not entitled to license. No person, association, partnership or corporation shall be entitled to or receive such license who or which, and in case of a partnership or association any member of which, has been since January first, nineteen hundred and three, or who or which shall hereafter be convicted of larceny or knowingly receiving stolen property, or of a violation of this article.

§ 62. Statement required from persons selling certain property. On purchasing any pig or pigs of metal, bronze or brass castings or parts thereof, sprues or gates or parts thereof, copper wire or brass car journals, or metal beer kegs, such junk dealer shall cause to be subscribed by the person from whom purchased a statement as to when, where and from whom he or she obtained such property, also his or her identity as verified by a government issued identification card, age, residence by city, village or town, and the street and number thereof, if any, the driver's license number or information from a government issued identification card, if any, of such person, and otherwise such description as will reasonably locate the same, his or her occupation

and name of his or her employer and place of employment or business, which statement the junk dealer shall forthwith file in the office of the chief of police of the city or village in which the purchase was made, if made in a city or incorporated village, and otherwise in the office of the sheriff of the county in which made. The junk metal dealer shall also make and retain a copy of the government issued photographic identification card used to verify the identity of the person from whom the junk metal was purchased and shall retain this copy in a separate book or register for two years from the date of purchase of the junk metal and include an additional copy of this identification with the information required to be transmitted to the chief of police or sheriff pursuant to this section.

§ 63. Certain property to be kept in separate piles. Every junk dealer shall on purchasing any of the property described in the last section place and keep each separate purchase in a separate and distinct pile, bundle or package, in the usual place of business of such junk dealer, without removing, melting, cutting or destroying any article thereof, for a period of five days immediately succeeding such purchase, on which package, bundle or pile shall be placed and kept by such dealer a tag bearing the name and residence of the seller, with the date, hour and place of purchase, and the weight thereof.

§ 63-a. Purchasing property from a child. No owner, keeper or proprietor of a junk shop, junk cart or other vehicle or boat or vessel used for the collection of junk, or any person in the employ of such owner, keeper, or proprietor, or any collector of junk, shall receive or purchase any goods, chattels, wares or merchandise from any child under the age of sixteen years. It shall be no defense to a prosecution for a violation of this section, that in the transaction upon which the prosecution is based the child acted as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another.

§ 64. Penalty. Each violation of this article, either by the junk dealer, the agent or servant thereof, and each false statement made in or on any statement or tag above mentioned shall be a misdemeanor and the person convicted shall, in addition to other penalties imposed, forfeit his license to do business. But nothing herein contained shall apply to cities of the first class.

ARTICLE 6-A

CONVICT MADE GOODS

Section 69. Sale of incarcerated individual made goods.

§ 69. Sale of incarcerated individual made goods. No goods, wares, or merchandise, manufactured, produced or mined wholly or in part by incarcerated individuals, except incarcerated individuals or persons on parole, probation, or release, shall be sold in this state to any person, firm, association or corporation except that nothing in this section shall be construed to forbid the sale of such goods produced in the correctional facilities of this state to the state, the government of the United States or to any state of the United States, or any political subdivision thereof, or for any public institution owned or managed and controlled by the state, or any political subdivision thereof, as provided in section one hundred eighty-four of the correction law, or any public corporation or eleemosynary association or corporation funded in whole or in part by any federal, state or local funds, or to forbid the sale, subject to the rules and regulations of the head of the department or other like governmental authority having jurisdiction, of any product resulting from occupational therapy within any penal or correctional institution, as provided in section one hundred ninety-seven of the correction law.

Nothing in this section shall be construed to forbid the sale of parts and components produced by incarcerated individual labor in correctional industry programs of the government of the United States or any state of the United States, or any political subdivision thereof, to the department of corrections and community supervision's division of

correctional industries for use in its manufacturing operations.

A violation of the provisions of this section shall constitute a misdemeanor.

ARTICLE 6-B

SALE OF GOODS PRODUCED WITH CHILD LABOR

Section 69-a. Sale of goods produced with child labor.

69-b. Definitions.

69-c. Violations.

69-d. Saving clause with respect to other laws.

§ 69-a. Sale of goods produced with child labor. No goods, wares, or merchandise, manufactured or produced in or for a factory or by industrial homework or produced or mined in a mine or quarry in this or any other state, or in any territory, dependency or possession of the United States, on or after the date this article takes effect, wholly or in part through the use of child labor shall be sold in this state to any person, firm, association or corporation, provided that the seller shall have notice that such goods, wares or merchandise were so manufactured, produced or mined.

§ 69-b. Definitions. For the purposes of this article:

1. The term "child labor" shall be defined as employment of persons under sixteen years of age.

2. The term "factory" shall be defined as provided in the first sentence of paragraph nine of section two of the labor law. Goods, wares and merchandise shall be deemed to be manufactured or produced for a factory if labor, other than that incident to agriculture or farming, be done for a factory at any place upon its work or upon any of the materials entering into its product, whether under contract or arrangement with any person in charge of or connected with such factory

directly or indirectly through one or more contractors or other third persons.

3. The term "industrial home work" shall be defined as provided in section three hundred fifty of the labor law.

4. The term "employment" shall be defined as permitting or suffering another to work.

5. The term "notice" shall be deemed to include, but not to be confined to, information derived from a label affixed to goods, wares or merchandise or to any package, container, crate or unit of rolling stock in which the same are contained.

§ 69-c. Violations. A violation of the provisions of this article shall constitute a misdemeanor.

§ 69-d. Saving clause with respect to other laws. Nothing in this article shall be deemed to modify, alter, repeal or amend any provision affecting terms, requirements, conditions, hours or wages of employment, or any definitions applicable thereto, contained in the labor law, the education law or any other law, general, special or local.

ARTICLE 6-C **SCRAP PROCESSORS**

Section 69-e. Definitions.

69-f. License.

69-g. Records.

69-h. Penalty.

§ 69-e. Definitions. 1. "Scrap metal processing facility" shall mean an establishment engaged primarily in the purchase, processing and shipment of ferrous and/or non-ferrous scrap, the end product of which

is the production of raw material for remelting purposes for steel mills, foundaries, smelters, refiners, and similar users.

2. "Scrap processor" shall mean any person, association, partnership or corporation operating and maintaining a "scrap metal processing facility".

§ 69-f. License. It shall be unlawful for any person, association, partnership or corporation to engage in business as a scrap processor unless such scrap processor shall have complied with the provisions of this article and obtained a license to do so from the mayor of the city, if the place of business of such scrap processor is in a city, or the mayor of the village if the place of business is in an incorporated village, otherwise from the supervisor of the town in which such place of business is located, or from the licensing authority of any such municipality; for which license shall be paid such mayor or supervisor or licensing authority for the use of such city, village, or town the sum of seventy-five dollars if such place of business is the principal place of business of such scrap processor in this state, otherwise the sum of fifty dollars, which license shall expire on June thirtieth of each year.

§ 69-g. Records. 1. Such scrap processor shall record (i) each purchase of any pig or pigs of metal, bronze or brass castings or parts thereof, sprues or gates or parts thereof, utility wire or brass car journals, or of metal beer kegs, and (ii) each purchase of iron, steel and/or nonferrous scrap for a price of fifty dollars or more, and preserve such record for a period of three years; which record shall show the date of purchase, name of seller, his residence address by street, number, city, village or town, the driver's license number or information from a government issued photographic identification card, if any, of such person, or by such description as will reasonably locate the seller, the type and quantity of such purchase; and the scrap processor shall cause such record to be signed by the seller or his agent. It shall be unlawful for any seller to refuse to furnish such

information or to furnish incorrect or incomplete information. Such scrap processor shall also make and retain a copy of the government issued photographic identification card used to verify the identity of the person from whom the scrap metal was purchased and shall retain this copy in a separate book, register or electronic archive for two years from the date of purchase.

2. Such records shall be available for inspection by the police department of the state or the municipality in which the establishment is located.

§ 69-h. Penalty. 1. Each violation of this article by a scrap processor shall be a violation subject to a fine of not more than two hundred dollars, unless such violation shall be wilful, in which event it shall be a misdemeanor except, however, the scrap processor shall not be liable for any violation of this article by a seller, his agent, or a purported seller or agent.

2. Each violation of this article by a seller or his agent shall be a misdemeanor.

ARTICLE 6-D

BUSINESS OF INSTALLING SECURITY OR FIRE ALARM SYSTEMS

Section 69-l. Definitions.

69-m. License required.

69-n. Powers of the secretary of state.

69-o. License after examination; application.

69-p. License without examination.

69-pp. Licensed master electrician waiver.

69-q. Licenses; display; renewal; duplicates.

69-r. Fees.

69-s. Suspension and revocation of licenses.

69-ss. Revocation, suspension, reprimands, fines; unlicensed activities.

69-t. Hearing on charges; decision.

- 69-u. Judicial review.
- 69-v. Violations and penalties.
- 69-vv. Civil penalties.
- 69-vvv. Fines for false alarms.
- 69-w. Official acts used as evidence.
- 69-x. Disposition of moneys derived from operation of article.
- 69-y. Separability clause.
- 69-z. Applicability.

§ 69-l. Definitions. As used in this article, unless the context requires otherwise:

1. "Department" means the department of state.
2. "Person" means an individual, firm, company, partnership, limited liability company or corporation.
3. "Licensee" means a person as herein defined licensed to engage in the business of installing, servicing or maintaining security or fire alarm systems under this article.
4. "To engage in the business of installing, servicing or maintaining security or fire alarm systems" means and refers to a person who holds himself out directly or indirectly, as being able, or who offers or undertakes, by any means or method, to install, service or maintain a security or fire alarm system to detect intrusion, break-in, movement, sound or fire.
5. "Fee", "examination fee", "license fee" and "renewal fee" mean the fees required to accompany an application for examination or fingerprint processing for or issuance of any license, including any temporary, apprentice or renewal license, pursuant to this article. Such fee shall be non-refundable.
6. "Alarm system" means a system installed to detect intrusion, break-in, movement, sound or fire.

7. "False alarm" means the activation of any alarm system that results in a request for police or fire or other emergency for which the responding public safety agency finds no evidence of criminal activity, fire, or emergency.

8. "Municipality" means a county, town, city or village.

9. "Alarm system company" means a company licensed to engage in the business of installing, servicing, or maintaining security or fire alarm systems pursuant to this article.

§ 69-m. License required. 1. On and after October first, nineteen hundred ninety-two, no person shall engage in the business of installing, servicing or maintaining security or fire alarm systems or hold himself out as being able so to do unless he is licensed therefor pursuant to this article. Nothing herein shall prohibit a person licensed in accordance with the provisions of this article from employing individuals to assist in the installation, servicing or maintaining of security or fire alarm systems, provided such licensee issues identification cards on a form prescribed by the secretary of state to each unlicensed individual.

2. Notwithstanding the provisions of subdivision one of this section, a license shall not be required of a person to engage in the business of installing, servicing or maintaining security or fire alarm systems if such an alarm system is to be installed in a motor vehicle, water vessel or aircraft or is a battery-operated smoke detection device. Furthermore, a property owner or proprietor who purchases or owns an alarm system to be installed by him or his employees onto his property or place of business shall not fall under the provisions of this article.

§ 69-n. Powers of the secretary of state. In addition to the powers and duties elsewhere prescribed in this article, the secretary of state

shall have power:

1. To appoint an adequate number of assistants, inspectors and other employees as may be necessary to carry out the provisions of this article, to prescribe their duties, and to fix their compensation within the amount appropriated therefor.
2. To examine into the qualifications and fitness of applicants for licenses under this article.
3. To keep records of all licenses issued, suspended or revoked.
4. To prepare a manual of rules and regulations for the conduct of examinations and to furnish copies thereof to persons desiring the same upon payment of a reasonable fee therefor.
5. To adopt such rules and regulations not inconsistent with the provisions of this article, as may be necessary with respect to the form and content of applications for licenses, the reception thereof, the investigation and examination of applicants and their qualifications, and the other matters incidental or appropriate to his powers and duties as prescribed by this article and for the proper administration and enforcement of the provisions of this article, and to amend or repeal any of such rules and regulations.

§ 69-o. License after examination; application. 1. After successfully passing the designated examination, any person over the age of eighteen years, desiring a license to engage in the business of installing, servicing or maintaining security or fire alarm systems under this article, may make application to the secretary of state therefor. The application shall be subscribed by the applicant and affirmed by him as true under the penalties of perjury. The application shall be in such form and shall contain such information relative to the applicant and his qualifications as may be prescribed by the secretary of state. Each application shall be accompanied by:

- (a) Two recent photographs of the applicant of a size prescribed by

the secretary of state and two sets of fingerprints of the applicant to be recorded in such manner as the secretary of state may prescribe by rule. The fingerprints shall be taken on a standard fingerprint card approved for fingerprinting by the state division of criminal justice services and shall be accompanied by the appropriate processing fees in proper form for the division of criminal justice services;

(b) Evidence of education satisfactory to the secretary of state which shall include evidence of the successful completion of a course of study in a school duly licensed pursuant to the education law or approved by the board of regents as a school qualified to instruct students in the field of security or fire alarm systems or can demonstrate to the satisfaction of the secretary of state that he has successfully completed an approved industry sponsored training program; and

(c) Evidence of having successfully passed the required examination.

2. After the filing of an applicant's fingerprint cards, the secretary of state shall forward such fingerprints to the division of criminal justice services to be compared with the fingerprints on file with the division of criminal justice services in order to ascertain whether the applicant has been convicted of a felony involving fraud, bribery, perjury or theft pursuant to article one hundred forty, one hundred fifty-five, one hundred sixty, one hundred sixty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred ninety, one hundred ninety-five, two hundred or two hundred ten of the penal law; or has a criminal action which has been pending for such a felony for under one year without a final disposition unless adjourned in contemplation of dismissal; provided, however, that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such:

(a) A conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or

(b) A conviction the records of which have been expunged or sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; or

(c) A conviction for which a certificate of relief from disabilities or a certificate of good conduct has been issued pursuant to the correction law.

The division of criminal justice services shall retain the fingerprint cards and return the report of such convictions or pending cases, if any, to the secretary of state who shall retain them in a confidential file for no more than one year, after which time such report shall be destroyed.

The secretary of state shall deny the application of any individual convicted of a felony involving fraud, bribery, perjury or theft pursuant to article one hundred forty, one hundred fifty-five, one hundred sixty, one hundred sixty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred ninety, one hundred ninety-five, two hundred or two hundred ten of the penal law; or has a criminal action which has been pending for such a felony for under one year without a final disposition unless adjourned in contemplation of dismissal; provided, however, that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such:

(i) A conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or

(ii) A conviction the records of which have been expunged or sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; or

(iii) A conviction for which a certificate of relief from disabilities or a certificate of good conduct has been issued pursuant to the correction law.

3. The secretary of state shall prepare question papers which shall be the same for all applications at any given examination. The questions may be partly written and partly oral and shall not be confined to any specific method or system. In addition, a portion of the examination may include testing of practical skills through various exercises. No person

shall receive a license hereunder who has not actually demonstrated to the secretary of state his ability and fitness to engage in the business of installing, servicing or maintaining security or fire alarm systems in such practical tests as may be required by the secretary of state.

4. Examinations shall be in the English language and shall be held at least quarterly and shall be given in at least four convenient places in the state.

5. There shall be an examination fee of fifteen dollars.

6. When an applicant has successfully passed the examination therefor, and has otherwise qualified for a license, the secretary of state on payment of the fee prescribed by this article, shall issue to such applicant a license to engage in the business of installing, servicing or maintaining security or fire alarm systems.

§ 69-p. License without examination. 1. Any person over the age of eighteen years who shall present to the secretary of state satisfactory evidence that he has been actually engaged in the business of installing, servicing or maintaining security or fire alarm systems in this state for at least two years within the period of three years immediately prior to October first, nineteen hundred ninety-two, shall be entitled to a license under this article without examination, provided that application therefor is accompanied by the requirements of paragraphs (a) and (b), respectively, of subdivision one of section sixty-nine-o of this article and the required annual license fee, is filed with the secretary of state.

2. The secretary of state shall upon application and without examination, issue a license to any person over the age of eighteen years who has been duly licensed by any other state, territory, protectorate or dependency of the United States to engage in the business of installing, servicing or maintaining security or fire alarm systems upon compliance with standards and requirements not lower, in the judgment of the secretary of state, than those of this state,

provided, however, that such state extends similar reciprocity to licensees of this state. Such application shall be accompanied by the requirements of paragraphs (a) and (b), respectively, of subdivision one of section sixty-nine-o of this article and the required license fee.

3. (a) If any person, eligible for any license, mentioned in this section, be in the military service at or during the time application for such license is required to be filed and license fee paid, according to the provisions of this section, the period within which said application may be filed and license fee may be paid, is extended in behalf of such person, until three months after the termination of said military service, any provision contained in this article to the contrary, notwithstanding.

(b) In the case of persons who are or were in the military service and (i) have been or will be discharged under conditions other than dishonorable, or (ii) have a qualifying condition, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable from such service, or (iii) are discharged LGBT veterans, as defined in section one of the veterans' services law, and have received a discharge other than bad conduct or dishonorable from such service, the period of two years specified in subdivision one of this section need not be continuous. The length of time such person was engaged in the business of installing, servicing or maintaining security or fire alarm systems before entering the military service may be added to any period of time during which such person was or is engaged in the business of installing, servicing or maintaining security or fire alarm systems after the termination of military service.

§ 69-pp. Licensed master electrician waiver. 1. Any person who is licensed by any municipality as a master electrician and who engages in the business of installing, servicing or maintaining security or fire alarm systems within such municipality shall be waived from the provisions of this article upon registration with the secretary of state in accordance with the provisions of this section.

2. Each licensed master electrician seeking a waiver shall register

with the secretary of state on a form prescribed by the secretary. Such form shall include at least: the individual's name and home address, the business's name and address, a listing of jurisdictions in which the master electrician is licensed, a listing of all appropriate license numbers and such other information as the secretary shall deem necessary. No applicant for a waiver shall be required to meet the provisions of section sixty-nine-o of this article.

3. Any waiver shall only apply for engaging in the business of installing, servicing or maintaining security or fire alarm systems in municipalities where such master electrician is licensed. However, should a licensed master electrician for any reason become unlicensed by any municipality, such master electrician shall immediately inform the secretary of state of such action. The secretary of state may suspend any waiver granted upon the basis of the master electrician license.

4. A master electrician who engages in the business of installing, servicing or maintaining security or fire alarm systems in municipalities where such master electrician is not duly licensed, shall be required to be licensed pursuant to this article.

5. A master electrician who is licensed in any municipality within the state shall be deemed to have satisfied the requirements of paragraphs (b) and (c) of subdivision one of section sixty-nine-o of this article.

6. The fee for all waivers granted to any master electrician shall be established by the secretary of state and shall not exceed fifty dollars every two years. Provided, however, that any person licensed pursuant to this article prior to the effective date of this section shall be exempt from the waiver fee for periods prior to October first, nineteen hundred ninety-four. Such waiver shall be valid for a two year period and be renewable for two year periods thereafter.

7. Any license issued by any municipality establishing a master electrician license after July fifteenth, nineteen hundred ninety-three shall not be grounds for a waiver pursuant to this section unless the secretary determines that the standards for such master electrician

license are not lower than those of this article.

§ 69-q. Licenses; display; renewal; duplicates. 1. All licenses shall be for a period of two years.

2. No license shall be assignable or transferable except as hereinafter provided.

3. (a) A license issued to a limited liability company or to a corporation to engage in the business of installing, servicing or maintaining security or fire alarm systems shall require that such business be operated under the direction and control of at least one member or manager of the limited liability company or a manager or managing officer of a corporation, who shall be required to meet the licensing requirements of this article on behalf of the licensee and who, in the case of a corporation, shall not be required to be an officer of the corporation. If such member, manager or managing officer, who shall have met the requirements of this article, ceases to act in the capacity of member, manager or managing corporate officer for any reason whatsoever, the licensee shall notify the department in writing within fourteen days from such termination or cessation. The licensee may continue to conduct the business of installing, servicing or maintaining security or fire alarm systems for a period not to exceed sixty days from the date of such termination or cessation; the period of sixty days aforesaid may be extended upon application to the secretary of state and for good cause for an additional period not to exceed one hundred twenty days; by the end of such period a new member, manager or managing officer must be designated who has met the licensing requirements of this article on behalf of the licensee.

(b) The limited liability company or corporation shall be liable with respect to all actions taken by its member, manager or managing officer acting on behalf of such limited liability company or corporation.

4. A license to engage in the business of installing, servicing or maintaining security or fire alarm systems issued to an individual may be assigned or transferred for the remainder of the license period to a

partnership, limited liability company or corporation if such individual is a member of such partnership, a member of the limited liability company or an officer of such corporation at the time of such assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one member of such partnership, provided he obtains the consent of all of the other members of such partnership. The application for such transfer or assignment must be accompanied by the requirements of paragraphs (a) and (b) of subdivision one of section sixty-nine-o of this article and by proof satisfactory to the department that the requirements herein provided have been complied with. No assignment or transfer shall become effective unless and until the endorsement has been made on the face of the license by the department and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made without payment of any fee. A bona fide purchaser of such business from the holder of the license thereof may continue to use the license of the seller for a period of thirty days from the date of the sale, provided there is endorsed on the face thereof the name of the purchaser, the date of the sale, and the signature of the seller and the purchaser; and provided further within five days from the date of the sale, an application, in accordance with the provisions of this article, shall be presented by the purchaser to the secretary of state for a license to conduct the business of installing, servicing or maintaining security or fire alarm systems.

5. Employees of a person licensed to conduct the business of installing, servicing or maintaining security or fire alarm systems shall not be required to be licensed provided that the nonlicensed employee have in his possession an identification card issued pursuant to section sixty-nine-m of this article. A person licensed to conduct such business shall, however, be required to submit to the department a full set of fingerprints of any employee who assists in the installation, servicing or maintaining of security or fire alarm systems, which shall be forwarded by the department to the division of criminal justice services to be compared with the fingerprints on file with the division to determine whether such employee has been convicted of a felony involving fraud, bribery, perjury or the theft pursuant to

article one hundred forty, one hundred fifty-five, one hundred sixty, one hundred sixty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred ninety, one hundred ninety-five, two hundred or two hundred ten of the penal law or has a criminal action which has been pending for under one year without a final disposition unless adjourned in contemplation of dismissal. Employee fingerprints will be recorded in such manner as the secretary of state may prescribe by rule. Such employee's fingerprints shall be taken on a standard fingerprint card approved for fingerprinting by the state division of criminal justice services and shall be accompanied by the appropriate processing fees in proper form for the division of criminal justice services. The division of criminal justice services shall return the fingerprint card and the report of such convictions to the department, who shall then notify the licensee that such employee has been convicted of such a felony or has a criminal action pending pursuant to a schedule developed by the division in conjunction with the secretary of state but not to be implemented prior to September first, nineteen hundred ninety-four. Upon submission of such fingerprints to the department, a person may be employed on a provisional basis to assist in the installation, servicing or maintaining of security or fire alarm systems. However, such employee may not continue in such a capacity if it is determined that such employee has been convicted of such a felony or has a criminal action pending.

6. A license to conduct the business of installing, servicing or maintaining security or fire alarm systems issued to an individual or to a partnership may be used after the death of the licensed individual or co-partner by his next of kin or duly appointed administrator or executor in the name of the estate for a period of not more than sixty days from the date of death of such individual or co-partner, provided that there is endorsed upon the face of the license after the name of the decedent the word "deceased", the date of death and the name of the next of kin, administrator or executor under whose authority the license is being used; the period of sixty days aforesaid may be extended upon application to the secretary of state and for good cause shown for an additional period not to exceed one hundred twenty days. Any license so

continued which shall expire during such period of sixty days or the extension thereof may be renewed by the next of kin, administrator or executor for the balance of such period or the extension thereof.

7. A license to conduct the business of installing, servicing or maintaining security or fire alarm systems shall be conspicuously posted upon the premises where the licensee is engaged in the business of installing, servicing or maintaining security or fire alarm systems.

8. Any license which has not been suspended or revoked, may, upon the payment of the renewal fee prescribed by this article, be renewed for additional periods of two years from its expiration, without further examination, upon the filing of an application for such renewal, on a form and with such additional information as prescribed by the secretary of state.

9. Any person failing to file application and fee for renewal of a license within one year immediately following the expiration of his last license shall pay an additional fee of sixty dollars, and if he fails to file application and fee for renewal within two years he shall be ineligible for such license until he shall have again met the requirements set forth in this article.

10. A duplicate license may be issued for one lost, destroyed or mutilated upon application therefor on a form prescribed by the secretary of state and the payment of the fee prescribed therefor by this article. Each such duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

11. Notice in writing shall be given the secretary of state at his office in Albany by the holder of a license to conduct the business of installing, servicing or maintaining security or fire alarm systems of any change in address of the business or residence of the person engaged in such business together with the return of license, whereupon a properly signed endorsement will be made on the face of the license as to such change and the license then returned to the licensee. A change

of address by a licensee without such notice and endorsement of license shall operate to cancel the license.

§ 69-r. Fees. 1. The fee for a license to engage in the business of installing, servicing or maintaining security or fire alarm systems shall be two hundred dollars plus an amount to be determined by the division of criminal justice services to cover the cost of the division's fingerprint search and report. For each renewal thereof, the fee shall be one hundred dollars plus an amount to be determined by the division of criminal justice services to cover the cost of the division's fingerprint search and report.

2. The fee for taking an examination under this article shall be fifteen dollars; provided, however, that if the applicant qualifies for a license as the result of such examination, the fee paid for the privilege of taking such examination shall be included in the license fee for the license issued to him thereon.

3. The fee for issuing a duplicate license in substitution for one lost, destroyed or mutilated shall be twenty-five dollars.

4. The fee for changing a name or address shall be ten dollars.

5. The fees hereinabove set forth shall be those for licenses issued for the license period of two years or fraction of such period.

§ 69-s. Suspension and revocation of licenses. 1. A license to engage in the business of installing, servicing or maintaining security or fire alarm systems may be suspended or revoked, or in lieu thereof a fine not exceeding one thousand dollars per violation payable to the department may be imposed or a reprimand issued by the secretary of state, for any one or more of the following causes:

(a) Fraud or bribery in securing a license;

(b) The making of any false statement as to a material matter in any application or other statement or certificate required by or pursuant to

this article;

(c) Incompetency;

(d) Failure to display the license as provided in this article;

(e) Violation of any provision of this article, or of any rule or regulation adopted hereunder;

(f) Conviction of a felony involving fraud, theft, perjury or bribery or other cause which would permit disqualifications from receiving a license upon the original application.

2. Whenever the license to engage in the business of installing, servicing or maintaining security or fire alarm systems is revoked, such license shall not be reinstated or reissued until after the expiration of a period of five years from the date of such revocation.

§ 69-ss. Revocation, suspension, reprimands, fines; unlicensed activities. 1. The secretary of state shall, before imposing any fine or reprimand on a person thereof, or before issuing any order directing the cessation of unlicensed activities, and at least ten days prior to the date set for the hearing, notify in writing such person, or the person alleged to have engaged in unlicensed activities, of any charges made and shall afford such person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the person charged, or by mailing same by certified mail to the last known business or other address provided by such person to the secretary of state, or by any method authorized by the civil practice law and rules for the service of a summons. The hearing on such charges shall be at such time and place as the department shall prescribe.

2. The department, acting by such officer or person in the department as the secretary of state may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 69-t. Hearing on charges; decision. No license shall be suspended or revoked nor shall any fine or reprimand be imposed until after a hearing had before an officer or employee of the department designated for such purpose by the secretary of state, upon notice to the licensee of at least ten days. The notice shall be served either personally or by certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee. The licensee shall have the opportunity to be heard in his defense either in person or by counsel and may produce witnesses and testify in his behalf. A stenographic record of the hearing shall be taken and preserved. The hearing may be adjourned from time to time. The person conducting the hearing shall make a written report of his findings and a recommendation to the secretary of state for decision. The secretary of state shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation and dismissing the charges or suspending or revoking the license or in lieu thereof imposing a fine or reprimand upon the licensee. For the purpose of this article, the secretary of state or any officer or employee of the department designated by him, may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

§ 69-u. Judicial review. The action of the secretary of state in suspending, revoking or refusing to issue or renew a license, or imposing a fine or reprimand on the holder thereof may be reviewed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

§ 69-v. Violations and penalties. Any person who shall directly or indirectly engage in the business of installing, servicing or maintaining security or fire alarm systems or hold himself out to the public as being able so to do without a license therefor, or who shall violate any of the provisions of this article, or having had his license

suspended or revoked, shall continue to engage in the business of installing, servicing or maintaining security or fire alarm systems or who, without a license to engage in the business of installing, servicing or maintaining security or fire alarm systems, directly or indirectly employs, permits or authorizes an unlicensed person to engage in the business of installing, servicing or maintaining security or fire alarm systems, shall be guilty of a misdemeanor and, upon conviction, shall be punishable by imprisonment of not more than six months, or by a fine of not more than one thousand dollars or by both such fine and imprisonment upon the first conviction and by imprisonment of not more than one year or by a fine of not less than one thousand dollars nor more than five thousand dollars or by both such fine and imprisonment upon a subsequent conviction. Each violation of this article shall be deemed a separate offense.

§ 69-vv. Civil penalties. Notwithstanding any inconsistent provision of law, with respect to violations of section sixty-nine-ss of this article, the secretary of state is authorized, upon the complaint of any person or on his or her own initiative, to investigate and prosecute violations of the provisions of such section by persons not licensed pursuant to this article and may impose a fine of up to one thousand dollars for the first violation; two thousand dollars for a second such violation; five thousand dollars for a third violation; and ten thousand dollars for a fourth violation and each subsequent violation. The attorney general, acting on behalf of the secretary of state, may commence an action or proceeding in a court of competent jurisdiction to obtain a judgment against such unlicensed person in an amount equal to that imposed as a fine.

§ 69-vvv. Fines for false alarms. 1. Notwithstanding any other provision of law, a municipality may enact, adopt or enforce any ordinance, resolution or regulation requiring any alarm system company to pay for or be responsible for any fines, fees or other penalties relative to false alarms only when the false alarm is attributed to a deficiency in the alarm system or an error of the alarm system company

or central station. Nothing in this section shall prevent a municipality from imposing any fine, fee or other penalties for a false alarm when such false alarm is attributable to, or caused by, the property owner, lessee, occupant or other person or persons.

2. An alarm company operator or an alarm agent shall not be liable for civil penalties and fines assessed or imposed by a municipality for false alarms not attributed to alarm company operator error, improper installation of the alarm system by an alarm agent or an alarm company operator, defective equipment provided or installed by an alarm agent or an alarm company operator, defective equipment leased by an alarm company operator, or equipment that was not deficient upon installation or provision for use to the end-user but resulted in a deficiency due to normal wear and tear.

§ 69-w. Official acts used as evidence. The official acts of the secretary of state and department shall be prima facie evidence of the facts therein and shall be entitled to be received in evidence in all actions at law and other legal proceedings in any court or before any board, body or officer.

§ 69-x. Disposition of moneys derived from operation of article. Processing fees for the fingerprint search conducted by the division of criminal justice services shall accompany the fingerprint cards and shall be deposited to the credit of the general fund. All remaining moneys derived from the operation of this article shall be deposited in the business and licensing services account established pursuant to section ninety-seven-y of the state finance law.

§ 69-y. Separability clause. If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been

rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

§ 69-z. Applicability. 1. The provisions of this article shall not be construed to limit in any way the authority of a city with a population of one million or more to enact, implement and continue to enforce local laws and regulations governing home improvement contractors and their agents or employees that were in effect prior to the effective date of this article, or to enact, implement and enforce any amendments thereto after the effective date of this article.

2. The provisions of this article shall govern notwithstanding any other law to the contrary; provided, however, that local law shall govern with respect to inspection of fire alarms by a fire marshall or any other person designated under such local law; and provided, further, that this article shall not be held to invalidate any provision of the laws of this state or any subdivision thereof unless there is a direct conflict between the provision of this article and the provision of such law or unless such law is duplicative of this article, in which case this article shall prevail, except as provided otherwise in subdivision one of this section. Except as provided in subdivision one of this section, no local law shall require any fee or license for the installation, servicing or maintaining of security or fire alarm systems, except that which is provided pursuant to this article.

ARTICLE 7

PRIVATE INVESTIGATORS, BAIL ENFORCEMENT AGENTS AND WATCH, GUARD AND PATROL AGENCIES

Section 70. Private investigator license.

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§ 70. Private investigator license. 1. The department of state shall have the power to issue licenses to private investigators. Nothing in this article shall prevent a private investigator licensed hereunder from performing the services of a watch, guard or patrol agency or bail enforcement agent as defined herein; however, a watch, guard or patrol agency or bail enforcement agent may not perform the services of a private investigator as defined herein.

2. No person, firm, company, partnership, limited liability company or corporation shall engage in the business of private investigator or advertise his, their or its business to be that of private investigator notwithstanding the name or title used in describing such agency or

notwithstanding the fact that other functions and services may also be performed for fee, hire or reward, without having first obtained from the department of state a license so to do, as hereinafter provided, for each bureau, agency, sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, company, partnership, limited liability company or corporation for the conduct of such business.

3. No person, firm, company, partnership, limited liability company or corporation shall engage in the business of furnishing or supplying for fee, hire or any consideration or reward information as to the personal character or activities of any person, firm, company, or corporation, society or association, or any person or group of persons, or as to the character or kind of the business and occupation of any person, firm, company or corporation, or own or conduct or maintain a bureau or agency for the above mentioned purposes, except exclusively as to the financial rating, standing, and credit responsibility of persons, firms, companies or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds or commercial credit or of claimants under insurance policies, provided the business so exempted does not embrace other activities as described in section seventy-one of this article, or except where such information is furnished or supplied by persons licensed under the provisions of section twenty-four-a or subdivision three-b of section fifty of the workers' compensation law or representing employers or groups of employers insured under the workers' compensation law in the state insurance fund, without having first obtained from the department of state, as hereafter provided, a license so to do as private investigator for each such bureau or agency and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such persons, firm, limited liability company, partnership or corporation for the conduct of such business. Nothing contained in this section shall be deemed to include the business of adjusters for insurance companies, nor public adjusters licensed by the superintendent of financial services under the insurance law of this state.

4. Any person, firm, company, partnership or corporation who violates

any provision of this section shall be guilty of a class A misdemeanor.

§ 70-a. Bail enforcement agents and watch, guard or patrol agencies.

1. The department of state shall have the power to issue separate licenses to bail enforcement agents and to watch, guard or patrol agencies. Nothing in this article shall prevent a private investigator licensed hereunder from performing the services of a watch, guard or patrol agency or bail enforcement agent as defined in this article; however, a watch, guard or patrol agency or bail enforcement agent may not perform the services of a private investigator as defined in this article.

2. No person, firm, company, partnership, limited liability company or corporation shall engage in the business of bail enforcement agents or the business of watch, guard or patrol agency, or advertise his, their or its business to be that of bail enforcement agent or watch, guard or patrol agency, notwithstanding the name or title used in describing such agency or notwithstanding the fact that other functions and services may also be performed for fee, hire or reward, without having first obtained from the department of state a license so to do, as hereinafter provided, for each bureau, agency, sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, company, partnership, limited liability company or corporation for the conduct of such business.

3. Any person, firm, company, partnership or corporation who violates any provision of this section shall be guilty of a class B misdemeanor.

§ 71. Definitions. 1. "Private investigator" shall mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation, or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed for fee, hire or reward; crime or wrongs

done or threatened against the government of the United States of America or any state or territory of the United States of America; the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; the credibility of witnesses or other persons; the whereabouts of missing persons; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real or personal property; or the affiliation, connection or relation of any person, firm or corporation with any union, organization, society or association, or with any official, member or representative thereof; or with reference to any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike; or with reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors, and sub-contractors; or the securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases. The foregoing shall not be deemed to include the business of persons licensed by the industrial commissioner under the provisions of section twenty-four-a or subdivision three-b of section fifty of the workmen's compensation law or representing employers or groups of employers insured under the workmen's compensation law in the state insurance fund, nor persons engaged in the business of adjusters for insurance companies nor public adjusters licensed by the superintendent of financial services under the insurance law of this state.

1-a. "Bail enforcement agent" shall mean and include only the business of bail enforcement and shall also mean and include, separately or collectively, the engaging in the business of enforcing the terms and conditions of a person's release from custody on bail in a criminal proceeding, including locating, apprehending and returning any such person released from custody on bail who has failed to appear at any stage of a criminal proceeding to answer the charge before the court in which he may be prosecuted. The foregoing shall not be deemed to include the business of persons licensed under the provisions of section

twenty-four-a or subdivision three-b of section fifty of the workers' compensation law or representing employers or groups of employers insured under the workers' compensation law in the state insurance fund, nor persons engaged in the business of adjusters for insurance companies nor public adjusters licensed by the superintendent of financial services under the insurance law of this state or the business of private investigator, watch, guard or patrol agency or security guard company.

2. "Watch, guard or patrol agency" shall mean and include the business of watch, guard or patrol agency and shall also mean and include, separately or collectively, the furnishing, for hire or reward, of watchmen or guards or private patrolmen or other persons to protect persons or property or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes or other valuable documents, papers, and articles of value, or to procure the return thereof or the performing of the service of such guard or other person for any of said purposes. The foregoing shall not be deemed to include the business of persons licensed by the industrial commissioner under the provisions of section twenty-four-a or subdivision three-b of section fifty of the workmen's compensation law or representing employers or groups of employers insured under the workmen's compensation law in the state insurance fund, nor persons engaged in the business of adjusters for insurance companies nor public adjusters licensed by the superintendent of financial services under the insurance law of this state.

3. The term the "business of private investigator," and the term "private investigator" shall mean and include any person, firm, limited liability company, partnership or corporation engaged in the business of private investigator as defined in subdivision one of this section with or without the assistance of any employee or employees. The term "business of watch, guard or patrol agency" and the term "watch, guard or patrol agency" shall mean and include any person, firm, limited liability company, partnership or corporation engaged in the business of watch, guard or patrol agency as defined in subdivision two of this

section or the business of a security guard company as defined in subdivision five of section eighty-nine-f of this chapter with or without the assistance of any employee or employees. For the purposes of this article, a public entity as defined in subdivision seven of section eighty-nine-f of this chapter or a security guard company which utilizes security guards solely for its own proprietary use shall not be deemed a security guard company.

4. The term "business of bail enforcement agent" and the term "bail enforcement agent" shall mean and include any person, firm, company, partnership or corporation engaged in the business of bail enforcement as defined in subdivision one-a of this section with or without the assistance of any employee or employees.

§ 72. Application for licenses. Any person, firm, partnership, limited liability company or corporation intending to conduct the business of private investigator, business of bail enforcement agent or the business of watch, guard or patrol agency, and any person, firm, partnership, limited liability company or corporation intending to conduct the business of furnishing or supplying information as to the personal character of any person or firm, or as to the character or kind of the business and occupation of any person, firm or corporation, society or association or any person or group of persons, or intending to own, conduct, manage or maintain a bureau or agency for the above mentioned purposes, or while engaged in other lawful business activities also intending to engage in any one or more of the activities set forth in section seventy-one of this article except exclusively as to the financial rating, standing, and credit responsibility of persons, firms, companies or corporations or as to personal habits and financial responsibility of applicants for insurance indemnity bonds or commercial credit or of claimants under insurance policies shall, for each such bureau or agency and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, partnership, limited liability company or corporation for the conduct of such business, file in the office of the department of state a written application, on forms provided by the department containing

such information and documentation, including fingerprints, as the secretary of state may require by rule and regulation.

1. If the applicant is a person, the application shall be subscribed by such person, and if the applicant is a firm or partnership the application shall be subscribed by each individual composing or intending to compose such firm or partnership. The application shall state the full name, age, residences within the past three years, present and previous occupations of each person or individual so signing the same, and shall also specify the name of the city, town or village, stating the street and number, if the premises have a street and number, and otherwise such apt description as will reasonably indicate the location thereof, where is to be located the principal place of business and the bureau, agency, sub-agency, office or branch office for which the license is desired, and such further facts as may be required by the department of state to show the good character, competency and integrity of each person or individual so signing such application. Each person or individual signing such application shall, together with such application, submit to the department of state, his photograph, taken within six months prior thereto in duplicate, in passport size and also two sets of fingerprints of his two hands recorded in such manner as may be specified by the secretary of state or the secretary of state's authorized representative. Before approving such application it shall be the duty of the secretary of state or the secretary of state's authorized representative to forward one copy of such fingerprints to the division of criminal justice services. Upon receipt of such fingerprints, such division shall forward to the secretary of state a report with respect to the applicant's previous criminal history, if any, or a statement that the applicant has no previous criminal history according to its files. If additional copies of fingerprints are required the applicant shall furnish them upon request. Such fingerprints may be submitted to the federal bureau of investigation for a national criminal history record check. The secretary shall reveal the name of the applicant to the chief of police and the district attorney of the applicant's residence and of the proposed place of business and shall request of them a report concerning the applicant's character in the event they shall have information concerning it. The secretary shall

take such other steps as may be necessary to investigate the honesty, good character and integrity of each applicant. Every such applicant for a license as private investigator shall establish to the satisfaction of the secretary of state (a) if the applicant be a person, or, (b) in the case of a firm, limited liability company, partnership or corporation, at least one member of such firm, partnership, limited liability company or corporation, has been regularly employed, for a period of not less than three years, undertaking such investigations as those described as performed by a private investigator in subdivision one of section seventy-one of this article, as a sheriff, police officer in a city or county police department, or the division of state police, investigator in an agency of the state, county, or United States government, or employee of a licensed private investigator, or has had an equivalent position and experience or that such person or member was an employee of a police department who rendered service therein as a police officer for not less than twenty years or was an employee of a fire department who rendered service therein as a fire marshal for not less than twenty years. However, employment as a watchman, guard or private patrolman shall not be considered employment as a "private investigator" for purposes of this section. Every such applicant for a license as watch, guard or patrol agency shall establish to the satisfaction of the secretary of state (a) if the applicant be a person, or, (b) in the case of a firm, limited liability company, partnership or corporation, at least one member of such firm, partnership, limited liability company or corporation, has been regularly employed, for a period of not less than two years, performing such duties or providing such services as described as those performed or furnished by a watch, guard or patrol agency in subdivision two of section seventy-one of this article, as a sheriff, police officer in a city or county police department, or employee of an agency of the state, county or United States government, or licensed private investigator or watch, guard or patrol agency, or has had an equivalent position and experience; qualifying experience shall have been completed within such period of time and at such time prior to the filing of the application as shall be satisfactory to the secretary of state. The person or member meeting the experience requirement under this subdivision and the person responsible for the operation and management of each bureau, agency, sub-agency, office or

branch office of the applicant shall provide sufficient proof of having taken and passed a written examination prescribed by the secretary of state to test their understanding of their rights, duties and powers as a private investigator and/or watchman, guard or private patrolman, depending upon the work to be performed under the license. In the case of an application subscribed by a resident of the state of New York such application shall be approved, as to each resident person or individual so signing the same, but not less than five reputable citizens of the community in which such applicant resides or transacts business, or in which it is proposed to own, conduct, manage or maintain the bureau, agency, sub-agency, office or branch office for which the license is desired, each of whom shall subscribe and affirm as true, under the penalties of perjury, that he has personally known the said person or individual for a period of at least five years prior to the filing of such application, that he has read such application and believes each of the statements made therein to be true, that such person is honest, of good character and competent, and not related or connected to the person so certifying by blood or marriage. In the case of an application subscribed by a non-resident of the state of New York such application shall be approved, as to each non-resident person or individual so signing the same by not less than five reputable citizens of the community in which such applicant resides. The certificate of approval shall be signed by such reputable citizens and duly verified and acknowledged by them before an officer authorized to take oaths and acknowledgment of deeds. All provisions of this section, applying to corporations, shall also apply to joint-stock associations, except that each such joint-stock association shall file a duly certified copy of its certificate of organization in the place of the certified copy of its certificate of incorporation herein required.

1-a. Every such applicant for a license as bail enforcement agent shall establish to the satisfaction of the secretary of state (a) if the applicant be a person, or (b) in the case of a firm, company, partnership, or corporation, at least one member of such firm, partnership, company or corporation, has been regularly employed, for a period of not less than three years, performing such duties or providing such services as described as those furnished by a bail enforcement

agent in section seventy-one of this article, as a sheriff, police officer in a city or county police department, or the division of state police, investigator in an agency of the state, county, or United States government, or employee of a licensed private investigator, or has had an equivalent position and experience or that such person or member was an employee of a police department who rendered service therein as a police officer for not less than twenty years or was an employee of a fire department who rendered service therein as a fire marshal for not less than twenty years.

1-b. The person or member meeting the experience requirement under subdivisions one and one-a of this section and any person or member of such firm, company, partnership or corporation who engages in the apprehension and return of suspects who fail to appear before the court must either satisfactorily complete a basic certification course in training for bail enforcement agents offered by a provider that is approved by the secretary of state; or such person or member must have served as a police officer, as that term is defined in subdivision thirty-four of section 1.20 of the criminal procedure law, for a period of not less than three years.

The basic course of training shall include at least twenty-five hours of training approved by the secretary of state and must include instruction on issues involved with the rights and limitations involving the bailee/fugitive who signs a contract with the bail enforcement agent. Completion of the course shall be for educational purposes only and not intended to confer the power of arrest of a peace officer or public officer, or agent of any federal, state, or local government, unless the person is so employed by a governmental agency.

2. If the applicant is a corporation, the application shall be subscribed by the president, secretary, treasurer, and all other officers and directors working for such corporation within the state of New York, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, and the name of the city, town or village, stating the street and number, if the premises have a street and number, and otherwise such

apt description as will reasonably indicate the location thereof, where is to be located the bureau, agency, sub-agency, office or branch office for which the license is desired, the amount of the corporation's outstanding paid up capital stock and whether paid in cash or property, and, if in property, the nature of the same, and shall be accompanied by a duly certified copy of its certificate of incorporation. Each and every requirement as to character of subdivision one of this section as to a person or individual member of a firm or partnership shall apply to the president, secretary, treasurer and all other officers and directors working for such corporation within the state of New York and each such officer and director, his successor and successors shall prior to entering upon the discharge of his duties subscribe a like statement, approved in like manner, as is by said subdivision one prescribed in the case of a person or individual member of a firm or partnership.

3. Each person subscribing an application pursuant to this section shall affirm that the statements therein are true under the penalties of perjury.

4. The secretary of state may deny, suspend or revoke the license of a corporation if, at any time, ten per centum or more of the corporate stock is held by a person who cannot meet the character standard set for an individual licensee.

§ 73. Enforcement of article; investigations. 1. The secretary of state shall have the power to enforce the provisions of this article and article seven-A of this chapter and upon complaint of any person, or on his own initiative, to investigate any violation thereof or to investigate the business, business practices and business methods of any person, firm, limited liability company, partnership or corporation applying for or holding a license as a private investigator, bail enforcement agent or watch, guard or patrol agency, if in the opinion of the secretary of state such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the secretary of state, to supply such information, books, papers or records as may be required concerning his, their or its business, business practices or

business methods, or proposed business practices or methods. Failure to comply with a lawful request of secretary shall be a ground for denying an application for a license, or for revoking, suspending, or failing to renew a license issued under this article.

2. For the purpose of enforcing the provisions of this article and article seven-A of this chapter, and in making investigations relating to any violation thereof, and for the purpose of investigating the character, competency and integrity of the applicants or licensees hereunder, and for the purpose of investigating the business, business practices and business methods of any applicant or licensee, or of the officers or agents thereof, the department of state, acting by such officer or person in the department as the secretary of state may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state and require the production of any books, records or papers which he deems relevant to the inquiry and administer an oath to and take testimony of any person or cause his deposition to be taken, except that any applicant or licensee or officer or agent thereof shall not be entitled to fees and/or mileage. A subpoena issued under this section shall be regulated by the civil practice law and rules. Any person, duly subpoenaed, who fails to obey such subpoena without reasonable cause or without such cause refuses to be examined or to answer any legal or pertinent question as to the character or qualification of such applicant or licensee or such applicant's or licensee's business, business practices and methods or such violations, shall be guilty of a misdemeanor. The testimony of witnesses in any investigative proceeding shall be under oath, which the secretary of state or one of his deputies, or a subordinate of the department of state designated by the secretary of state, may administer, and wilful false swearing in any such proceeding shall be perjury.

3. Licensees hereunder must maintain such records as the secretary of state by rule determines and in addition, the secretary may prescribe by rule that further records be kept by certain classes of licensees.

§ 74. Issuance of licenses; fee; bonds. 1. (a) The application shall be accompanied by a non-refundable fee, payable to the department of state for the use of the state, for each certificate of license, as hereinbelow enumerated, issued to the applicant, if the applicant be an individual, of four hundred dollars for a license as private investigator or bail enforcement agent or a fee of three hundred dollars for a license as watch, guard or patrol agency, or if the applicant be a firm, partnership, limited liability company or corporation, a fee of five hundred dollars for a license as private investigator or bail enforcement agent or a fee of four hundred dollars for a license as watch, guard or patrol agency.

(b) When the application shall have been examined and such further inquiry and investigation made as the secretary of state shall deem proper, and when the secretary of state shall be satisfied therefrom of the good character, competency and integrity of such applicant, or, if the applicant be a firm or partnership, the individual members thereof, or if the applicant be a limited liability company, the individual members thereof, or if the applicant be a corporation, the president, secretary, treasurer and all other officers and all directors thereof, and each stockholder owning ten per centum or more of the stock and a period to ten days from the date of the filing of the application shall have passed, the department of state shall issue and deliver to such applicant a certificate of license to conduct such business and to own, conduct or maintain a bureau, agency, sub-agency, office or branch office for the conduct of such business on the premises stated in such application upon the applicant's executing, delivering and filing in the office of such department a surety company bond in the sum of ten thousand dollars; provided however, that an applicant for a license as a bail enforcement agent shall execute, deliver and file with the office of such department a surety company bond in the sum of five hundred thousand dollars, conditioned for the faithful and honest conduct of such business by such applicant, which surety bond must be written by a company recognized and approved by the superintendent of financial services of the state, and approved by the department of state with respect to its form, manner of execution and sufficiency provided, further, however, before a license is issued to a non-resident the applicant must file with the secretary of state a written consent to the

jurisdiction of the courts of New York (i) in any case or cases arising from any contract for the performance of private investigative services as private investigator, bail enforcement agent or watch, guard or patrol agency, made within the state or to be performed, wholly or in part, within the state or in any way connected with the conduct of business within the state, and (ii) in any case or cases arising from any tort occurring within the state or occurring in connection with the business of the licensee within the state. The license as private investigator, bail enforcement agent or watch, guard or patrol agency granted pursuant to this article shall last for a period of two years, but shall be revocable at all times by the department of state for cause shown. Such bond shall be taken in the name of the people of the state of New York, and any person injured by the violation of any of the provisions of this article or by the wilful, malicious and wrongful act of the principal or employee may bring an action against such principal, employee or both on said bond in his own name to recover damages suffered by reason of such wilful, malicious and wrongful act. In each and every suit, or prosecution arising out of this article, the agency of any employee as to the employment and as to acting in the course of his employment, shall be presumed. The license certificate shall be in a form to be prescribed by the secretary of state and shall specify the full name of the applicant, the location of the principal office or place of business and the location of the bureau, agency, sub-agency, office or branch office for which the license is issued, the date on which it is issued, the date on which it will expire and the names and residences of the applicant or applicants filing the statement required by section seventy-two of this article upon which the license is issued and in the event of a change of any such address or residence the department of state shall be duly notified in writing of such change within twenty-four hours thereafter, and failure to give such notification shall be sufficient cause for revocation of such license. No such license as private investigator, bail enforcement agent or watch, guard or patrol agency shall be issued to a person under the age of twenty-five years.

(c) The secretary of state shall receive a non-refundable examination fee of fifteen dollars from each person who takes an examination to qualify for application for licensure pursuant to this article. Fees

paid to the department of state pursuant to this article shall be deposited in the business and licensing services account established pursuant to section ninety-seven-y of the state finance law.

2. Except as hereinafter in this subdivision provided, no such license shall be issued to any person who has been convicted in this state or any other state or territory of a felony, or any of the following offenses, to wit: (a) illegally using, carrying or possessing a pistol or other dangerous weapon; (b) making or possessing burglar's instruments; (c) buying or receiving or criminally possessing stolen property; (d) unlawful entry of a building; (e) aiding escape from prison; (f) unlawfully possessing or distributing habit forming narcotic drugs; (g) violating subdivision six of section seven hundred twenty-two of the former penal law as in force and effect immediately prior to September first, nineteen hundred sixty-seven, or violating section 165.25 or 165.30 of the penal law; (h) violating section seven hundred forty-two, section seven hundred forty-three, or section seven hundred forty-five of the said former penal law, or violating any section contained in article two hundred fifty of the penal law. Except as hereinafter in this subdivision provided, no license shall be issued to any person whose license has been previously revoked by the department of state or the authorities of any other state or territory because of conviction of any of the offenses specified in this section. The provisions of this subdivision shall not prevent the issuance of a license to any person who, subsequent to his conviction, shall have received executive pardon therefor removing this disability, or who has received a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law to remove the disability under this section because of such conviction or previous license revocation occasioned thereby.

3. There shall be kept in the office of the department of state a bulletin board, in a place accessible to the general public, on which shall be posted at noon on Friday of each week the following: a statement of all pending applications for licenses under this article, giving the name of the applicant, and whether individual, firm, limited liability company or corporation, and the proposed business address; a

similar statement of all such licenses issued during the preceding week; a similar statement of all such licenses revoked during the preceding week. No holder of an employment agency license shall be licensed under this article. While holding a license under this article a licensee shall not simultaneously hold an employment agency license or have financial interest in or participate in the control and management of any employment agency or any other person, firm, limited liability company or corporation engaged in private detective business except that a licensee hereunder may own or possess stock in any corporation whose only business is to undertake for hire the preparation of payrolls and the transportation of payrolls, moneys, securities and other valuables or whose only business is to provide or furnish protective, guard or private investigator service to: (a) the government of the United States or any subdivision, department or agency of the government of the United States, the government of the state of New York or any of its subdivisions, departments, commissions or agencies; or (b) a corporation created under or subject to the provisions of chapter four hundred forty of the laws of nineteen hundred twenty-six or chapter two hundred fifty-four of the laws of nineteen hundred forty. In the event of the filing in the office of the department of state a verified statement of objections to the issuance of a license under the provisions of this article, no license shall be issued to such applicant until all objections shall have been heard in a public hearing and a determination made in a manner provided by section seventy-nine of this article.

4. For changing the name on a license or for changing the status of a license, the secretary of state shall receive a non-refundable fee of one hundred fifty dollars.

5. For changing the address on a license, the secretary of state shall receive a non-refundable fee of ten dollars.

§ 74-a. Notification. Prior to taking or attempting to take into custody a person, a bail enforcement agent shall notify a local law enforcement agency having jurisdiction over the area in which the person is believed to be located of such bail enforcement agent's intentions.

The notification shall be provided on a form prescribed by the local law enforcement agency. Notwithstanding, the form shall include information including but not limited to name, address, local address and motor vehicle registration of said agent. The local law enforcement agency in prescribing such form may consult with the division of criminal justice services. A representative of a local law enforcement agency may accompany a bail enforcement agent when the bail enforcement agent enters what is believed to be an occupied structure to search for or to apprehend a person.

§ 75. Posting and surrender of license certificate. Immediately upon the receipt of the license certificate issued by the department of state pursuant to this article, the licensee named therein shall cause such license certificate to be posted up and at all times displayed in a conspicuous place in the bureau, agency, sub-agency, office or branch office for which it is issued, so that all persons visiting such place may readily see the same. Such license certificate shall at all reasonable times be subject to inspection by the secretary of state or an authorized representative or representatives of the department of state. It shall be unlawful for any person, firm, partnership, limited liability company or corporation holding such license certificate to post such certificate or to permit such certificate to be posted upon premises other than those described therein or to which it has been transferred pursuant to the provisions of this article, or knowingly to alter, deface or destroy any such license certificate. Every license certificate shall be surrendered to the department of state within seventy-two hours after its terms shall have expired or after notice in writing to the holder that such license has been revoked. Failure to comply with any of the provisions of this section is a misdemeanor and sufficient cause for the revocation of a license.

§ 76. Certificate or pocket card lost or destroyed. If it shall be established to the satisfaction of the secretary of state, in accordance with rules and regulations of such department, that an unexpired license certificate or pocket card, issued in accordance with the provisions of

this article, has been lost or destroyed without fault on the part of the holder, such department shall issue a duplicate license certificate or pocket card for the unexpired portion of the term of the original license certificate. The secretary of state shall receive a non-refundable fee of ten dollars for issuing a duplicate certificate of license or identification card.

§ 77. Removal of bureau, agency or office. If the holder of an unexpired license certificate issued pursuant to this article shall remove the bureau, agency, sub-agency, office or branch office to a place other than that described in the license certificate, he shall, within the twenty-four hours immediately following such removal, give written notice of such removal to the department of state, which notice shall describe the premises to which such removal is made and the date on which it was made, and send such license certificate to such department, at its office in the city of Albany, and such department shall cause to be written or stamped across the face of such license certificate a statement, signed by the secretary of state or an authorized subordinate of the department of state, to the effect that the holder of such license has removed, on the date stated in such written notice, such bureau, agency, sub-agency, office or branch office from the place originally described in such license certificate to the place described in such written notice, and such license certificate with the indorsement thereon shall then be returned to the licensee named therein.

§ 78. Renewal of licenses. A license granted under the provisions of this article may be renewed by the department of state upon application therefor by the holder thereof, in such form as such department may prescribe, accompanied by the non-refundable fee and surety bond each in amounts equivalent to those specified in section seventy-four of this article as pertaining to original licenses. The application shall be filed six weeks before the expiration date of the license unless the application is accompanied by a non-refundable late filing fee of one hundred dollars. In no event will renewal be granted more than six

months after the date of expiration of a license. No person, firm, limited liability company, partnership or corporation shall carry on any business subject to this article during any period which may exist between the date of expiration of a license and the renewal thereof.

§ 78-a. Surrender of licenses. A license issued pursuant to this article may not be surrendered nor may any licensee resign as such licensee without the written approval of the secretary of state or any deputy authorized to act for him.

§ 79. Hearings, notice, determinations, review. 1. The department of state shall have the power to revoke or suspend any license, or in lieu thereof to impose a fine not exceeding one thousand dollars payable to the department of state, or reprimand any licensee or deny an application for a license or renewal thereof upon proof:

(a) that the applicant or licensee has violated any of the provisions of this article or the rules and regulations promulgated hereunder;

(b) that the applicant or licensee has practiced fraud, deceit or misrepresentation;

(c) that the applicant or licensee has made a material misstatement in the application for or renewal of his license;

(d) that the applicant or licensee has demonstrated incompetence or untrustworthiness in his actions;

(e) that the applicant or licensee has violated any of the provisions of article seven-A of this chapter or the rules and regulations promulgated thereunder.

2. The department of state shall, before denying an application for a license or before revoking or suspending any license, excepting a temporary suspension as provided in subdivision five of this section, or imposing any fine or reprimand, and at least fifteen days prior to the date set for the hearing, and upon due notice to the complainant or objector, notify in writing the applicant for, or the holder of such license of any charge made and shall afford said applicant, or licensee, an opportunity to be heard in person or by counsel in reference thereto.

Such written notice may be served by delivery of same personally to the applicant or licensee, or by mailing same by certified mail to the last known business address of such applicant or licensee.

3. The hearing on such charges shall be at such time and place as the department of state shall prescribe and shall be conducted by such officer or person in the department as the secretary of state may designate, who shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. Such officer or person in the department of state designated to take such testimony shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

4. In the event that the department shall deny the application for, or revoke or suspend any such license, or impose any fine or reprimand, its determination shall be in writing and officially signed. The original of such determination, when so signed, shall be filed in the office of the department and copies thereof shall be mailed to the applicant or licensee and to the complainant within two days after the filing thereof as herein prescribed.

5. The department, acting by the officer or person designated to conduct the hearing pursuant to subdivision three above or by such other officer or person in the department as the secretary of state may designate, shall have the power to suspend the license of any licensee who has been convicted in this state or any other state or territory of a felony or of any misdemeanor or offense enumerated under subdivision two of section seventy-four or under section eighty-four of this chapter for a period not exceeding thirty days pending a hearing and a determination of charges made against him. If such hearing is adjourned at the request of the licensee, or by reason of any act or omission by him or on his behalf, such suspension may be continued for the additional period of such adjournment.

6. The action of the department of state in granting or refusing to grant or to renew a license under this article or in revoking or suspending or refusing to revoke or suspend such a license or imposing any fine or reprimand shall be subject to review by a proceeding instituted under article seventy-eight of the civil practice law and rules at the instance of the applicant for such license, the holder of a license so revoked, suspended, fined or reprimanded or the person aggrieved.

§ 80. License certificates, pocket cards or badges. Upon the issuing of a license as hereinbefore provided the department of state shall issue to each person, partner, member of a limited liability company or officer of a corporation making and filing a statement required by section seventy-two of this article a pocket card of such size and design as the department of state may prescribe, which card shall contain a photograph of the licensee, the name and business address of the licensee and the imprint or impress of the seal of the department of state which pocket card shall be evidence of due authorization pursuant to the terms of this article. All persons to whom such license certificates or pocket cards shall have been issued shall be responsible for the safe keeping of the same, and shall not lend, enable, let or allow any other person to have, hold, use or display such certificate or pocket card; and any person so parting with such a license certificate or pocket card or displaying the same without authority, or who shall display any license certificate or pocket card purporting to authorize the holder thereof to act as a private investigator, bail enforcement agent or watch, guard or patrol agency, unless the same shall have been duly issued pursuant to the provisions of this article, shall be guilty of a misdemeanor. Failure to comply with the provisions of this section shall be sufficient cause for revocation of such license, and all such certificates or pocket cards shall be returned to the department of state within seventy-two hours after the holder thereof has received notice in writing of the expiration or revocation of such license. It shall be unlawful for a holder of a license or anyone else to distribute, possess, use or display any license certificate, pocket card, badge, shield or any other indicia of a license status pursuant to

this article except as set forth in this article. Any person who is a licensee hereunder or an officer or authorized employee of any other person, firm, limited liability company or corporation, whether or not licensed hereunder, while performing the services of a watchman, guard or private patrolman, may wear on his outer clothing a rectangular metal or woven insignia approved by the department of state, which insignia shall not be larger than three inches high nor four inches wide with an inscription thereon containing the word "watchman", "guard", "patrol" or "special service" and the name of such licensee or employer. It shall be unlawful for any employer, whether or not licensed hereunder, to wear or distribute to his, their or its employees any employment identification except as authorized in this article and approved by the secretary of state. Any person violating any provision of this section shall be guilty of a misdemeanor.

§ 81. Employees. 1. The holder of any license certificate issued pursuant to this article may employ to assist him in his work of private detective or investigator or bail enforcement agent as described in section seventy-one of this article and in the conduct of such business as many persons as he may deem necessary, and shall at all times during such employment be legally responsible for the good conduct in the business of each and every person so employed.

No holder of any unexpired license certificate issued pursuant to this article shall knowingly employ in connection with his or its business in any capacity whatsoever, any person who has been convicted of a felony or any of the offenses specified in subdivision two of section seventy-four of this article, and who has not subsequent to such conviction received executive pardon therefor removing this disability, or received a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law to remove the disability under this section because of such a conviction, or any person whose private detective or investigator's license or bail enforcement agent's license was revoked or application for such license was denied by the department of state or by the authorities of any other state or territory because of conviction of any

of such offenses. Should the holder of an unexpired license certificate falsely state or represent that a person is or has been in his employ, such false statement or misrepresentation shall be sufficient cause for the revocation of such license. Any person falsely stating or representing that he is or has been a detective or employed by a detective agency or that he is or has been a bail enforcement agent or employed by a bail enforcement agency shall be guilty of a misdemeanor.

2. No person shall hereafter be employed by any holder of a license certificate until he shall have executed and furnished to such license certificate holder a verified statement, to be known as "employee's statement," setting forth:

(a) His full name, age and residence address.

(b) The business or occupation engaged in for the three years immediately preceding the date of the filing of the statement, setting forth the place or places where such business or occupation was engaged in, and the name or names of employers, if any.

(c) That he has not been convicted of a felony or of any offense involving moral turpitude or of any of the misdemeanors or offenses described in subdivision one of this section.

(d) Such further information as the department of state may by rule require to show the good character, competency, and integrity of the person executing the statement.

3. Immediately upon the verification of an employee's statement, the holder of a license certificate by whom such person has been or is to be employed shall cause two sets of fingerprints of the two hands of such person to be recorded in such manner as the department of state may by rule prescribe. The holder of a license certificate shall immediately stamp in indelible ink the employee's statement and each set of fingerprints with the name, year and license certificate number of such holder and a number, which number shall be determined by the number of such statements furnished to such holder and shall be in numerical sequence.

4. The holder of a license certificate shall affix one set of such fingerprints to the employee's statement in such manner that the prints

can be examined without disclosing the contents of the employee's statement and shall retain such statement and prints so long as he shall be licensed under this article by the department of state.

5. The holder of a license certificate shall file the other set of fingerprints with the department of state by forwarding the same by registered mail to the office of the secretary of state, Albany, New York, within twenty-four hours of such employment.

6. Within five days after the filing of such fingerprints the secretary of state shall cause such fingerprints to be compared with fingerprints filed with the division of criminal justice services and, if he finds any record of any conviction as defined in the criminal procedure law of a felony or any other offense specified in subdivision one of this section, he shall immediately notify the holder of such license certificate and shall also refer the matter to the attorney-general. The secretary of state may also submit fingerprints to the federal bureau of investigation for a national criminal history record check and may, from time to time, cause such fingerprints to be checked against the fingerprints filed with the division of criminal justice services or of other official fingerprint files within or without this state, and if he finds that such person has been convicted of a felony or any other offense specified in subdivision one of this section he shall immediately notify the holder of such license certificate and shall also refer the matter to the attorney-general. The secretary of state shall at all times be given access to and may from time to time examine the fingerprints retained by the holder of a license certificate as provided in subdivision four of this section.

7. If any holder of a certificate shall file with the department of state the fingerprints of a person other than the person so employed, he shall be subject to a fine not exceeding five thousand dollars (\$5,000) or to imprisonment not exceeding one year, or both.

8. The provisions of this section shall not be applicable to security guards or the employment of security guards by licensees.

§ 82. Employees not to divulge information or make false reports. Any person who is or has been an employee of a holder of a license shall not divulge to any one other than his employer, or as his employer shall direct, except as he may be required by law, any information acquired by him during such employment in respect of any of the work to which he shall have been assigned by such employer. Any such employee violating the provisions of this section and any such employee who shall wilfully make a false report to his employer in respect of any of such work, shall be guilty of a misdemeanor. The employer of any employee believed to have violated this section shall without any liability whatsoever upon said employer supply the secretary of state or such officer or person in the department of state as the secretary of state may designate, all the known facts and circumstances in connection with the said employee's transaction or performance or action believed to be in violation of this article and the secretary of state or his authorized representative shall, should the facts and circumstances be deemed to warrant, conduct further investigation and submit the evidence thus acquired to the attorney-general of the state for appropriate action in accordance with the provisions of section eighty-five of this chapter.

§ 83. Application of article. Nothing in this article shall apply to any detective or officer belonging to the police force of the state, or any county, city, town or village thereof, appointed or elected by due authority of law, or to any person in the employ of any police force or police department of the state, or of any county, city, town or village thereof while engaged in the performance of their official duties; nor to any person, firm, limited liability company, partnership, corporation, or any bureau or agency, whose business is exclusively the furnishing of information as to the business and financial standing, and credit responsibility of persons, firms, or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds or commercial credit or of claimants under insurance policies, nor to any person licensed as a certified public accountant while engaged in the practice of public accountancy as defined in article one hundred forty-nine of the education law or any

firm, limited liability company, partnership or corporation registered as a certified public accounting firm by the commissioner of education while performing services regulated under article one hundred forty-nine of the education law or Part 70 of the regulations of the commissioner of education; and whose business does not embrace other activities described in section seventy-one of this article; or whose business is licensed by the commissioner of labor under the provisions of section twenty-four-a or subdivision three-b of section fifty of the workers' compensation law or whose business is representing employers or groups of employers insured under the workers' compensation law in the state insurance fund; nor to any corporation duly authorized by the state to operate a central burglar or fire alarm protection business; nor to any person while engaged in the business of adjuster for an insurance company nor to any public adjuster licensed by the superintendent of financial services under the insurance law nor to any person regularly employed as special agent, detective or investigator exclusively by one employer in connection with the affairs of that employer only nor to any charitable or philanthropic society or association duly incorporated under the laws of the state and which is organized and maintained for the public good and not for private profit, nor shall anything in this article contained be construed to affect in any way attorneys or counselors at law in the regular practice of their profession, but such exemption shall not enure to the benefit of any employee or representative of such attorney or counselor at law who is not employed solely, exclusively and regularly by such attorney or counselor at law. No person, firm, limited liability company, partnership, corporation or any bureau or agency exempted hereunder from the application of this article shall perform any manner of private investigator, bail enforcement agent or watch, guard or patrol agency service as described in section seventy-one of this article, for any other person, firm, limited liability company, partnership, corporation, bureau or agency whether for fee, hire, reward, other compensation, remuneration, or consideration or as an accommodation without fee, reward or remuneration or by a reciprocal arrangement whereby such services are exchanged on request of parties thereto. The commission of a single act prohibited by this article shall constitute a violation thereof.

Nothing in this article shall be construed to affect or prohibit the right of any person to form or become affiliated with or to continue as a member of any union, association, society or organization of his own choosing.

§ 84. Unlawful acts. 1. It is unlawful for the holder of a license, issued under this article, or for any employee of such licensee, knowingly to commit any of the following acts within or without the state of New York: to incite, encourage, or aid in the incitement or encouragement of any person or persons who have become a party to any strike, to do unlawful acts against the person or property of any one, or to incite, stir up, create or aid in the inciting of discontent or dissatisfaction among the employees of any person, firm, limited liability company or corporation with the intention of having them strike; to interfere or prevent lawful and peaceful picketing during strikes; to interfere with, restrain, or coerce employees in the exercise of their right to form, join or assist any labor organization of their own choosing; to interfere or hinder the lawful or peaceful collective bargaining between employees and employers; to pay, offer, or give any money, gratuity, favor, consideration, or other thing of value, directly or indirectly, to any person for any verbal or written report of the lawful activities of employees in the exercise of their right of self-organization, to form, join, or assist labor organizations and to bargain collectively through representatives of their own choosing; to advertise for, recruit, furnish or replace or offer to furnish or replace for hire or reward, within or without the state of New York, any help or labor, skilled or unskilled, or to furnish or offer to furnish armed guards, other than armed guards theretofore regularly employed for the protection of payrolls, property or premises, for service upon property which is being operated in anticipation of or during the course or existence of a strike, or furnish armed guards upon the highways, for persons involved in labor disputes or to furnish or offer to furnish to employers or their agents, any arms, munitions, tear gas implements, or any other weapons; or to send letters or literature to employers offering to eliminate labor unions or distribute or circulate any list of members of a labor organization, or to advise any person of the

membership of an individual in a labor organization for the express purpose of preventing those so listed or named from obtaining or retaining employment. The violation of any of the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine of not less than five hundred dollars, or one year's imprisonment or both. It is unlawful for the holder of a license to collect or offer or attempt to collect or directly or indirectly engage in the business of collecting of debts or claims of any kind, excepting that the taking possession, on behalf of a secured party having the right to do so under section 9--609 of the uniform commercial code, of property in the possession of a debtor who has defaulted in the performance of a security agreement secured by such property, shall not be considered a violation of this section and excepting further that the secretary of state may grant exemption from this prohibition in the collection of debts to licensees who are principally engaged in the business of credit investigation and credit reporting. It is unlawful for the holder of a license to furnish or perform any services described in subdivisions one and two of section seventy-one of this article on a contingent or percentage basis or to make or enter into any agreement for furnishing services of any kind or character, by the terms or conditions of which agreement the compensation to be paid for such services to the holder of a license is partially or wholly contingent or based upon a percentage of the amount of money or property recovered or dependent in any way upon the result achieved. It shall be unlawful for a holder of a license to use, display, cause to be printed or distributed, cards, letter-heads, circulars, brochures or any other advertising material or advertisement in which any name or indicia of the license status of the licensee is set forth in any manner other than the name under which the licensee is duly licensed. It is unlawful for a licensed private investigator or bail enforcement agent to own, have or possess or in any manner to wear, exhibit or display, a shield or badge of any material, kind, nature or description, in the performance of any of the activities as private investigator or bail enforcement agent, as distinguished from watch, guard or patrol agency, under this article. It is unlawful for a licensed private investigator or bail enforcement agent to issue to any person employed by such licensee, a badge or shield of any material, kind, nature or description, and it is unlawful for any person employed

by such licensee to possess, carry or display a badge or shield of any description provided that any licensed private investigator or bail enforcement agent who also engages in the business of watch, guard or patrol agency may possess, use or display or issue to employees in the conduct of such business, a rectangular metal or woven insignia to be worn on the outer clothing and approved by the department of state, which insignia shall not be larger than three inches high or four inches wide with an inscription thereon containing the word "watchman", "guard", "patrol" or "special service" and the name of the licensee. It shall be unlawful for any licensee to publish or cause to be published any advertisement, letter-head, circular, statement or phrase of any sort which suggests that the licensee is an official police or investigative agency or any other agency instrumentality of the state of New York or any of its political subdivisions. It shall be unlawful for any licensee to make any statement which would reasonably cause another person to believe that the licensee is a police officer or official investigator of the state of New York or any of its political subdivisions. It shall be unlawful for a licensee to offer, by radio, television, newspaper advertisement or any other means of communication, to perform services at any location which is merely the location of a telephone answer service unless full disclosure of that fact is made in the advertisement.

2. Notwithstanding any inconsistent provision of subdivision one of this section, a private investigator may contract with a local social services district to furnish or perform services for the location of absent parents and fathers of children born out of wedlock on a contingent basis.

§ 85. Prosecution. Criminal action for violation of this article shall be prosecuted by the attorney general, his or her deputy, or a district attorney, in the name of the people of the state. In any such prosecution the attorney general, or his or her deputy, shall exercise all the powers and perform all duties which the district attorney would otherwise be authorized to exercise or to perform therein. The attorney general or a district attorney shall, upon a conviction for a violation

of any provision of this article and within ten days thereafter, make and file with the department of state a detailed report showing the date of such conviction, the name of the person convicted and the nature of the charge.

§ 86. Reward may be presumed. In any prosecution under this article any person, firm, limited liability company, partnership or corporation who performs or commits any of the acts set forth in sections seventy and seventy-one of this article shall be presumed to do so for a fee, compensation, valuable consideration or reward.

§ 87. Department of state to employ agents; expenses for enforcement of law. The department of state is hereby authorized to employ such agent or agents as the secretary of state may deem necessary to enable the department of state to carry out the provisions of this article and to enforce compliance therewith.

§ 88. Roster of licensees. The department of state shall publish at least once in each year, a roster of the names and addresses of all persons, firms, limited liability companies and corporations licensed under the provisions of this article. A copy of each roster issued by the department of state shall be mailed by it to any licensee upon request and without charge.

§ 89. Inspection by industrial commissioner. All applications, papers and records on file in the department of state in connection therewith shall at all times be open for the inspection of the industrial commissioner of the department of labor and the persons in charge thereof shall afford every reasonable facility for their examination and permit copies to be made when required by the industrial commissioner.

§ 89-a. Disposition of fees and other revenue. All fees and other

moneys derived from the operation of this article shall on the fifth day of each month be paid by the department of state into the state treasury.

ARTICLE 7-A
SECURITY GUARD ACT

Section 89-e. Short title.

89-f. Definitions.

89-g. Employment of security guards.

89-h. Requirements for a registration card.

89-i. Investigation.

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89-k. Issuance and denial of registration cards.

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89-n. Training requirements.

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89-s. Reporting.

* 89-w. Applicability.

* Numerically this section should be in Art. 8 but its subject matter places it in Art. 7-A.

§ 89-e. Short title. This article shall be known and may be cited as the "security guard act of nineteen hundred ninety-two".

§ 89-f. Definitions. As used in this article, the following words and phrases shall have the following meanings:

1. "Commissioner" shall mean the commissioner of the division of criminal justice services.

2. "Division" shall mean the division of criminal justice services.

3. "Secretary" shall mean the secretary of state.

4. "Department" shall mean the department of state.

5. "Security guard company" shall mean any person, firm, limited liability company, corporation, public entity or subsidiary or department of such firm, limited liability company, corporation or public entity employing one or more security guards or being self-employed as a security guard on either a proprietary basis for its own use or on a contractual basis for use by another person, firm, limited liability company, corporation, public entity or subsidiary thereof within the state.

6. "Security guard" shall mean a person, other than a police officer, employed by a security guard company to principally perform one or more of the following functions within the state:

a. protection of individuals and/or property from harm, theft or other unlawful activity;

b. deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity including but not limited to unlawful or unauthorized intrusion or entry, larceny, vandalism, abuse, arson or trespass on property;

c. street patrol service;

d. response to but not installation or service of a security system alarm installed and/or used to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage and other losses and/or to maintain security of a protected premises.

Provided, however, that a security guard who is otherwise subject to regulation with respect to registration and training by the federal

government in the performance of their duties, or a security guard providing such services on a voluntary basis, shall not be subject to the provisions of this article.

7. "Public entity" shall mean:

a. the state of New York;

b. a county, city, town, village or any other political subdivision or civil department or division of the state;

c. any other public corporation, public authority, commission, agency, municipal or other public housing authority, or project organized pursuant to article two of the private housing finance law;

d. any other governmental instrumentality or governmental unit in the state of New York.

8. "Security system" shall mean an assembly of equipment and devices or a single device designated to detect and/or signal an unauthorized intrusion into premises or to signal an attempted robbery, burglary, theft, pilferage or other loss at a protected premises, and with respect to which signal, police and/or security guards are expected to respond. Smoke and/or fire alarm systems are excluded from the provisions of this article.

9. "Applicant" shall mean an individual who has filed an application with the department for a security guard registration card.

10. "Holder" shall mean an individual who has been issued a registration card by the department.

11. "Registration card" shall mean a photographic identification card issued by the department, including a special armed guard registration card signifying that the individual identified thereon has been authorized by the department to perform security guard functions.

12. "Special armed guard registration card" shall mean a registration card issued by the department signifying that the individual thereon has been certified by the department to perform security guard functions and to carry firearms in connection with such functions. Nothing herein contained shall relieve such guard from any provision of law which requires that he or she be licensed to carry such firearm.

13. "Serious offense" shall mean any felony involving the offenses enumerated in the closing paragraph of this subdivision; a criminal solicitation of or a conspiracy to commit or an attempt to commit or a criminal facilitation of a felony involving the offenses enumerated in the closing paragraph of this subdivision, which criminal solicitation, conspiracy, attempt or criminal facilitation itself constitutes a felony or any offense in any other jurisdiction which if committed in this state would constitute a felony; any offense in any other jurisdiction which if committed in this state would constitute a felony provided that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such: (i) a conviction for which an executive pardon has been issued pursuant to the executive law; (ii) a conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or (iii) a conviction the records of which have been sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; and (iv) a conviction for which other evidence of successful rehabilitation to remove the disability has been issued.

Felonies involving: assault, aggravated assault and reckless endangerment pursuant to article one hundred twenty; vehicular manslaughter, manslaughter and murder pursuant to article one hundred twenty-five; sex offenses pursuant to article one hundred thirty; unlawful imprisonment, kidnapping or coercion pursuant to article one hundred thirty-five; criminal trespass and burglary pursuant to article one hundred forty; criminal mischief, criminal tampering and tampering with a consumer product pursuant to article one hundred forty-five; arson pursuant to article one hundred fifty; larceny and offenses

involving theft pursuant to article one hundred fifty-five; offenses involving computers pursuant to article one hundred fifty-six; robbery pursuant to article one hundred sixty; criminal possession of stolen property pursuant to article one hundred sixty-five; forgery and related offenses pursuant to article one hundred seventy; involving false written statements pursuant to article one hundred seventy-five; commercial bribing and commercial bribe receiving pursuant to article one hundred eighty; criminal impersonation and scheme to defraud pursuant to article one hundred ninety; bribery involving public servants and related offenses pursuant to article two hundred; perjury and related offenses pursuant to article two hundred ten; tampering with a witness, intimidating a victim or witness and tampering with physical evidence pursuant to article two hundred fifteen; criminal possession of a controlled substance pursuant to sections 220.06, 220.09, 220.16, 220.18 and 220.21; criminal sale of a controlled substance pursuant to sections 220.31, 220.34, 220.39, 220.41, 220.43 and 220.44; criminal sale of cannabis pursuant to sections 222.55, 222.60 and 222.65; riot in the first degree, aggravated harassment in the first degree, criminal nuisance in the first degree and falsely reporting an incident in the second or first degree pursuant to article two hundred forty; and crimes against public safety pursuant to article two hundred sixty-five of the penal law.

14. "Peace officer" shall mean a peace officer as defined by subdivision thirty-three of section 1.20 of the criminal procedure law, who is employed full-time as a peace officer and who has successfully completed the training requirements as set forth in subdivision one of section 2.30 of such law.

15. "Police officer" shall mean a police officer as defined by subdivision thirty-four of section 1.20 of the criminal procedure law.

§ 89-g. Employment of security guards. 1. Except as provided in this section and section eighty-nine-w of this article, no security guard company shall knowingly employ a person as a security guard and no person shall be employed as a security guard or act as a security guard

unless:

a. The security guard company has verified with the department that such person possesses a valid registration card which has not expired or been revoked or suspended; or

b. Such security guard company has filed with the department in a manner prescribed by rules and regulations promulgated by the department, by certified mail:

(i) An application for a registration card completed and sworn to by such person pursuant to subdivision one of section eighty-nine-h of this article;

(ii) A certification by the security guard company that it has exercised due diligence to verify as true the information contained in such person's application;

(iii) A certification that such person has completed the preassignment training required by subdivision two of section eighty-nine-h of this article;

(iv) Two photographs of such person taken within thirty days prior to the filing of the application of a size prescribed by the secretary and two sets of fingerprints of such person. The fingerprints shall be taken on a standard fingerprint card approved by the division; and

(v) The fees prescribed by subdivision ten of section eighty-nine-h of this article.

2. It shall be incumbent upon each security guard company to exercise due diligence in verifying that the information contained in every application for a registration card it files with the department is true provided, however, the secretary shall, upon consultation with the security guard advisory council, promulgate rules and regulations to specify the minimum due diligence required to be exercised by such companies in order to verify the information required pursuant to subdivisions five and seven of section eighty-nine-h of this article.

3. Except as provided in section seven hundred fifty-two of the correction law, no security guard company shall knowingly employ to perform security guard functions, any individual:

a. who has been convicted of a serious offense, or of a misdemeanor in the state or of any offense in any other jurisdiction which, if committed in this state, would constitute a misdemeanor, and which, in the discretion of the secretary, bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment; or

b. who in any jurisdiction has been denied authorization to perform security guard functions or whose authorization to perform security guard functions has been suspended or revoked on grounds which would constitute a basis for denying, suspending or revoking a registration card in this state.

4. For each security guard employed by a security guard company as of the effective date of this section such security guard company shall at a time assigned by the secretary, pursuant to a staggered schedule, comply with the provisions of paragraphs a and b of subdivision one of this section and the provisions of section eighty-nine-n of this article. Until the assigned filing date, such security guard company may continue to employ such person to perform security guard functions. No security guard company may employ such person after the assigned filing date which has not complied with the provisions of paragraphs a and b of subdivision one of this section with respect to such person.

5. Within fifteen calendar days following the employment, retirement, resignation or termination of a security guard by a security guard company, such company shall give the department written notice thereof on a form prescribed by the department.

6. Insurance requirements. All security guard companies which are self-insured shall file with the department a certificate of insurance evidencing comprehensive general liability coverage from an insurance company licensed to do business in this state or procured by a duly licensed excess line broker pursuant to section two thousand one hundred eighteen of the insurance law for death and personal injury, which coverage shall include false arrest or false imprisonment, malicious

prosecution, libel, slander, and violation of right of privacy, in the minimum amount of one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate which amount shall be available for the payment of claims. The certificate shall provide that the insurance shall not be modified or cancelled unless thirty days prior notice shall be given to the department. After the effective date of this article, no security guard company shall knowingly have in its employ a security guard unless such coverage is in force and such certificate is filed with the department.

7. Every security guard company shall maintain for each security guard it employs, and for a period of one year following the retirement, resignation or termination of such security guard's employment a copy of the application for a registration card, proof of due diligence to verify the information therein contained, one photograph and training records, after which year the security guard company shall cause all such records and documents to be destroyed.

8. All security guard companies, except those security guard companies which employ such guards solely for their own proprietary use, shall be subject to the enforcement provisions contained in article seven of this chapter; provided, however, that whenever the secretary of state shall have reason to believe that any security guard company has hired or intends to hire an unlicensed security guard in violation of this article, the secretary may bring an action in supreme court to enjoin the employment of unlicensed security guards in violation of this article or for an order directing the security guard company to remedy the violation.

9. No registered security guard shall accept or continue in employment with a security guard company upon notice of determination from the department that such employer has (a) violated the provisions of this article or the rules and regulations promulgated pursuant thereto, or (b) has engaged in fraud, deceit or misrepresentation.

10. All security guard companies shall maintain books and records of employees who are security guards and shall, upon request, make such

books and records available to the secretary of state.

§ 89-h. Requirements for a registration card. To qualify for a registration card to perform security guard functions, an applicant shall fulfill the following requirements:

1. Application: file an application with the department sworn to or affirmed by the applicant in such form and including such information and attachments as may be prescribed or requested by the department upon consultation with the security guard advisory council including but not limited to the character and fitness, competence and employment history of the applicant;

2. Training: file a certificate with the department certifying either that the applicant has satisfactorily completed a minimum of eight hours of pre-assignment training as prescribed by the division or that such requirement has been waived in accordance with section eight hundred forty-one-c of the executive law;

3. Age: be at least eighteen years of age;

5. Criminal record: not have been convicted of a serious offense, or of a misdemeanor in the state or of any offense in any other jurisdiction which, if committed in this state, would constitute a misdemeanor, and which, in the discretion of the secretary, bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment;

6. Character and fitness: be of good moral character and fitness;

7. Competence: not have been declared by any court of competent jurisdiction to be incompetent by reason of mental disease or defect which has not been removed;

8. Employment history: not have been discharged from a correctional or law enforcement agency for incompetence or misconduct as determined by a

court of competent jurisdiction, administrative hearing officer, administrative law judge, arbitrator, arbitration panel or other duly constituted tribunal, or resigned from such agency while charged with misconduct or incompetence; provided however, that an applicant who has been discharged or has resigned from such agency while charged with misconduct or incompetency may submit an explanation to the department and request a waiver of this requirement;

9. Disability: a physical or mental disability or disability by reason of intoxication or the use of, addiction to or dependence on alcohol or drugs which, as determined by the department, renders the applicant unable to perform the essential functions of the security guard position, with or without reasonable accommodation, or who, as determined by the department, poses a direct threat to health or safety;

10. Fees: pay (a) a fee of thirty-six dollars for processing of the application, investigation of the applicant and for the initial biennial registration period. Such fees shall be deposited to the credit of the business and licensing services account established pursuant to the provisions of section ninety-seven-y of the state finance law; and (b) a fee pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, and amendments thereto, for the cost of the division's full search and retain procedures, and a fee as determined by the federal bureau of investigation for the cost of its fingerprint search procedures, which fees shall be remitted by the department to the division and federal bureau of investigation; and

11. Changes: give the department written notice, within fourteen calendar days of occurrence, of any change of circumstances which varies from the information previously given to the department hereunder.

§ 89-i. Investigation. Within five business days after receipt of an application, the department shall transmit to the division two sets of fingerprints and the fees required pursuant to paragraph (b) of subdivision ten of section eighty-nine-h of this article. One set of fingerprints and the required fee shall be submitted to the federal

bureau of investigation for a national criminal history record check. The results will be used to ascertain whether or not the applicant has been charged with or convicted of a serious offense and may cause to be conducted an investigation to verify the information contained in the application; provided, however, that the department shall cause such investigation to be conducted for applicants whose application has not been submitted and verified pursuant to section eighty-nine-g of this article. The department, in consultation with the division, may waive such background checks, investigations and fees if in its opinion, the security guard applicant has been subject to previous background checks and investigation requirements which meet or exceed the requirements of this section. The department, in consultation with the division, may not be required to conduct background checks or investigations for applicants who are also employed as peace officers.

§ 89-j. Security guard registry. The department shall pursuant to section ninety-nine of the executive law maintain a computerized registry.

§ 89-k. Issuance and denial of registration cards. 1. Requirements of registration cards. Unless the department determines that the applicant does not meet the requirements of section eighty-nine-h of this article or is unable to perform security guard functions, it shall issue a registration card in a form prescribed by the department, which shall include, among other information, the expiration date of such card and any renewal thereof, authorizing the applicant to perform security guard functions. If the department determines that an applicant does not meet the requirements of section eighty-nine-h of this article, it shall deny the application for a registration card. Upon issuance of the registration card or denial of the application therefor, the department shall forthwith give notice of such issuance or denial to such applicant and to the security guard company which employs such applicant, by regular mail.

2. Administrative review. Denial of a registration card hereunder

shall be reviewable by an administrative hearing as set forth in subdivisions two, three, four and five of section seventy-nine of this chapter.

§ 89-1. Suspension, revocation and reissuance of registration cards.

1. Revocations and suspensions. The secretary or any person deputized by the secretary may suspend for a period not to exceed eighteen months or revoke any registration card issued pursuant to this article after a hearing pursuant to this section, except that, where revocation is sought based solely upon the holder having been convicted of a serious offense, the secretary shall provide notice to the holder, at the holder's registration address as maintained by the department, that the holder's registration card will be revoked on a date certain, but not less than thirty-five days after the date of the notice, unless the holder requests an administrative hearing pursuant to this section within said thirty-five day period.

2. Causes for revocation or suspension. A registration card issued pursuant to this article may be suspended or revoked for one or more of the following causes:

a. the holder is convicted of a serious offense, or of a misdemeanor in the state which, in the discretion of the secretary, bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment;

b. the application contained a material false statement or omission the truth or inclusion of which would have resulted in denial of the application pursuant to section eighty-nine-k of this article;

c. the holder is in violation of any provisions of this article or the rules and regulations promulgated pursuant to this article;

d. employment of the holder as a security guard constitutes a danger to the health, safety or well-being of the public.

3. Procedure. The hearing required by subdivision one of this section shall be held pursuant to the state administrative procedure act, provided, however, that where a registration card has been temporarily suspended pursuant to paragraph b of subdivision four of this section, the hearing shall be held within thirty days and the adjudication shall be made within forty-five days following the service of notice of such hearing. If such hearing is adjourned at the request of the holder or by reason of any act or omission by the holder or on the holder's behalf such suspension may be continued for the additional period of such adjournment. Where a holder has been served with notice of hearing which has not been adjourned and such holder without good cause fails to appear at the hearing, such hearing may proceed and an adjudication may be made in the absence of such holder.

4. Temporary suspension of registration cards.

a. Temporary suspension where the holder is charged with a serious offense. Where a holder is charged with a serious offense, such holder's registration card may be suspended (i) by the court pending any prosecution for a serious offense. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 140.40 of the criminal procedure law and there exists reasonable cause to believe that the holder committed the serious offense with which he is charged. At such time, the holder shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present witnesses and other evidence tending to rebut the court's findings. Where the suspension is imposed upon a pending charge of a serious offense which is a class A misdemeanor and the holder has requested a hearing pursuant to article one hundred seventy of the criminal procedure law, or where the suspension is imposed upon a pending charge of a serious offense which is a felony and the holder has requested a hearing pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of such hearing, the court fails to find that there is reasonable cause to believe that the holder committed a serious offense, or if the charges are dismissed or the holder is acquitted of such charges or the conviction is reversed on appeal, the court shall

promptly notify the secretary and direct restoration of such registration card unless such registration card is suspended or revoked pursuant to any other provision of this section. If a holder is convicted of a serious offense, the court shall promptly notify the secretary and the suspension shall remain in effect pending a hearing held pursuant to subdivision three of this section; or (ii) by an officer designated by the secretary pursuant to the state administrative procedure act to preside over a hearing, on application by the secretary on notice to the holder, where such officer finds that such holder has been charged with a serious offense and reasonable cause exists to believe that the holder committed the serious offense with which the holder is charged.

b. Temporary suspension pending hearing and adjudication. Pending the hearing and adjudication on suspension or revocation of a registration card, the officer designated to preside over the hearing may, on application of the secretary with notice to the holder, suspend such registration card where (i) the holder has been convicted of a serious offense, (ii) the holder has been charged with a serious offense and such officer finds that reasonable cause exists to believe that the holder committed the serious offense with which the holder is charged, or (iii) such officer finds that reasonable cause exists to believe that the employment of the holder as a security guard constitutes a danger to the health, safety or well-being of the public.

5. No registration card may be suspended pursuant to this section based upon the fact that a holder is charged with or convicted of one or more serious offenses, or of a misdemeanor in the state which, in the discretion of the secretary, bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment unless:

a. there is a direct relationship between one or more such serious offenses and the registration card or employment of the holder as a security guard; or

b. the possession of a registration card by the holder or the

employment of the holder as a security guard would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

6. Fines. Where it is determined after hearing that the holder has violated one or more provisions of this article pursuant to paragraph c of subdivision two of this section, the secretary may, in lieu of revocation or suspension of the registration card of such holder, impose a fine not to exceed one thousand dollars for each violation payable to the department.

7. Surrender of suspended or revoked registration card. a. When the court suspends a registration card pursuant to subparagraph (i) of paragraph a of subdivision four of this section, the holder shall forthwith surrender the registration card to the court and the court shall promptly send the registration card to the secretary.

b. Upon suspension or revocation of the registration card by the secretary or by the officer designated by the secretary to preside over the hearing, pursuant to this section, the holder shall, if present at the time of such suspension or revocation, surrender the registration card forthwith. If the holder is not present at the time of such suspension or revocation, the secretary shall send notice of such suspension or revocation to the holder at the address indicated on the registration card or such other last known address, by personal service or by certified mail return receipt requested, in which case the holder shall within five days following receipt of such notice surrender the registration card by delivering same in person or by certified mail to a location designated by the secretary. Notice of suspension or revocation shall be given by the secretary to the security guard company by which the holder was employed at the time of such suspension or revocation.

8. Reissuance of registration card. A suspended or revoked registration card may be reissued only by the secretary or by a person deputized by the secretary. Except as otherwise provided in this section, where a registration card has been revoked, it may not be reissued for at least one year following revocation.

§ 89-m. Renewal of registration cards. 1. Registration cards shall expire two years from the date of issuance or last renewal as the case may be. Not less than sixty nor more than ninety days prior to the expiration date of a registration card, the department shall mail to each registrant at his last known address, notice of renewal and a registration renewal form. Registration cards shall not be renewed unless not more than sixty nor less than thirty days prior to the expiration date of the registration card, the holder submits to the department, a registration renewal form sworn to or affirmed by the holder under the penalty of perjury together with a biennial renewal fee in the amount of twenty-five dollars payable to the department and a certificate certifying that the holder has satisfactorily completed the required annual in-service training courses as prescribed by the commissioner pursuant to subdivision one of section eight hundred forty-one-c of the executive law. Unless the department determines the existence of facts which would constitute cause for denial, revocation or suspension of the registration card pursuant to this article, it shall renew the registration card. Denial of renewal hereunder shall be reviewable by an administrative hearing as set forth in section seventy-nine of this chapter. The twenty-five dollar biennial renewal fee collected by the department shall be deposited to the licensing examinations services account established pursuant to the provisions of section 97-aa of the state finance law. Notice that a registration card has expired or has not been renewed pursuant to this section shall be given by the secretary to the holder of such registration card and to the security guard company by which such holder was employed at the time of such expiration or non-renewal.

2. A registration card which was not renewed or which expired may be reissued only in a manner prescribed by rules and regulations promulgated by the department.

§ 89-n. Training requirements. 1. Security guards shall be required to satisfactorily complete training programs given and administered by

security guard training schools, schools which provide security guard training programs or security guard companies prescribed, certified and approved by the commissioner pursuant to section eight hundred forty-one-c of the executive law to include:

- a. an eight hour pre-assignment training course;
- b. an on-the-job training course to be completed within ninety working days following employment, consisting of a minimum of sixteen hours and a maximum of forty hours, as determined by the council, generally relating to the security guard's specific duties, the nature of the work place and the requirements of the security guard company;
- c. a forty-seven hour firearms training course for issuance of a special armed guard registration card;
- d. an eight hour annual in-service training course; and
- e. an additional eight hour annual in-service training course for holders of special armed guard registration cards.

The training programs and courses required by this subdivision may, if approved and certified by the commissioner pursuant to subdivision two of section eight hundred forty-one-c of the executive law, be given and administered by security guard companies.

Nothing herein shall be construed to prohibit a security guard company from voluntarily providing training programs and courses which exceed the minimum requirements provided by this subdivision.

Upon completion of a required training course, a security guard shall receive from the provider a certificate evidencing satisfactory completion thereof in accordance with the requirements prescribed by the commissioner pursuant to section eight hundred forty-one-c of the executive law.

- 2. a. A security guard who has been or was previously employed as a

peace officer for eighteen months or more who exhibits a valid certificate awarded pursuant to subdivision six of section 2.30 of the criminal procedure law attesting to his or her satisfactory completion of the training requirements imposed by section 2.30 of the criminal procedure law shall be exempt from the requirements of paragraph c of subdivision one of this section provided that such peace officer has completed a course of firearms training approved by the municipal police training council provided, however, that nothing in this subdivision shall be deemed to authorize such guard to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

3. A security guard who is also employed as a peace officer for eighteen months or more shall be exempt from the requirements of paragraph e of subdivision one of this section as long as he or she is currently employed as a peace officer and provides to his or her security guard employer proof of such annual in-service training required under paragraph e of subdivision one of this section.

4. The provisions of this section shall not apply to a security guard who is:

a. a correction officer of any state correctional facility having the powers of a peace officer pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law;

b. a bridge and tunnel officer, sergeant or lieutenant of the Triborough bridge and tunnel authority having the powers of a peace officer pursuant to subdivision twenty of section 2.10 of the criminal procedure law;

c. a uniformed court officer of the unified court system having the powers of a peace officer pursuant to subdivision twenty-one of section 2.10 of the criminal procedure law;

d. a court clerk having the powers of a peace officer pursuant to subdivision twenty-one of section 2.10 of the criminal procedure law;

e. a deputy sheriff having the powers of a peace officer pursuant to subdivision two of section 2.10 of the criminal procedure law;

f. a police officer as defined in paragraphs (a), (b), (c), (d), (e), (f), (j), (k), (l), (o) and (p) of subdivision thirty-four of section 1.20 of the criminal procedure law who has been retired from such employment for a period not to exceed ten years, provided, however, that a retired police officer who has been retired from such employment for a period in excess of ten years shall be required to provide proof to his or her security guard employer of his or her satisfactory completion of an eight hour annual in-service training course approved by the commissioner, and provided further, however, that a retired police officer who will be required by his or her security guard employer to carry a firearm or will be authorized to have access to a firearm shall provide to such employer proof of his or her satisfactory completion of a forty-seven hour firearms training course approved by the commissioner and, if such firearms training course has not been completed within one year prior to such employment, satisfactory completion of an additional eight hour annual firearms in-service training course approved by the commissioner, such training course to be completed at least annually; or

g. a peace officer as defined in subdivisions two, twenty and twenty-five and paragraphs a and b of subdivision twenty-one of section 2.10 of the criminal procedure law who has been retired from such employment for a period not to exceed ten years, provided, however, that a retired peace officer who has been retired from such employment for a period in excess of ten years shall be required to provide proof to his or her security guard employer of his or her satisfactory completion of an eight hour annual in-service training course approved by the municipal police training council, and provided further, however, that a retired peace officer who will be required by his or her security guard employer to carry a firearm or will be authorized to have access to a firearm shall provide to such employer proof of his or her satisfactory completion of a forty-seven hour firearms training course approved by the municipal police training council and, if such firearms training course has not been completed within one year prior to employment,

satisfactory completion of an additional eight hour annual firearms in-service training course approved by the municipal police training council, such training course to be completed at least annually.

§ 89-o. Rules and regulations. The secretary shall in consultation with the security guard advisory council, adopt rules and regulations implementing the provisions of this article. Such rules and regulations shall include criteria for determining whether a person is a security guard or whether a particular function is a security guard function as defined by subdivision six of section eighty-nine-f of this article.

§ 89-p. Violations and penalties. Any person who is employed as a security guard or who acts as a security guard in violation of the provisions of section eighty-nine-g of this article or who knowingly and wilfully makes material misstatements in the application for or renewal of his or her registration card or who permits or authorizes the employment of a person as a security guard in violation of the provisions of section eighty-nine-g of this article or any security guard company which employs a security guard in violation of the provisions of section eighty-nine-g of this article shall be guilty of a misdemeanor which, upon conviction, shall be punishable by a term of imprisonment not to exceed six months, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment upon the first conviction and by a term of imprisonment not to exceed one year or by a fine of not less than one thousand dollars and not to exceed two thousand five hundred dollars or by both such fine and imprisonment upon a subsequent conviction. Any person who shall knowingly and wilfully fail to surrender his or her registration card as required by subdivision seven of section eighty-nine-l of this article shall be guilty of a violation punishable by a fine not to exceed two hundred fifty dollars in addition to any other penalty prescribed by law. Each violation of this article shall be deemed a separate offense.

§ 89-q. Separability. If any item, clause, sentence, subparagraph,

subdivision, section or other part of this article, or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this article, or the application of such section or part of a section held invalid, to any other person or circumstances, but shall be confined in its operation to the item, clause, sentence, subparagraph, subdivision, section or other part of this article directly involved in such holding, or to the person and circumstances therein involved.

§ 89-r. Preemption. The provisions of this article shall govern notwithstanding any other law to the contrary and further, no local law shall be enacted which shall require any fee or license for the licensure of registration or security guards.

§ 89-s. Reporting. On or before February first, nineteen hundred ninety-four, and on or before February first of each succeeding year, the secretary, upon consultation with the commissioner and the security guard advisory council, shall report to the governor, the temporary president of the senate and the speaker of the assembly on the implementation, procedures, operation, training, and enforcement of the security guard act of nineteen hundred ninety-two, together with any recommendations relating thereto. Such report shall include, but not be limited to:

a. the number of security guards registered and maintained in the security guard registry;

b. the number of applicants for registration, and the number of applications denied with the reason or reasons therefor;

c. statistics related to the time it takes to process fingerprint cards, applications and inquiries to the registry by security guard companies;

d. the number and length of suspensions and revocations, and the

number and amount of fines imposed;

e. the amount of fees collected by the department and the division;

f. the level of appropriation authority available to the department and the division and the amount of money expended by the department and division for the purposes of carrying out the provisions of this article; and

g. any other information which the department and the division deem necessary. The division shall provide the department with any information necessary to comply with the requirements of this section.

*** § 89-w. Applicability.** The provisions of this article shall not apply to a not-for-profit security guard company, public entity, or tenant or third-party security provider of such tenant of a publicly owned sports venue with a capacity of at least sixty thousand people located in the county of Erie, which hires a security guard or guards for a specific event or events solely for its own proprietary use and which employs such security guards only on a temporary basis for a total period not exceeding fifteen days per year. Notwithstanding anything to the contrary, such tenant or third-party security provider of a publicly owned sports venue with a capacity of at least sixty thousand people located in the county of Erie shall ensure that no less than fifty percent of the security guards that such tenant or third-party security provider hires have obtained a license under this article.

* NB Effective until September 20, 2027

* § 89-w. Applicability. The provisions of this article shall not apply to a not-for-profit security guard company or public entity which hires a security guard or guards for a specific event or events solely for its own proprietary use and which employs such security guards only on a temporary basis for a total period not exceeding fifteen days per year.

* NB Effective September 20, 2027

* NB Numerically this section should be in Art. 8 but its subject matter places it in Art. 7-A.

ARTICLE 8
PROCESS SERVERS

Section 89-t. Definitions.

89-u. Process server records, penalties.

89-v. Enforcement by attorney general.

§ 89-t. Definitions. For this article, a process server is a person other than an attorney or a party to an action acting on his own behalf who: (a) derives income from the service of papers in an action; or (b) has effected service of process in five or more actions or proceedings in the twelve month period immediately preceding the service in question. A person who serves interlocutory papers upon an attorney or who serves papers on behalf of a federal, state or local governmental agency in the course of his employment by such agency shall not be deemed a process server within the meaning of this article by virtue of such service.

§ 89-u. Process server records, penalties. 1. Each process server shall maintain a legible record of all service made by him as prescribed in this section.

2. The record to be maintained shall include the following information, where applicable:

- a. the title of the action;
- b. the name of the person served, if known;
- c. the date and approximate time service was effected;
- d. the address where service was effected;
- e. the nature of the papers served;

f. the court in which the action has been commenced;

g. the index number of the action, if known.

3. If service is effected pursuant to subdivisions one, two, or three of section three hundred eight of the civil practice law and rules, the record shall also include the description of the person served, including, but not limited to, sex, color of skin, hair color, approximate age, height and weight and other identifying features.

4. If service is effected pursuant to subdivision four of section three hundred eight of the civil practice law and rules, the record shall also include the dates, addresses and time of attempted service pursuant to subdivisions one, two or three of such section.

5. If the process server files an affidavit of service with the court, his record shall include the date of such filing.

6. Process servers shall retain each record required to be kept under this article for a period of two years from the date of service. Where a process server is employed as a process server by any person, a copy of such records shall also be maintained by such person at his principal office in this state for the same period.

§ 89-v. Enforcement by attorney general. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged

thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. Provided, however, a process server or agency may not be held liable for penalty in any action brought under this section for violation of this article, if the process server or agency shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical calculation, computer malfunction and programming and printing errors. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 8-A

PROCESS SERVERS AND PROCESS SERVING AGENCIES IN CITIES HAVING A POPULATION OF ONE MILLION OR MORE

Section 89-bb. Definitions.

89-cc. Process server records.

89-dd. Process serving agency records.

89-ee. Responsibility of process serving agency and process servers.

89-ff. Affidavits of service.

89-gg. Availability of records.

89-hh. Enforcement by attorney general.

89-ii. Preservation of private remedies.

89-jj. Preemption.

89-kk. Severability.

89-ll. Applicability.

§ 89-bb. Definitions. For the purposes of this article:

1. A "process server" is a person, other than an attorney or a party to an action acting on his own behalf, who: (a) derives income from the service of papers in an action; or (b) has effected service of process in five or more actions or proceedings in the twelve month period immediately preceding the service in question. A person who serves interlocutory papers upon an attorney or who serves papers on behalf of a federal, state or local governmental agency in the course of his employment by such agency shall not be deemed a process server within the meaning of this article by virtue of such service.

2. A "process serving agency" is any person, firm, partnership, association or corporation, other than an attorney or a law firm located in this state, who, as owner, manager or contractor, maintains an office, bureau or agency for the purpose of assigning or distributing process to individual process servers for actual service.

§ 89-cc. Process server records. 1. Each process server shall maintain a legible record of all service made by him or her as prescribed in this section. Such records shall be kept, either:

(a) in chronological order in a bound, paginated volume. Corrections in records shall be made only by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry. All other methods of correction, including but not limited to erasing, opaquing, obliterating or redacting, are prohibited; or

(b) by submitting recorded entries to a third party contractor within three days of service or attempted service, provided, however that permissions pertaining to such data will be secured so that the data cannot be deleted upon submission. Records shall be reported in chronological order. It shall be unlawful for any process server to tamper with data or properties of any electronic record kept pursuant to this section after an image file is made by modifying, amending, deleting, rearranging or in any other way altering any such data or properties including, but not limited to, using a meta data scrubber or similar device or program. If a typographical error has occurred or if

data contained in the process server's record was accidentally omitted from the electronic data entry, the third party contractor may make an amendment in which the original record shall be identified by entering it in italics. All third party contractors must maintain a daily backup of all submitted data, and all data must be available for review upon request of any and all interested parties.

2. The record to be maintained shall include the following information, where applicable:

- (a) the title of the action or a reasonable abbreviation thereof;
- (b) the name of the person served, if known;
- (c) the date and approximate time service was effected;
- (d) the address where service was effected;
- (e) the nature of the papers served;
- (f) the court in which the action has been commenced;
- (g) the index number of the action, if known;
- (h) if service is effectuated pursuant to subdivision four of section three hundred eight of the civil practice law and rules or subdivision one of section seven hundred thirty-five of the real property actions and proceedings law, a description of the color of the door to which the summons is affixed;
- (i) the process serving agency from whom the process served was received, if any;
- (j) type of service effected whether personal, substituted or conspicuous;
- (k) if service is effected pursuant to subdivision one, two or three of section three hundred eight of the civil practice law and rules, the record shall also include the description of the person served, including, but not limited to sex, color of skin, hair color, approximate age, height and weight and other identifying features;
- (l) if service is effected pursuant to subdivision four of section three hundred eight of the civil practice law and rules, the record shall also include the dates, addresses and time of attempted service pursuant to subdivision one, two or three of such section;
- (m) if the process server files an affidavit of service with the court, his record shall include the date of such filing.

§ 89-dd. Process serving agency records. 1. Each process serving agency shall be required to keep complete and accurate records with respect to each process server to whom it distributes, assigns or delivers process to be served. Corrections in records shall be made only by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry. All other methods of correction, including but not limited to, erasing, opaquing, obliterating, or redacting, are prohibited.

2. Such records shall include, where applicable:

(a) The name of the process server to whom process is distributed, assigned or delivered to be served;

(b) The titles or a reasonable abbreviation thereof and index numbers of each case if filed in court by the agency;

(c) The date that such papers were assigned for service, and the date that service was effected;

(d) The person from whom such papers were received for service;

(e) The date of filing of papers with the court if filed by the agency;

(f) The type of service effected whether personal, substituted or conspicuous.

§ 89-ee. Responsibility of process serving agency and process servers.

1. It shall be unlawful for a process server to fail to comply with all legal requirements for the service of process.

2. A process serving agency shall be legally responsible for the acts of each process server to whom it has distributed, assigned or delivered process for service if it could reasonably have known that the process server was acting improperly.

3. It shall be unlawful for a process serving agency or a process server to fail to comply with all laws and regulations respecting preparation, notarization and filing of affidavits of service of process and other documents.

§ 89-ff. Affidavits of service. It shall be unlawful for a process server to fail to set forth on any affidavit of service or process signed by him his license or registration number if such process server is required to be licensed or registered pursuant to any state or local law and the name and address of any process serving agency from whom he obtained the process for service if any.

§ 89-gg. Availability of records. All records required to be maintained by this article shall be retained by a process server or process serving agency for a minimum of three years and shall be available for inspection by the attorney general. The attorney general shall afford a process server or process serving agency at least five days prior written notice of its desire to make an inspection of records and shall specify the records to be inspected.

§ 89-hh. Enforcement by attorney general. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. Provided, however, a process server or agency may not be held liable for penalty in any action brought under

this section for violation of this article, if the process server or agency shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical calculation, computer malfunction and programming and printing errors. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 89-ii. Preservation of private remedies. Nothing in this article shall be construed to nullify or impair any right or rights which an individual may have against a process server or process serving agency at common law, by statute or otherwise.

§ 89-jj. Preemption. This article does not annul, alter, affect or exempt any person or business entity subject to the provisions of this article from complying with any local law, ordinance or regulation with respect to process servers or process serving agencies except to the extent that those laws are inconsistent with any provision of this article, and then only to the extent of the inconsistency. For purposes of this section, a local law, ordinance or regulation is not inconsistent with this article if the protection such law or regulation affords a consumer is greater than the protection provided by this article.

§ 89-kk. Severability. If any provision of this article or if any application thereof to any person or circumstance is held invalid, the remainder of this article and the application of the provision to other persons and circumstances shall not be affected thereby.

§ 89-ll. Applicability. This article shall apply only in cities having

a population of one million or more.

ARTICLE 8-B

LICENSING OF ARMORED CAR CARRIERS

Section 89-aaa. Short title.

89-bbb. Definitions.

89-ccc. Doing business without a license prohibited.

89-ddd. Application for licenses.

89-eee. Conditions precedent to licensing.

89-fff. Licensing.

89-ggg. Grounds for denial, suspension or revocation of license;
procedure.

89-hhh. Enforcement of article; investigations.

89-iii. Insurance.

89-jjj. Violations and penalties.

89-kkk. Preemption.

89-lll. Regulations.

89-nnn. Separability.

§ 89-aaa. Short title. This article shall be known and may be cited as the "armored car carrier act."

§ 89-bbb. Definitions. When used in this article, the following terms shall have the following meanings:

1. "Commissioner" means the commissioner of the division of criminal justice services.

2. "Division" means the division of criminal justice services.

3. "Secretary" means the secretary of state.

4. "Department" means the department of state.

6. "Armored car carrier" means any individual, partnership, association, limited liability company, corporation, or any other entity, engaging in the business of providing armored car services for hire.

7. "Armored car services" means engaging in the business of providing secured transportation, protection and safeguarding of valuable cargo from one place or point to another, including the provision of cash services for automated teller machines, by means of specially designed and constructed bullet-resistant armored vehicles and armored car guards.

8. "Armored car guard" has the meaning ascribed to that term by subdivision eight of section eighty-nine-ppp of this chapter.

9. "Valuable cargo" means money, cash, currency, coin, bullion, precious metals and articles made therefrom, gems and jewelry, negotiable and non-negotiable securities, bonds, notes, checks, drafts, coupons, or other valuable instruments, documents or certificates, including tapes, computer disks, or other electronic or magnetic media, U.S. Postage Stamps, food stamps, and other articles of unusual value.

10. "Licensee" means an armored car carrier that has been issued a license in accordance with the provisions of this article.

11. "Principal" means any person controlling an interest greater than ten percent of an armored car carrier.

12. "Officer" means the four primary officers of a corporation, normally defined as president, vice-president, secretary and treasurer.

13. "Serious offense" has the meaning ascribed to that term by subdivision thirteen of section eighty-nine-f of this chapter.

§ 89-ccc. Doing business without a license prohibited. 1. No individual, partnership, association, limited liability company,

corporation, or any other entity, shall operate in the state as an armored car carrier or provide armored car services, or hold themselves out as an armored car carrier or provider of armored car services, except as authorized by this article and without first being licensed by the department. No armored car carrier shall employ any armored car guard who does not possess a conditional letter of authority or a valid registration card in accordance with the provisions of article eight-C of this chapter.

2. Notwithstanding the provisions of subdivision one of this section, each armored car carrier engaging in the business of providing armored car services in the state as of the effective date of this section, may continue to provide such services until the one hundred eightieth day after this section shall have taken effect. No armored car carrier shall provide armored car services after such date which has not complied with the provisions of this article and article eight-C of this chapter.

§ 89-ddd. Application for licenses. 1. Application for a license required under this article shall be in writing, subscribed by the applicant under oath, and in the form prescribed by the secretary, and shall contain the following:

a. The exact name and the address of the applicant and its date of incorporation or organization, as applicable;

b. The name and the business and residential address of each principal and officer of the applicant;

c. The complete address where the business of the applicant is to be conducted, showing the street and number, if any, post office and building and room number, if any, the office building and room number, if any, and the municipality and county;

d. If the applicant has one or more branches, subsidiaries or affiliates operating in the state, the complete address of each such place of business; and

e. A complete set of two fingerprint cards for each principal and officer of the applicant on a standard fingerprint card approved by the division and a fee pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, and amendments thereto, for the cost of the division's full search and retain procedures, which fee shall be remitted by the department to the division for deposit by the comptroller into the general fund. Before approving such application the secretary, or his or her designee, shall forward one copy of such fingerprint card and the processing fee to the division upon receipt of such fingerprints. The division shall forward to the secretary a report with respect to the applicant's previous criminal history, if any, or a statement that the applicant has no previous criminal history according to its files. Upon the written request of an armored car carrier, the secretary shall require each principal and officer of the applicant to submit to an additional fingerprint check by the Federal Bureau of Investigation, and to remit the appropriate fee therefor. If additional copies of fingerprints are required the applicant shall furnish them upon request.

2. Upon original application for a license to operate as an armored car carrier, the applicant shall pay an application fee in the amount of three hundred dollars. Upon application for a license renewal, the licensee shall pay a renewal processing fee in the amount of three hundred dollars.

§ 89-eee. Conditions precedent to licensing. Upon filing of an application for a license, if the secretary shall be satisfied that the good character, competency and integrity of the applicant, and of the principals and officers thereof, are such as to comply with the provisions of this article, he or she shall thereupon issue a license to operate as an armored car carrier in accordance with the provisions of this article. Such license shall remain in full force and effect for a period of three years unless it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the secretary shall not so find, the secretary shall not issue such license and the secretary

shall notify the applicant of the denial in writing. The secretary shall approve or deny every application for license hereunder within ninety days from the filing thereof. No license shall be issued to an applicant who has been convicted of a serious offense, or of a misdemeanor, where such conviction, in the discretion of the secretary, bears such a relationship to providing armored car services so as to constitute a bar to licensure.

§ 89-fff. Licensing. 1. Each license issued under this article shall state the address or addresses at which the business is to be conducted and shall state fully the name of the licensee, and the date and place of its incorporation or organization, as applicable, and the expiration date of the license. A copy of such license shall be prominently posted in each place of business of the licensee. Such license shall not be transferable or assignable.

2. In the event the location at which the business is to be conducted shall be changed, the licensee shall forthwith notify the secretary in writing, who shall thereupon without charge attach to the license a rider setting forth such changed location.

3. In the event that there shall be any changes among the principals or officers of any licensee, the licensee shall forthwith notify the secretary in writing, of the name and address of each new principal or officer, and shall submit a complete set of two fingerprint cards, and the appropriate fee, for each such principal or officer in accordance with the provisions of paragraph e of subdivision one of section eighty-nine-ddd of this article.

4. Prior to the sale or transfer of all or the majority of the stock or assets of any armored car carrier, the new principals or officers of the purchaser or transferee shall apply for a new license with the department in accordance with the provisions of sections eighty-nine-ddd and eighty-nine-eee of this article. Such application shall be made at least sixty days prior to such sale or transfer. If the purchaser or transferee is an existing licensee under this article, then such

licensee need not reapply for licensure hereunder, but shall notify the department in writing of such purchase or transfer at least sixty days prior thereto.

5. A license granted under the provisions of this article may be renewed by the department upon the application therefor by the licensee, in such form as the department may prescribe, accompanied by the nonrefundable renewal processing fee pursuant to subdivision two of section eighty-nine-ddd of this article. In no event shall renewal be granted more than six months after the date of expiration of a license. No individual, partnership, association, limited liability company, corporation, or any other entity shall engage in the business of providing armored car services subject to this article during any period which may exist between the date of expiration of a license and the renewal thereof.

§ 89-ggg. Grounds for denial, suspension or revocation of license; procedure. 1. The secretary shall have the power to suspend or revoke a license or, in lieu thereof, impose a fine not exceeding one thousand dollars payable to the department, or, reprimand any licensee or deny an application for a renewal thereof upon proof:

a. That the applicant or licensee has violated any of the provisions of this article or the rules and regulations promulgated hereunder;

b. That the applicant or licensee has practiced fraud, deceit or misrepresentation;

c. That the applicant or licensee has demonstrated incompetence or untrustworthiness in his or her actions;

d. That the applicant or licensee has been convicted of a serious offense or misdemeanor which, in the discretion of the secretary, bears such a relationship to the provision of armored car services by an armored car carrier as to constitute a bar to licensure or renewal; or

e. That the applicant or licensee has violated any of the provisions or article eight-C of this chapter or the rules and regulations promulgated thereunder.

2. No license shall be revoked or suspended and no fine or reprimand shall be imposed except after written notice and hearing as set forth in subdivisions two, three, four, five and six of section seventy-nine of this chapter. The secretary shall revoke a license issued to a person pursuant to this section upon proof that, on or after the date such licensee applied for such license, the licensee was convicted of one or more serious offenses.

3. No license may be suspended or temporarily suspended pursuant to this section based upon the fact that a licensee is charged with one or more serious offenses, or charged with or convicted of a misdemeanor which, in the discretion of the secretary, bears such a relationship to the performance of the duties of an armored car carrier, as to constitute a bar to licensure unless:

a. there is a direct relationship between one or more such serious offenses and the license to do business or business activities of an armored car carrier; or

b. the possession of a license by such armored car carrier would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

4. Pending the hearing and adjudication on suspension or revocation of a license pursuant to the provisions of subdivision three of this section, such license may be temporarily suspended, in accordance with the provisions of subdivision four of section eighty-nine-1 of this chapter, provided that such subdivision shall be read in such a manner as to apply to armored car carriers or armored car guards as the context requires.

5. Every license issued hereunder shall remain in full force and effect for a period of three years unless the same shall have been

surrendered, revoked or suspended in accordance with the provisions of this article.

6. Whenever the secretary shall revoke or suspend a license issued pursuant to this article, the secretary shall forthwith execute a written order to that effect. The secretary shall forthwith serve a copy of such order upon the licensee. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules.

§ 89-hhh. Enforcement of article; investigations. All armored car carriers shall be subject to the enforcement provisions contained in article seven of this chapter, provided that such provisions shall be read in such a manner as to apply to armored car carriers or armored car guards, as the context requires.

§ 89-iii. Insurance. 1. Every armored car carrier shall obtain a minimum of ten million dollars all risk insurance coverage and such additional amounts as are sufficient to cover the value of each valuable cargo consigned in transit or while safeguarded in such carrier's vaults. In addition, each such carrier shall obtain comprehensive general liability insurance coverage for death, personal injury and property damage in the minimum amount of five hundred thousand dollars per occurrence and one million dollars in the aggregate.

2. A written certificate or certificates of insurance shall be provided to the secretary by each armored car carrier as part of its application for a license pursuant to the provisions of section eighty-nine-ddd of this article, or for renewal of such license in accordance with the provisions of subdivision five of section eighty-nine-fff of this article.

3. Failure by an armored car carrier to keep such all risk insurance or comprehensive general liability insurance coverage in full force and effect, shall be a ground for the secretary to refuse to issue or renew

a license, or to suspend or revoke such license, in accordance with the provisions of section eighty-nine-ggg of this article.

4. All such insurance required by this section shall be issued by an insurance company licensed to do business in the state or shall otherwise be procured by a duly licensed excess line broker pursuant to section two thousand one hundred eighteen of the insurance law.

§ 89-jjj. Violations and penalties. 1. Any armored car carrier and the several members, principals, officers, directors, agents or employees thereof, who shall knowingly and willfully make material misstatements in the application for a license, or renewal thereof, under the provisions of this article, or which permits or authorizes the employment of an individual as an armored car guard in violation of the provisions of article eight-C of this chapter, shall be guilty of a misdemeanor, which, upon conviction, shall be punishable by a term of imprisonment not to exceed six months, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment, upon the first conviction, and by a term of imprisonment not to exceed one year, or by a fine of not less than one thousand dollars and not to exceed two thousand five hundred dollars, or by both such fine and imprisonment, upon a subsequent conviction.

2. Upon the motion of the secretary or upon his or her own motion, the attorney general shall investigate alleged provision of unlicensed armored car services. In the event that the attorney general determines that unlicensed armored car services are being or have been provided, he or she shall commence a civil action against those responsible persons, and an application shall be made in the name of the people of the state to a court of competent jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the provision of unlicensed armored car services; and, if it shall appear to the satisfaction of the court that the defendant has engaged in the business of providing unlicensed armored car services, an injunction may be issued by such court or justice, enjoining and restraining any such unlicensed services, without

requiring proof that any person has, in fact, been injured or damaged thereby. Whenever the court shall determine that the defendant has violated the provisions of this article by providing unlicensed armored car services, the court may fine such defendant not less than one thousand dollars for each violation, but in no event shall the total amount of such fine exceed the sum of twenty-five thousand dollars.

3. Each violation of this article shall be deemed a separate offense.

4. Unless otherwise provided under this article, all fees, fines and penalties collected under this article shall be deposited by the state comptroller to the credit of the licensing examinations services account within the miscellaneous special revenue fund established pursuant to the provisions of section ninety-seven-aa of the state finance law.

§ 89-kkk. Preemption. 1. The provisions of this article shall exclusively govern all armored car carriers notwithstanding the provisions of any other law to the contrary and further, no local law shall be enacted which shall attempt to regulate or require any fee or license for the licensure or registration of armored car carriers. Unless otherwise provided under this article, all such carriers are specifically exempt and excluded from the provisions of articles seven and seven-A of this chapter or any other law purporting to regulate, watch, guard or patrol agencies or security guard companies or agents and employees thereof.

2. The provisions of this article shall not apply to any subsidiary of an entity organized and operating pursuant to the federal "bank holding company act of 1956" (12 U.S.C.A.S. 1841 et seq.).

§ 89-lll. Regulations. The secretary is hereby authorized and empowered to promulgate rules and regulations necessary for the proper conduct of the business authorized under this article, and not inconsistent herewith.

§ 89-nnn. Separability. In the event it is determined by a court of competent jurisdiction that any phrase, clause, part, subdivision, paragraph or section, or any of the provisions of this article, is unconstitutional or otherwise invalid or inoperative, such determination shall not affect the validity or effect of the remaining provisions of this article.

ARTICLE 8-C

TRAINING AND REGISTRATION OF ARMORED CAR GUARDS

Section 89-ooo. Short Title.

89-ppp. Definitions.

89-qqq. Qualifications for an armored car guard registration card.

89-rrr. Application for registration card.

89-sss. Training requirements; waiver or exemption.

89-ttt. Annual training; background checks.

89-uuu. Interim employment.

89-vvv. Conditional letter of authority; issuance of registration card; suspension or revocation; renewal.

89-www. Violations and penalties.

89-xxx. Preemption.

89-yyy. Regulations.

89-zzz. Separability.

§ 89-ooo. Short title. This article shall be known and may be cited as the "armored car guard act."

§ 89-ppp. Definitions. When used in this article, the following terms shall have the following meanings:

1. "Commissioner" means the commissioner of the division of criminal justice services.

2. "Division" means the division of criminal justice services.

3. "Secretary" means the secretary of state.

4. "Department" means the department of state.

6. "Armored car carrier" has the meaning ascribed to that term by subdivision six of section eighty-nine-bbb of this chapter.

7. "Armored car services" has the meaning ascribed to that term by subdivision seven or section eighty-nine-bbb of this chapter.

8. "Armored car guard" means an individual employed by an armored car carrier to provide armored car services and who carries a firearm or is authorized by the employer to access a firearm when providing armored car services, and who holds a conditional letter of authority or a valid registration card issued by the department pursuant to the provisions of this article.

9. "Applicant" means an individual who has filed an application with the department for a registration card.

10. "Holder" means an individual who has been issued a conditional letter of authority or a registration card by the department.

11. "Registration card" means a photographic identification card issued by the department signifying that the holder has been certified by the department to perform armored car services in the employ of an armored car carrier and to carry firearms in connection therewith. Nothing herein contained shall relieve such holder from any provision of law which requires that he or she be licensed to carry such firearm.

12. "Qualified firearms instructor" means an individual who holds a certificate as a firearms instructor from an association or organization recognized by the division.

13. "Qualified firearms training course" means a minimum forty-seven

hour firearms training course for armored car guards that is specific and germane to the armored car carrier industry, recognized by the division in consultation with the armored car carrier industry.

14. "Peace officer" has the meaning ascribed to that term by subdivision thirty-three of section 1.20 of the criminal procedure law, who is employed full-time as a peace officer and who has successfully completed the training requirements as set forth in subdivision one of section 2.30 of such law.

15. "Police officer" has the meaning ascribed to that term by subdivision thirty-four of section 1.20 of the criminal procedure law.

16. "Valuable cargo" has the meaning ascribed to that term by subdivision nine of section eighty-nine-bbb of this chapter.

17. "Serious offense" has the meaning ascribed to that term by subdivision thirteen of section eighty-nine-f of this chapter.

§ 89-qqq. Qualifications for an armored car guard registration card. No applicant shall have been convicted of a serious offense, or of a misdemeanor which, in the discretion of the secretary, bears such a relationship to the performance of the duties of an armored car guard, as to constitute a bar to employment.

§ 89-rrr. Application for registration card. An application for an armored car guard registration card shall be verified and subscribed by the applicant and shall contain the following information:

1. Full name;
2. Aliases or maiden name;
3. Current residence and telephone number;

4. Any conviction of a crime, as that term is defined in section 10.00 of the penal law;

5. A complete set of two fingerprint cards on a standard fingerprint card approved by the division. Before approving such application the secretary, or his or her designee, shall transmit to the division one copy of such fingerprint card and the fee required pursuant to subdivision seven of this section and cause to be conducted a search of state files to ascertain whether the applicant has a previous criminal history. Upon the written request of an armored car carrier, the secretary shall require each applicant to submit to an additional fingerprint check by the federal bureau of investigation, and to remit the appropriate fee therefor. The secretary may cause an investigation to be conducted to verify the information contained in the application provided. The department, in consultation with the division, may waive such background checks, investigations and fees if, in its opinion, the applicant has been subject to previous background checks and investigation requirements which meet or exceed the requirements of this section or the federal "Armored Car Industry Reciprocity Act of 1993," pub. l. 103-55 (15 U.S.C. § 5901 et seq.), and amendments thereto. The department, in consultation with the division, may not be required to conduct background checks or investigations for applicants who are also employed as peace officers. If additional copies of fingerprints are required the applicant shall furnish them upon request;

6. Two photographs of such applicant taken within thirty days prior to the filing of the application of a size prescribed by the department; and

7. An application processing fee of fifty dollars and a fee pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, and amendments thereto, for the cost of the division's full search and retain procedures, which fee shall be remitted by the department to the division for deposit by the comptroller into the general fund.

§ 89-sss. Training requirements; waiver or exemption. 1. Every armored car guard, other than a police officer, employed by an armored car carrier shall be required to satisfactorily complete a qualified firearms training course. Such course shall include appropriate range instruction by a qualified firearms instructor, and range qualification with each type and caliber of firearm he or she will have access to while on duty.

2. Such course shall be given and administered by armored car carriers or their designees. Every armored car carrier shall maintain a record of and certify to the secretary, in writing, the satisfactory completion of such course by any armored car guard.

3. Nothing herein shall be construed to prohibit an armored car carrier from voluntarily providing training programs and courses which exceed the minimum requirements provided by this section.

4. The commissioner shall waive the training requirements specified in subdivision one of this section, with respect to applicants employed by armored car carriers, if the applicant provides appropriate documentation to demonstrate that he or she was or is subject to training requirements which meet or exceed the requirements established pursuant to such subdivision.

5. An armored car guard who has been or was previously employed as a peace officer for eighteen months or more who exhibits a valid certificate awarded pursuant to subdivision six of section 2.30 of the criminal procedure law attesting to his or her satisfactory completion of the training requirements imposed by section 2.30 of the criminal procedure law, shall be exempt from the requirements of subdivision one of this section, provided that such peace officer has completed a course of firearms training recognized by the division. Nothing in this subdivision shall be deemed to authorize such guard to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

§ 89-ttt. Annual training; background checks. 1. a. In addition to the minimum firearms training required by section eighty-nine-sss of this article, each armored car guard, other than a police officer, shall satisfactorily complete an eight hour in-service firearms training course, recognized by the division, at least annually. Such course shall be administered by armored car carriers, or their designees, and shall include requalification with the firearms he or she will have access to while on duty, under the supervision of a qualified firearms instructor. Every armored car carrier shall maintain a record of and certify to the secretary, in writing, the satisfactory completion of such course by any armored car guard.

b. An armored car guard who is also employed as a peace officer for eighteen months or more shall be exempt from the requirements of paragraph a of this subdivision as long as he or she is currently employed as a peace officer and provides to his or her employer proof of such annual in-service firearms training required under such paragraph.

2. The secretary or his or her designee shall annually ensure that each armored car guard holding a valid registration card is subject to the division's ongoing criminal history search and retain procedures.

3. Notwithstanding the provisions of this article, an armored car guard and his or her employer shall comply with the provisions of the federal "Armored Car Industry Reciprocity Act of 1993," pub. l. 103-55 (15 U.S.C. § 5901 et seq.), and amendments thereto.

4. Every armored car carrier shall permit the department to inspect, review or copy training records to ensure compliance with the provisions of this article.

§ 89-uuu. Interim employment. For each armored car guard employed by an armored car carrier, as of the effective date of this section, such carrier shall, at a time assigned by the secretary pursuant to a staggered schedule, comply with the provisions of this article with respect to registration. Until the assigned filing date, such armored

car carrier may continue to employ such guard to provide armored car services. No armored car carrier may employ any such guard after the assigned filing date who has not complied with the registration requirements as set forth in this article.

§ 89-vvv. Conditional letter of authority; issuance of registration card; suspension or revocation; renewal. 1. Upon review of the completed application required by section eighty-nine-rrr of this article and after the applicant has met the qualifications of section eighty-nine-qqq of this article, the department shall issue a conditional letter of authority, in a form prescribed by the secretary, to such applicant within five business days after receipt of the completed application. Any such applicant may be employed by an armored car carrier, pending his or her satisfaction of the requirements of section eighty-nine-sss of this article not later than one hundred eighty days after the date of submission of the completed application.

2. Upon review of the completed application required by section eighty-nine-rrr of this article and after the applicant has met the qualifications of section eighty-nine-qqq of this article and satisfied the requirements of section eighty-nine-sss of this article, the department shall issue a registration card, in a form prescribed by the secretary, which shall include the guard's name, photograph, card number, expiration date, and any other information the department deems necessary. The department shall issue or deny issuance of such registration card within ninety days after receipt of a completed application therefor. Denial of a registration card hereunder shall be reviewable by an administrative hearing as set forth in subdivisions two, three, four, five and six of section seventy-nine of this chapter.

3. The secretary may suspend, for a period not to exceed eighteen months, revoke, or refuse to reissue, as the case may be, a conditional letter of authority or registration card issued pursuant to this section, after a hearing pursuant to subdivisions two, three, four, five and six of section seventy-nine of this chapter, for one or more of the following causes:

a. the holder is convicted of a serious offense or a misdemeanor which, in the discretion of the secretary, bears such a relationship to the performance of the duties of an armored car guard, as to constitute a bar to employment;

b. the holder has practiced fraud, deceit or misrepresentation;

c. the holder is in violation of any provisions of this article or the rules and regulations promulgated hereunder; or

d. the possession of a license as an armored car guard would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

4. Pending the hearing and adjudication on suspension or revocation of a conditional letter of authority or registration card pursuant to the provisions of subdivision three of this section, such conditional letter of authority or registration card may be temporarily suspended, in accordance with the provisions of subdivision four of section eighty-nine-1 of this chapter, provided that such subdivision shall be read in such a manner as to apply to armored car carriers or armored car guards as the context requires. The secretary shall revoke a conditional letter of authority or registration card issued to any holder pursuant to this section, after a hearing pursuant to subdivisions two, three, four, five and six of section seventy-nine of this chapter, upon proof that, on or after the date such holder applied for such conditional letter of authority or registration card, the holder was convicted of one or more serious offenses.

5. No conditional letter of authority or registration card may be suspended or temporarily suspended pursuant to this section based upon the fact that a holder is charged with one or more serious offenses, or charged with or convicted of a misdemeanor which, in the discretion of the secretary, bears such a relationship to the performance of the duties of an armored car guard, as to constitute a bar to employment unless:

a. there is a direct relationship between one or more such serious offenses and the conditional letter, registration card or employment of the holder as an armored car guard; or

b. the possession of a conditional letter or registration card by the holder or the employment of the holder as an armored car guard would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

6. The secretary, or the officer designated by the secretary to preside over the hearing pursuant to this section, shall forthwith give written notice of the suspension, revocation or nonrenewal of a conditional letter of authority or registration card, to the holder and the armored car carrier by which the holder was employed at the time of such suspension, revocation or nonrenewal. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules.

7. A registration card issued pursuant to subdivision two of this section shall be reissued biennially by the secretary upon timely application therefor and submission of a renewal processing fee of fifty dollars.

§ 89-www. Violations and penalties. 1. Any individual who is employed as an armored car guard or who acts as an armored car guard in violation of the provisions of this article or who knowingly and willfully makes material misstatements in the application for or renewal of his or her conditional letter of authority or registration card, as the case may be, or who permits or authorizes the employment of an individual as an armored car guard in violation of the provisions of this article, shall be guilty of a misdemeanor, which, upon conviction, shall be punishable by a term of imprisonment not to exceed six months, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment, upon the first conviction, and by a term of imprisonment not to exceed one year, or by a fine of not less than one thousand dollars and not to

exceed two thousand five hundred dollars, or by both such fine and imprisonment, upon a subsequent conviction.

2. a. Any holder who shall knowingly and willfully fail to surrender his or her conditional letter of authority or registration card within five days of receipt of notice of suspension, revocation, or nonrenewal thereof by the secretary, or the officer designated by the secretary to preside over the hearing, pursuant to the provisions of section eighty-nine-vvv of this article, shall be guilty of a violation, punishable by a fine not to exceed two hundred fifty dollars, in addition to any other penalty prescribed by law.

b. Notwithstanding the provisions of paragraph a of this subdivision, where it is determined after a hearing that the holder has violated one or more provisions of this article pursuant to paragraph c of subdivision three of section eighty-nine-vvv of this article, the secretary may, in lieu of revocation or suspension of the conditional letter of authority or registration card of such holder, impose a fine not to exceed one thousand dollars for each violation, payable to the department.

3. Each violation of this article shall be deemed a separate offense.

4. Unless otherwise provided under this article, all fees, fines and penalties collected under this article shall be deposited to the credit of the licensing examinations services account established pursuant to the provisions of section ninety-seven-aa of the state finance law.

§ 89-xxx. Preemption. 1. The provisions of this article shall exclusively govern all armored car guards notwithstanding the provisions of any other law to the contrary and further, no local law shall be enacted which shall regulate or require any fee or license for the licensure or registration of armored car guards. Unless otherwise provided under this article, all such guards are specifically exempt and excluded from the provisions of articles seven and seven-A of this chapter or any other law purporting to regulate watch, guard or patrol agencies or security guard companies or agents and employees thereof.

2. The provisions of this article shall not apply to any subsidiary of an entity organized and operating pursuant to the federal "bank holding company act of 1956" (12 U.S.C.A.S. 1841 et seq.).

§ 89-yyy. Regulations. The secretary and commissioner, in consultation with the armored car carrier industry, are hereby authorized and empowered to promulgate rules and regulations necessary for the proper conduct of the business authorized under this article, and not inconsistent herewith.

§ 89-zzz. Separability. In the event it is determined by a court of competent jurisdiction that any phrase, clause, part, subdivision, paragraph or section, or any of the provisions of this article, is unconstitutional or otherwise invalid or inoperative, such determination shall not affect the validity or effect of the remaining provisions of this article.

ARTICLE 9

BILLS OF LADING, WAREHOUSE RECEIPTS, OTHER RECEIPTS AND VOUCHERS

- Section 90. Fictitious bills of lading, receipts and vouchers.
- 91. Offenses by pipe-line corporations.
 - 92. Erroneous bills of lading or receipts, issued in good faith, excepted.
 - 93. Duplicate receipts must be marked "duplicate."
 - 94. Selling, hypothecating or pledging property received for transportation or storage.
 - 95. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.
 - 96. Property demanded by process of law.
 - 97. Penalty for failure to issue bill of lading.
 - 98. Issue of bill of lading for goods not received.
 - 99. Issue of bill of lading containing false statement.

100. Issue of duplicate bill of lading not so marked.
101. Negotiation of bill of lading for goods subject to security interest or lien.
102. Negotiation of bill of lading when goods are not in common carrier's possession.
103. Inducing common carrier to issue bill of lading when goods have not been received.
104. Issue of a non-negotiable bill of lading not so marked.
105. Issue of warehouse receipts for goods not received.
106. Issue of warehouse receipt containing false statement.
107. Issue of duplicate warehouse receipt not so marked.
108. Issue for warehouseman's goods of warehouse receipts which do not state that fact.
109. Delivery of goods without obtaining negotiable warehouse receipt.
110. Negotiation of warehouse receipt for goods subject to security interest or lien.
111. Issue of non-negotiable warehouse receipt not so marked.

§ 90. Fictitious bills of lading, receipts and vouchers. A person who: Being the master, owner or agent of any vessel, or officer or agent of any railway, express or transportation company, or otherwise being or representing any carrier, delivers any bill of lading, receipt or other voucher, by which it appears that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express or transportation company, or other carrier, unless the same has been so shipped or delivered and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher, is guilty of a misdemeanor.

§ 91. Offenses by pipe-line corporations. A pipe-line corporation, or a person being the officer, agent, manager or representative thereof, who:

1. Accepts, makes or issues any receipt, certificate or order of any kind for any commodity, unless the commodity represented is actually at the time in the possession of the corporation; or,

2. Delivers to any person any petroleum or other commodity received for transportation by such corporation without the presentation and surrender of all vouchers, receipts, orders or certificates that have been issued or accepted for the same; or,

3. Having parted with the possession of any commodity and having received therefor an order, voucher, receipt or certificate, shall reissue the same, or shall not cause it to be cancelled by the word "cancelled" stamped or printed legibly across the face thereof, and to be filed and recorded by such corporation, as provided by law,

Is guilty of a misdemeanor.

§ 92. Erroneous bills of lading or receipts, issued in good faith, excepted. No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher did not correspond with the description given in such instrument of merchandise received, if such description corresponds substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels or brands were untrue.

§ 93. Duplicate receipts must be marked "duplicate." A person mentioned in sections ninety and ninety-one, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while a former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is guilty of a misdemeanor.

§ 94. Selling, hypothecating or pledging property received for transportation or storage. A person mentioned in sections ninety and ninety-one, who sells or pledges any merchandise for which a bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is guilty of a misdemeanor.

§ 95. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property. A person mentioned in section ninety, who delivers to another any merchandise for which a bill of lading, receipt or voucher has been issued, unless such bill of lading, receipt or voucher bears upon its face the words, "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery or a bond, undertaking, letter of guarantee or indemnity is given in lieu thereof at the time of such delivery, or unless, in case of a partial delivery, a memorandum thereof is endorsed upon such bill of lading, receipt or voucher, is guilty of a misdemeanor.

§ 96. Property demanded by process of law. The last two sections do not apply to any case where property is demanded by virtue of legal process.

§ 97. Penalty for failure to issue bill of lading. Any person who, being the owner, master or agent of any vessel transporting merchandise or property between ports of this state, departs with such vessel or causes such vessel to depart from the port where such merchandise or property is taken on board, without giving or tendering to the shipper of such merchandise or property, if a bill of lading be demanded by such shipper, a bill of lading or shipping document as provided by section three hundred ninety-eight of this chapter, is guilty of a misdemeanor.

§ 98. Issue of bill of lading for goods not received. Any officer, agent or servant of a common carrier, who with intent to defraud issues or aids in issuing a bill of lading knowing that all or any part of the goods for which such bill of lading is issued have not been received by such common carrier, or by an agent of such common carrier, or by a connecting common carrier, or are not under the common carrier's control at the time of issuing such bill, shall be guilty of a misdemeanor.

§ 99. Issue of bill of lading containing false statement. Any officer, agent, or servant of a common carrier, who with intent to defraud issues or aids in issuing a bill of lading for goods knowing that it contains any false statement, shall be guilty of a misdemeanor.

§ 100. Issue of duplicate bill of lading not so marked. Any officer, agent or servant of a common carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill of lading for goods, other than goods to be transported to any place in the United States except Alaska and Hawaii, without plainly placing upon the face thereof the word "duplicate", knowing that a former negotiable bill of lading for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a misdemeanor.

§ 101. Negotiation of bill of lading for goods subject to security interest or lien. Any person who ships goods to which he has not title, or which are subject to a security interest, or upon which there is a lien, and who takes for such goods a negotiable bill of lading which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the security interest or lien, shall be guilty of a misdemeanor.

§ 102. Negotiation of bill of lading when goods are not in common carrier's possession. Any person who with intent to deceive negotiates or transfers for value a bill of lading knowing that any or all of the

goods which by the terms of such bill of lading appear to have been received for transportation by the common carrier which issued the bill of lading, are not in possession or control of such common carrier, or of a connecting common carrier, without disclosing this fact, shall be guilty of a misdemeanor.

§ 103. Inducing common carrier to issue bill of lading when goods have not been received. Any person who with intent to defraud secures the issue by a common carrier of a bill of lading knowing that at the time of such issue, any or all of the goods described in such bill of lading as received for transportation have not been received by such common carrier, or an agent of such common carrier or a connecting common carrier, or are not under the common carrier's control, by inducing an officer, agent or servant of such common carrier falsely to believe that such goods have been received by such common carrier, or are under its control, shall be guilty of a misdemeanor.

§ 104. Issue of a non-negotiable bill of lading not so marked. Any person who with intent to defraud issues or aids in issuing a non-negotiable bill of lading without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a misdemeanor.

§ 105. Issue of warehouse receipt for goods not received. A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a warehouse receipt knowing that the goods for which such warehouse receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such warehouse receipt, shall be guilty of a misdemeanor.

§ 106. Issue of warehouse receipt containing false statement. A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a warehouse receipts for goods knowing that it contains any false statement, shall be guilty

of a misdemeanor.

§ 107. Issue of duplicate warehouse receipt not so marked. A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable warehouse receipt for goods knowing that a former negotiable warehouse receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," shall be guilty of a misdemeanor.

§ 108. Issue for warehouseman's goods of warehouse receipts which do not state the fact. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents or servants who, knowing this ownership, issues or aids in issuing a negotiable warehouse receipt for such goods which does not state such ownership, shall be guilty of a misdemeanor.

§ 109. Delivery of goods without obtaining negotiable warehouse receipt. A warehouseman, or any officer, agent or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable warehouse receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such negotiable warehouse receipt at or before the time of such delivery, shall, except in the cases provided for in sections 7-210 and 7-601 of the uniform commercial code or if the goods have been lawfully sold or disposed of because of their perishable or hazardous nature, be guilty of a misdemeanor.

§ 110. Negotiation of warehouse receipt for goods subject to security interest or lien. Any person who deposits with a warehouseman goods to which he has no title, or which are subject to a security interest, or

upon which there is a lien, and who takes for such goods a negotiable warehouse receipt which he afterward negotiates for value with intent to deceive and without disclosing his want of title or the existence of the security interest or lien, shall be guilty of a misdemeanor.

§ 111. Issue of non-negotiable warehouse receipt not so marked. Any person who with intent to defraud issues or aids in issuing a non-negotiable warehouse receipt without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a misdemeanor.

ARTICLE 9-A

PASSAGE TICKETS

Section 115. Company defined.

116. Redemption of unused passage tickets.

117. Advertising as agent, without written authorization; false or misleading information.

118. Issuance of order or other instrument securing passage by vessel from foreign port to this state; what to contain.

119. Punishment for violation of two preceding sections.

120. Street railroad or omnibus transfer tickets not to be given away or sold.

121. Owners, pursers and clerks allowed to sell tickets.

122. Station masters, conductors and agents allowed to sell tickets.

123. What must be stated in passage ticket.

124. Sale of tickets not filled out, a misdemeanor.

125. Soliciting the surrender of tickets a misdemeanor.

126. Purchase or selling partially used non-transferable railroad tickets, a misdemeanor.

127. Unlawful acts relating to passage tickets, reservations or passenger accommodations.

§ 115. Company defined. The term "company," as used in this article, includes all corporations, whether created under the laws of this state,

or of the United States, or of those of any other state or nation.

§ 116. Redemption of unused passage tickets. Every person who shall have purchased a passage ticket from an authorized agent of a railroad company, which shall not have been used, or shall have been used only in part, may, within thirty days after the date of the sale of said ticket, present the same, unused or partly used, for redemption, at the general office of the railroad company which issued said ticket, or at the ticket office where said ticket was sold, or at the ticket office at the point to which the ticket has been used. If said ticket wholly unused, shall be presented for redemption at the ticket office where sold, the same shall be then and there redeemed by the agent in charge of said ticket office at the price paid for said ticket. If said ticket, partly used, shall be presented for redemption at the ticket office where sold, or at the ticket office at the point to which used, the ticket agent at either of said offices, upon delivery of said ticket, shall issue to the holder thereof a receipt, properly describing said ticket and setting forth the date of the receipt of said ticket, and the name of the person from whom received, and shall thereupon forthwith transmit said ticket for redemption to the general office. It shall be the duty of every railroad company to redeem tickets presented for redemption, as in this section provided for promptly and within not to exceed thirty days from the date of presentation at the general office or from the date of the aforesaid receipt. A wholly unused ticket shall be redeemed at the price paid therefor. A partly used ticket shall be redeemed at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket of the same class between the points for which said ticket was actually used. Mileage books shall be redeemed within thirty days after the date of the expiration thereof in the same manner. Provided, however, that nothing herein contained shall be deemed to prohibit the requirement by tariff of advance notice of cancellation as a condition to the redemption or use of passage tickets in connection with which reserve accommodations have been obtained; provided, further, that nothing herein contained shall be deemed to prohibit the establishment by tariff of a service charge for the redemption of wholly unused or partly used tickets. Every railroad company which shall

wrongfully refuse redemption, as in this section provided for, shall forfeit to the aggrieved party fifty dollars, which sum may be recovered, together with the amount of redemption money to which the party is entitled, in an action in any court of competent jurisdiction, together with costs; but no such action can be maintained unless commenced within one year after the cause of action accrued.

§ 117. Advertising as agent, without written authorization; false or misleading information.

No person issuing, selling or offering to sell any passage ticket or any instrument giving or purporting to give any right, either absolutely or upon any condition or contingency, to a passage or conveyance upon any vessel, or a berth or stateroom in any vessel, shall hold himself out to be or advertise himself in any way as the agent of the owners or consignees of such vessel or line, unless he has received authority in writing therefor, specifying the name of the company, line or vessel for which he is authorized to act as agent and the city, town or village, together with the street, and the street number in which his office is kept for the sale of tickets, and unless such written authorization is conspicuously displayed in such office. Provided that this section shall not apply to the sale of passage tickets on board any such vessel or to the offices of the actual owners or consignees of such vessel. No person issuing, selling or offering to sell or holding himself out as being authorized to sell any such passage ticket or instrument giving or purporting to give any such right to passage or conveyance shall give or cause to be given any false or misleading information or shall print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any false or misleading advertisement, circular, circular letter, pamphlet, card, handbill or other printed paper or notice in regard to said passage ticket or instrument or the passage or voyage to which it entitles or purports to entitle its owner, purchaser or holder or line over which, or the vessel for which such passage is sold or offered or as to his agency for such line or vessel. No person issuing, selling or offering to sell any passenger ticket for passage or conveyance aboard any vessel, including the owner or

consignee of such vessel, his agents, servants, or employees, shall omit reference to the country of registry of such vessel from any advertisement, circular, circular letter, pamphlet, card, handbill or other printed paper or written notice, in regard to said passage ticket or instrument or the passage or voyage to which it entitles or purports to entitle its owner, purchaser or holder or line over which, or the vessel for which such passage is sold or offered or as to his agency for such line or vessel. Such reference shall be prominently displayed in all printed matter.

§ 118. Issuance of order or other instrument securing passage by vessel from foreign port to this state; what to contain. No person agreeing to furnish or secure for any other person, for a consideration, passage by vessel from any foreign port to any port in this state shall issue any advice, order, certificate or other instrument purporting to entitle one or more persons to a passage ticket or other evidence of a right of passage, unless every such advice, order, certificate or instrument shall be signed or countersigned by a duly appointed agent as provided in section one hundred seventeen, of the vessel or line over which said advice, order, certificate or other instrument is held out to be good to secure such passage ticket or other evidence of a right of passage. Every such order, advice, certificate or other instrument and every receipt for money paid for or on account of any such advice, order, certificate or other instrument, shall contain a statement of the amount paid or to be paid for such passage; the name, address and age of the person for whom intended; the name of the company or line, if any, to which the vessel on which passage is to be made belongs; the place from which such passage is to commence; the place where such passage is to terminate; the name of the person purchasing such advice, order, certificate or other instrument, and such advice, order, certificate or other instrument must be signed by the person who issues it.

§ 119. Punishment for violation of two preceding sections. Any person violating any of the provisions of the two preceding sections shall be guilty of a misdemeanor.

§ 120. Street railroad or omnibus transfer tickets not to be given away or sold. No transfer ticket or written or printed instrument giving, or purporting to give, the right of transfer to any person from a public conveyance operated upon one line or route of a street surface, elevated, underground railroad or omnibus line to a public conveyance upon another line or route of a street surface, elevated, underground railroad or omnibus line, or from one car or omnibus to another car or omnibus upon the same line or route of street surface, elevated, underground railroad or omnibus line shall be issued, sold or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell or give away such a transfer ticket or instrument as aforesaid to a person not lawfully entitled thereto, and any person not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument, or shall sell or give away such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage after the time limited for its use shall have expired, shall be guilty of a misdemeanor.

§ 121. Owners, pursers and clerks allowed to sell tickets. The provisions of this article do not prevent the actual owners or consignees of any vessel, from selling passage tickets thereon; nor do they prevent the purser or clerk of any vessel from selling in his office on board of such vessel, any passage ticket upon such vessel.

§ 122. Station masters, conductors and agents allowed to sell tickets. The provisions of this article do not prevent the station master or other ticket agent upon any railway, from selling in his office at any station on such railway, any passage tickets upon such railway; nor do they prevent any conductor upon a railway from selling such tickets upon the trains of such railway.

§ 123. What must be stated in passage ticket. A ticket or instrument

issued as evidence of a right of passage upon the high seas, from any port in this state, to any port of any other state or nation, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for such ticket or instrument must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or line, if any, to which such vessel belongs, its country of registry, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

§ 124. Sale of tickets not filled out, a misdemeanor. A person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

§ 125. Soliciting the surrender of tickets a misdemeanor. Any hotel, boarding-house, lodging-house or restaurant owner, proprietor, manager, clerk or other employee or any runner, guide, porter or solicitor who solicits in any manner any immigrant or steerage passenger inward or outward bound, having a railroad or steamship ticket, order or other instrument entitling or purporting to entitle such passenger to transportation or conveyance on any railroad or steamship, to surrender such ticket, order or other instrument to such hotel, boarding-house, lodging-house or restaurant owner, proprietor, manager or other employee or to any runner, guide, porter or solicitor or any other person for the purpose of detaining any such immigrant or steerage passenger in any such hotel, boarding-house, lodging-house, or restaurant, shall be guilty of a misdemeanor.

§ 126. Purchase or selling partially used non-transferable railroad tickets, a misdemeanor. It shall be unlawful for any person, association of persons, firm or corporation to buy or sell the unused portions of non-transferable railroad tickets, the use of which is restricted to the original purchasers thereof by the railroad company issuing the same, or to act as vendor or broker of partially used non-transferable railroad tickets or to solicit personally or by sign or advertisement or in any other manner to aid in the sale or purchase of partially used non-transferable railroad tickets. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

§ 127. Unlawful acts relating to passage tickets, reservations or passenger accommodations. 1. Definitions. Whenever used in this section

a. The term "established tariff charge" is the charge set forth in the tariff as published and filed by the railroad, parlor or sleeping car owner or operator, steamship company, air line or bus line involved.

b. The term "passage ticket" includes each passage ticket or combination of tickets issued by any railroad, parlor or sleeping car owner or operator, steamship company, air line or bus line, required by any one passenger for transportation from his original point of departure to final destination.

c. The term "reservation or passenger accommodation" includes each reservation or passenger accommodation issued by any railroad, parlor or sleeping car owner or operator, steamship company, air line or bus line, for the use of a passenger between his original point of departure and final destination.

d. The term "charge" shall include any service charge, fee, payment or consideration required, charged, made or received for rendering the service of procuring or transferring a ticket, reservation or passenger accommodation.

e. The terms "procure" and "procurement" shall include procuring by purchase or otherwise.

2. Any person, whether acting on behalf of himself or another person, who

a. Sells, resells, or causes to be resold, or offers to sell or resell, any ticket, reservation or passenger accommodation, at a price in excess of one dollar above the established tariff charge or charges therefor; or

b. Procures or possesses or offers to procure any ticket, reservation or passenger accommodation, with the intent to sell or resell the same, or to cause the same to be sold or resold, at a price in excess of one dollar above the established tariff charge or charges; or

c. Requires, makes or receives a charge in excess of one dollar for the procurement or transfer of a ticket, reservation or passenger accommodation; or

d. Procures or possesses or offers to procure a ticket, reservation or passenger accommodation, with the intent to require, make or receive a charge therefor in excess of one dollar, shall be guilty of a misdemeanor.

3. Proof of the sale or resale of or offer to sell or resell a ticket, reservation or passenger accommodation at a price in excess of the amount or amounts herein specified, shall be presumptive evidence of the intent specified in subdivision (b) of paragraph two hereof.

4. Proof of the making or receiving of any charge in excess of one dollar shall be presumptive evidence of the intent specified in subdivision (d) in paragraph two hereof.

5. The person responsible for the management of each travel agency and hotel operating within the state of New York shall, within thirty days after its enactment, cause a copy of this section to be posted in a

conspicuous place upon the premises of the agency or hotel for the information of patrons, guests and members of the public at large.

6. This section shall not apply to tickets, reservations or passenger accommodations (a) to or from places outside the continental United States and Canada, excluding Alaska nor (b) to existing written contracts between any travel agency and any corporation, firm or government agency covering tourist or travel services.

ARTICLE 9-B

USE OF NAMES AND SYMBOLS

Section 130. Filing of certificates by persons conducting business under assumed name or as partners.

131. Ownership of merchandise establishments and services to be publicly revealed and displayed.

132. Fictitious copartnership names.

133. Use of name or address with intent to deceive.

134. Fraudulent use of the name or title of secret fraternity.

135. Unlawful use of name of benevolent, humane or charitable corporation.

136. Exhibition or display of the flag.

137. Unauthorized wearing or use of badge, name or insignia of certain orders and societies.

138. Use of certain governmental, military or naval names.

140. Wearing industry badges, or other insignia of identification by unauthorized persons.

141. Unlawful use of the name United Nations.

142. Unlawful possession or use of an identification card issued by United Nations.

143. False identification documents.

§ 130. Filing of certificates by persons conducting business under assumed name or as partners. 1. No person shall hereafter (i) carry on or conduct or transact business in this state under any name or designation other than his or its real name, or (ii) carry on or conduct

or transact business in this state as a member of a partnership, unless:

(a) Such person, if other than a corporation, limited partnership or limited liability company, shall file in the office of the clerk of each county in which such business is conducted or transacted a certificate setting forth the name or designation under which and the address within the county at which such business is conducted or transacted, the full name or names of the person or persons conducting or transacting the same, including the names of all partners, with the residence address of each such person, and the age of any person less than eighteen years of age. Each certificate shall be executed and duly acknowledged by the person or, if there be more than one, by all of the persons conducting the business.

(b) Such person, if a corporation, limited partnership or limited liability company, shall file, together with the fees as set forth in subdivision five of this section, in the office of the secretary of state a certificate setting forth the name or designation under which business is carried on or conducted or transacted, its corporate, limited partnership or limited liability company name, the location including number and street, if any, of its principal place of business in the state, the name of each county in which it does business or intends to do business, and the location including number and street, if any, of each place where it carries on or conducts or transacts business in this state. Each certificate shall be executed by an officer of the corporation, a general partner of the limited partnership, a member or manager of a limited liability company, or an attorney-in-fact or authorized person for such corporation, limited partnership, or limited liability company, as the case may be. A corporation which carries on or conducts or transacts business in this state as a member of a partnership or limited liability company shall not be required solely by reason thereof to file the certificate required by this paragraph if the partners shall have filed the certificate required by paragraph (a) of this subdivision.

1-a. As used in this section, unless the context otherwise requires:

(a) "Person" shall mean an individual, partnership, limited partnership, corporation, limited liability company and unincorporated association;

(b) The "real name" of a corporation shall mean its corporate name as set forth in its certificate of incorporation; the "real name" of a limited partnership shall mean its name as set forth in its certificate of limited partnership; the "real name" of a limited liability company shall mean its name as set forth in its articles of organization and any generally accepted, understood or recognizable abbreviations of such names.

(c) The use by a corporation, limited partnership or limited liability company of a divisional, departmental or trade name or designation, in conjunction with the real name of the corporation, limited partnership or limited liability company, shall be deemed to be the use of the real name of the corporation, limited partnership or limited liability company, for purposes of this section.

2. (a) No individual, partnership, or unincorporated association shall hereafter use or file a certificate for the use of any name or designation to carry on or conduct or transact business in this state which consists of or includes words, or initials and a word or words, which are or appear to be the full name or names, or the initial or initials and family name of a person or persons, or a colorable simulation thereof, unless:

(1) the words or initials and word or words appearing to be the full name or initials and family name of a person included, are the true full name or the initials and family name of the person or one of the persons conducting the business; or

(2) the words or initials and words so included, which are or appear to be the full name, or the initials and family name, of any person, have a secondary, historic or geographic meaning or connotation apart from that of a name of a person, and the name or designation so used contains a word or words clearly signifying such secondary, historic or geographic meaning or connotation, or is followed by the abbreviation "a.n.", and said secondary, historic or geographic meaning or connotation is stated in the certificate; or

(3) the person or persons conducting the business are successors in interest to the person or persons theretofore using such name or names to carry on or conduct or transact business, in which case the certificate filed shall so state.

(b) Paragraph (a) of this subdivision shall not apply to corporations, limited partnerships, or limited liability companies.

(c) No corporation, limited partnership or limited liability company shall use or file a certificate for the use of any name or designation to carry on or conduct or transact business in this state which consists of or includes a word or words the use of which is prohibited or restricted by subparagraphs three through eleven of paragraph (a) of section three hundred one of the business corporation law or subparagraphs three through nine of paragraph (a) of section three hundred one and paragraph (w) of section four hundred four of the not-for-profit corporation law, or paragraph three of subdivision (a) of section 121-102 of the partnership law, or subdivisions (d) through (i) of section two hundred four of the limited liability company law, respectively, without having obtained any necessary consents or approvals which would permit the use of the word or words pursuant to such laws.

3. Whenever a certificate which has been filed under this section does not accurately set forth the facts required by this section, or within thirty days after there has been a change in such facts, an amended certificate shall be filed which shall identify the original certificate and incorporate the corrections or changes. If such amended certificate is filed for the purpose of adding or withdrawing the name of any person to the original certificate as a person conducting a business or as a partner, such amended certificate must be executed by such person and by any one or more of the other persons named in the original or last amended certificate, unless otherwise provided by an order of the supreme court. Any other amended certificate may be executed by any one or more of the persons named therein as a person conducting the business or as a partner or, in the case of a corporation, by an officer of the corporation, in the case of a limited partnership, by a general partner of the limited partnership, or in the case of a limited liability company, by a member or manager of the limited liability company, or by an attorney-in-fact or authorized person for such corporation, limited partnership, or limited liability company, as the case may be.

4. A certified copy of the original certificate, or if an amended

certificate has been filed, then of the most recent amended certificate filed shall be conspicuously displayed on the premises at each place in which the business for which the same was filed is conducted.

5. (a) (1) The several county clerks of this state shall keep an alphabetical index of all certificates, provided for herein, together with appropriate notations of the nature of amended certificates and certificates of discontinuance, and for the indexing and filing of such certificates, they shall receive a fee as specified in paragraph two of subdivision (b) of section eight thousand twenty-one of the civil practice law and rules.

(2) A county clerk may adopt a new indexing system utilizing electro-mechanical, electronic or any other method he deems suitable for maintaining the indexes.

(b) (1) The secretary of state shall keep an alphabetical index of all certificates filed pursuant to paragraph (b) of subdivision one of this section, together with appropriate notations of the nature of amended certificates and certificates of discontinuance; and for the indexing and filing of such certificates, the secretary of state shall receive a fee of twenty-five dollars (\$25.00).

(2) The secretary of state shall also collect from each corporation filing an assumed name certificate the fee or fees, as specified in paragraph two of subdivision (b) of section eight thousand twenty-one of the civil practice law and rules, for each county in which the corporation does business or transacts business or intends to do or transact business, as indicated in the certificate. Any fee or fees collected by the secretary of state for filing a certificate or certificates with a county clerk shall be transmitted to such county clerk together with a copy of such certificate or certificates, for indexing and filing as provided above, within ten (10) business days of the last day of the month in which such fees and certificates were received by the secretary of state. The secretary of state shall also transmit to the appropriate county clerk or clerks within such ten-day period a copy of any amended certificates or certificates of discontinuance received by the secretary of state for filing in such counties.

6. A copy of a certificate filed under the provisions of this section, duly certified to by the county clerk or secretary of state in whose office the certificate is filed, shall be presumptive evidence in all courts of this state of the facts therein contained; provided, however, that neither the certificate itself nor the filing thereof shall, for any purpose other than this section, constitute or be construed as an admission by the filing person, or be used as evidence, that such person does or has done business or has carried on, conducted or transacted business in this state or any county therein, or intended to do so.

7. Subdivision one of this section shall not apply to a person who, or a partnership which, has duly filed a certificate of continued use of firm name under article seven of the partnership law, or to a private banker duly authorized by the superintendent of financial services to engage in business pursuant to the provisions of the banking law or to a partnership of attorneys and counsellors-at-law engaged in the practice of their profession, and subdivision three of this section shall not apply to such a person or partnership who has filed a certificate of discontinuance under subdivision ten of this section.

8. The failure to comply with the provisions of this section shall in no way affect the rights of third persons, nor shall this section be deemed or construed to limit the liability of partners under the provisions of the partnership law.

8-a. The acceptance of a certificate by the county clerk or the secretary of state for filing pursuant to the provisions of this section shall not be construed to confer any right to or interest in any trade name; nor shall any of the provisions of this section be construed to affect the rights to, or the enforcement of any rights to, any trade name acquired at any time under the common law of this state.

9. Any person or persons carrying on, conducting or transacting business as aforesaid, who knowingly fails to comply with the provisions of this section or who knowingly makes a false statement in a certificate filed thereunder shall be guilty of a misdemeanor. Any person or persons carrying on, conducting or transacting business as

aforesaid who fails to comply with the provisions of this section shall be prohibited from maintaining any action or proceeding in any court in this state on any contract, account or transaction made in a name other than its real name until the certificate required by this section has been executed and filed in accordance with the provisions set forth herein.

10. If the business for which a certificate is filed under this section is discontinued, or the conditions under which it is conducted are such that the filing of a certificate in such county or with the secretary of state is no longer required, a certificate of discontinuance may be filed with the county clerk with whom the original certificate was filed or, if a corporation, limited partnership, or limited liability company, with the secretary of state, identifying such certificate and also identifying the amended certificate, if any, last previously filed and certifying the facts by reason of which the filing of a certificate is no longer required. The certificate of discontinuance shall be executed in the same manner as an original certificate and shall specify the date on which the discontinuance occurred or the conditions under which the business is conducted changed so that the filing of a certificate is no longer required. The county clerk or, if a corporation, limited partnership, or limited liability company, the secretary of state shall note the discontinuance in the index. A certificate of discontinuance shall be executed by a majority of the persons named in the original certificate or the amended certificate last previously filed as persons conducting or transacting the business or as partners or, in the case of a corporation, by an officer of the corporation, in the case of a limited partnership, by a general partner of the limited partnership, or in the case of a limited liability company, by a member or manager of the limited liability company, or by an attorney-in-fact or authorized person for such corporation, limited partnership, or limited liability company, as the case may be, provided that if any of them shall be deceased the certificate shall so state and may be executed by a majority of the survivors, or by the executor or administrator of a deceased person named in the original certificate or last previously filed amended certificate as the only person conducting or transacting the business,

and provided further that any such signatures may be dispensed with by order of the supreme court.

11. Notwithstanding any other provision of this section, an education corporation may not file a certificate under this section with the secretary of state, unless the consent of the board of regents is endorsed on or annexed thereto. Nothing in this subdivision shall invalidate a certificate lawfully filed by an education corporation pursuant to this section prior to the effective date of this subdivision.

§ 131. Ownership of merchandise establishments and services to be publicly revealed and displayed. Every person, partnership, association or corporation owning or conducting any shop, store or other establishment or service wherein the sale of merchandise at retail or wholesale is carried on or transacted or a service is performed as a business shall cause the true, full name, including the full first name or legally registered trade name or names of the proprietor or owner or proprietors or owners of such shop, store or other establishment or service to be publicly revealed and prominently and legibly displayed in the English language either upon a window of such shop, store or other establishment or place where a service is performed or upon a sign conspicuously placed upon the exterior of the building containing the same. The foregoing provisions shall not apply to a person, partnership, association or corporation operating under a lease, a department in a shop, store or other establishment or service as aforesaid where the lessor of such shop, store or other establishment or service is liable to customers for merchandise sold by and the operations of such leased department. Failure to comply with the provisions of this section shall constitute a misdemeanor.

§ 132. Fictitious copartnership names. 1. A person who transacts business, using the name, as a partner, of one not interested with him as a partner, or using the designation "and company," or "& Co." when no actual partner is represented thereby is guilty of a misdemeanor. This

section shall not apply to any case, where it is specially prescribed by statute that a partnership name may be continued in use by a successor, survivor, or other person.

2. Provided, however, that nothing in this section shall be construed to prohibit the use of the designation "and associates" or "& associates" by a professional or professionals who actually practice such profession with or employ one or more other professionals engaged in such profession.

§ 133. Use of name or address with intent to deceive. No person, firm or corporation shall, with intent to deceive or mislead the public, assume, adopt or use as, or as part of, a corporate, assumed or trade name, for advertising purposes or for the purposes of trade, or for any other purpose, any name, designation or style, or any symbol or simulation thereof, or a part of any name, designation or style, or any symbol or simulation thereof, which may deceive or mislead the public as to the identity of such person, firm or corporation or as to the connection of such person, firm or corporation with any other person, firm or corporation; nor shall any person, firm or corporation, with like intent, adopt or use as, or as part of, a corporate, assumed or trade name, for advertising purposes, or for the purposes of trade, or for any other purpose, any address or designation of location in the community which may deceive or mislead the public as to the true address or location of such person, firm or corporation. A violation of this section shall be a misdemeanor. Whenever there shall be an actual or threatened violation of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, to enjoin and restrain such actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact assuming, adopting or using such name, or is about to assume, adopt or use such name, and that the assumption, adoption or use of such name may deceive or mislead the public, an injunction may be issued by said court or justice, enjoining and restraining such actual or threatened violation without requiring proof that any person has in fact been

deceived or misled thereby.

§ 134. Fraudulent use of the name or title of secret fraternity. Any person, firm, association, society, order or organization, or any officer, agent, representative or employee thereof, or person acting or pretending to act on behalf thereof who in a newspaper or other publication published in this state, or in any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device without authority of the grand lodge hereinafter mentioned fraudulently uses, or in any manner directly or indirectly aids in the use of the name or title of any secret fraternal association, society, order or organization which has had a grand lodge in this state for ten years, or any imitation of such name or title or any name or title so nearly resembling it as to be calculated to deceive, or who without authority publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device directly or indirectly advertising for or soliciting members or applications for membership in such secret fraternal association, society, order or organization, or in any alleged or pretended association, society, order or organization, using or designated or claimed to be known by such title or imitation or resemblance thereof or who therein or thereby offers to sell, or to confer or to communicate or to give information directly or indirectly where, how, of whom, or by what means any alleged or pretended degree or any alleged or pretended secret work or any alleged or pretended secrets of such secret fraternal association, society, order or organization or any alleged or pretended association, society, order or organization designated or claimed to be known by such title or imitation or resemblance thereof can or may be obtained, conferred or communicated, is guilty of a misdemeanor.

§ 135. Unlawful use of name of benevolent, humane or charitable corporation. No person, society or corporation shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use the name of a benevolent, humane or

charitable organization incorporated under the laws of this state, or a name so nearly resembling it as to be calculated to deceive the public with respect to any such corporation. A violation of this section shall be a misdemeanor. Whenever there shall be an actual or threatened violation of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain said actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact using the name of a benevolent, humane or charitable organization, incorporated as aforesaid, or a name so nearly resembling it as to be circulated to deceive the public, an injunction may be issued by said court or justice, enjoining and restraining such actual or threatened violation, without requiring proof that any person has in fact been misled or deceived thereby.

§ 136. Exhibition or display of the flag. Any person who: a. In any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement, of any nature upon any flag, standard, color, shield or ensign of the United States of America, or the state of New York, or shall expose or cause to be exposed to public view any such flag, standard, color, shield or ensign, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or

b. Shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after the first day of September, nineteen hundred five, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color, shield or ensign, to advertise, call attention to,

decorate, mark, or distinguish, the article or substance on which so placed, or

c. Shall print, engrave, or otherwise place or cause to be printed, engraved or otherwise placed on any blank check, bill head, letter head, envelope or other business stationery, a representation of any such flag, standard, color, shield or ensign, or shall use any such blank check, bill head, letter head, envelope or other stationery for business purposes or correspondence, or

d. Shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt upon either by words or act, or

e. Shall raffle or place in pawn any such flag, standard, color, shield or ensign, or

f. Shall publicly carry or display any emblem, placard or flag which casts contempt, either by word or act, upon the flag of the United States of America, or

g. Shall publicly use or cause any such flag, standard, color, shield or ensign, to be publicly used as a receptacle for the placing, depositing or collecting of money or any other article or thing, shall be guilty of a misdemeanor.

The words flag, standard, color, shield or ensign, as used in this section, shall include any flag, standard, color, shield or ensign, or any picture or representation, of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color, shield or ensign, of the United States of America, or of the state of New York, or a picture or a representation, of either thereof, upon which shall be shown the colors, the stars, and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, shield or ensign of the United States of America or of the state of New York.

This section shall not apply to any act expressly permitted by the statutes of the United States of America, or by the United States army and navy regulations, nor shall it be construed to apply to a certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, stationery for use in private correspondence, or newspaper or periodical, on any of which shall be printed, painted or placed, said flag, standard, color, shield or ensign disconnected and apart from any advertisement.

The possession by any person, other than a public officer, as such, of any such flag, standard, color, shield or ensign, on which shall be anything made unlawful at any time by this section, or of any article or substance or thing on which shall be anything made unlawful at any time by this section shall be presumptive evidence that the same is in violation of this section, and was made, done or created after the first day of September, nineteen hundred five, and that such flag, standard, color, shield or ensign, or article, substance, or thing, did not exist on the first day of September, nineteen hundred and five.

§ 137. Unauthorized wearing or use of badge, name or insignia of certain orders and societies. 1. Any person who wilfully wears, or attaches to any motor vehicle, the badge, insignia, rosette or the button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States or Military Order of Foreign Wars of the United States, or the badge or button of the United Spanish War Veterans, the Veterans of Foreign Wars of the United States, the American Legion, the Disabled American Veterans, the Military Order of the World War, the Army and Navy Union, U.S.A., or the Order of Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or the Steuben Society of America, or the Jewish War Veterans of the United States, Inc., or the Catholic War Veterans, Inc., or the insignia or emblem of the Italian American War Veterans of the United States, Incorporated, or the insignia or emblem of the National Italo-American War Veterans, Inc., the insignia or emblem of the Polish Legion of American Veterans, Inc., or the insignia or emblem of the Military Order of the Purple

Heart, Inc., or the insignia or emblem of any lodge, society or organization subordinate to or recognized as Masonic by the Grand Lodge of Free and Accepted Masons of the State of New York, or the insignia or emblem of the Masonic War Veterans of the State of New York, Inc., or the insignia or emblem of the Order of the Eastern Star of the State of New York, or the badge, banner, insignia, button or emblem of any lodge, society or organization subordinate to or recognized as Pythian by the Grand Lodge, Knights of Pythias of the State of New York, or the badge, insignia, button, tab, or chapeaux of La Societe des Forty Hommes et eight Chevaux or the Marine Corps League, or AMVETS, American Veterans of World War II, Air Force Association, or the insignia or emblem of the Knights of Columbus, or the badge, shield, emblem or name of the Police Conference of New York, Inc., or the badge, shield, emblem or name of the New York State Association of Chiefs of Police, or the shield of the Westchester County Police Conference or the badge, shield, emblem or name of the New York State Fire Fighters Association, or the badge, shield, emblem or name of the Policemen's Benevolent Association of Westchester County, Inc., or the badge, shield, emblem or name of the Metropolitan Police Conference of Eastern New York, Inc., or the badge, shield, emblem or name of the Nassau Police Conference, Inc., or the badge, shield, emblem or name of the International Veterans Boxers Association, or the badge, shield, emblem, insignia or name of the Grand council of Guardians, Inc., or the badge, shield, emblem or name of the New York Veteran Police Association, or the insignia, emblem, badge, banner, button of Grand Lodge of the State of New York, Order Sons of Italy in America, Incorporated, or any subordinate Lodge or Grand Lodge of the State of New York, Order Sons of Italy in America, Incorporated, or the insignia, emblem, badge, banner, button of Ladies' Lodges, Grand Lodge of the State of New York, Order Sons of Italy in America, Incorporated, or the badge, banner, insignia, button or emblem of any clan of the United Scottish Clans of New York and New Jersey, or the insignia, emblem, badge, banner or button of The Ladies Auxiliary, Italian American War Veterans of the United States, Incorporated, or the Civil Air Patrol, Inc., or the insignia, emblem, badge, banner or button of the Order of the American Hellenic Educational Progressive Association, Incorporated, or the insignia, emblem, badge, banner or button of the Polish Legion of American Veterans or Ladies Auxiliary of

Polish Legion of American Veterans, or the insignia, emblem, badge, banner, or button of the Veterans of World War I of the United States of America Department of New York, Inc., China-Burma-India Veterans Association, Inc., Polish - American Veterans of World War II, Amsterdam, N. Y., Inc., Polish-American Veterans of World War II, Schenectady, N. Y., Inc., World War Veterans Club of Lindenhurst, Inc., the Eastern Paralyzed Veterans Association, the Vietnam Veterans of America, the Army and Navy Union of the United States, the American Gold Star Mothers, Inc., Regular Veterans Association, Inc., the 369th Veterans Association, Inc., the Tri-County Council of Vietnam Veterans, the National Congress of Puerto Rican Veterans, or the Fleet Reserve Association, or the badge, insignia, rosette or button of any society, order or organization of ten years standing in the state of New York, or uses the same, or the name of any such society, order or organization by falsely representing himself to be a member thereof in good standing, to obtain, or in attempting to obtain, aid or assistance within the state, or wilfully uses the names of any such society, order or organization, or the titles of its officers, or uses its insignia or emblems, or the forms or designs thereof, or its ritual or ceremonies unless entitled to use or wear the same under the constitution and by-laws, rules, and regulations of such order or of such society, order or organization, is guilty of a violation punishable by a fine not to exceed one hundred dollars.

2. Nothing herein contained shall be construed as superseding any provision of law prohibiting certain use and display on private vehicles of state and other seals and insignia and of specified signs, lettering or devices.

§ 138. Use of certain governmental, military or naval names. 1. It shall be unlawful and is prohibited for any person, firm, corporation or association, not an agency or instrumentality of the United States government, selling or offering for sale goods, wares or merchandise, to use or cause or permit to be used in the corporate or trade name or description of the seller or of the place where the goods, wares or merchandise are offered for sale, any of the following words or

expressions, viz., "army," "navy," "marine corps," "marines," "coast guard," "government," "post exchange," "P. X.," or "G. I.," unless there is displayed in conjunction therewith, in letters of at least the same size as such words or expressions, the words, "we sell articles acquired from the United States government only," or "we sell both articles acquired from the United States government and non-government articles," as the case may be.

2. No person, firm, corporation or association selling or offering for sale any article of merchandise, shall in any manner represent, contrary to fact, that the article was made for, or acquired directly or indirectly from, the United States government or its military or naval forces or any agency of the United States government, or that the article conforms to government specifications or requirements, or that it has been disposed of by the United States government.

§ 140. Wearing industry badges, or other insignia of identification by unauthorized persons. An employer of labor may adopt a badge, or other insignia of identification, to be worn or displayed by the employees for the purpose of identification while upon the premises of the employer and may post a notice of the adoption of such badge, or insignia, near the main entrance of such premises. Such employer may deposit with the department of labor a replica of such badge or insignia, and such department shall, if such badge or insignia be distinctive, issue to such employer a certificate authorizing the use thereof for the purposes of this section. Any person who, after the approval and adoption of such badge, or insignia, without authority or permission of the employer adopting the same, wilfully wears such badge or displays such insignia, or any facsimile or any imitation thereof, or uses the same to obtain admittance to or remain upon the premises of the employer, is guilty of a misdemeanor.

§ 141. Unlawful use of the name United Nations. No person, firm or corporation shall, without express authority from the secretary general of the United Nations, assume, adopt or use as, or as a part of a

corporate, assumed or trade name, for advertising purposes, or for the purposes of trade, or for any other purpose, the name United Nations, or abbreviation thereof; or any official emblem or other official insignia thereof; nor shall any person, firm or corporation, with intent to deceive or mislead the public, for any of such purposes, assume, adopt or use any name, designation or style, or simulation thereof, or designation or style, or simulation thereof, which may deceive or mislead the public as to the true identity of such person, firm or corporation or as to the official connection of such person, firm or corporation with the United Nations. A violation of this section shall be a misdemeanor. Whenever there shall be an actual or threatened violation of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, to enjoin and restrain such actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact, assuming, adopting or using such name, or is about to assume, adopt or use such name, and that the assumption, adoption or use of such name was not expressly authorized by the secretary general of the United Nations, and may deceive or mislead the public, an injunction may be issued by such court or justice, enjoining and restraining such actual or threatened violation without requiring proof that any person has in fact been deceived or mislead thereby. This section shall not prevent the continued use of a corporate name or trade name heretofore lawfully used.

§ 142. Unlawful possession or use of an identification card issued by United Nations. It shall be unlawful for any person to possess or use an identification card issued to another person by the United Nations. Any person finding or otherwise coming into possession of the identification card of another person shall forthwith surrender the same to the official in command at the headquarters of the United Nations or to any police officer or peace officer of the state. Any person who wilfully violates any provisions of this section shall be guilty of a misdemeanor punishable upon conviction by a fine of not more than fifty dollars or by imprisonment of not more than ten days, or both.

§ 143. False identification documents. 1. As used in this section, "false identification document" means any document, including a personal identification card, which is of a type intended or commonly used or accepted for the purpose of identification of individuals and which is not issued by or under the lawful authority of the named or indicated issuer. "False identification document" shall also include a personal identification document intended or commonly used or accepted for the purpose of identification which resembles or is intended to resemble one issued by the named or indicated issuer even though that issuer may be fictitious.

2. No person, firm or corporation shall produce, advertise, offer for sale, sell, distribute or otherwise transfer in this state any false personal identification document unless such document bears the word "NOVELTY" diagonally printed clearly and indelibly on both the front and back of such document in capital letters in not less than twelve point type.

3. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York or by the corporation counsel for any city or by an attorney properly designated by the governing body to represent any other political subdivision, to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the respondent of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the respondent has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application, the attorney general, corporation counsel or other properly designated attorney, as the case may be, is authorized to

take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Each sale of a false identification document shall constitute a separate and distinct violation.

ARTICLE 9-C

CYBER PIRACY PROTECTIONS; DOMAIN NAMES

Section 146. Short title.

147. Definitions.

148. Unlawful registration of domain name.

149. Civil remedies.

§ 146. Short title. This article shall be known and may be cited as the "domain names cyber piracy protections act".

§ 147. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the internet.

2. "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

3. "Traffic in" refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, or any other transfer for consideration or receipt in exchange for consideration.

§ 148. Unlawful registration of domain name. 1. No person or entity shall register a domain name that consists of the name of another living

person, or a name substantially and confusingly similar thereto, without that person's or entity's consent, with the specific intent to profit from such name by selling the domain name for financial gain to that person or any third party.

2. A person or entity shall be only liable for a violation of subdivision one of this section if such person or entity is the domain name registrant or such registrant's authorized licensee.

3. A person or entity who in good faith registers a domain name consisting of the name of another living person, or a name substantially and confusingly similar thereto, shall not be liable under this section if such name is used in, affiliated with, or related to a work of authorship protected under title 17 USC, including a work made for hire as defined in 17 USC 101, and if the person or entity registering the domain name is the copyright owner or licensee of the work, the person or entity intends to sell the domain name in conjunction with the lawful exploitation of the work, and such registration is not prohibited by a contract between the registrant and the named person.

§ 149. Civil remedies. 1. Upon the commission of a violation of this article, an application may be made by the attorney general to a court having jurisdiction to issue an injunction against the person or entity that registered the domain name in violation of this article, and upon notice to the respondent of not less than five days, the court may award injunctive relief, including the forfeiture or cancellation of the domain name. Upon receipt of a court order for injunctive relief, the registrar, domain name registry or other domain name registration authority with which the person or entity has registered the domain name with, shall comply with such order's requirements. If it shall appear to the satisfaction of the court that the person or entity who registered the domain name with the registrar, domain name registry or other domain name registration authority, has committed a violation of this article, the court shall enjoin and restrain such person or entity from any further violation without requiring proof that any person has, in fact, been injured or damaged thereby.

2. In addition to injunctive relief, the court may fine the person or entity that registered a domain name in violation of this article, one thousand dollars for each day the violation occurs. The court may also order the transfer of the domain name as part of the relief awarded.

3. The registrar, domain name registry or other domain name registration authority shall not be liable for injunctive or monetary relief under this section except in the case of bad faith or reckless disregard, which includes a willful failure to comply with any court order.

4. In a civil action commenced under this section, a domain name shall be deemed to have its situs within the state if the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located within the state.

ARTICLE 10 SHOOTING RANGES

Section 150. Shooting ranges.

§ 150. Shooting ranges. 1. In any action or proceeding commenced against an owner or user of a shooting range where one or more causes of action asserts a claim based on noise or noise pollution resulting from the inherent shooting activity on such shooting range, it shall be an affirmative defense that, at the time of the commencement of the action or proceeding, the shooting range is in compliance with any applicable noise control laws or ordinances, or, if the applicable noise control laws or ordinances have no legal force and effect against such owner or user or there are no applicable noise control laws or ordinances at the time of the effective date of this section, then the A-weighted sound level of small arms fire on the shooting range does not exceed 90 dB(A) for one hour out of a day, or does not exceed 85 dB(A) for eight hours out of a day measured at, or adjusted to, a distance of one hundred feet outside the real property boundary of the shooting range. An owner or

user may move for judgment dismissing one or more causes of action asserted against him on the ground that a cause of action cannot be maintained because of such affirmative defense.

2. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a person under any other law.

3. Notwithstanding the provisions of subdivisions one and two of this section, no shooting range shall be operated during the period from 10:00 PM until 7:00 AM unless a local law or ordinance specifically authorizes the operation of a shooting range during all or any portion of such time period.

4. For the purposes of this section:

(a) "Shooting range" shall mean an outdoor range equipped with targets for use with firearms and shall include, but not be limited to, all rifle, pistol and shotgun ranges.

(b) "A-weighted sound level" shall mean the sound pressure level measured by the use of an instrument with the metering characteristics and A-weighting frequency response prescribed by sound level meters using the impulse response mode.

(c) "Sound pressure level" shall mean twenty times the logarithm to the base ten of the ratio of the root mean squared pressure of a sound to a reference pressure of twenty micropascals. The unit applied to this measure shall be the decibel (dB).

(d) "Small arms" shall mean projectile firearms of small caliber, including rifles, pistols, and shotguns.

ARTICLE 10-A

TRUTH IN TRAVEL ACT

Section 155. Legislative intent.

156. Short title.

157. Definitions.

157-a. Travel agreements.

158. Prohibited practices by travel consultants.

158-a. Prohibited practices by travel promoters.

159. Violations and penalties.

159-a. Severability.

§ 155. Legislative intent. It is hereby determined and declared that the promotion of travel, either individually or as a group, is now of such volume that it is in the public interest to subject it to the supervision of the appropriate political subdivisions of the state for the purpose of safeguarding the public against fraud, false advertising, misrepresentation and similar abuses.

§ 156. Short title. This act shall be known and may be cited as the "truth in travel act."

§ 157. Definitions. 1. "Travel consultant" means any person, firm, corporation, partnership or association, other than a common carrier or employee of a common carrier, who as principal or agent, sells or offers for sale any travel tickets or orders for transportation, or negotiates for or holds himself out by solicitation, advertisement or otherwise as one who sells, provides, furnishes contracts or arranges for such travel tickets or orders for transportation.

For the purposes of this article, "carrier" means any person, firm, corporation, partnership or association engaged in the business of transporting persons for hire.

2. "Travel promoter" means any person, firm, corporation, partnership or association, other than a common carrier or employee of a common carrier, who is primarily engaged in the direct solicitation of persons, by mail or telephone, for the sale of any travel or vacation investments, goods, products, or services, including, but not limited to travel or tour benefits, real property, interests in real property, time shares, lodging, commodities, or securities. For purposes of this article, a "travel promoter" does not include:

a. A person, firm, corporation, partnership or association that is an officially appointed agent of a common carrier and meets standards no less than those required on January first, nineteen hundred eighty-nine, for authorized agents of the airline reporting corporation.

b. A person, firm, corporation, partnership or association that is a registered member in good standing of the Cruise Lines International Association and who solely solicits and/or sells travel services and products as an officially appointed agent of one or more ocean carriers in the sale of the ocean carrier's travel services pursuant to the agency appointment.

c. A broker-dealer registered with the securities and exchange commission or the department of law who is engaged in the sale of securities or commodities or sale or rental of real estate pursuant to its registration.

3. "Travel services" means transportation, accommodations in lodgings such as hotels, motels or motor courts, rental of motor vehicles, or any other service related to travel. For purposes of this article, "travel services" shall include investments in time shares.

4. "Time share" means an interest in any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby three or more purchasers, in exchange for a consideration, receive ownership rights in or a right to use the same accommodations or facilities in real property, or both, for different intervals of less than a full year during any given year, but not necessarily for consecutive years, and which extend for a period of more than three years or which, for nominal consideration, may be renewed to continue for a period of more than three years.

5. "Merchant account number" means an identifying number given by a credit card issuer to a merchant for purposes of identifying the merchant in the processing of credit card charges and purchases.

§ 157-a. Travel agreements. 1. When a person agrees, in response to a solicitation by a travel promoter which is directed to the person individually, to purchase membership in a travel club or to enter into any travel services contract or other agreement to accept transportation, lodging, an interest or investment in a time share plan, travel investments, or other travel services, the travel promoter must provide such purchaser with written disclosure of all limitations on and terms of such purchase or agreement within five business days of the date of the agreement. Such disclosure shall clearly and conspicuously include:

a. the name, business address and telephone number of the travel promoter;

b. the amount due, the date of payment, the purpose of the payment and an itemized statement of the balance due, if any;

c. the name of the carrier with which the travel promoter has contracted to provide the transportation, the type and size of carrier to be used, and the date, time and place of each departure;

d. a detailed description of any other services provided in conjunction with the transportation;

e. conditions, if any, upon which the travel services contract between the travel promoter and the traveler may be cancelled, and the rights and obligations of all parties in the event of such cancellation;

f. the conditions, if any, upon which the travel services contract between the travel promoter and the carrier or other service provider may be cancelled, and the rights and obligations of all parties in the event of such cancellation; and

g. a description of all contingencies, limitations and/or conditions of the agreement.

2. After receipt of full written disclosure, the purchaser may cancel such an agreement until midnight of the third business day after the disclosure is received by the purchaser, by use of the form prescribed in subdivision three of this section; however, notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox, properly addressed and postage prepaid.

3. The written disclosure shall include, in addition to the requirements of subdivision two of this section, the following statement printed in capital and lower case letters of not less than ten point bold faced type:

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE RECEIPT OF THIS DISCLOSURE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE OR SEND A TELEGRAM TO

(Name of Seller),

AT (Address of seller)

NOT LATER THAN
MIDNIGHT OF THE THIRD DAY
AFTER RECEIPT OF THIS
DISCLOSURE

(Place of Business)

(Date)

I HEREBY CANCEL THIS TRANSACTION

(Date)

(Purchaser's Signature)

4. Until the written disclosure required by subdivision one of this section has been received, the purchaser may cancel the agreement by notifying the travel promoter in any manner and by any means of his or

her intention to cancel.

5. Within ten days after notice of cancellation is given, the travel promoter shall refund to the purchaser concerned any payments made by such purchaser; such refund may be made by reaccrediting the purchaser's charge account if a credit card was used to make a payment and if the travel promoter informs the purchaser in writing that the charge account has been reaccredited.

6. If the travel promoter fails within the period prescribed by subdivision five of this section to return all payments made by a purchaser, he or she shall be liable to the purchaser for such payments. If the purchaser is successful in an action to enforce any provision of this section or section one hundred fifty-eight-a of this article or appeal thereon, the court shall award the purchaser one hundred dollars and may award reasonable attorney's fees and costs, in addition to any other remedy.

7. The obligations imposed by this section shall be in addition to and not in derogation of the requirements of any other law.

§ 158. Prohibited practices by travel consultants. It shall be illegal for any travel consultant and, if such travel consultant is a corporation, any officer or director thereof, to engage in any or all of the following enumerated practices:

1. Knowingly misrepresent the quality or kind of service, type or size of aircraft, vehicle, ship or train, time of departure or arrival, points served, route to be traveled, stops to be made, or total trip-time from point of departure to destination or other services available, reserved or contracted for in connection with any trip or tour.

2. Knowingly misrepresent the fares and charges for transportation or services in connection therewith.

3. Knowingly advertise or otherwise offer for sale or sell transportation or services in connection therewith at less than the rates, fares and charges specified in the currently effective tariffs of the carrier, who is engaged to provide such transportation or services, or knowingly offer or give rebates or other concessions thereon, or knowingly assist or permit a person or persons to obtain such transportation or services at less than such lawful rates, fares and charges.

4. Knowingly misrepresent that special priorities for reservations are available when such special considerations are not in fact granted to members of the public generally.

5. Knowingly sell transportation to a person or persons on a reservation or charter basis for specified space, flight or time or knowingly represent that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with a carrier for the furnishing of such definite reservation or charter as represented or sold.

6. Knowingly sell or issue tickets or other documents to passengers to be exchanged or used for transportation if such tickets or other documents will not be or cannot be legally honored by carriers for transportation.

7. Knowingly misrepresent the requirements that must be met by a person or persons in order to qualify for charter or group fare rates.

§ 158-a. Prohibited practices by travel promoters. It shall be illegal for any travel promoter and, if such travel promoter is a corporation, any officer or director thereof, to engage in any or all of the following enumerated practices:

1. Offer free accommodations for more than one person and free travel for one person when the charge for the travel of the additional person or persons is equal to or exceeds what would have been paid for the

total number of travel tickets without utilizing the travel services offered by the travel promoter.

2. Use a merchant account number assigned to a merchant other than the travel promoter providing or offering the travel service in order to process credit card charges and purchases.

3. Misrepresent the quality or kind of service, type or size of aircraft, vehicle, ship or train, time of departure or arrival, points served, route to be traveled, stops to be made, total trip-time from point of departure to destination, type or size of lodging, time share or other accommodation, availability of lodging, time share or other accommodation, or other services available, reserved or contracted for in connection with any trip, tour or other travel services, unless such misrepresentation was based upon a reasonable belief as to the services available based upon representations made by the person, company, corporation, common carrier or other entity offering such services.

4. Misrepresent the fares and charges for transportation or services in connection therewith, unless such misrepresentation was based upon a reasonable belief as to the fares and charges applicable based upon representations made by the person, company, corporation, common carrier or other entity offering such services.

5. Advertise or otherwise offer for sale or sell transportation or services in connection therewith at less than the rates, fares and charges specified in the currently effective tariffs of the carrier that is engaged to provide such transportation or services, or offer or give rebates or other concessions thereon, or assist or permit a person or persons to obtain such transportation or services at less than such lawful rates, fares and charges.

6. Misrepresent that special priorities for reservations are available when such special considerations are not in fact granted to members of the public generally.

7. Sell transportation to a person or persons on a reservation or

charter basis for specified space, flight or time or represent that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with a carrier for the furnishing of such definite reservation or charter as represented or sold.

8. Sell or issue tickets or other documents to passengers to be exchanged or used for transportation if such tickets or other documents will not be or cannot be legally honored by carriers for transportation.

9. Misrepresent the requirements that must be met by a person or persons in order to qualify for charter or group fare rates, unless such misrepresentation was based upon a reasonable belief as to the requirements applicable based upon representations made by the person, company, corporation, common carrier or other entity offering such charter or group fare.

§ 159. Violations and penalties. 1. Except as otherwise provided by law, any travel consultant who shall violate the terms of section one hundred fifty-eight of this article shall be guilty of a misdemeanor.

2. Except as otherwise provided by law, any travel promoter who shall knowingly violate the terms of section one hundred fifty-eight-a of this article shall be guilty of a misdemeanor.

3. The district attorney of any county may bring an action in the name of the people of the state to restrain or prevent any violation of this article or any continuance of any such violation.

4. Enforcement; penalties. Whenever there shall be a violation of section one hundred fifty-seven-a, one hundred fifty-eight or one hundred fifty-eight-a of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the

defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 159-a. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid the invalidity thereof shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

ARTICLE 10-B

TRANSMISSION OF MONEY TO FOREIGN COUNTRIES.

Section 160. Unauthorized transmission of money as agent.

161. Agent to transmit through principal.

162. Certain transmission prohibited; method of transmission.

163. Time of transmission.

164. Disposition of undelivered moneys.

165. Application of article.

166. Violations; penalty.

§ 160. Unauthorized transmission of money as agent. No person, firm or corporation or unincorporated association shall represent himself to be an agent of any steamship company, express company, banking

establishment or institution, or other company, for the purpose of receiving money for transmission or of transmitting the same by draft, traveller's check, money order or otherwise to foreign countries, nor shall any person, firm, corporation or unincorporated association do business as such agent, unless thereto duly authorized.

§ 161. Agent to transmit through principal. No such agent so authorized shall transmit any money received for transmission by him through any person, firm or corporation other than through the principal from whom such agent has duly received authority.

§ 162. Certain transmission prohibited; method of transmission. No steamship company, express company, or other company and no agent thereof, shall receive any money as a depositary. Every such steamship company, express company, or other company and every agent thereof in transmitting any money received for transmission, shall incorporate in the advice of draft, money order or other instrument by means of which such money is transmitted a statement showing the amount thereof in terms of dollars and cents together with the amount thereof in terms of the money standard of the country to which such money is transmitted.

§ 163. Time of transmission. Every agent authorized to act as such by any steamship company, express company, or otherwise for the purpose of transmitting money, shall within two days after receipt thereof, deliver to his principal the money so received. Every such steamship company, express company, or other company shall thereupon and within three days after receipt thereof from an agent, transmit the same to the person to whom such money has been consigned by the transmitter unless within such period of three days there be no mail bearing steamer leaving for the point of destination of such moneys, in which event such money shall be transmitted on the first steamship to leave thereafter.

§ 164. Disposition of undelivered moneys. Every steamship company,

express company, or other company, to which moneys received for transmission are returned for the reason that the same cannot be delivered shall forthwith notify the transmitter thereof by mailing written notice to such transmitter at his last known address. If such money be unclaimed for a period of ninety days after such notice, such company shall immediately turn over such money to the state comptroller who shall maintain the same as a capital revolving fund for the purpose of paying claimants thereof. After such moneys have remained unclaimed in the hands of the comptroller for five years, the same shall escheat to the state.

§ 165. Application of article. This article shall not apply to any person, firm, corporation or association under the supervision of the department of financial services.

§ 166. Violations; penalty. Every person, firm or corporation and every officer thereof, who violates any provision of this article is guilty of a misdemeanor.

ARTICLE 11

EMPLOYMENT AGENCIES.

- Section 170. Application of article.
171. Definitions.
172. License required.
173. Application for license.
174. Procedure upon application; grant of license.
175. Form and contents of license.
176. Assignment or transfer of license; change of location; additional locations.
177. Bonds and license fees.
178. Action on bond.
179. Registers and other records to be kept.
181. Contracts, statements of terms and conditions, and receipts.

- 182. Cards to be furnished nurses; registry records.
- 184. Recruitment of domestic or household employees who are residents of other states; findings and policy.
- 184-a. Recruitment of domestic or household employees from outside the continental United States.
- 185. Fees.
- 185-a. Domestic dayworkers who are transported to the place of employment.
- 186. Return of fees.
- 187. Additional prohibitions.
- 188. Copies of law to be posted.
- 189. Enforcement of provisions of this article.
- 190. Penalties for violations.
- 191. Definition.
- 192. Prohibited activities.
- 193. Penalties for violation.
- 194. Employment agency fees; reimbursement from employee to employer prohibited.

§ 170. Application of article. This article shall apply to all employment agencies in the state.

§ 171. Definitions. Whenever used in this article:

1. "Commissioner" means the industrial commissioner of the state of New York, except that in the application of this article to the city of New York the term "commissioner" means the commissioner of consumer affairs of such city.

2. a. "Employment agency" means any person (as hereinafter defined) who, for a fee, procures or attempts to procure:

(1) employment or engagements for persons seeking employment or engagements, or

(2) employees for employers seeking the services of employees.

b. "Employment agency" shall include any person engaged in the practice of law who regularly and as part of a pattern of conduct, directly or indirectly, recruits, supplies, or attempts or offers to recruit or supply, an employee who resides outside the continental United States (as defined in section one hundred eighty-four-a of this article) for employment in this state and who receives a fee in connection with the arrangement for the admission into this country of such workers for employment.

c. "Employment agency" shall include any person who, for a fee, renders vocational guidance or counselling services and who directly or indirectly:

(1) procures or attempts to procure or represents that he can procure employment or engagements for persons seeking employment or engagements;

(2) represents that he has access, or has the capacity to gain access, to jobs not otherwise available to those not purchasing his services; or

(3) provides information or service of any kind purporting to promote, lead to or result in employment for the applicant with any employer other than himself.

d. "Employment agency" shall include any nurses' registry and any theatrical employment agency (as hereinafter defined).

e. "Employment agency" shall not include: (1) any employment bureau conducted by a duly incorporated bar association, hospital, association of registered professional nurses, registered medical institution, or by a duly incorporated association or society of professional engineers, or by a duly incorporated association or society of land surveyors, or by a duly incorporated association or society of registered architects; (2) any speakers' bureau as defined in subdivision eleven hereof; (3) any organization operated by or under the exclusive control of a bonafide nonprofit educational, religious, charitable or eleemosynary institution. (4) any person, firm, corporation or organization defined and regulated by sections one hundred ninety-one through one hundred ninety-three of this chapter.

3. "Fee" means anything of value, including any money or other

valuable consideration charged, collected, received, paid or promised for any service, or act rendered or to be rendered by an employment agency, including but not limited to money received by such agency or its emigrant agent which is more than the amount paid by it for transportation, transfer of baggage, or board and lodging on behalf of any applicant for employment.

4. "Agency manager" means the person designated by the applicant for a license who is responsible for the direction and operation of the placement activities of the agency at the premises covered by the license.

5. "Placement employee" shall mean any agency manager, director, counsellor, interviewer, or any other person employed by an employment agency who spends a substantial part of his time interviewing, counselling or conferring with job applicants or employers for the purpose of placing or procuring job applicants, but shall not include employees of an employment agency who are primarily engaged in clerical occupations.

6. "Nurses' registry" means any employment agency, bureau, office or other place which procures or attempts to procure employment or engagements for nurses licensed pursuant to article one hundred thirty-nine of the education law as a registered professional nurse or licensed practical nurse.

7. "Person" means any individual, company, society, association, corporation, manager, contractor, subcontractor, partnership, bureau, agency, service, office or the agent or employee of the foregoing.

8. "Theatrical employment agency" means any person (as defined in subdivision seven of this section) who procures or attempts to procure employment or engagements for an artist, but such term does not include the business of managing entertainments, exhibitions or performances, or the artists or attractions constituting the same, where such business only incidentally involves the seeking of employment therefor.

8-a. "Artist" shall mean actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

9. "Theatrical engagement" means any engagement or employment of an artist.

10. "Emigrant agent" shall mean any person, on behalf of an employment agency who, for a fee, procures or attempts to procure employment for persons outside the state or outside the continental United States seeking such employment, or employees from outside the state or outside the continental United States for employers seeking the services of such employees.

11. "Speakers' bureau" means any person whose principal business is to provide lecture business management and promotional services on behalf of lecturers or speakers and procures on behalf of a lecturer or speaker, speaking engagements to appear in lecture programs established by an individual or institutional sponsor and who charges a fee, directly or indirectly, to such lecturer or speaker.

Whenever used in this article words in the singular shall include the plural.

§ 172. License required. No person shall open, keep, maintain, own, operate or carry on any employment agency unless such person shall have first procured a license therefor as provided in this article. Such license shall be issued by the commissioner of labor, except that if the employment agency is to be conducted in the city of New York such license shall be issued by the commissioner of consumer affairs of such city. Such license shall be posted in a conspicuous place in said agency.

§ 173. Application for license. 1. An application for such license shall be made to the commissioner of labor, except that if the employment agency is to be conducted in the city of New York the application for such license shall be made to the commissioner of consumer affairs of such city. If the employment agency is owned by an individual such application shall be made by such individual; if it is owned by a partnership such application shall be made by all partners; if it is owned by an association or society, such application shall be made by the president and treasurer thereof, by whatever title designated; if it is owned by a corporation, such application shall be made by all its officers and, if the stock of the corporation is publicly traded, by all stockholders holding ten percent or more of the stock of such corporation. A conformed or photostatic copy of the minutes showing the election of such officers shall be attached to such application.

If the applicant will conduct business under a trade name or if the applicant is a partnership, the application for a license shall be accompanied by a copy of the trade name or partnership certificate duly certified by the clerk of the county in whose office said certificate is filed. Such trade name shall not be similar or identical to that of any existing licensed agency.

2. a. Such application shall be written and in the form prescribed by the commissioner and shall state truthfully the name and address of the applicant; the name under which the employment agency is to be conducted; the street and number of the building or place where the business is to be conducted; the business or occupations engaged in by the applicant theretofore; the name and address of the individual who will be responsible for the direction and operation of the placement activities of the agency, whether such individual be the applicant or another; the length of time such individual has spent as a placement employee; a description of the duties of such individual when so engaged; the name and present address of the last employer to employ such individual as a placement employee; and such other information as

may be prescribed by the commissioner. If such individual is not the applicant, the application for a license shall be accompanied by an application for an agency manager permit by the individual who will be responsible for the direction and operation of the placement activities of the agency. An application for an agency manager permit shall be on such form as prescribed by the commissioner.

b. The application for a license shall be accompanied by samples or accurate facsimiles of each and every form which the applicant for a license will require applicants for employment to execute, and such forms must be approved by the commissioner before a license may be issued. The commissioner shall approve any such forms which fairly and clearly represent contractual terms and conditions between the proposed employment agency and applicants for employment, such as are permitted by this article. The commissioner shall make all forms required pursuant to this article available to employment agencies in languages other than English, including any other language that the commissioner determines, in his or her discretion, based on the size of the New York population that speaks each language and any other factor that the commissioner deems relevant. An employment agency shall not be penalized for errors or omissions in the non-English portions of any forms provided by the commissioner.

c. If the applicant for a license intends to recruit persons who reside in a state outside this state for employment as domestic or household employees, or to recruit persons from outside the continental United States for domestic or household employment, or is to provide or arrange for lodging of applicants for employment or other persons doing business with the agency, he shall so state in the application for a license, and give the address where such lodging will be provided. Such application shall be accompanied by the statements of at least two reputable residents of the state, subscribed and affirmed by such residents as true under the penalties of perjury, except that where the agency is to be conducted in New York city, the statements shall be of at least two reputable persons who reside or do business in such city, to the effect that the applicant is a person of good moral character.

§ 174. Procedure upon application; grant of license. 1. Upon the receipt of an application for a license, the commissioner shall cause the name and address of the applicant, the name under which the employment agency is to be conducted, and the street and number of the place where the agency is to be conducted, to be posted on the commissioner's website, as well as in a conspicuous place in his public office. Such agency shall be used exclusively as an employment agency and for no other purpose, except as hereinafter provided. The commissioner shall investigate or cause to be investigated the character and responsibility of the applicant and agency manager and shall examine or cause to be examined the premises designated in such application as the place in which it is proposed to conduct such agency.

The commissioner shall require all applicants for licenses and agency managers to be fingerprinted. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check. The criminal history information, if any, received by the commissioner shall be considered in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law. A reasonable time before making a determination on the application pursuant to this subdivision, the commissioner shall provide the applicant with a copy of the applicant's criminal history information, if any. Where such criminal history information is provided, the commissioner shall also provide a copy of article twenty-three-A of the correction law, and inform such applicant of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services.

2. Any person may file, within one week after such application is so posted, a written protest against the issuance of such license. Such protest shall be in writing and signed by the person filing the same or

his authorized agent or attorney, and shall state reasons why the said license should not be granted. Upon the filing of such protest the commissioner shall appoint a time and place for the hearing of such application, and shall give at least five days' notice of such time and place to the applicant and the person filing such protest. The commissioner may administer oaths, subpoena witnesses and take testimony in respect to the matters contained in such application and protests or complaints of any character for violation of this article, and may receive evidence in the form of affidavits pertaining to such matters. If it shall appear upon such hearing or from the inspection, examination or investigation made by the commissioner that the applicant or agency manager is not a person of good character or responsibility; or that he or the agency manager has not had at least two years experience as a placement employee, vocational counsellor or in related activities, or other satisfactory business experience which similarly tend to establish the competence of such individual to direct and operate the placement activities of the agency; or that the place where such agency is to be conducted is not a suitable place therefor; or that the applicant has not complied with the provisions of this article; the said application shall be denied and a license shall not be granted. Each application should be granted or refused within thirty days from the date of its filing.

3. Any license heretofore issued shall run to the first Tuesday of May next following the date thereof and no later, unless sooner revoked by the commissioner. On and after May first, nineteen hundred seventy-six, licenses shall run to May first, nineteen hundred seventy-eight; thereafter to May first of every second year. A separate license shall be required for each branch of any agency.

4. No license shall be granted to a person to conduct the business of an employment agency in rooms used for living purposes or where boarders or lodgers are kept or where meals are served or where persons sleep or in connection with a building or premises where intoxicating liquors are sold to be consumed on the premises, excepting cafes and restaurants in office buildings. No license shall be granted to a person to conduct the business of an employment agency where the name of the employment agency

directly or indirectly expresses or connotes any limitation, specification or discrimination as to race, creed, color, age, sex, national origin, disability or marital status, and the lack of intent on the part of the applicant for the license to make any such limitation, specification or discrimination shall be immaterial, except that any presently licensed employment agency bearing a name which directly or indirectly expresses or connotes any such limitation, specification or discrimination may continue to use its present name and may have its license renewed using its present name, provided that it display under such name, wherever it appears, a statement to the effect that its services are rendered without limitation, specification or discrimination as to race, creed, color, age, sex, national origin, disability or marital status.

§ 175. Form and contents of license. 1. Every license shall contain the name of the person licensed, a designation of the city, town or village, street and number of the place in which the person licensed is authorized to carry on the said employment agency, and the number and date of such license. If the licensee is a corporation, the license shall be issued in the name of the corporation and the names of the president and treasurer individually and as officers. All other officers of the corporation and all stockholders of a corporation whose stock is not publicly traded holding ten percent or more of the stock of such corporation shall be deemed licensees.

2. It shall be the duty of the licensee to notify promptly the commissioner of any changes of the persons licensed or deemed to be licensees, and of any material change in the ownership or operation of the agency.

§ 176. Assignment or transfer of license; change of location; additional locations. A license granted as provided in this article shall not be valid for any person other than the person to whom it is issued or any place other than that designated in the license and shall not be assigned or transferred without the consent of the commissioner.

Applications for such consent shall be made in the same manner as an application for a license, and all the provisions of sections one hundred seventy-three and one hundred seventy-four shall apply to applications for such consent. The location of an employment agency shall not be changed without the consent of the commissioner, and such change of location shall be indorsed upon the license. A person who has obtained an employment agency license in accordance with the provisions of this article, may apply for an additional license to conduct an additional employment agency, in accordance with the provisions of section one hundred seventy-three. The manner of application, and the conditions and terms applicable to the issuance of such license shall be the same as for an initial or original license except that the said license shall not extend beyond the termination date of the original license. An additional bond shall be furnished to the commissioner issuing the additional license, and the terms of said bond shall be such as to make it payable as well to the people of the state of New York or of the city of New York, as the case may be.

§ 177. Bonds and license fees. 1. Every person licensed under the provisions of this article to carry on the business of an employment agency shall pay to the commissioner a license fee in accordance with the following schedule before such license is issued. The minimum fee for said license shall be five hundred dollars, and for an agency operating with more than four placement employees, seven hundred dollars, provided, however, that if the license is to run less than one year, the fee shall be two hundred fifty dollars and three hundred fifty dollars respectively, and if the license is to run less than six months, the fee shall be one hundred twenty-five dollars and one hundred seventy-five dollars respectively. For the purpose of determining the license fee which an employment agency shall pay, the applicant for such license shall state in his application to the commissioner the average number of placement employees employed by the applicant's employment agency during the preceding calendar year; or, in the event that the applicant has not previously conducted an employment agency under the provisions of this article, he or she shall state the average number of placement employees which he or she reasonably expects will be employed

by the employment agency during the calendar year in which the license is issued. If the application for a license is denied or withdrawn, one-half of the license fee provided herein shall be returned to the applicant. He or she shall also deposit before such license is issued, with the commissioner, a bond in the penal sum of five thousand dollars with two or more sureties or a duly authorized surety company, to be approved by the commissioner, provided, however, that if the applicant will engage in the recruitment of domestic or household employees from outside the continental United States, or will conduct a modeling agency the bond shall be in the penal sum of ten thousand dollars.

2. The bond executed as provided in subdivision one of this section shall be payable to the people of the state of New York or of the city of New York, as the case may be, and shall be conditioned that the person applying for the license will comply with this article, and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit, or any unlawful act or omission of any licensed person, his agents or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under such license, or caused by any other violation of this article in carrying on the business for which such license is granted. The bond also shall be conditioned that the person applying for the license shall pay the commissioner all fines imposed pursuant to section one hundred eighty-nine of this article.

3. If at any time the surety or sureties become financially irresponsible in the judgment of the commissioner or insolvent the licensed person shall, upon notice from the commissioner, file a new bond, subject to the provisions of this section. The failure to file a new bond, within ten days after such notice, in the discretion of the commissioner, shall operate as a revocation of such license and the license shall be thereupon returned to the commissioner.

§ 178. Action on bond. All claims or suits brought in any court against any licensed person may be brought in the name of the person damaged upon the bond deposited by such licensed person as provided in

section one hundred seventy-seven and may be transferred and assigned as other claims for damages in civil suits. The amount of damages claimed by plaintiff, and not the penalty named in the bond, shall determine the jurisdiction of the court in which the action is brought. The commissioner may institute a suit against the bond on behalf of any person damaged. Where such licensed person has departed from the state with intent to defraud his creditors or to avoid the service of a summons in an action brought under this section, service shall be made upon the surety in the manner provided for service of a summons. A copy of such summons shall be mailed to the last known post office address of the residence of the licensed person and the place where he conducted such employment agency, as shown by the records of the commissioner.

§ 179. Registers and other records to be kept. It shall be the duty of every licensed person to keep a register, approved by the commissioner, in which shall be entered, in the English language, the date of the application for employment, the date the applicant started work and the name and address of every applicant from whom a fee or deposit is charged, the amount of the fee or deposit and the service for which it is received or charged. Such licensed person shall also enter in the same or in a separate register, approved by the commissioner, in the English language, the name and address of every employer from whom a fee is received or charged or to whom the licensed person refers an applicant who has paid or is charged a fee, the date of such employer's request or assent that applicants be furnished, the kind of position for which applicants are requested, the names of the applicants sent from whom a fee or deposit is received or charged with the designation of the one employed, the amount of the fee or deposit charged, and the rate of salary or wages agreed upon. It shall also be the duty of every licensed person to keep complete and accurate written records in the English language of all receipts and income received or derived directly from the operation of his employment agency, and to keep records concerning job orders. No such licensed person, his agent or employees, shall make any false entry in such records. It shall be the duty of every licensed person to communicate orally or in writing with at least one of the persons mentioned as references for every applicant for work in private

families, or employed in a fiduciary capacity, and the result of such investigation shall be kept on file in such agency for a period of at least three years. Every register and all records kept pursuant to the requirements of this article shall be retained on the premises of the agency concerned for three years following the date on which the last entry thereon was made.

§ 181. Contracts, statements of terms and conditions, and receipts. It shall be the duty of every employment agency to give to each applicant for employment:

1. A true copy of every contract executed between such agency and such applicant, which shall have printed on it or attached to it a statement setting forth in a clear and concise manner the provisions of sections one hundred eighty-five, and one hundred eighty-six of this article.

2. (a) For class "C" theatrical employment:

(1) Such contract in blank shall be first approved by the commissioner and his or her determination shall be reviewable by certiorari. Each contract shall include the gross commission or fees to be paid by the artist to the theatrical employment agency consistent with section one hundred eighty-five of this article. Each such contract shall also include the name, address, phone number and license number of the theatrical employment agency in addition to the name of the artist, the type of services covered by the contract, and all terms and conditions associated with the payment of such commission or fees. The theatrical employment agency shall keep on file a copy of each contract entered into with an artist and provide a copy of each contract to the artist.

(2) Separate from the contract, the agency shall provide to the artist, at the time of each audition or interview for specific employment, information as to the name and address of the person to whom the artist is to apply for such employment, the service to be performed, the anticipated rate of compensation, where such compensation is known prior to the audition or interview, and any other material terms and conditions of such employment that are known by the agency prior to the audition or interview. Such information may be provided by electronic

communication.

(b) For all other employment, including class "A" and "A-1" employment, each contract shall include, but not be limited to, the following: information as to the name and address of the person to whom the applicant is to apply for such employment, the name, the address, the mailing address, and the telephone number of the employer; the address or addresses of employment, the kind of service to be performed; the anticipated rate of wages or compensation; the anticipated hours of work per day and number of days to be worked per week; the agency's fee for the applicant based on such anticipated wages or compensation; any provision to the employee, and costs associated with that provision including housing, health insurance, healthcare, sick leave, holidays and retirement benefits; whether such employment is permanent or temporary, the anticipated period of employment, the name and address of the person authorizing the hiring of such applicant; and the cost of transportation if the services are required outside of the city, town or village where such agency is located. If the job is a conditionally fee-paid job, the conditions under which the applicant will be required to pay a fee shall be clearly set forth in a separate agreement in ten-point type signed by the job applicant.

3. (a) This paragraph shall apply to all classes of employment except for class "C" theatrical employment. The employment agency shall provide to each applicant, a separate document accompanying each contract summarizing the terms and conditions of the contract. This document shall be entitled "terms and conditions" and shall include the language that the document is not a contract and that such document is not legally binding. The terms and conditions shall be provided in plain and commonly understood terms and language which shall aid the job applicant in understanding the transaction and such document shall limit the use of technical terms whenever possible.

(b) The terms and conditions shall conform to any templates established by the commissioner and be made available to employment agencies in such manner as determined by the commissioner. In developing such templates, the commissioner shall afford the public an opportunity to submit comments on such templates.

(c) The commissioner may promulgate rules and regulations necessary to

carry out the provisions of this section.

(d) An employment agency shall not be penalized for errors or omissions in the non-English portions of any templates provided by the commissioner.

4. A receipt for any fee, deposit, consideration, or payment which such agency receives from such applicant, which shall have printed or written on it the name of the applicant, the name and address of the employment agency, the date and amount of such fee, deposit, consideration or payment or portion thereof for which the receipt is given, the purpose for which it was paid, and the signature of the person receiving such payment. If the applicant for employment has been recruited from outside the state for domestic or household employment the receipt shall have printed on it, or attached to it, a copy of section one hundred eighty-four of this article. Except as provided below for class "C" theatrical employment, the receipt shall also include, immediately above the place for signature of the person receiving payment, set off in a box and printed in bold capital letters, the following statement: "An employment agency may not charge you, the job applicant, a fee before referring you to a job that you accept. If you pay a fee before accepting a job or pay a fee that otherwise violates the law, you may demand a refund, which shall be repaid within seven days". For class "C" employment such receipt shall state: "A theatrical employment agency may not charge you, the artist, a fee before referring you to a job that you accept. A theatrical employment agency may charge you, the artist, a fee after an agency represents you in the negotiation or renegotiation of an original or pre-existing employment contract. If you pay a fee that otherwise violates the law, you may demand a refund, which shall be repaid within seven days".

5. The completed original or duplicate-original copy of each such contract, statement of terms and conditions, receipts, and any other documents given to the applicant shall be retained by every employment agency for three years following the date on which the contract is executed or the payment is made, and shall be made available for inspection by the commissioner or his or her duly authorized agent or inspector, upon his or her request. Notwithstanding the other provisions

of such contracts, the monetary consideration to be paid by the applicant shall not exceed the fee ceiling provided in subdivision eight of section one hundred eighty-five of this article.

§ 182. Cards to be furnished nurses; registry records. A nurses' registry shall send out to practice nursing only persons duly licensed pursuant to article one hundred thirty-nine of the education law as a registered professional nurse or licensed practical nurse. Every nurses' registry, before sending a person out to practice nursing, shall investigate such person's educational qualifications and verify such person's licensure and current registration. At least two current written references shall be required of such person. The record of such investigation and verification shall be kept on file in the registry.

Every nurses' registry that sends out any such person shall at such time give to such person and send to the employer of such person a card stating (1) such person's name, address and salary, (2) whether such person is a registered professional nurse or licensed practical nurse, (3) the number of the current registration certificate issued to such person by the education department, and (4) a statement that the record of such person's educational qualifications and experience in the practice of nursing is on file in such registry and that a copy thereof will be sent to such employer on request. A copy of such card shall be kept on file in the registry.

The record of investigation and verification and the card-copy required by this section to be kept on file shall be open to inspection by any duly authorized agent of the university of the state of New York, and every nurses' registry shall furnish a complete list of its registrants on request of such agent.

§ 184. Recruitment of domestic or household employees who are residents of other states; findings and policy. The acute shortage of domestic or household employees in this state has led to extensive recruitment of such employees from other states in the continental

United States. Social, economic and community problems occur in the process of recruiting and relocating unskilled employees from outside the state for such household employment. It is hereby declared to be the public policy of the state to encourage the recruitment of such employees from outside the state only under circumstances and conditions which will safeguard and protect the interests of such employees, their employers and the public at large. Incident to such recruiting are factors and considerations which do not exist in the recruitment of workers from within the state which impose certain responsibilities upon employment agencies engaged in such recruiting. Likewise, such employment agencies incur costs in the recruiting and placement of employees from without the state which are not entailed in recruiting residents of the state. Therefore, in order to provide sound and responsible practices and procedures for such recruitment and adequate regulation thereof, the following provisions of this section are deemed to be in the interest of the public safety and welfare.

1. No employment agency, directly or indirectly, shall accept applications from persons who reside in a state outside New York, procure or offer to procure employment of persons as domestic or household employees who are residing in states outside of this state previous to their application for employment, except as provided in this section and in the applicable provisions of other sections of this article. As used in this section, the term "state" applies to the forty-eight states on this continent, and the District of Columbia, but does not include the state of Alaska.

2. An employment agency which engages in such recruitment, offer or procurement as described in subdivision one, directly or indirectly, shall furnish to the commissioner a written list containing the name and address of all emigrant agents from whom it accepts job applicants. If such emigrant agents are required to be licensed in the places in which they are recruiting employees, no employment agency, directly or indirectly, shall accept applicants from persons other than duly licensed emigrant agents.

3. No employment agency shall, directly or indirectly, procure or

offer to procure domestic or household employment for a person who is under the age of eighteen years and resides outside of the state.

4. If an employment agency engages in the recruitment of domestic or household employees from outside of the state, it shall:

(a) Enter into its register the following information, in addition to the register entries prescribed in section one hundred seventy-nine of this article: (1) the last home address and birth date of all applicants for such employment whom the employment agency is responsible for bringing into New York state; (2) the name and address of the emigrant agent, if any, through whom such applicant was obtained; (3) the name and address of all persons to whom the employment agency has made payments in connection with the recruitment of the applicant and amounts of such payments; (4) the total charges made by the agency to the applicant include, to be separately designated: (A) agency fee; (B) any charges for transportation, and (C) any other charges in connection with placement.

(b) Respecting applicants from out of the state for whom the agency is responsible, directly or indirectly, for bringing into New York state, the agency shall have the following additional obligations: (1) direct that the transportation of such applicants shall be by duly licensed common carrier for passengers where transportation to New York is arranged for or authorized, directly or indirectly, by the employment agency; (2) provide solely at agency expense suitable lodging and meals for the applicant if he or she is not placed in employment the day he or she arrives at the office of the employment agency, from the time he or she reports at such agency until he or she is placed, or is returned to the place from which he or she was recruited, or is given the option of returning to such place as provided in part (3) hereof, and provide solely at the agency's expense meals and lodging for the applicant at any time the applicant is not employed during the thirty-day period following the day the applicant arrives at the office of the employment agency unless the applicant unreasonably refuses to accept comparable employment offered by the agency; (3) provide the return fare and reasonable allowance for one day's meals to the applicant or employee should the employment terminate within thirty days and such applicant or employee is without employment, or should no placement be made, and the

employee desires to return to the place from which he was recruited. The bond pursuant to section one hundred seventy-seven of this article shall secure performance of the aforementioned undertaking and that required by provision (2) above and the provisions of section one hundred seventy-eight concerning actions on bonds shall be applicable thereto; (4) give an applicant before being brought to this state a written statement on a form approved by the commissioner showing the nature and duties of the job for which the applicant is recruited, the anticipated wages, the amount of the agency fee based on such wages, the amount for transportation that the applicant will have to repay if such amount has been advanced by the agency, and the amount of any other advances or charges. The statement also shall indicate when such amounts are payable to the agency. A copy of such statement shall be kept on file by the agency, and the copy shall have indicated on it when and by whom the original statement was given to the applicant; (5) communicate from New York state with the reference with which the agency is required to check, and no worker shall be induced, encouraged, invited or requested to come to New York state for employment unless communication shall have been made at least one day prior thereto; and (6) not require an applicant to pay the agency fee and any advances or charges at a rate greater than in four equal installments payable at the end of the first, second, third, and fourth weeks following the employment, notwithstanding the provisions of subdivisions two and three of section one hundred eighty-five, or any other provision of this chapter.

5. Notwithstanding the maximum fee schedule provided for in section one hundred eighty-five of this article, the maximum fee to be charged a job applicant for placement in employment under this section shall not exceed, as a percentage of the first full month's salary or wages the following:

where no meals or lodging are provided	15 %
where one meal per work day is provided	18 %
where two meals per work day are provided	21 %
where three meals per work day and lodging are provided and where the first full month's salary or wages is:	
less than \$130	26 %
at least \$130 but less than \$150	28 %

at least \$150 or more 30 %

5. Subsequent placement. If employment terminates within thirty days, and the agency is responsible for the placement of the employee with another employer within such thirty-day period, the agency may charge the maximum fee provided by subdivision four of this section. If such subsequent placement is made after such thirty-day period, the fee provisions of section one hundred eighty-five shall apply.

§ 184-a. Recruitment of domestic or household employees from outside the continental United States. 1. Purposes. The recruitment of domestic or household employees from outside the continental United States involves special problems and special services not encompassed in other sections of this article. This section is enacted to establish adequate regulation and to provide responsible practices and procedures for such recruitment and is in the interests of employers, employees, employment agencies and the public.

2. Application. a. The provisions of this section, and the applicable provisions of other sections of this article, shall apply to an employment agency which directly or indirectly recruits, supplies, or offers to recruit or supply, or participates in any manner in the recruitment or supply of any person who resides outside the continental United States for employment within the continental United States as a domestic or household employee. The provisions of sections one hundred eighty-four and one hundred eighty-five, and of subdivisions two, three, and four of section one hundred eighty-six of this article, are excluded from the application of this section.

b. The term "continental United States" as used in this section means the forty-eight states on this continent and the District of Columbia, but does not include the state of Alaska.

3. Responsibilities. a. No such agency shall directly or indirectly supply or participate in the supply of any person who is under the age of eighteen years at the time of his emigration to the United States.

b. Such agency shall have the following additional responsibilities:

(1) Confirm the statements in the employee's application for employment relating to the age and references given, and fully and accurately inform the employer before the employer agrees to employ the applicant, of the applicant's statements relating to his qualifications, age, experience, references and related matters.

(2) Provide the applicant for employment with a statement of job conditions in a form approved by the commissioner. The statement shall fully and accurately describe the nature and terms of employment, including wages, hours of work, agency fee and the advances, if any, which are specifically authorized by this section. Such statement shall also clearly indicate when the applicant will be required to pay such fee, and advances. The statement shall be in the English language, and if the applicant's native language is other than English, the statement shall also be in such language. This statement shall be mailed to the applicant prior to the time the applicant signs an employment agreement. The agency shall keep on file a duplicate copy of such statement, which shall have indicated on it when and by whom it was mailed to the applicant, and the certificate of mailing shall be attached thereto.

(3) Reduce to writing any contractual agreement with the employer or with the employee.

(4) If the agency arranges for the employee's travel, it shall provide that the transportation be by common carrier. The agency shall meet or arrange for the employer to meet the employee at the port of arrival.

(5) a. Provide the employee with suitable meals and lodging solely at agency expense from the time the employee arrives until the beginning of employment, or at any time within ninety days after arrival, upon notice that the employee is without employment.

b. If the employer discharges the employee without giving the agency advance notice of at least three business days, the agency may charge the employer the actual cost of providing suitable meals and lodging incurred because of the failure to give such notice, but in no event for more than five consecutive calendar days. Such charge, however, may not be made where unusual circumstances would create an undue burden on the employer to provide meals and lodging to the employee after the

discharge of the employee.

c. If the employee unreasonably refuses to accept comparable employment offered by the agency, the obligation provided by this paragraph shall terminate.

(6) If within ninety days after arrival the employee (a) has become disabled and is unable to continue work as evidenced by a certificate from a doctor designated by the consulate of the country of his nationality; and (b) is in financial distress and wishes to return to the country from which he came, the agency shall provide return fare and a reasonable allowance for meals while traveling.

(7) If the employee is hospitalized within ninety days after arrival, and the employee is in financial distress and unable to meet the cost of hospitalization, the agency shall be responsible for reasonable hospitalization costs incurred during such ninety-day period, provided, however, that this responsibility shall be deemed to be met if the agency provides a basic twenty-one day hospitalization insurance policy approved by the commissioner. This provision shall in no way prevent an agency from requiring the employer to agree to provide the same basic twenty-one day hospitalization insurance policy for the employee, but the employee may not be required to pay the premium for such policy covering the first ninety days. Any person or organization damaged by the failure of an agency to comply with this paragraph or with paragraphs (5) and (6) of this subdivision may bring an action on the agency bond as provided in this article.

(8) Comply with all of the applicable laws and regulations of the country from which the employee is recruited.

(9) If prior to the arrival of the employee in the United States, either the employee or the employer cancels the employment agreement, the agency shall notify in writing the central immigration office of the New York state department of labor within ten days of receiving notice of the cancellation.

4. Fees and disbursements. a. Circumstances permitting fees. Such agency shall not charge or accept a fee or other consideration unless in accordance with the terms of a written contract, the form of which has been approved by the commissioner, and unless the agency has been

responsible for the employment of the employee.

b. Maximum fee. (1) The total maximum fee that such agency may charge for any placement shall not exceed eleven percent of the employee's agreed or anticipated first full year's wages, and of this total maximum fee not more than twenty-five percent may be charged the employee. Nothing herein shall be construed as prohibiting an agency from making an agreement with an employer under which the employer agrees to pay the total maximum fee provided by this subdivision, but in such event, no fee shall be charged the employee.

(2) If the agreement between the employer and employee provides for an additional wage payment on completion of the contract of employment, and if such additional payment is payable to the employee on a monthly pro-rata basis in the event that the employment terminates for any reason before the completion of the contract, such additional payment may be considered part of the employee's first full year's wages.

(3) If an employee is provided meals or lodging, the value of such meals or lodging shall not be included in determining the employee's first full year's wages.

c. Deposits or advance fee. An agency may require an employer to pay a deposit or advance the fee before an employee is employed, and such deposit or advance shall be offset against the fee charged the employer.

d. Employer's cancellation fee. The agency shall be entitled to a fee from the employer not exceeding twenty-five dollars if the employer cancels his job order before the acceptance of the job offer by the employee. If the cancellation occurs after such acceptance and before certification for noncitizen employment by the appropriate governmental agency, the fee shall not exceed fifty dollars. If the cancellation occurs after such acceptance and after such certification, the fee shall not exceed seventy-five dollars. No cancellation fee, however, shall be payable if within a reasonable time after the employer placed his or her job order the agency failed to make reasonable efforts to supply a job applicant to the employer.

e. Employee's payments; when payable. The agency fee charged to the

employee and any advances made to the employee for transportation, visa fee and medical examination, and such other advances as are specifically authorized by the commissioner, shall be payable at a rate not greater than six equal installments, at the end of each of the first six months of employment. If the employer, on behalf of the employee, advances the employee's agency fee or other authorized costs, the contract between the employer and the agency shall provide that the employee is not required to repay the employer the money advanced at a rate greater than such six equal monthly installments.

f. Termination of employment. (1) Notwithstanding any other provision of this section, if the employment terminates for any reason within ninety days, the following fees may be charged the employer and may be charged the employee:

(a) Fifty percent of the maximum fee provided by paragraph b of this subdivision, and

(b) If the employment terminates after thirty days, an additional fee computed by prorating the remaining fifty percent of the maximum fee on the basis of the number of days worked during such sixty-day period.

(2) If after termination, subsequent placements are made by the agency to such employer or of such employee, the total termination fees payable by such employer and such employee shall not exceed the maximum fees provided by paragraph b of this subdivision for the initial placement.

g. Subsequent placement with another employer. If employment terminates within ninety days and the agency is responsible for the placement of the employee with another employer within such ninety-day period, the maximum fee that the agency may charge for such subsequent placement shall be the fee provided by paragraph b of this subdivision. If such subsequent placement is made after such ninety-day period, the fee provisions of section one hundred eighty-five of this article shall apply to such placement, notwithstanding subdivision two of this section.

h. Employee's refusal of employment. Notwithstanding any other provision of this section, if the employee after arrival in this country, refuses to accept the employment for which he was recruited or

another comparable position offered by the agency, he shall pay an agency fee of not to exceed twenty-five dollars, and shall remain personally responsible to his employer for any and all advances made in his behalf.

i. Limitations and charges. Except for the advances specifically provided in paragraph e of this subdivision, an agency shall not directly or indirectly make any charge or require any advances whatever. Such prohibited charges include, but are not limited to attorney's fees and finance charges.

5. Emigrant agent. a. Such agency shall furnish to the commissioner the names and addresses of all emigrant agents it utilizes. Only a duly licensed emigrant agency may be utilized, directly or indirectly, by the employment agency if such emigrant agent is required to be licensed in the place where he is recruiting employees.

b. Any fee paid to an emigrant agent shall be considered part of the maximum fee which an agency may charge as provided by this section.

6. Registers. In addition to the entries prescribed in section one hundred seventy-nine of this article, such agency shall enter in its register the following information: (a) the last home address and birth date of all applicants for employment who were recruited by the agency; (b) the name and address of the emigrant agent, if any, through whom such applicant was obtained; (c) the fee, if any, paid to the emigrant agent by the agency, job applicant or employer which shall be separately stated; (d) the charges or advances made to the job applicant for agency fee, transportation and visa fee, and such charges or advances shall be separately listed and the total indicated; and (e) the manner in which the employee's age and references were confirmed.

7. Recordkeeping. Such agency shall retain for inspection: (a) copies of all forms prepared or received on behalf of an employee and submitted to any governmental agency in connection with immigration requirements; and (b) copies of executed contracts between the agency and the employer and between the agency and the employee. The copies shall be retained on

the premises of the agency for three years.

§ 185. Fees. 1. Circumstances permitting fee. An employment agency shall not charge or accept a fee or other consideration unless in accordance with the terms of a written contract with a job applicant and after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer, except for class "C" employment: (a) after an agency has been responsible for referring an artist to an employer or such employer to an artist and where as a result thereof such artist has been employed by such employer; or (b) after an agency represents an artist in the negotiation or renegotiation of an original or pre-existing employment contract and where as a result thereof the artist enters into a negotiated or renegotiated employment contract. For class "C" employment pursuant to this paragraph, an employment agency shall provide an artist with a statement setting forth in a clear and concise manner the provisions of this section and section one hundred eighty-six of this article.

The maximum fees provided for herein for all types of placements or employment may be charged to the job applicant and a similar fee may be charged to the employer provided, however, that with regard to placements in class "B" employment, a fee of up to one and one-half times the fee charged to the job applicant may be charged to the employer. By agreement with an employment agency, the employer may voluntarily assume payment of the job applicant's fee. The fees charged to employers by any licensed person conducting an employment agency for rendering services in connection with, or for providing employment in classes "A", "A-1" and "B", as hereinafter defined in subdivision four of this section where the applicant is not charged a fee shall be determined by agreement between the employer and the employment agency. No fee shall be charged or accepted for the registration of applicants for employees or employment.

2. Size of fee; payment schedule. The gross fee charged to the job applicant and the gross fee charged to the employer each shall not

exceed the amounts enumerated in the schedules set forth in this section, for any single employment or engagement, except as hereinabove provided; and such fees shall be subject to the provisions of section one hundred eighty-six of this article. Except as otherwise provided herein, and except for class "C" employment, an employment agency shall not require an applicant while employed in the continental United States, and paid weekly to pay any fee at a rate greater than in ten equal weekly installments each of which shall be payable at the end of each of the first ten weeks of employment, or if paid less frequently, in five equal installments, each of which shall be payable at the end of the first five pay periods following his employment, or within a period of ten weeks, whichever period is longer. An employer's fee shall be due and payable at the time the applicant begins employment, unless otherwise determined by agreement between the employer and the agency.

3. Deposits, advance fees. An employment agency shall not require or accept a deposit or advance fee from any applicant.

4. Types of employment. For the purpose of placing a ceiling over the fees charged by persons conducting employment agencies, types of employment shall be classified as follows:

Class "A"--domestics, household employees, unskilled or untrained manual workers and laborers, including agricultural workers;

Class "A1"--non-professional trained or skilled industrial workers or mechanics;

Class "B"--commercial, clerical, executive, administrative and professional employment, all employment outside the continental United States, and all other employment not included in classes "A", "A1", "C" and "D";

Class "C"--theatrical engagements;

Class "D"--nursing engagements as defined in article one hundred thirty-nine of the education law.

5. Fee ceiling: For a placement in class "A" employment the gross fee, including the deposit if any, shall not exceed, in percentage of the first full month's salary or wages, the following:

where no meals or lodging are provided	10 %
where one meal per working day is provided	12 %
where two meals per working day are provided	14 %
where three meals and lodging per working day are provided	18 %

Where all parties to the employment agreement understand or agree at the time the employment is entered into that it shall be for a period shorter than one month, the gross fee shall not exceed ten per cent, twelve per cent, fourteen per cent or eighteen per cent respectively of the salary or wages actually paid.

6. Fee ceiling: For a placement in Class "A1" employment the gross fee shall not exceed one week's wages where all parties to the employment agreement understand or agree at the time the employment is entered into that it shall be for a period for ten weeks or more. Where all parties to the employment contract agree and understand at the time the employment contract is entered into that it shall be for a period shorter than ten weeks, the gross fee shall not exceed ten per cent of the wages or salary actually received.

7. Fee ceiling: For a placement in Class "B" employment the gross fee shall not exceed, in percentage of the first full month's salary or wages, the following:

where such first full month's salary or wages is	
less than \$750	25 %
at least \$ 750 but less than \$ 950	35 %
at least \$ 950 but less than \$1150	40 %
at least \$1150 but less than \$1350	45 %
at least \$1350 but less than \$1500	50 %
at least \$1500 but less than \$1650	55 %
at least \$1650 or more	60 %

Provided however, that where the placement is for employment in which

the applicant will be paid on a straight commission basis or on the basis of a drawing account plus commissions, the gross fee shall be based on percentages in the above schedule applied to an amount equivalent to one-twelfth of the estimated first year's earnings, as estimated by the employer.

Where all parties to the employment contract agree and understand at the time the employment contract is entered into that it shall be for a period shorter than four months the gross fee shall not exceed fifty percent of the fee prescribed in the schedule in this subdivision or ten percent of the wages or salary actually received, whichever is less.

8. Fee ceiling: For a placement in class "C" employment the gross fee shall not exceed, for a single engagement, ten per cent of the compensation payable to the applicant, except that for employment or engagements for orchestras and for employment or engagements in the opera and concert fields such fees shall not exceed twenty per cent of the compensation.

9. Fee ceiling: For a placement in class "D" employment the gross fee shall not exceed, for a single engagement, the following:

(1) for private nursing duty, five per cent of the salary or wages received each week through the first ten weeks of that engagement only, and such fee shall be due and payable at the end of each such week;

(2) for any other nursing duty, the amount of the first week's salary or wages unless the first year's computed salary or wages to be derived for at least one year's employment is twenty-five hundred dollars or more, in which event the gross fee shall not exceed, in percentage of such salary or wages, the following:

where such first year's salary or wages is		
at least \$2500 but less than \$3000	2 1/2	%
at least \$3000 but less than \$3500	3	%
at least \$3500 but less than \$4000	3 1/2	%
at least \$4000 but less than \$4500	4	%
at least \$4500 but less than \$5000	4 1/2	%
\$5000 or more	5	%

10. Notwithstanding any other provision of law to the contrary, no fee may be charged or collected for services rendered by an employment agency not licensed pursuant to section one hundred seventy-two of this article at the time such services were rendered. In an action to collect a fee, the court shall void all or any part of an agreement or contract with an employment agency that did not have a valid license at the time the contract was entered into or services were rendered; however, such contract shall not be considered void if a court finds a good faith effort by an employment agency to maintain its license despite clerical error or delay by the department of labor or the New York city department of consumer affairs.

§ 185-a. Domestic dayworkers who are transported to the place of employment. 1. Purposes. The lack of adequate local transportation in certain suburban and urban communities of the state has caused employment agencies to provide transportation to daily domestic workers, to and from their places of employment. This service rendered by the employment agencies has resulted in assured and continued employment on a regular basis for domestic workers who do not wish to sleep-in and for continuous and certain household employees for householders desiring day domestic workers only. This section is enacted to provide adequate compensation for such services, to encourage their continuation and to establish adequate regulations.

2. Application. a. The provisions of this section, and the applicable provisions of other sections of this article, shall apply to an employment agency which makes placements of domestic workers in households where the domestic employee is supplied with at least one meal, and where the agency transports the domestic worker to and from the employment agency or a location selected by the employment agency by a vehicle under the sole control and operation of the employment agency, all at no charge to the domestic employee.

b. The term placement as used in this section means a single day's employment pursuant to the employment agreement.

3. Responsibilities. a. Every employment agency making placements pursuant to the provisions of this section shall transport employees to householders in a vehicle under the sole control and operation of the employment agency. Such vehicle shall be operated in compliance with applicable laws governing occupancy, insurance and safety.

b. Such agency shall be responsible for the transportation of the employee to the point of origination at the conclusion of the working day. If the point of origination shall be other than the office of the employment agency or the home of the employee, notice thereof shall be given to the commissioner for his approval prior to its utilization.

4. Maximum fee. a. Notwithstanding any other provision of this article, the maximum fee that may be charged by such agency for a placement of this type of employment shall be charged to the employer only, and shall not exceed an amount based on the daily wage paid to the employee, the following:

Where such daily wage is		
at least \$11.00 but less than \$12.00		\$4.00
at least \$12.00 but less than \$13.00		\$4.25
at least \$13.00 but less than \$14.00		\$4.50
at least \$14.00 but less than \$15.00		\$4.75
at least \$15.00 but less than \$16.00		\$5.00
For each additional dollar of daily wage beginning at \$16.00, an additional fee of 25 cents may be charged; for each dollar of daily wage less than \$11.00 the fee shall be reduced by 25 cents. The value of meals shall not be included in determining the employee's wages.		

b. No charge shall be made to either employee or householder for any transportation provided hereunder.

c. Notwithstanding any other provision of this article a written contract with either the domestic employee or employer shall not be required in order for the agency to charge or collect a fee.

5. Registers. Such agency shall enter in the same or separate registers approved by the commissioner, the following information, instead of the register entries prescribed in section one hundred seventy-nine of this article.

(1) The name, address and date of first application for employment of each domestic worker, and the name and address of at least one of the former employers or persons to whom such applicant is known;

2. The name and address of every employer from whom a fee is received or charged, the name of each domestic employee employed by the employer, the date of employment, the fee charged or received from the employer and the rate of wages or salary agreed upon.

6. Statement of job conditions. Each agency shall give each employee and employer a statement of job conditions in a form approved by the commissioner. The statement to the employee shall fully and accurately describe the nature and terms of employment, including wages, numbers of hours of work, responsibility of the agency for transportation, and the responsibility of the employer for the payment of the fee and to provide the employee with one meal. The statement to the employer shall include the foregoing, and in addition the agency fee and the responsibility of the employer to provide the employee with one meal. Such statement as aforesaid shall be given prior to the first placement by the agency and need not be repeated unless changed.

§ 186. Return of fees. 1. Excessive fee: Any employment agency which collects, receives or retains a fee or other payment contrary to or in excess of the provisions of this article, shall return the fee or the excess portion thereof within seven days after receiving a demand therefor.

2. Failure to report: If a job applicant accepts employment and thereafter fails to report for work, the gross fee charged to such applicant shall not exceed twenty-five per cent of the maximum fee allowed by section one hundred eighty-five of this article. If a job applicant accepts employment and fails to report for work, no fee shall

be charged to the employer.

3. Termination without employee's fault. If a job applicant accepts employment and reports for work, and thereafter such employment is terminated without fault of the employee, the gross fee charged to such employee and to the employer each shall not exceed ten percent of the salary or wages received by such employee, and in no event shall such fee exceed the maximum fee allowed by section one hundred eighty-five of this article. However, if such employee is a domestic or household employee recruited from a state outside of this state the fee of the employer shall not exceed thirty-three and one-third percent of the wages or salary actually earned.

4. Termination under all other circumstances: If a job applicant accepts employment and reports for work, and thereafter such employment is terminated under any other circumstances, the gross fee charged to such employee and the employer each shall not exceed fifty per cent of the salary or wages received by such employee, and in no event shall such fee exceed the maximum fee allowed by section one hundred eighty-five of this article.

§ 187. Additional prohibitions. An employment agency shall not engage in any of the following activities or conduct:

(1) Induce or attempt to induce any employee to terminate his employment in order to obtain other employment through such agency, provided, however, that this provision shall not apply to an employee not placed in employment by the employment agency who is offered an executive administrative or professional position where the first year's compensation is \$12,000.00 or more or procure or attempt to procure the discharge of any person from his employment.

(2) Publish or cause to be published any false, fraudulent or misleading information, representation, promise, notice or advertisement.

(3) Advertise in newspapers or otherwise, or use letterheads or receipts or other written or printed matter, unless such advertising or other matter contains the name and address of the employment agency, the

word "agency" and the agency's license number.

(4) Direct an applicant to an employer for the purpose of obtaining employment without having first obtained a bona fide order therefor; however, a qualified applicant may be directed to an employer who has previously requested that he regularly be accorded interviews with applicants of certain qualifications if a confirmation of the order is sent to the employer. Likewise an employment agency may attempt to sell the services of an applicant to an employer from whom no job order has been received as long as this fact is told to the applicant before he is directed to the employer. Any applicant who is referred to an employer contrary to the provisions of this subdivision without obtaining employment thereby, shall be reimbursed by the employment agency for all ordinary and necessary travel expenses incurred by the applicant as a result of such referral, within twenty-four hours of making a demand therefor.

(5) Send or cause to be sent any person to any employer where the employment agency knows, or reasonably should have known, that the prospective employment is or would be in violation of state or federal laws governing minimum wages or child labor, or in violation of article sixty-five of the education law relating to compulsory education or article four of the labor law, or, that a labor dispute is in progress, without notifying the applicant of such fact, and delivering to him a clear written statement that a labor dispute exists at the place of such employment, or make any referral to an employment or occupation prohibited by law.

(6) Send or cause to be sent any person to any place which the employment agency knows or reasonably should have known is maintained for immoral or illicit purposes; nor knowingly permit persons of bad character, prostitutes, gamblers, procurers or intoxicated persons to frequent such agency.

(7) Compel any person to enter such agency for any purpose by the use of force.

(8) Engage in any business on the premises of the employment agency other than the business of operating an employment agency, except as owner, manager, employee or agent, the business of furnishing services to employers through the employment of temporary employees.

(9) Receive or accept any valuable thing or gift as a fee or in lieu

thereof, nor divide or share, either directly or indirectly, the fees herein allowed, with contractors, subcontractors, employers or their agents, foremen or any one in their employ, or if the contractors, subcontractors or employers be a corporation, any of the officers, directors or employees of the same to whom applicants for employment are sent.

(10) Require applicants for employees or employment to subscribe to any publication or incidental service or contribute to the cost of advertising.

(11) Make or cause to be made or use any name, sign or advertising device bearing a name which may be similar to or may reasonably be confused with the name of a federal, state, city, county or other government agency.

(12) Refuse to return on demand of an applicant any baggage or personal property belonging to such applicant.

(13) Charge an applicant any fee for a placement in a job which the agency advertised or represented to the job applicant to be a fee-paid job.

(14) Refer an applicant to a specified bank or credit organization for purposes of obtaining a loan.

§ 188. Copies of law to be posted. 1. Every licensed person shall post in a conspicuous place in the main room of such agency sections one hundred seventy-eight, one hundred eighty-one, one hundred eighty-five, and one hundred eighty-six, of this article. Such poster shall also contain the name and address of the commissioner charged with the enforcement of this article in the place where the agency is located.

2. The commissioner, in conjunction with the director of the office for new Americans, shall develop, establish and implement a public awareness campaign regarding the rights of job seekers. Such public awareness campaign shall be made available to the public by any means deemed appropriate by the commissioner and the director of the office for new Americans. Any materials developed and disseminated to job seekers according to this subdivision must also be distributed to licensed employment agencies.

§ 189. Enforcement of provisions of this article. 1. This article, article nineteen-B of the labor law and sections 37.01, 37.03 and 37.05 of the arts and cultural affairs law shall be enforced by the commissioner of labor, except that in the city of New York this article and such sections shall be enforced by the commissioner of consumer affairs of such city. In addition to the powers of the commissioner, the attorney general may enforce the provisions of this article to the extent permitted under section sixty-three of the executive law.

2. To effectuate the purposes of this article, article nineteen-B of the labor law and sections 37.01, 37.03 and 37.05 of the arts and cultural affairs law, the commissioner or any duly authorized agent or inspector designated by such commissioner, shall have authority to inspect the premises, registers, contract forms, completed contracts, statements of terms and conditions, receipt books, application forms, referral forms, reference forms, reference reports and financial records of fees charged and refunds made of each employment agency, and any other record that the employment agency is required to maintain pursuant to this article, which are essential to the operation of such agency, and of each applicant for an employment agency license, as frequently as necessary to ensure compliance with this article and such sections. In no event shall any employment agency be inspected less frequently than once every eighteen months. Inspections may consist of in-person visits to employment agencies or the review of records as described in this subdivision or both. The commissioner shall also have authority to subpoena records and witnesses or otherwise to conduct investigations of any employer or other person where he or she has reasonable grounds for believing that such employer or person is violating or has conspired or is conspiring with an employment agency to violate this article or such sections.

3. To effectuate the purposes of this article, the commissioner may make reasonable administrative rules within the standards set in this article. Before such rules shall be issued, the commissioner shall conduct a public hearing, giving due notice thereof to all interested

parties. No rule shall become effective until fifteen days after it has been filed in the office of the department of state, if it is a rule of the industrial commissioner, or in the office of the clerk of the city of New York, if it is a rule of the commissioner of licenses of such city, and copies thereof shall be furnished to all employment agencies affected at least fifteen days prior to the effective date of such rule.

4. Complaints against any such licensed or unlicensed person may be made orally or in writing to the commissioner, or be sent in an affidavit form without appearing in person, and may be made by recognized employment agencies, trade associations, or others. The commissioner may hold a hearing on a complaint with the powers provided by section one hundred seventy-four of this article. If a hearing is held, reasonable notice thereof, not less than five days, shall be given in writing to said person by serving upon the person either personally, by mail, or by leaving the same with the person in charge of his office, a concise statement of the facts constituting the complaint, and the hearing shall commence before the commissioner with reasonable speed but in no event later than two weeks from the date of the filing of the complaint. The commissioner when investigating any matters pertaining to the granting, issuing, transferring, renewing, revoking, suspending or cancelling of any license is authorized in his discretion to take such testimony as may be necessary on which to base official action. When taking such testimony he may subpoena witnesses and also direct the production before him of necessary and material books and papers. A daily calendar of all hearings shall be kept by the commissioner and shall be posted in a conspicuous place in his public office for at least one day before the date of such hearings. The commissioner shall render his decision within thirty days from the time the matter is finally submitted to him. The commissioner shall keep a record of all such complaints and hearings. The office of new Americans shall, pursuant to section ninety-four-b of the executive law, receive complaints and where appropriate refer such complaints to the attorney general or other federal, state or local agency authorized by law to take action on such complaint.

5. Upon a finding that the licensed person or his agent, employee or

anyone acting on his behalf is guilty of violating any provision of this article or is not a person of good character and responsibility, the commissioner may suspend or revoke the license of such licensed person. Any employment agency found to have violated any provision of this article shall be subject, for the first offense, to a civil penalty not to exceed one thousand dollars per violation, and, for each subsequent offense within six years of such previous offense, to a civil penalty, not to exceed five thousand dollars per violation. Upon notice of violation of this article or when it is determined that there has been a violation of this article by an employment agency, the commissioner may provide the employment agency with a specific time period for such employment agency to cure or correct such violation or take other ameliorative action as directed by the commissioner, the successful completion of which shall prevent the imposition of penalties on the employment agency for such violation. Whenever such commissioner shall suspend or revoke the license of any employment agency, or shall levy a fine against any agency, said determination shall be subject to judicial review in proceedings brought pursuant to article seventy-eight of the civil practice law and rules. Whenever an employment agency's license is revoked, another license or agency manager permit shall not be issued within three years from the date of such revocation to said licensed person or his agency manager or to any person with whom the licensee has been associated in the business of furnishing employment or engagements. Deputy commissioners, or other officials designated to act on behalf of the commissioner, may conduct hearings and act upon applications for licenses, and revoke or suspend such licenses, or levy fines against an employment agency.

6. If any provisions of this article or the application thereof to any person or circumstances is held unconstitutional, the remainder of the article and the application of that provision to other persons and circumstances shall not be affected thereby.

§ 190. Penalties for violations. Any person who violates and the officers of a corporation and stockholders holding ten percent or more of the stock of a corporation which is not publicly traded, who

knowingly permit the corporation to violate sections one hundred seventy-two, one hundred seventy-three, one hundred seventy-six, one hundred eighty-four, one hundred eighty-four-a, one hundred eighty-five, one hundred eighty-five-a, one hundred eighty-six, or one hundred eighty-seven of this article shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed two thousand five hundred dollars per violation, or imprisonment for not more than one year, or both, by any court of competent jurisdiction. The violation of any other provision of this article shall be punishable by a fine not to exceed five hundred dollars or imprisonment for not more than thirty days. Criminal proceedings based upon violations of these sections shall be instituted by the commissioner and may be instituted by any persons aggrieved by such violations.

§ 191. Definition. Whenever used in this article: "employer fee paid employment agency" means any person who on behalf of employers procures or attempts to procure employees for "Class B" employment (as defined in section one hundred eighty-five of this article) and who in no instance charges a fee directly, or indirectly, to persons seeking such employment even though a fee may be charged to employers seeking the services of such employees, and who engages in no activity constituting the operation of an employment agency as defined in section one hundred seventy-one of this chapter and who in no instance enters into any arrangement through which the employer fee paid employment agency receives remuneration or any other thing of value from any person, firm or corporation which collects fees from applicants.

§ 192. Prohibited activities. An employer fee paid employment agency shall not engage in any of the following activities or conduct:

1. Direct an applicant to an employer for the purpose of obtaining employment without having first obtained a bona fide order therefor; however, a qualified applicant may be directed to an employer who has previously requested that it regularly be accorded interviews with applicants of certain qualifications if a confirmation of the order is

sent to the employer. Likewise an agency may attempt to sell the services of an applicant to an employer from which no job order has been received as long as this fact is told the applicant before the applicant is directed to the employer. Any applicant who is referred to an employer contrary to the provisions of this subdivision without obtaining employment thereby, shall be reimbursed by the agency for all ordinary and necessary travel expenses incurred by the applicant as a result of such referral, within twenty-four hours of making a demand therefor.

2. Send or cause to be sent any person to any employer where the agency knows, or reasonably should have known, that the prospective employment is or would be in violation of state or federal laws governing minimum wages or child labor, or in violation of article sixty-five of the education law relating to compulsory education or article four of the labor law, or, that a labor dispute is in progress, without notifying the applicant of such fact, and delivering to him or her a clear written statement that a labor dispute exists at the place of such employment, or make any referral to an employment or occupation prohibited by law.

3. Require applicants for employment to subscribe to any publication or incidental service or contribute to the cost of advertising.

4. Make or cause to be made or use any name, sign or advertising device bearing a name which may be similar to or may reasonably be confused with the name of a federal, state, city, county or other government agency.

§ 193. Penalties for violation. Any person violating the provisions of section one hundred ninety-two of this article shall be guilty of a class A misdemeanor and shall be subject to a fine not to exceed one thousand dollars or imprisonment for not more than one year or both.

Criminal proceedings based upon violations may be instituted by the commissioner or may be instituted by any person aggrieved by such

violation.

§ 194. Employment agency fees; reimbursement from employee to employer prohibited. 1. As used in this section:

(a) "Commissioner" means the commissioner of labor.

(b) "Employer" means an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy or common carrier by rail, motor, water, air or express company doing business or operating within the state. The term "employer" shall not include a governmental agency.

(c) "Employee" means any person employed for hire by any employer in any employment.

2. No employer or its agent shall require, request, suggest or knowingly permit any employee of such employer to reimburse the employer for the cost of a fee paid by the employer to an employment agency or to an employer fee paid employment agency or to make any other payment on account of the employee's termination or resignation from employment.

3. (a) If the commissioner determines that an employer or its agent has violated a provision of this section, the commissioner shall issue to the employer an order which shall describe the alleged violation. In addition to directing reimbursement to the employee and requiring the further payment to the employee of a sum in the amount equal to payment requested or received from that employee, such order may direct payment to the commissioner for deposit in the treasury of the state of a further sum as a civil penalty not to exceed five hundred dollars.

(b) Any order issued under paragraph (a) of this subdivision shall be deemed a final order of the commissioner and not subject to review by any court or agency unless within thirty days following service of the order the employer files a petition with the industrial board of appeals for a review of the order.

(c) Provided that no proceeding for administrative or judicial review pursuant to this chapter shall then be pending and that the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or

has a place of business the order of the commissioner, or the decision of the industrial board of appeals containing the amount found to be due including the civil penalty, if any. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

(d) The civil penalty provided for in this section shall be in addition to and may be imposed with any other remedy or penalty provided for in this chapter.

4. No agreement by an employee or prospective employee to reimburse an employer for the cost of a fee of an employment agency or an employer fee paid employment agency or to become liable to the employer for any payment on account of the employee's termination or resignation from employment shall be enforceable.

ARTICLE 11-A

MOTOR VEHICLE MANUFACTURERS

Section 198-a. Warranties.

198-b. Sale or lease of used motor vehicles.

198-c. Automobile trade-in protection.

199. Penalties.

§ 198-a. Warranties. (a) As used in this section:

(1) "Consumer" means the purchaser, lessee or transferee, other than for purposes of resale, of a motor vehicle which is used primarily for personal, family or household purposes and any other person entitled by the terms of the manufacturer's warranty to enforce the obligations of such warranty;

(2) "Motor vehicle" means a motor vehicle excluding off-road vehicles, which was subject to a manufacturer's express warranty at the time of original delivery and either (i) was purchased, leased or transferred in this state within either the first eighteen thousand miles of operation

or two years from the date of original delivery, whichever is earlier, or (ii) is registered in this state;

(3) "Manufacturer's express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty.

(4) "Mileage deduction formula" means the mileage which is in excess of twelve thousand miles times the purchase price, or the lease price if applicable, of the vehicle divided by one hundred thousand miles.

(5) "Lessee" means any consumer who leases a motor vehicle pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle.

(6) "Lease price" means the aggregate of:

(i) the lessor's actual purchase cost;

(ii) the freight cost, if applicable;

(iii) the cost for accessories, if applicable;

(iv) any fee paid to another to obtain the lease; and

(v) an amount equal to five percent of the lessor's actual purchase cost as prescribed in subparagraph (i) of this paragraph.

(7) "Service fees" means the portion of a lease payment attributable to:

(i) an amount for earned interest calculated on the rental payments previously paid to the lessor for the leased vehicle at an annual rate equal to two points above the prime rate in effect on the date of the execution of the lease; and

(ii) any insurance or other costs expended by the lessor for the benefit of the lessee.

(8) "Capitalized cost" means the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle less service fees.

(b) (1) If a new motor vehicle which is sold and registered in this state does not conform to all express warranties during the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor vehicle to such consumer, whichever is the earlier date, the consumer shall during such period report the nonconformity, defect or condition to the manufacturer, its agent or its authorized dealer. If the notification is received by the manufacturer's agent or authorized dealer, the agent or

dealer shall within seven days forward written notice thereof to the manufacturer by certified mail, return receipt requested, and shall include in such notice a statement indicating whether or not such repairs have been undertaken. The manufacturer, its agent or its authorized dealer shall correct said nonconformity, defect or condition at no charge to the consumer, notwithstanding the fact that such repairs are made after the expiration of such period of operation or such two year period.

(2) If a manufacturer's agent or authorized dealer refuses to undertake repairs within seven days of receipt of the notice by a consumer of a nonconformity, defect or condition pursuant to paragraph one of this subdivision, the consumer may immediately forward written notice of such refusal to the manufacturer by certified mail, return receipt requested. The manufacturer or its authorized agent shall have twenty days from receipt of such notice of refusal to commence such repairs. If within such twenty day period, the manufacturer or its authorized agent fails to commence such repairs, the manufacturer, at the option of the consumer, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the vehicle from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges. Such fees and charges shall include but not be limited to all license fees, registration fees and any similar governmental charges, less an allowance for the consumer's use of the vehicle in excess of the first twelve thousand miles of operation pursuant to the mileage deduction formula defined in paragraph four of subdivision (a) of this section, and a reasonable allowance for any damage not attributable to normal wear or improvements.

(c) (1) If, within the period specified in subdivision (b) of this section, the manufacturer or its agents or authorized dealers are unable to repair or correct any defect or condition which substantially impairs the value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer, at the option of the consumer, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the vehicle from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges. Any return of a motor vehicle may, at

the option of the consumer, be made to the dealer or other authorized agent of the manufacturer who sold such vehicle to the consumer or to the dealer or other authorized agent who attempted to repair or correct the defect or condition which necessitated the return and shall not be subject to any further shipping charges. Such fees and charges shall include but not be limited to all license fees, registration fees and any similar governmental charges, less an allowance for the consumer's use of the vehicle in excess of the first twelve thousand miles of operation pursuant to the mileage deduction formula defined in paragraph four of subdivision (a) of this section, and a reasonable allowance for any damage not attributable to normal wear or improvements.

(2) A manufacturer which accepts return of the motor vehicle because the motor vehicle does not conform to its warranty shall notify the commissioner of the department of motor vehicles that the motor vehicle was returned to the manufacturer for nonconformity to its warranty and shall disclose, in accordance with the provisions of section four hundred seventeen-a of the vehicle and traffic law prior to resale either at wholesale or retail, that it was previously returned to the manufacturer for nonconformity to its warranty. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the department of motor vehicles. Refunds shall be accompanied by the proper application for credit or refund of state and local sales taxes as published by the department of taxation and finance and by a notice that the sales tax paid on the purchase price, lease price or portion thereof being refunded is refundable by the commissioner of taxation and finance in accordance with the provisions of subdivision (f) of section eleven hundred thirty-nine of the tax law. If applicable, refunds shall be made to the lessor and lessee as their interests may appear on the records of ownership kept by the department of motor vehicles, as follows: the lessee shall receive the capitalized cost and the lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. The terms of the lease shall be deemed terminated contemporaneously with the date of the arbitrator's decision and award and no penalty for early termination shall be assessed as a result thereof. Refunds shall be accompanied by the proper application form for credit or refund of state and local

sales tax as published by the department of taxation and finance and a notice that the sales tax paid on the lease price or portion thereof being refunded is refundable by the commissioner of taxation and finance in accordance with the provisions of subdivision (f) of section eleven hundred thirty-nine of the tax law.

(3) It shall be an affirmative defense to any claim under this section that:

(i) the nonconformity, defect or condition does not substantially impair such value; or

(ii) the nonconformity, defect or condition is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if:

(1) the same nonconformity, defect or condition has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity, defect or condition continues to exist; or

(2) the vehicle is out of service by reason of repair of one or more nonconformities, defects or conditions for a cumulative total of thirty or more calendar days during either period, whichever is the earlier date.

(e) The term of an express warranty, the two year warranty period and the thirty day out of service period shall be extended by any time during which repair services are not available to the consumer because of a war, invasion or strike, fire, flood or other natural disaster.

(f) Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(g) If a manufacturer has established an informal dispute settlement mechanism, such mechanism shall comply in all respects with the provisions of this section and the provisions of subdivision (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such mechanism. In the event that

an arbitrator in such an informal dispute mechanism awards a refund or replacement vehicle, he or she shall not reduce the award to an amount less than the full purchase price or the lease price, if applicable, or a vehicle of equal value, plus all fees and charges except to the extent such reductions are specifically permitted under subdivision (c) of this section.

(h) A manufacturer shall have up to thirty days from the date the consumer notifies the manufacturer of his or her acceptance of the arbitrator's decision to comply with the terms of that decision. Failure to comply with the thirty day limitation shall also entitle the consumer to recover a fee of twenty-five dollars for each business day of noncompliance up to five hundred dollars. Provided, however, that nothing contained in this subdivision shall impose any liability on a manufacturer where a delay beyond the thirty day period is attributable to a consumer who has requested a replacement vehicle built to order or with options that are not comparable to the vehicle being replaced or otherwise made compliance impossible within said period. In no event shall a consumer who has resorted to an informal dispute settlement mechanism be precluded from seeking the rights or remedies available by law.

(i) Any agreement entered into by a consumer for the purchase of a new motor vehicle which waives, limits or disclaims the rights set forth in this section shall be void as contrary to public policy. Said rights shall inure to a subsequent transferee of such motor vehicle.

Any provision of any agreement entered into by a consumer for the purchase of a new motor vehicle which includes as an additional cost for such motor vehicle an expense identified as being for the purpose of affording such consumer his or her rights under this section, shall be void as contrary to public policy.

(j) Any action brought pursuant to this section shall be commenced within four years of the date of original delivery of the motor vehicle to the consumer.

(k) Each consumer shall have the option of submitting any dispute arising under this section upon the payment of a prescribed filing fee to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the New York state attorney

general. Upon application of the consumer and payment of the filing fee, all manufacturers shall submit to such alternate arbitration.

Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by and under regulations established by the New York state attorney general. Such mechanism shall insure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules; provided, however, that notwithstanding paragraph (i) of subdivision (a) of section seventy-five hundred two of the civil practice law and rules, special proceedings brought before a court pursuant to such article seventy-five in relation to an arbitration hereunder shall be brought only in the county where the consumer resides or where the arbitration was held or is pending.

(l) A court may award reasonable attorney's fees to a prevailing plaintiff or to a consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to subdivision (k) of this section. In the event a prevailing plaintiff is required to retain the services of an attorney to enforce collection of an award granted pursuant to this section, the court may assess against the manufacturer reasonable attorney's fees for services rendered to enforce collection of said award.

(m) (1) Each manufacturer shall require that each informal dispute settlement mechanism used by it provide, at a minimum, the following:

(i) that the arbitrators participating in such mechanism are trained in arbitration and familiar with the provisions of this section, that the arbitrators and consumers who request arbitration are provided with a written copy of the provisions of this section, together with the notice set forth below entitled "NEW CAR LEMON LAW BILL OF RIGHTS", and that consumers, upon request, are given an opportunity to make an oral presentation to the arbitrator;

(ii) that the rights and procedures used in the mechanism comply with federal regulations promulgated by the federal trade commission relating to informal dispute settlement mechanisms; and

(iii) that the remedies set forth under subdivision (c) of this section are awarded if, after a reasonable number of attempts have been undertaken under subdivision (d) of this section to conform the vehicle to the express warranties, the defect or nonconformity still exists.

(2) The following notice shall be provided to consumers and arbitrators and shall be printed in conspicuous ten point bold face type:

NEW CAR LEMON LAW BILL OF RIGHTS

(1) IN ADDITION TO ANY WARRANTIES OFFERED BY THE MANUFACTURER, YOUR NEW CAR, IF PURCHASED AND REGISTERED IN NEW YORK STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST.

(2) YOU MUST REPORT ANY PROBLEMS TO THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER.

(3) UPON NOTIFICATION, THE PROBLEM MUST BE CORRECTED FREE OF CHARGE.

(4) IF THE SAME PROBLEM CANNOT BE REPAIRED AFTER FOUR OR MORE ATTEMPTS; OR IF YOUR CAR IS OUT OF SERVICE TO REPAIR A PROBLEM FOR A TOTAL OF THIRTY DAYS DURING THE WARRANTY PERIOD; OR IF THE MANUFACTURER OR ITS AGENT REFUSES TO REPAIR A SUBSTANTIAL DEFECT OR CONDITION WITHIN TWENTY DAYS OF RECEIPT OF NOTICE SENT BY YOU TO THE MANUFACTURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED; THEN YOU MAY BE ENTITLED TO EITHER A COMPARABLE CAR OR A REFUND OF YOUR PURCHASE PRICE, PLUS LICENSE AND REGISTRATION FEES, MINUS A MILEAGE ALLOWANCE ONLY IF THE VEHICLE HAS BEEN DRIVEN MORE THAN 12,000 MILES. SPECIAL NOTIFICATION REQUIREMENTS MAY APPLY TO MOTOR HOMES.

(5) A MANUFACTURER MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY ABUSE, NEGLECT, OR UNAUTHORIZED MODIFICATIONS OF THE CAR.

(6) A MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE CAR OR REFUND YOUR PURCHASE PRICE IF THE PROBLEM DOES NOT SUBSTANTIALLY IMPAIR THE VALUE OF YOUR CAR.

(7) IF A MANUFACTURER HAS ESTABLISHED AN ARBITRATION PROCEDURE, THE MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE CAR OR REFUND YOUR PURCHASE PRICE UNTIL YOU FIRST RESORT TO THE PROCEDURE.

(8) IF THE MANUFACTURER DOES NOT HAVE AN ARBITRATION PROCEDURE, YOU MAY RESORT TO ANY REMEDY BY LAW AND MAY BE ENTITLED TO YOUR ATTORNEY'S FEES IF YOU PREVAIL.

(9) NO CONTRACT OR AGREEMENT CAN VOID ANY OF THESE RIGHTS.

(10) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE THROUGH THE MANUFACTURER, YOU MAY INSTEAD CHOOSE TO SUBMIT YOUR CLAIM TO AN INDEPENDENT ARBITRATOR, APPROVED BY THE ATTORNEY GENERAL. YOU MAY HAVE TO PAY A FEE FOR SUCH AN ARBITRATION. CONTACT YOUR LOCAL CONSUMER OFFICE OR ATTORNEY GENERAL'S OFFICE TO FIND OUT HOW TO ARRANGE FOR INDEPENDENT ARBITRATION.

(3) All informal dispute settlement mechanisms shall maintain the following records:

(i) the number of purchase price and lease price refunds and vehicle replacements requested, the number of each awarded in arbitration, the amount of each award and the number of awards that were complied with in a timely manner;

(ii) the number of awards where additional repairs or a warranty extension was the most prominent remedy, the amount or value of each award, and the number of such awards that were complied with in a timely manner;

(iii) the number and total dollar amount of awards where some form of reimbursement for expenses or compensation for losses was the most prominent remedy, the amount or value of each award and the number of such awards that were complied with in a timely manner; and

(iv) the average number of days from the date of a consumer's initial request to arbitrate until the date of the final arbitrator's decision and the average number of days from the date of the final arbitrator's decision to the date on which performance was satisfactorily carried out.

(n) Special provisions applicable to motor homes:

(1) To the extent that the provisions of this subdivision are inconsistent with the other provisions of this section, the provisions of this subdivision shall apply.

(2) For purposes of this section, the manufacturer of a motor home is any person, partnership, corporation, factory branch, or other entity engaged in the business of manufacturing or assembling new motor homes for sale in this state.

(3) This section does not apply to the living facilities of motor homes, which are the portions thereof designed, used or maintained primarily as living quarters and shall include, but not be limited to the flooring, plumbing system and fixtures, roof air conditioner,

furnace, generator, electrical systems other than automotive circuits, the side entrance door, exterior compartments, and windows other than the windshield and driver and front passenger windows.

(4) If, within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor vehicle to such consumer, whichever is the earlier date, the manufacturer of a motor home or its agents or its authorized dealers or repair shops to which they refer a consumer are unable to repair or correct any covered defect or condition which substantially impairs the value of the motor home to the consumer after a reasonable number of attempts, the motor home manufacturer, at the option of the consumer, shall replace the motor home with a comparable motor home, or accept return of the motor home from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges as well as the other fees and charges set forth in paragraph one of subdivision (c) of this section.

(5) If an agent or authorized dealer of a motor home manufacturer or a repair shop to which they refer a consumer refuses to undertake repairs within seven days of receipt of notice by a consumer of a nonconformity, defect or condition within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor home to such consumer, whichever is the earlier date, the consumer may immediately forward written notice of such refusal to the motor home manufacturer by certified mail, return receipt requested. The motor home manufacturer or its authorized agent or a repair shop to which they refer a consumer shall have twenty days from receipt of such notice of refusal to commence such repairs. If within such twenty day period, the motor home manufacturer or its authorized agent or repair shop to which they refer a consumer, fails to commence such repairs, the motor home manufacturer, at the option of the consumer, shall replace the motor home with a comparable motor home, or accept return of the motor home from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price, and any trade-in allowance or other charges, fees, or allowances. Such fees and charges shall include but not be limited to all license fees, registration fees, and any similar governmental charges, less an allowance for the consumer's use of the vehicle in excess of the first

twelve thousand miles of operation pursuant to the mileage deduction formula defined in paragraph four of subdivision (a) of this section, and a reasonable allowance for any damage not attributable to normal wear or improvements.

(6) If within the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor home to such consumer, whichever is the earlier date, the same covered nonconformity, defect or condition in a motor home has been subject to repair two times or a motor home has been out of service by reason of repair for twenty-one days, whichever occurs first, the consumer must have reported this to the motor home manufacturer or its authorized dealer by certified mail, return receipt requested, and may institute any proceeding or other action pursuant to this section if the motor home has been out of service by reason of three repair attempts or for at least thirty days. The special notification requirements of this paragraph shall only apply if the manufacturer or its authorized dealer provides a prior written copy of the requirements of this paragraph to the consumer and receipt of the notice is acknowledged by the consumer in writing. If the consumer who has received notice from the manufacturer fails to comply with the special notification requirements of this paragraph, additional repair attempts or days out of service by reason of repair shall not be taken into account in determining whether the consumer is entitled to a remedy provided in paragraph four of this subdivision. However, additional repair attempts or days out of service by reason of repair that occur after the consumer complies with such special notification requirements shall be taken into account in making that determination. It shall not count as a repair attempt if the repair facility is not authorized by the applicable motor home manufacturer to perform warranty work on the identified nonconformity. It shall count as only one repair attempt for a motor home if the same nonconformity is being addressed a second time due to the consumer's decision to continue traveling and to seek the repair of the same nonconformity at another repair facility rather than wait for the initial repair to be completed.

(7) Nothing in this section shall in any way limit any rights, remedies or causes of action that a consumer or motor home manufacturer may otherwise have against the manufacturer of the motor home's chassis, or its propulsion and other components.

(8) (A) Each manufacturer shall require that each informal dispute settlement mechanism used by it provide, at a minimum, the following:

(i) that the arbitrators participating in such mechanism are trained in arbitration and familiar with the provisions of this section, that the arbitrators and consumers who request arbitration are provided with a written copy of the provisions of this section, together with the notice set forth below entitled "NEW MOTOR HOME LEMON LAW BILL OF RIGHTS", and that consumers, upon request, are given an opportunity to make an oral presentation to the arbitrator;

(ii) that the rights and procedures used in the mechanism comply with federal regulations promulgated by the federal trade commission relating to informal dispute settlement mechanisms; and

(iii) that the remedies set forth under subdivision (c) of this section are awarded if, after a reasonable number of attempts have been undertaken under subdivision (d) of this section to conform the vehicle to the express warranties, the defect or nonconformity still exists.

(B) Notwithstanding the provisions of paragraph two of subdivision (m) of this section, the following provision shall apply for purposes of this subdivision:

The following notice shall be provided to consumers and arbitrators and shall be printed in conspicuous ten point bold face type:

NEW MOTOR HOME LEMON LAW BILL OF RIGHTS

(1) IN ADDITION TO ANY WARRANTIES OFFERED BY THE MANUFACTURER, YOUR NEW MOTOR HOME, IF PURCHASED AND REGISTERED IN NEW YORK STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST. HOWEVER, THIS ADDITIONAL WARRANTY DOES NOT APPLY TO THE LIVING FACILITIES OF MOTOR HOMES, WHICH ARE THE PORTIONS THEREOF DESIGNED, USED OR MAINTAINED PRIMARILY AS LIVING QUARTERS AND SHALL INCLUDE, BUT NOT BE LIMITED TO THE FLOORING, PLUMBING SYSTEM AND FIXTURES, ROOF AIR CONDITIONER, FURNACE, GENERATOR, ELECTRICAL SYSTEMS OTHER THAN AUTOMOTIVE CIRCUITS, THE SIDE ENTRANCE DOOR, EXTERIOR COMPARTMENTS, AND WINDOWS OTHER THAN THE WINDSHIELD AND DRIVER AND FRONT PASSENGER WINDOWS.

(2) YOU MUST REPORT ANY PROBLEMS TO THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER.

(3) UPON NOTIFICATION, THE PROBLEM MUST BE CORRECTED FREE OF CHARGE.

(4) IF, WITHIN THE FIRST EIGHTEEN THOUSAND MILES OF OPERATION OR DURING THE PERIOD OF TWO YEARS FOLLOWING THE DATE OF ORIGINAL DELIVERY OF THE MOTOR VEHICLE TO SUCH CONSUMER, WHICHEVER IS THE EARLIER DATE THE MANUFACTURER OF A MOTOR HOME OR ITS AGENTS OR ITS AUTHORIZED DEALERS OR REPAIR SHOPS TO WHICH THEY REFER A CONSUMER ARE UNABLE TO REPAIR OR CORRECT ANY COVERED DEFECT OR CONDITION WHICH SUBSTANTIALLY IMPAIRS THE VALUE OF THE MOTOR HOME TO THE CONSUMER AFTER A REASONABLE NUMBER OF ATTEMPTS, THE MOTOR HOME MANUFACTURER, AT THE OPTION OF THE CONSUMER, SHALL REPLACE THE MOTOR HOME WITH A COMPARABLE MOTOR HOME, OR ACCEPT RETURN OF THE MOTOR HOME FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE OR, IF APPLICABLE, THE LEASE PRICE AND ANY TRADE-IN ALLOWANCE, PLUS FEES AND CHARGES, AS WELL AS THE OTHER FEES AND CHARGES, INCLUDING BUT NOT LIMITED TO ALL LICENSE FEES, REGISTRATION FEES, AND ANY SIMILAR GOVERNMENTAL CHARGES, LESS AN ALLOWANCE FOR THE CONSUMER'S USE OF THE VEHICLE IN EXCESS OF TWELVE THOUSAND MILES TIMES THE PURCHASE PRICE, OR THE LEASE PRICE IF APPLICABLE, OF THE VEHICLE DIVIDED BY ONE HUNDRED THOUSAND MILES, AND A REASONABLE ALLOWANCE FOR ANY DAMAGE NOT ATTRIBUTABLE TO NORMAL WEAR OR IMPROVEMENTS.

(5) SPECIAL NOTICE PROVISION: IF WITHIN EIGHTEEN THOUSAND MILES OR TWO YEARS, WHICHEVER COMES FIRST, THE SAME COVERED NONCONFORMITY, DEFECT OR CONDITION IN YOUR MOTOR HOME HAS BEEN SUBJECT TO REPAIR TWO TIMES OR YOUR MOTOR HOME HAS BEEN OUT OF SERVICE BY REASON OF REPAIR FOR TWENTY-ONE DAYS, WHICHEVER COMES FIRST, YOU MUST HAVE REPORTED THIS TO THE MOTOR HOME MANUFACTURER OR ITS AUTHORIZED DEALER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND YOU MAY INSTITUTE ANY PROCEEDING OR OTHER ACTION PURSUANT TO THE LEMON LAW IF THE MOTOR HOME HAS BEEN OUT OF SERVICE BY REASON OF THREE REPAIR ATTEMPTS OR FOR AT LEAST THIRTY DAYS. THIS SPECIAL NOTICE REQUIREMENT SHALL ONLY APPLY IF THE MANUFACTURER OR ITS AUTHORIZED DEALER PROVIDES WRITTEN COPY OF THE REQUIREMENTS OF THIS PARAGRAPH TO YOU AND RECEIPT OF NOTICE IS ACKNOWLEDGED BY YOU IN WRITING. IF YOU FAIL TO COMPLY WITH THE SPECIAL NOTIFICATION REQUIREMENTS OF THIS PARAGRAPH, ADDITIONAL REPAIR ATTEMPTS OR DAYS OUT OF SERVICE BY REASON OF REPAIR SHALL NOT BE TAKEN INTO ACCOUNT IN DETERMINING WHETHER YOU ARE ENTITLED TO A REMEDY PROVIDED IN PARAGRAPH FOUR. HOWEVER, ADDITIONAL REPAIR ATTEMPTS OR DAYS OUT OF SERVICE BY REASON OF REPAIR THAT OCCUR AFTER YOU COMPLY WITH SUCH SPECIAL NOTIFICATION REQUIREMENTS SHALL BE TAKEN INTO ACCOUNT IN MAKING THAT

DETERMINATION.

NOTICE TO THE MANUFACTURER SHOULD BE SENT TO THE FOLLOWING:

NOTICE TO THE DEALER SHOULD BE SENT TO THE FOLLOWING:

(6) A MANUFACTURER MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY ABUSE, NEGLIGENCE, OR UNAUTHORIZED MODIFICATIONS OF THE MOTOR HOME.

(7) A MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE MOTOR HOME OR REFUND YOUR PURCHASE PRICE IF THE PROBLEM IS NOT COVERED BY THE LEMON LAW OR DOES NOT SUBSTANTIALLY IMPAIR THE VALUE OF YOUR MOTOR HOME.

(8) IF A MANUFACTURER HAS ESTABLISHED AN ARBITRATION PROCEDURE, THE MANUFACTURER MAY REFUSE TO EXCHANGE A COMPARABLE MOTOR HOME OR REFUND YOUR PURCHASE PRICE UNTIL YOU FIRST RESORT TO THE PROCEDURE.

(9) IF THE MANUFACTURER DOES NOT HAVE AN ARBITRATION PROCEDURE, YOU MAY RESORT TO ANY REMEDY BY LAW AND MAY BE ENTITLED TO YOUR ATTORNEY'S FEES IF YOU PREVAIL.

(10) NO CONTRACT OR AGREEMENT CAN VOID ANY OF THESE RIGHTS.

(11) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE THROUGH THE MANUFACTURER, YOU MAY INSTEAD CHOOSE TO SUBMIT YOUR CLAIM TO AN INDEPENDENT ARBITRATOR, APPROVED BY THE ATTORNEY GENERAL. YOU MAY HAVE TO PAY A FEE FOR SUCH ARBITRATION. CONTACT YOUR LOCAL CONSUMER OFFICE OR ATTORNEY GENERAL'S OFFICE TO FIND OUT HOW TO ARRANGE FOR INDEPENDENT ARBITRATION.

(o) At the time of purchase or lease of a motor vehicle from an authorized dealer in this state, the manufacturer shall provide to the dealer or leaseholder, and the dealer or leaseholder shall provide to the consumer a notice, printed in not less than eight point bold face type, entitled "New Car Lemon Law Bill of Rights". The text of such notice shall be identical with the notice required by paragraph two of subdivision (m) of this section.

§ 198-b. Sale or lease of used motor vehicles. a. Definitions. As used in this section, the following words shall have the following meanings:

1. "Consumer" means the purchaser, or lessee, other than for purposes of resale, of a used motor vehicle primarily used for personal, family, or household purposes and subject to a warranty, and the spouse or child of the purchaser or the lessee if either such motor vehicle or the lease

of such motor vehicle is transferred to the spouse or child during the duration of any warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

2. "Used motor vehicle" means a motor vehicle, excluding motor homes and off-road vehicles, which has been purchased, leased, or transferred either after eighteen thousand miles of operation or two years from the date of original delivery, whichever is earlier;

3. "Dealer" means any person or business which sells, offers for sale, leases or offers for lease a used vehicle after selling, offering for sale, leasing or offering for lease three or more used vehicles in the previous twelve month period, but does not include:

(a) a bank or financial institution except in the case of a lease of a used motor vehicle,

(b) a business selling a used vehicle to an employee of that business,

(c) a regulated public utility which sells at public auction vehicles used in the ordinary course of its operations, provided that any advertisements of such sales conspicuously disclose the "as is" nature of the sale,

(d) the sale of a leased vehicle to that vehicle's lessee, a family member of the lessee, or an employee of the lessee, or

(e) the state, its agencies, bureaus, boards, commissions and authorities, and all of the political subdivisions of the state, including the agencies and authorities of such subdivisions;

4. "Warranty" means any undertaking in connection with the sale or lease by a dealer of a used motor vehicle to refund, repair, replace, maintain or take other action with respect to such used motor vehicle and provided at no extra charge beyond the price of the used motor vehicle;

5. "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain or take other action with respect to a used motor vehicle and provided at an extra charge beyond the price of the used motor vehicle or of the

lease contract for the used motor vehicle;

6. "Repair insurance" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, maintain or take other action with respect to a used motor vehicle and which is regulated by the department of financial services.

b. Written warranty required; terms. 1. No dealer shall sell or lease a used motor vehicle to a consumer without giving the consumer a written warranty which shall at minimum apply for the following terms:

(a) If the used motor vehicle has thirty-six thousand miles or less, the warranty shall be at minimum ninety days or four thousand miles, whichever comes first.

(b) If the used motor vehicle has more than thirty-six thousand miles, but less than eighty thousand miles, the warranty shall be at minimum sixty days or three thousand miles, whichever comes first.

(c) If the used motor vehicle has eighty thousand miles or more but no more than one hundred thousand miles, the warranty shall be at a minimum thirty days or one thousand miles, whichever comes first.

2. The written warranty shall require the dealer or his agent to repair or, at the election of the dealer, reimburse the consumer for the reasonable cost of repairing the failure of a covered part. Covered parts shall at least include the following items:

(a) Engine. All lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings and flywheel.

(b) Transmission. The transmission case, internal parts, and the torque converter.

(c) Drive axle. Front and rear drive axle housings and internal parts, axle shafts, propeller shafts and universal joints.

(d) Brakes. Master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings and disc brake calipers.

(e) Radiator.

(f) Steering. The steering gear housing and all internal parts, power steering pump, valve body, piston and rack.

(g) Alternator, generator, starter, ignition system excluding the battery.

3. Such repair or reimbursement shall be made by the dealer notwithstanding the fact that the warranty period has expired, provided the consumer notifies the dealer of the failure of a covered part within the specified warranty period.

4. The written warranty may contain additional language excluding coverage:

(a) for a failure of a covered part caused by a lack of customary maintenance;

(b) for a failure of a covered part caused by collision, abuse, negligence, theft, vandalism, fire or other casualty and damage from the environment (windstorm, lightning, road hazards, etc.);

(c) if the odometer has been stopped or altered such that the vehicle's actual mileage cannot be readily determined or if any covered part has been altered such that a covered part was thereby caused to fail;

(d) for maintenance services and the parts used in connection with such services such as seals, gaskets, oil or grease unless required in connection with the repair of a covered part;

(e) for a motor tuneup;

(f) for a failure resulting from racing or other competition;

(g) for a failure caused by towing a trailer or another vehicle unless the used motor vehicle is equipped for this as recommended by the manufacturer;

(h) if the used motor vehicle is used to carry passengers for hire;

(i) if the used motor vehicle is rented to someone other than the consumer as defined in paragraph one of subdivision a of this section;

(j) for repair of valves and/or rings to correct low compression and/or oil consumption which are considered normal wear;

(k) to the extent otherwise permitted by law, for property damage arising or allegedly arising out of the failure of a covered part; and

(l) to the extent otherwise permitted by law, for loss of the use of the used motor vehicle, loss of time, inconvenience, commercial loss or consequential damages.

c. Failure to honor warranty. 1. If the dealer or his agent fails to

correct a malfunction or defect as required by the warranty specified in this section which substantially impairs the value of the used motor vehicle to the consumer after a reasonable period of time, the dealer shall accept return of the used motor vehicle from the consumer and refund to the consumer the full purchase price, or in the case of a lease contract all payments made under the contract, including sales or compensating use tax, less a reasonable allowance for any damage not attributable to normal wear or usage, and adjustment for any modifications which either increase or decrease the market value of the vehicle or of the lease contract, and in the case of a lease contract, shall cancel all further payments due from the consumer under the lease contract. In determining the purchase price to be refunded or in determining all payments made under a lease contract to be refunded, the purchase price, or all payments made under a lease contract, shall be deemed equal to the sum of the actual cash difference paid for the used motor vehicle, or for the lease contract, plus, if the dealer elects to not return any vehicles traded-in by the consumer, the wholesale value of any such traded-in vehicles as listed in the National Auto Dealers Association Used Car Guide, or such other guide as may be specified in regulations promulgated by the commissioner of motor vehicles, as adjusted for mileage, improvements, and any major physical or mechanical defects in the traded-in vehicle at the time of trade-in. The dealer selling or leasing the used motor vehicle shall deliver to the consumer a written notice including conspicuous language indicating that if the consumer should be entitled to a refund pursuant to this section, the value of any vehicle traded-in by the consumer, if the dealer elects to not return it to the consumer, for purposes of determining the amount of such refund will be determined by reference to the National Auto Dealers Association Used Car Guide wholesale value, or such other guide as may be approved by the commissioner of motor vehicles, as adjusted for mileage, improvements, and any major physical or mechanical defects, rather than the value listed in the sales contract. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the department of motor vehicles. If the amount to be refunded to the lienholder will be insufficient to discharge the lien, the dealer shall notify the consumer in writing by registered or certified mail that the consumer has thirty

days to pay the lienholder the amount which, together with the amount to be refunded by the dealer, will be sufficient to discharge the lien. The notice to the consumer shall contain conspicuous language warning the consumer that failure to pay such funds to the lienholder within thirty days will terminate the dealer's obligation to provide a refund. If the consumer fails to make such payment within thirty days, the dealer shall have no further responsibility to provide a refund under this section. Alternatively, the dealer may elect to offer to replace the used motor vehicle with a comparably priced vehicle, with such adjustment in price as the parties may agree to. The consumer shall not be obligated to accept a replacement vehicle, but may instead elect to receive the refund provided under this section. It shall be an affirmative defense to any claim under this section that:

(a) The malfunction or defect does not substantially impair such value; or

(b) The malfunction or defect is the result of abuse, neglect or unreasonable modifications or alterations of the used motor vehicle.

2. It shall be presumed that a dealer has had a reasonable opportunity to correct a malfunction or defect in a used motor vehicle, if:

(a) The same malfunction or defect has been subject to repair three or more times by the selling or leasing dealer or his agent within the warranty period, but such malfunction or defect continues to exist; or

(b) The vehicle is out of service by reason of repair or malfunction or defect for a cumulative total of fifteen or more days during the warranty period. Said period shall not include days when the dealer is unable to complete the repair because of the unavailability of necessary repair parts. The dealer shall be required to exercise due diligence in attempting to obtain necessary repair parts. Provided, however, that if a vehicle has been out of service for a cumulative total of forty-five days, even if a portion of that time is attributable to the unavailability of replacement parts, the consumer shall be entitled to the replacement or refund remedies provided in this section.

3. The term of any warranty, service contract or repair insurance shall be extended by any time period during which the used motor vehicle is in the possession of the dealer or his duly authorized agent for the

purpose of repairing the used motor vehicle under the terms and obligations of said warranty, service contract or repair insurance.

4. The term of any warranty, service contract or repair insurance, and the fifteen day out-of-service period, shall be extended by any time during which repair services are not available to the consumer because of a war, invasion or strike, fire, flood or other natural disaster.

d. Waiver void. 1. Any agreement entered into by a consumer for the purchase or lease of a used motor vehicle which waives, limits or disclaims the rights set forth in this article shall be void as contrary to public policy. Further, if a dealer fails to give the written warranty required by this article, the dealer nevertheless shall be deemed to have given said warranty as a matter of law.

2. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

3. Notwithstanding paragraph one of this subdivision, this article shall not apply to used motor vehicles sold for, or in the case of a lease where the value of the used motor vehicle as agreed to by the consumer and the dealer which vehicle is the subject of the contract is, less than one thousand five hundred dollars, or to used motor vehicles with over one hundred thousand miles at the time of sale or lease if said mileage is indicated in writing at the time of sale or lease. Further, this article shall not apply to the sale or lease of historical motor vehicles as defined in section four hundred one of the vehicle and traffic law.

e. Time of delivery, location of warranty and notice. The written warranty provided for in subdivision b of this section and the written notice provided for in subdivision c of this section shall be delivered to the consumer at or before the time the consumer signs the sales or lease contract for the used motor vehicle. The warranty and the notice may be set forth on one sheet or on separate sheets. They may be separate from, attached to, or a part of the sales or lease contract. If

they are part of the sales or lease contract, they shall be separated from the other contract provisions and each headed by a conspicuous title.

f. Arbitration and enforcement. 1. If a dealer has established or participates in an informal dispute settlement procedure which complies in all respects with the provisions of part seven hundred three of title sixteen of the code of federal regulations the provisions of this article concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure. Dealers utilizing informal dispute settlement procedures pursuant to this subdivision shall insure that arbitrators participating in such informal dispute settlement procedures are familiar with the provisions of this section and shall provide to arbitrators and consumers who seek arbitration a copy of the provisions of this section together with the following notice in conspicuous ten point bold face type:

USED CAR LEMON LAW BILL OF RIGHTS

1. If you purchase a used car for more than one thousand five hundred dollars, or lease a used car where you and the dealer have agreed that the car's value is more than one thousand five hundred dollars, from anyone selling or leasing three or more used cars a year, you must be given a written warranty.

2. If your used car has 18,000 miles or less, you may be protected by the new car lemon law.

3. (a) If your used car has more than 18,000 miles and up to and including 36,000 miles, a warranty must be provided for at least 90 days or 4,000 miles, whichever comes first.

(b) If your used car has more than 36,000 miles but less than 80,000 miles, a warranty must be provided for at least 60 days or 3,000 miles, whichever comes first.

(c) If your used car has 80,000 miles or more but no more than 100,000 miles, a warranty must be provided for at least 30 days or 1,000 miles, whichever comes first. Cars with over 100,000 miles are not covered.

4. If your engine, transmission, drive axle, brakes, radiator, steering, alternator, generator, starter, or ignition system (excluding the battery) are defective, the dealer or his agent must repair or, if he so chooses, reimburse you for the reasonable cost of repair.

5. If the same problem cannot be repaired after three or more attempts, you are entitled to return the car and receive a refund of your purchase price or of all payments made under your lease contract, and of sales tax and fees, minus a reasonable allowance for any damage not attributable to normal usage or wear, and, in the case of a lease contract, a cancellation of all further payments you are otherwise required to make under the lease contract.

6. If your car is out of service to repair a problem for a total of fifteen days or more during the warranty period you are entitled to return the car and receive a refund of your purchase price or of all payments made under your lease contract, and of sales tax and fees, minus a reasonable allowance for any damage not attributable to normal usage or wear, and, in the case of a lease contract, a cancellation of all further payments you are otherwise required to make under the lease contract.

7. A dealer may put into the written warranty certain provisions which will prohibit your recovery under certain conditions; however, the dealer may not cause you to waive any rights under this law.

8. A dealer may refuse to refund your purchase price, or the payments made under your lease contract, if the problem does not substantially impair the value of your car, or if the problem is caused by abuse, neglect, or unreasonable modification.

9. If a dealer has established an arbitration procedure, the dealer may refuse to refund your purchase price until you first resort to the procedure. If the dealer does not have an arbitration procedure, you may resort to any remedy provided by law and may be entitled to your attorney's fees if you prevail.

10. As an alternative to the arbitration procedure made available through the dealer you may instead choose to submit your claim to an independent arbitrator, approved by the attorney general. You may have to pay a fee for such an arbitration. Contact your local consumer office or attorney general's office to find out how to arrange for independent arbitration.

11. If any dealer refuses to honor your rights or you are not satisfied by the informal dispute settlement procedure, complain to the New York State Attorney General, Executive Office, Capitol, Albany, N.Y. 12224.

2. A dealer shall have up to thirty days from the date of notice by the consumer that the arbitrator's decision has been accepted to comply with the terms of such decision. Provided, however, that nothing contained in this subdivision shall impose any liability on a dealer where a delay beyond the thirty day period is attributable to a consumer who has requested a particular replacement vehicle or otherwise made compliance impossible within said period.

3. Upon the payment of a prescribed filing fee, a consumer shall have the option of submitting any dispute arising under this section to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the attorney general. Upon application of the consumer and payment of the filing fee, the dealer shall submit to such alternate arbitration.

Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by and under regulations established by the attorney general. Such mechanism shall ensure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules.

The notice required by paragraph one of this subdivision, entitled

Used Car Lemon Law Bill of Rights, shall be provided to arbitrators and consumers who seek arbitration under this subdivision.

A dealer shall have thirty days from the date of mailing of a copy of the arbitrator's decision to such dealer to comply with the terms of such decision. Failure to comply within the thirty day period shall entitle the consumer to recover, in addition to any other recovery to which he may be entitled, a fee of twenty-five dollars for each business day beyond thirty days up to five hundred dollars; provided however, that nothing in this subdivision shall impose any liability on a dealer where a delay beyond the thirty day period is attributable to a consumer who has requested a particular replacement vehicle or otherwise made compliance impossible within said period.

The commissioner of motor vehicles or any person deputized by him may deny the application of any person for registration under section four hundred fifteen of the vehicle and traffic law and suspend or revoke a registration under such section or refuse to issue a renewal thereof if he or such deputy determines that such applicant or registrant or any officer, director, stockholder, or partner, or any other person directly or indirectly interested in the business has deliberately failed to pay an arbitration award, which has not been stayed or appealed, rendered in an arbitration proceeding pursuant to this paragraph for sixty days after the date of mailing of a copy of the award to the registrant. Any action taken by the commissioner of motor vehicles pursuant to this paragraph shall be governed by the procedures set forth in subdivision nine of section four hundred fifteen of the vehicle and traffic law.

4. In no event shall a consumer who has resorted to an informal dispute settlement procedure be precluded from seeking the rights or remedies available by law.

5. In an action brought to enforce the provisions of this article, the court may award reasonable attorney's fees to a prevailing plaintiff or to a consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to paragraph three of this subdivision. In the event a prevailing plaintiff is required to

retain the services of an attorney to enforce collection of an award granted pursuant to this section, the court may assess against the dealer reasonable attorney's fees for services rendered to enforce collection of said award.

6. Any action brought pursuant to this article shall be commenced within four years of the date of original delivery of the used motor vehicle to the consumer.

g. Notice of consumer rights. At the time of purchase or lease of a used motor vehicle from a dealer in this state, the dealer shall provide to the consumer a notice, printed in not less than eight point bold face type, entitled "Used Car Lemon Law Bill of Rights". The text of such notice shall be identical with the notice required by paragraph one of subdivision f of this section.

§ 198-c. Automobile trade-in protection. (a) As used in this section, "dealer" shall have the same meaning as such term is defined by section four hundred fifteen of the vehicle and traffic law.

(b) When a dealer purchases or obtains a vehicle in trade in a retail sale or lease transaction and the vehicle is subject to a prior credit or lease balance, all of the following apply:

(1) If the dealer agreed to pay a specified amount on the prior credit or lease balance owing on the vehicle purchased or obtained in trade, and the agreement to pay the specified amount is contained in a written agreement documenting the transaction, the dealer shall tender the agreed upon amount as provided in the written agreement to the lessor, or to the lien holder, or to the designee of that lessor or lien holder of the vehicle purchased or obtained in trade within twenty-one calendar days of purchasing or obtaining the vehicle in trade, provided, however, that the dealer may rely upon the amount due as stated by the lessor or lien holder.

(2) If the dealer did not set forth an agreement regarding payment of a prior credit or lease balance owed on the vehicle purchased or obtained in trade, in a written agreement documenting the transaction, the dealer shall tender to the lessor, or to the lien holder, or to the

designee of that lessor or lien holder of the vehicle purchased or obtained in trade, an amount necessary to discharge the prior credit or lease balance owing on the vehicle purchased or obtained in trade within twenty-one calendar days of purchasing or obtaining the vehicle in trade, provided, however, that the dealer may rely upon the amount due as stated by the lessor or lien holder.

(3) The time period specified in paragraph one or two of this subdivision may be shortened if the dealer and consumer agree, in writing, to a shorter time period.

(4) A dealer shall not sell, consign for sale, or transfer any ownership interest in the vehicle purchased or obtained in trade until an amount necessary to discharge the prior credit or lease balance owing on the vehicle has been tendered to the lessor, or to the lien holder, or to the designee of that lessor or lien holder of the vehicle purchased or obtained in trade.

(c) If the agreement gives either party the right to rescind the entire agreement within a reasonable time period, rescission of the entire agreement shall effectively rescind the obligations pursuant to this section without violating this section.

(d) This section shall not apply to agreements or transactions that involve a state or federal program in which a dealer is issued a voucher to offset the purchase price or lease price for a qualifying lease of a new vehicle upon the surrender of an eligible trade-in vehicle to a dealer participating in the program.

(e) (1) Every violation of this section shall be deemed a deceptive act and practice subject to enforcement under article twenty-two-A of this chapter. In addition, the district attorney, county attorney, and the corporation counsel shall have concurrent authority to seek the relief in paragraph two of this subdivision, and all civil penalties obtained in any such action shall be retained by the municipality or county.

(2) In every case where the court shall determine that a violation of this section has occurred, it may impose a civil penalty of not more than five thousand dollars for each violation. Such penalty shall be in addition to any denial of registration or renewal, suspension of registration or revocation of registration or assessment of a fine authorized by subdivision nine of section four hundred fifteen of the

vehicle and traffic law.

(3) Nothing in this section shall be construed to restrict any right which any person may have under any other statute or the common law.

(4) No dealer shall be deemed to have violated the provisions of this section if such dealer shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

(f) Any person who is convicted of knowingly violating paragraph four of subdivision (b) of this section shall be guilty of a class A misdemeanor.

(g) If any part or provision of this section or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operations to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this section or the application thereof to other persons or circumstances.

§ 199. Penalties. Any person, firm, or corporation violating the provisions of section one hundred ninety-six of this article shall be liable in an action brought on behalf of the people of the state of New York in the sum of one thousand dollars for each of such violations.

ARTICLE 11-B

FRANCHISES FOR THE SALE OF MOTOR FUELS

Section 199-a. Definitions.

199-b. Disclosures to prospective dealers.

199-c. Termination or refusal to renew a franchise without good cause prohibited; notice requirement; right of action.

199-d. Repurchase of merchandise.

199-e. Waiver provisions.

199-f. Application.

199-g. Arbitration.

199-h. Relationship to other laws.

- 199-i. Dealers' rights to transfer, assign or dispose of the franchise upon notice to distributor.
- 199-j. Dealer's right to deal with suppliers other than his distributor.
- 199-k. Separability.
- 199-l. Removal of certain actions and proceedings.
- 199-m. Dealers' rights of association.
- 199-n. Enforcement of dealers' rights of association; injunction; damages; limitation of actions.

§ 199-a. Definitions. As used in this article, the terms:

1. "Distributor" means any person engaged in the sale, consignment, or distribution of motor fuels to dealers.
2. "Dealer" means any person engaged in the retail sale of motor fuels for use in motor vehicles under a franchise entered into with a distributor.
3. "Franchise" means any agreement between a distributor and a dealer under which the dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor, or to which the distributor has the right to authorize the use thereof, and is furnished by the distributor with products to be sold at retail under such trademark, trade name, service mark, or other identifying symbol or name or any agreement between a distributor and a dealer under which the dealer is granted the right to occupy or use premises or facilities owned, leased, or controlled by the distributor, for the purpose of engaging in the retail sale of motor fuels of the distributor, provided that an agreement by one distributor to lease premises or facilities to another distributor shall not constitute a franchise.
4. "Retail" means the sale of motor fuels to the consuming public for the purposes other than resale.

5. "Service Station" means any premises whereon the retail sale of motor fuels is conducted as the principal business.

§ 199-b. Disclosures to prospective dealers. A distributor shall disclose in writing to any prospective dealer the following information, before any franchise is entered into:

1. The gallonage volume history, if any, of the location under negotiation for and during the three year period immediately past or for the entire period which the location has been supplied by the distributor, whichever is shorter.

2. The name and last known address of the previous dealer or dealers for the last three years, or for and during the entire period which the location has been supplied by the distributor, whichever is shorter, and the reason or reasons for the termination of each dealer franchise.

3. Any legally binding commitments for the sale, demolition or other disposition of the location.

4. The training programs, if any, and the specific goods and services the distributor will provide for and to the dealer.

5. Full disclosure of any and all obligations which will be required of the dealer, including but not limited to, any obligation to exclusively deal in any of the products of the distributor, its subsidiaries or any other company or any advertising and promotional items that the dealer must accept.

6. Full disclosure of all restrictions on the sale, transfer, renewal and termination of the franchise.

§ 199-c. Termination or refusal to renew a franchise without good cause prohibited; notice requirement; right of action. 1. Except as otherwise provided in this article, no distributor or agent thereof

shall terminate, cancel or refuse to renew any franchise except for good cause, which shall include, but not be limited to:

(a) The dealer's failure to comply with a substantive requirement of a franchise agreement;

(b) The dealer's failure to act in good faith in carrying out the terms of the franchise.

(c) The distributor's failure to renew his lease of the service station premises, provided the distributor does not supply the service station with motor fuels for a period of one year after the expiration of the lease.

2. A distributor may elect not to renew the franchise due to the sale or lease of the service station premises owned by the distributor to other than a subsidiary or affiliate of the distributor for any use, provided the distributor does not supply the service station with motor fuels for a period of one year after such sale or lease; the sale or lease of the service station premises to a subsidiary or affiliate of the distributor for use other than as a service station; or the use of the service station premises by the distributor for other than as a service station.

3. No distributor may terminate, cancel or refuse to renew a franchise agreement for any reason unless he has given ninety days' written notice to the dealer of his intent to terminate, cancel or not renew such franchise, provided that in the event of the dealer's default under the terms and conditions of the franchise agreement as set out in paragraph a of subdivision one of this section, the distributor may, alternatively, give the dealer ten days' written notice to cure the default, and if the default has not been cured within such period, the distributor may terminate or cancel the franchise in accordance with the notice requirements of the franchise agreements, provided such notice is given within ten days or any other period mutually agreed upon in writing after the expiration of the ten-day default period.

4. A gasoline dealer may bring an action under this section against a distributor in any court of competent jurisdiction for wrongfully terminating, cancelling or refusing to renew a franchise and the court

may award money damages and grant such equitable relief as may be proper.

§ 199-d. Repurchase of merchandise. In the event of any termination, cancellation or failure to renew a franchise, whether by mutual agreement or otherwise, a distributor shall make or cause to be made an offer in good faith to repurchase from the dealer at then current wholesale prices any and all merchantable products purchased by said dealer from the distributor, provided however, that in such event the distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer and further provided that such repurchased obligation is conditioned upon there being no other claims or liens against such products by or on behalf of other creditors of the dealer.

§ 199-e. Waiver provisions. Any provision of any franchise agreement purporting to waive any provision of this article shall be null and void.

§ 199-f. Application. This act shall not apply to a franchise granted prior to the effective date of this article provided that a renewal or extension of such a franchise shall not be excluded from the application of this article.

§ 199-g. Arbitration. Any action instituted pursuant to this article in connection with the termination, cancellation, or non-renewal of a franchise, or any part thereof, which provides for the arbitration of disputes arising thereunder in accordance with the rules of the American Arbitration Association shall be subject to the provisions of article seventy-five of the civil practice law and rules.

§ 199-h. Relationship to other laws. This article shall not be held to

invalidate any provisions of the laws of this state unless there is a direct conflict between the provisions of this article and the provisions of such state law, in which case this article shall prevail.

§ 199-i. Dealers' rights to transfer, assign or dispose of the franchise upon notice to distributor. 1. Every franchise agreement and any other lease or agreement in connection therewith between a distributor and a dealer shall be transferable or assignable at the option of the dealer provided the distributor consents to such assignment, which consent shall not be unreasonably withheld. A proposed assignee shall meet the reasonable standards normally required by the distributor or its prospective dealers, including, but not limited to: (a) experience and qualifications; (b) credit rating; (c) financial resources; (d) moral character; and (e) operation by the assignee of not more than two dealerships with the distributor from whom consent is requested. Prior to any transfer or assignment, the dealer shall notify the distributor of an intention to transfer or assign such franchise by written notice of intent setting forth the prospective assignee's name, address, statement of financial qualification and business experience during the previous five years. The distributor shall, within sixty days after receipt of such notice of intent, give written notice to the dealer of its consent or objection to such transfer or assignment. If the distributor objects to the transfer or assignment, it shall state its reasons therefor. If the distributor does not reply within the specified sixty days, approval of the transfer or assignment shall be deemed granted. Such transfer or assignment shall not be valid until the assignee agrees in writing to comply with all the requirements of the franchise and any other lease or agreement in connection therewith then in effect.

A dealer may not exercise the right of assignment or transfer after he has been notified of termination or non-renewal of the franchise agreement for cause as described in the federal petroleum marketing practices act unless the notice of intent to assign or transfer under this section has been delivered to the distributor prior to the dealer's receipt of such notice of termination or non-renewal.

2. (a) Upon the death of the dealer, the franchise and any lease or other agreement in connection therewith shall devolve to the designated successor of such dealer, provided that prior to his death, the dealer has notified the distributor in writing of the name, address and relationship of the designated successor and the designated successor meets the qualifications specified in subdivision one of this section at the time of the dealer's death. For the purpose of this subdivision, the term "designated successor" shall include one or more of the following persons: (i) the surviving spouse; (ii) the adult child or children of the deceased dealer; and (iii) any adult next-of-kin of the deceased dealer who has actively participated in the dealership for at least twelve months preceding the dealer's death. The twelve month period need not be continuous.

Upon the death of the dealer, the designated successor shall promptly assume operation of the franchise and shall be responsible for the operation of the franchise in accordance with the terms and conditions of the deceased dealer's franchise, pending acceptance by the distributor of the designated successor. The distributor may assist the designated successor with the operation of the station in a supervisory capacity at its own expense. Within twenty days after the dealer's death, the designated successor shall give written notice to the distributor of his or her election to assume and operate the franchise, which shall include the information required in subdivision one of this section, and shall also notify the distributor concerning what arrangements have been made for the operation of the franchise pending the acceptance or rejection of the designated successor. Within forty days after such notification, the distributor shall give written notice to the designated successor of its approval or disapproval of the designated successor. If the distributor does not approve the designated successor, it shall state its reasons therefor. If the distributor does not reply within the specified forty day period, approval of the designated successor shall be deemed granted.

(b) In the event that the distributor has timely objected to the designated successor, the personal representative or next-of-kin of the deceased dealer may, within sixty days from receipt by the designated

successor of the notice of disapproval, elect to transfer or assign the franchise in accordance with the provisions of subdivision one of this section. Such an election shall be made by giving written notice to the distributor of the election within twenty days after the receipt by the designated successor of the notice of disapproval. Written notice shall be given to the distributor of the intention to transfer or assign the franchise in accordance with the provisions of subdivision one of this section prior to the expiration of such sixty day period. Pending such a transfer or assignment, the distributor may assume full operation of the franchise for its own account, in which event it shall account to the personal representative of the deceased dealer for any inventory, assets and personal property of any kind on the premises at the time the distributor accepts possession of the franchise.

(c) In the event that the deceased dealer has not designated a successor or the designated successor has not elected to assume and operate the franchise, the personal representative or next-of-kin of the deceased dealer may, within one hundred twenty days after the dealer's death, elect to transfer the franchise in accordance with the provisions of subdivision one of this section. Such an election shall be made by giving written notice to the distributor of such an election within twenty days after the dealer's death. Written notice shall be given to the distributor of the intention to transfer or assign the franchise in accordance with the provisions of subdivision one of this section prior to the expiration of such one hundred twenty day period. Within twenty days after the dealer's death, the personal representative or next-of-kin shall also give written notice to the distributor concerning what arrangements have been made for the operation of the franchise pending the transfer or assignment. Pending such a transfer or assignment, the distributor may elect to assume full operation of the franchise for its own account, in which event it shall account to the personal representative of the deceased dealer for any inventory, assets and personal property of any kind on the premises at the time the distributor accepts possession of the franchise.

(d) No franchise by succession or assignment pursuant to this section shall be valid unless and until the designated successor or assignee agrees in writing to comply with all of the requirements of the franchise and any other lease or agreement in connection therewith then

in effect.

3. This section shall not apply to any franchise until the dealer has operated the service station pursuant to a franchise agreement with the distributor for a continuous three year period, which period shall include the term of any franchise in effect prior to or on the effective date of this section and the term of any franchise transferred to a designated successor pursuant to paragraph (a) of subdivision two hereof.

4. Notice of transfer or assignment and notice of objections stating the reasons therefor may be transmitted by any method of personal service established under article three of the civil practice law and rules, or by mailing same by certified or registered mail to the party to be notified at their actual place of business. Notice by mailing shall be deemed made when deposited in a post office or official depository of the United States postal service.

5. Upon receipt of the written notice of objection with reasons therefor, as provided in subdivisions one and two of this section, a dealer, designated successor or the personal representative or next-of-kin of the deceased dealer may bring an action against a distributor in any court of competent jurisdiction for wrongfully impeding the transfer or assignment of a franchise, provided that any such action must be commenced within one year following receipt of such notice of objection. The court, upon finding that the stated reasons for objection are arbitrary, capricious or unreasonable, may award money damages and grant such equitable relief as it deems proper.

6. In the event that any of the time periods referred to herein are not met by a dealer, assignee, designated successor, personal representative or next-of-kin, the franchise shall terminate.

§ 199-j. Dealer's right to deal with suppliers other than his distributor. 1. Any provision of a franchise which requires a dealer to purchase or sell products of the distributor other than motor fuel, or

which prohibits a dealer from purchasing or selling such products of persons or firms other than the distributor, shall be null and void. Any person or firm who is a distributor, or an officer, agent or employee of a distributor, who shall threaten, harass, coerce or attempt to coerce a dealer for the purpose of compelling the dealer to purchase or sell such products of the distributor or to refrain from purchasing or selling such products of persons or firms other than the distributor shall be guilty of a violation and shall be subject to a fine in an amount up to five hundred dollars for each violation.

2. (a) Any provision of a franchise which prohibits a dealer from purchasing or selling any of the alternative motor fuels set forth in paragraph (b) of this subdivision from a person or firm other than the distributor, or limits the quantity of such motor fuel to be purchased from such other person or firm, or any provision of a franchise which directly or indirectly discourages a dealer from purchasing or selling such alternative motor fuels from such other person or firm, shall be null and void as it pertains to that particular alternative motor fuel if the distributor does not supply or offer to supply to the dealer such alternative motor fuel. Nothing contained in this paragraph, however, shall grant to any dealer any rights, authority or obligation with respect to the permissible uses of the premises or facilities owned, leased or controlled by a distributor pursuant to the terms of the franchise.

(b) For the purposes of this section, the term "alternative motor fuel" shall mean any of the following: (i) a blend of eighty-five percent ethanol and fifteen percent gasoline; (ii) a blend of at least two percent methyl-ester, commonly referred to as "bio-diesel", and diesel motor fuel; (iii) motor fuel comprised primarily of methane, stored in either a gaseous or liquid state and suitable for use and consumption in the engine of a motor vehicle, commonly referred to as "compressed natural gas"; or (iv) hydrogen.

(c) Any person or firm who is a distributor, or an officer, agent or employee of a distributor, who threatens, harasses, coerces or attempts to coerce a dealer for the purpose of compelling such dealer to refrain from purchasing or selling alternative motor fuel from a person or firm other than the distributor shall be guilty of a violation and be subject

to a fine in an amount up to one thousand dollars for each violation.

3. Franchise provisions. Any provision of a franchise with a refiner which prohibits a dealer, who either directly or through an affiliate owns a service station including the tanks and pumps and who dedicates a tank for sale of unbranded motor fuel, or a distributor from purchasing or selling unbranded motor fuel from a person or firm other than the refiner or limits the quantity of such unbranded motor fuel to be purchased from another person or firm or any provision of a franchise which directly or indirectly discourages a dealer or distributor from purchasing or selling such unbranded motor fuels from another person or firm, shall be null and void. For purposes of this subdivision and subdivisions four, five and six of this section the following terms shall have the following meanings:

(a) "refiner" means any person, firm or corporation who owns, leases, operates, controls or supervises a commercial entity producing gasoline or diesel motor fuel;

(b) "distributor" means any person other than a refiner or dealer who purchases motor fuel at a terminal facility and supplies motor fuel to service stations; and

(c) "unbranded motor fuel" means motor fuel which does not use a trademark, trade name, service mark, or other identifying symbol or name owned by a refiner.

4. Labeling of unbranded motor fuels. Under any circumstances where a dealer sells unbranded motor fuel, the dealer shall display a sign which will be visible to consumers before entering the station which states that unbranded fuel is available for sale. The dealer shall also post a sign disclosing that such supply is unbranded on each pump dispensing this fuel. The sign shall be at least eight inches by ten inches with letters not less than three inches in height. The sign shall be legible to the consumer from any point where a vehicle may be refueled. The dealer shall cover all logos, trademarks, or other identifying insignia of the refiner on each dispenser used to dispense the product from such tank or pump. The dealer shall not be required to deface or cover any other logo, trademark, or insignia at his place of business.

5. Sale of unbranded product. A dealer who is entitled to sell unbranded product shall have the right to mix in any storage tank motor fuel produced or supplied by two or more refiners, including his or her refiner, as long as such mixture is stored separately from the refiner's supply and is sold as unbranded. A dealer who is entitled to sell unbranded product shall have the right to mix motor fuel purchased from a source other than his or her refiner without regard to whether said motor fuel was sold under or carries any brand, trademark, tradename, or other similar designation. A dealer shall retail such a mixture as "unbranded", "no brand", or other similar designation indicating that the motor fuel does not carry a brand, trademark, tradename, or other similar designation. A franchisee who markets such a mixture shall be subject to the posting and labeling requirements of this article and article sixteen of the agriculture and markets law. Any violation of section one hundred ninety-two-b of the agriculture and markets law by a dealer in regards to the marketing of unbranded fuel under this section shall not be deemed a violation of the refiner under subdivision six of such section.

6. Sale of refiner's product. A dealer who has sold motor fuel other than that of the refiner by dispensing such motor fuel from a storage tank, underground or otherwise, or container or receptacle, shall follow the procedures set forth in this section before using such storage tank, container, or receptacle for dispensing the branded motor fuel of the refiner. Before using such tank to dispense the refiner's fuel, the dealer shall first empty the tank. The dealer may then use such tank to dispense motor fuel represented to be the product of such refiner. With respect to retail gasoline stations, the term "empty the tank" as used in this section means that the pump, dispenser, device, or other equipment normally used to dispense or pump motor fuel from the storage tank into a motor vehicle has reduced the fluid level in the storage tank to the point where any additional special equipment, such as a vacuum pump, would be necessary to draw out the remaining residue of motor fuel in the tank. The refiner, or his or her employee or agent, shall have the right to inspect the tank to ensure that it is empty in accordance with this section and that the labeling requirements of this section are met.

§ 199-k. Separability. If any provision of this article or the application of such provision to any person or circumstance is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected by such holding.

§ 199-l. Removal of certain actions and proceedings. Where a proceeding is commenced to dispossess a dealer in a court which does not have jurisdiction to grant the relief provided in this article and the dealer demonstrates that he has a defense or counterclaim cognizable under this article, a court having such jurisdiction may remove the action to itself upon motion. Provided, however, that no such removal should be permitted where a federal or state court has already entered a final judgment on the franchise or possession issues and no stay order pending appeal has been filed and the proceeding is being commenced solely for the purpose of enforcing such judgment. No removal provided for herein shall serve to extend a franchisee's time to take certain actions provided for under state or federal law, including but not limited to the time within which to seek injunctive relief under the federal petroleum marketing practices act.

§ 199-m. Dealers' rights of association. No distributor shall directly or indirectly, through any officer, agent or employee, restrict or inhibit the right of a dealer to join a trade association or to freely associate with other dealers for any lawful purpose. A failure to comply with this section shall be a violation punishable by a fine of up to one thousand dollars.

§ 199-n. Enforcement of dealers' rights of association; injunction; damages; limitation of actions. Any distributor or officer, agent or employee of a distributor who violates section one hundred ninety-nine-m of this article may be sued in the supreme court in the county in which

the defendant resides, or where a dealer affected by the violation does business, for temporary and permanent injunctive relief and for damages, if any, and the costs of the action, including reasonable attorney's fees. A plaintiff shall not be required to allege or prove that actual damages have been suffered in order to obtain injunctive relief.

ARTICLE 11-C

SALE OF ZERO-EMISSION SCHOOL BUSES

Section. 199-o. Independent range estimate required.

199-p. Penalties.

§ 199-o. Independent range estimate required. (a) Any entity that sells a zero-emission school bus to a school district or contractor for use in providing transportation services to a school district located within the state of New York shall be required to provide an independent third-party range estimate to prospective purchasers prior to such a sale. Such range estimate must, at a minimum, provide the estimated range on different terrain and different weather conditions. The range estimate shall also include the average level of battery degradation per ten thousand miles traveled. The range estimate shall also consider whether the bus is stored outside or utilizes an indoor garage. For the purposes of this section "zero-emission school bus" shall have the same meaning as in subdivision one of section thirty-six hundred thirty-eight of the education law.

(b) Nothing in this section shall be interpreted to impact sales completed prior to January first, two thousand twenty-six, provided however that if the entity selling such zero-emission school buses later receives a range estimate for the model or models sold prior to January first, two thousand twenty-six, the selling entity shall provide such range estimate to the purchasing school district or contractor.

§ 199-p. Penalties. Any person, firm, corporation, or association or agent or employee thereof who violates the provisions of this article shall be liable for a civil penalty of not more than one thousand

dollars for each violation, which shall accrue to the state of New York and may be recovered in a civil action brought by the attorney general. For the purposes of this article, the noncompliant sale of each zero-emission school bus shall constitute a single violation.

ARTICLE 12

HOTELS AND BOARDING HOUSES

Section 200. Safes; limited liability.

201. Liability for loss of clothing and other personal property limited.

202. Loss by fire.

203. Value of animals.

203-a. Hotel and motel keeper's liability for property in transport.

203-b. Posting of statute.

204. Register to be kept.

204-a. Safety chain latches required.

205. Human trafficking awareness and training.

206. Rates to be posted; penalty for violation.

206-a. Advertising of rates for motels and motor courts.

206-b. Posting of rates for motels and motor courts.

206-c. Frauds on guests of hotels, boarding houses, rooming-houses and lodging houses.

206-d. Posting of rates of various type accommodations.

206-e. Telephone call charges; disclosure; violations.

206-f. Information concerning services for human trafficking victims.

207. Sale of unclaimed articles and other property covered by his lien.

208. Disposition of proceeds of sale.

209. Certain sales after eighteen months.

209-a. Registration of hotel and motel names.

209-b. Index of registrants and registered names.

209-c. Registration of identical, similar or misleading names prohibited.

209-d. Penalties for violation.

209-e. Preservation of existing remedies; use of true name.

209-f. Notice of assignment.

209-g. Notice of abandonment.

§ 200. Safes; limited liability. Whenever the proprietor or manager of any hotel, motel, inn or steamboat shall provide a safe or safe deposit boxes in the office of such hotel, motel or steamboat, or other convenient place for the safe keeping of any money, jewels, ornaments, bank notes, bonds, negotiable securities or precious stones, belonging to the guests of or travelers in such hotel, motel, inn or steamboat, and shall notify the guests or travelers thereof by posting a notice stating the fact that such safe or safe deposit boxes are provided, in which such property may be deposited, in a public and conspicuous place and manner in the office and public rooms, and in the public parlors of such hotel, motel, or inn, or saloon of such steamboat; and if such guest or traveler shall neglect to deliver such property, to the person in charge of such office for deposit in such safe or safe deposit boxes, the proprietor or manager of such hotel, motel, or steamboat shall not be liable for any loss of such property, sustained by such guest or traveler by theft or otherwise; but no hotel, motel or steamboat proprietor, manager or lessee shall be obliged to receive property on deposit for safe keeping, exceeding one thousand five hundred dollars in value; and if such guest or traveler shall deliver such property, to the person in charge of such office for deposit in such safe or safe deposit boxes, said proprietor, manager or lessee shall not be liable for any loss thereof, sustained by such guest or traveler by theft or otherwise, in any sum exceeding the sum of one thousand five hundred dollars unless by special agreement in writing with such proprietor, manager or lessee.

§ 201. Liability for loss of clothing and other personal property limited. 1. No hotel or motel keeper except as provided in the foregoing section shall be liable for damage to or loss of wearing apparel or other personal property in the lobby, hallways or in the room or rooms assigned to a guest for any sum exceeding the sum of five hundred dollars, unless it shall appear that such loss occurred through the

fault or negligence of such keeper, nor shall he be liable in any sum exceeding the sum of one hundred dollars for the loss of or damage to any such property when delivered to such keeper for storage or safe keeping in the store room, baggage room or other place elsewhere than in the room or rooms assigned to such guest, unless at the time of delivering the same for storage or safe keeping such value in excess of one hundred dollars shall be stated and a written receipt, stating such value, shall be issued by such keeper, but in no event shall such keeper be liable beyond five hundred dollars, unless it shall appear that such loss occurred through his fault or negligence, and such keeper may make a reasonable charge for storing or keeping such property, nor shall he be liable for the loss of or damage to any merchandise samples or merchandise for sale, unless the guest shall have given such keeper prior written notice of having the same in his possession, together with the value thereof, the receipt of which notice the hotel or motel keeper shall acknowledge in writing over the signature of himself or his agent, but in no event shall such keeper be liable beyond five hundred dollars, unless it shall appear that such loss or damage occurred through his fault or negligence; as to property deposited by guests or patrons in the parcel or checkroom of any hotel, motel or restaurant, the delivery of which is evidenced by a check or receipt therefor and for which no fee or charge is exacted, the proprietor shall not be liable beyond two hundred dollars, unless such value in excess of two hundred dollars shall be stated upon delivery and a written receipt, stating such value, shall be issued, but he shall in no event be liable beyond three hundred dollars, unless such loss occurs through his fault or negligence. Notwithstanding anything hereinabove contained, no hotel or motel keeper shall be liable for damage to or loss of such property by fire, when it shall appear that such fire was occasioned without his fault or negligence.

2. A printed copy of this section shall be posted in a conspicuous place and manner in the office or public room and in the public parlors of such hotel or motel. No hotel, motel or restaurant proprietor shall post a notice disclaiming or misrepresenting his liability under this section.

§ 202. Loss by fire. No inn keeper shall be liable for the loss or destruction by fire of property received by him from a guest, stored or being with the knowledge of such guest in a barn or other out-building, where it shall appear that such loss or destruction was the work of an incendiary, and occurred without the fault or negligence of such inn keeper.

§ 203. Value of animals. No animal belonging to a guest and destroyed by fire while on the premises of any inn keeper shall be deemed of greater value than three hundred dollars, unless an agreement shall be proved between such guest and inn keeper that a higher estimate shall be made of the same.

§ 203-a. Hotel and motel keeper's liability for property in transport. No hotel or motel keeper shall be liable in any sum exceeding the sum of two hundred and fifty dollars for the loss of or damage to property of a guest delivered to such keeper, his agent or employee, for transport to or from the hotel or motel, unless at the time of delivering the same such value in excess of two hundred and fifty dollars shall be stated by such guest and a written receipt stating such value shall be issued by such keeper; provided, however, that where such written receipt is issued the keeper shall not be liable beyond five hundred dollars unless it shall appear that such loss or damage occurred through his fault or negligence.

§ 203-b. Posting of statute. Every keeper of a hotel or motel or inn shall post in a public and conspicuous place and manner in the registration office and in the public rooms of such hotel or motel or inn a printed copy of this section and section two hundred three-a.

§ 204. Register to be kept. The owner, lessee, proprietor or manager of any hotel, motel, tourist cabins, camp, resort, tavern, inn, boarding

or lodging house shall keep for a period of three years a register which shall show the name, residence, date of arrival and departure of his guests. Such records may be kept within the meaning of this section when reproduced on any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduced the original record.

§ 204-a. Safety chain latches required. Every person, firm or corporation engaged in the business of furnishing public lodging accommodations in hotels, motels or motor courts shall install and maintain, on the inside of each entrance door to every rental unit for which there is a duplicate or master key which would afford entry to said unit by one other than the occupant, a safety chain latch.

§ 205. Human trafficking awareness and training. 1. Human trafficking recognition training program. a. For purposes of this section, "lodging facility" shall mean any inn, hotel, motel, motor court or other establishment that provides lodging to transient guests. Such term shall not include an establishment treated as a dwelling unit for the purposes of any state or local law or regulation or an establishment located within a building that has five or less rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

b. Every lodging facility shall require all employees who are likely to interact or come into contact with guests to undergo a human trafficking recognition training program to provide training in the recognition of a human trafficking victim as defined in section four hundred eighty-three-aa of the social services law. Such training program shall be established or approved by the division of criminal justice services and the office of temporary and disability assistance in consultation with the New York state interagency task force on human trafficking. The training program may be developed by a federal, state, or non-profit organization, and may be incorporated as part of the lodging facility's existing training programs or may be provided by

organizations or providers identified by the commissioner of the division of criminal justice services or the commissioner of the office of temporary and disability assistance, provided that the training includes all of the requirements of this section. Established or approved training programs may be made available through methods including, but not limited to, in-person instruction, electronic and video communication, or online programs.

c. Any human trafficking recognition training program established or approved by the division of criminal justice services and the office of temporary and disability assistance in consultation with the New York state interagency task force on human trafficking as required in this section shall address no less than the following issues:

- (i) the nature of human trafficking;
- (ii) how human trafficking is defined in law;
- (iii) how to identify victims of human trafficking; and
- (iv) who to contact, such as the national human trafficking hotline, which connects victims of human trafficking to:
 - (A) relief and recovery options; and
 - (B) social and legal services.

d. The commissioner of the division of criminal justice services and the commissioner of the office of temporary and disability assistance shall make available a list online of established or approved human trafficking recognition programs for use by a lodging facility.

e. All new employees required to receive human trafficking recognition training shall receive such training within their first sixty days of employment.

f. The training shall take place on the premises of the lodging facility and shall be considered compensable time.

2. Record keeping requirements of human trafficking recognition training. Every keeper of each lodging facility shall maintain records indicating that each employee required to undergo an established or approved human trafficking recognition training program pursuant to this

section has completed such training. Such records shall be kept on file by the lodging facility for the period during which the employee is employed by the lodging facility and for one year after such employment ends.

§ 206. Rates to be posted; penalty for violation. Every keeper of a hotel or inn shall post in a public and conspicuous place and manner in the office or public room, and in the public parlors of such hotel or inn, a printed copy of this section and sections two hundred and two hundred and one, and a statement of the charges or rate of charges by the day and for meals furnished and for lodging. No charge or sum shall be collected or received by any such hotel keeper or inn keeper for any service not actually rendered or for a longer time than the person so charged actually remained at such hotel or inn, nor for a higher rate of charge for the use of such room or board, lodging or meals than is specified in the rate of charges required to be posted by the last preceding sentence; provided such guest shall have given such hotel keeper or inn keeper notice at the office of his departure. For any violation of this section the offender shall forfeit to the injured party three times the amount so charged, and shall not be entitled to receive any money for meals, services or time charged.

§ 206-a. Advertising of rates for motels and motor courts. No person engaged in the business of furnishing public lodging accommodations in motels and motor courts shall:

(a) post or maintain posted on any outdoor or outside advertising sign pertaining to such establishment, that may be seen from a public highway or street, any rates for accommodations in such establishment unless the sign shall have posted thereon both the minimum and maximum room, or other rental unit rates, for accommodations offered for rental. All posted rates and descriptive data on such sign shall be in type and material of the same size and prominence.

(b) post or maintain posted on such outdoor or outside advertising signs rates for accommodations in any such establishment unless there are available in any such establishment, when vacant, accommodations for

immediate occupancy to meet the posted rates of such advertising signs.

(c) post or maintain outdoor or outside advertising signs in connection with any such establishment relating to rates which shall have thereon any untrue, false, fraudulent or misleading representations or statements as to any matter whatsoever.

Advertising signs stating the rate per person and bearing the legend "and up" shall not be deemed to comply with the provisions of this section.

Any person who violates any of the provisions of this section shall be guilty of an offense and subject to a fine of not more than fifty dollars.

§ 206-b. Posting of rates for motels and motor courts. Every person, firm or corporation engaged in the business of furnishing public lodging accommodations in motels and motor courts shall:

Post in a conspicuous place or manner in each and every rental unit, a printed copy of this section and section two hundred six-a and a statement of the rental unit charge or rate charged by the day for the rental unit. No charge or sum shall be collected or received by any motel or motor court keeper for any service not actually rendered or for a longer time than the person so charged actually remained at such motel or motor court, nor for a higher rate of charge for the use of said rental unit than is specified in the list of charges required to be posted by the last preceding sentence of this paragraph, nor for a higher rate of charge for the use of said rental unit than the maximum rate posted or maintained on any outdoor or outside advertising sign pertaining to such establishment, provided such guest shall have given such motel or motor court keeper notice at the office of his departure. For any violation of this section, the offender shall forfeit to the injured party, three times the amount so charged, and shall not be entitled to receive any money for services or time charged.

§ 206-c. Frauds on guests of hotels, boarding houses, rooming-houses and lodging houses. A person who for purposes of gain and by means of any false statement or representation regarding a hotel, boarding house, rooming-house or lodging house, shall divert or attempt to divert any traveler or any other person to another hotel, boarding house, rooming-house or lodging house, shall be guilty of a misdemeanor.

The making of a false statement regarding a hotel, boarding house, rooming-house or lodging house, coupled with a suggestion or recommendation to patronize another hotel, boarding house, rooming-house or lodging house shall be presumptive evidence that the act of the defendant was committed for the purpose of gain.

Any person who shall pay, or offer to pay any money or other reward to another for diverting patrons from one hotel, boarding house, rooming-house or lodging house to another, knowing that such diversion was effected in the manner herein prohibited, shall be guilty of a misdemeanor.

In any prosecution of a person for payment or offer of payment of money or other reward in violation of this section, proof of prior notice to the defendant that the person to whom payment was made or offered has at any time diverted patronage from one hotel, boarding house, rooming-house or lodging house to another by means of false representation, shall be presumptive evidence that such defendant knew that the diversion complained of was effected by false statements or representations in violation of this section.

§ 206-d. Posting of rates of various type accommodations. In addition to other provisions in this article relating to posting of rates, every keeper of a hotel, motel or inn shall post publicly and conspicuously at the place maintained for the registration of guests so that it can be easily and readily seen and read by guests registering, a statement of the charges or rate of charges by the day indicating the standard rates for rooms or suites of different accommodations, and for meals furnished.

The standard rates shall be that schedule of rates available to guests who do not qualify for special discounts or rate reductions.

§ 206-e. Telephone call charges; disclosure; violations. 1. For the purpose of this section:

(a) The term "aggregator" means any hotel, motel, innkeeper, school or hospital which is not a telegraph or telephone corporation, as defined in the public service law, which, in the ordinary course of business, makes available for public use telephones or telephone equipment. This term shall also mean any hotel, motel, innkeeper, school or hospital which imposes any charge or receives any compensation by contract, tariff or otherwise for calls made from a telephone provided in a guest room, dormitory, hospital room or other premises under the control of such entity to an alternate operator service provider. This term shall also mean any university, provided however, that the foregoing shall in no way affect the tax-exempt or any other status of any such university under the education, tax or not-for-profit corporation laws or any other provision of law, rule or regulation relating thereto.

(b) The term "alternate operator service provider" means a telecommunications company, other than a local exchange company, which provides operator assisted service by means of personal or automated call intervention.

(c) The term "COCOT service provider" means any person or corporation which resells service by means of a customer owned or leased currency or credit operated telephone.

2. Every alternate operator service provider shall arrange to have conspicuously displayed on, or in the immediate vicinity of, any telephone or telephone equipment which automatically accesses the alternate operator service provider's network and where its services are made available either to the public or transient end users, information which shall include, but not be limited to:

(a) The identity of the alternate operator service provider that will make the charge for any calls placed from such telephone or telephone equipment;

(b) A statement that any inter-exchange long distance carrier can be accessed by following dialing instructions or access codes provided by such other carriers;

(c) A toll free number which the caller can use to obtain information on the rates, terms or conditions for a call;

(d) A statement that, upon the request of the caller, the operator servicing the call will provide rate information; and

(e) A toll free number to call for resolution of a billing or service complaint.

3. Every COCOT service provider shall conspicuously display on, or in the immediate vicinity of, its telephones or telephone equipment made available for public use, information which shall include, but not be limited to:

(a) The identity of the COCOT service provider, and, where applicable, the alternate operator service provider that will make the charge for any calls placed from such telephone or telephone equipment;

(b) A statement that any inter-exchange long distance carrier can be accessed by following dialing instructions or access codes provided by such carriers;

(c) A toll free number which the caller can use to obtain information on the rates, terms or conditions for a call;

(d) A statement that, upon the request of the caller, the operator servicing the call will provide rate information;

(e) A toll free number to call for resolution of a billing or service complaint; and

(f) Where applicable, a notice that additional charges are imposed by the COCOT service provider, or the owner of the place where the COCOT is located, for the use of the telephone or telephone equipment for the placing of a call.

4. Every aggregator shall conspicuously display on, or in the immediate vicinity of, any telephone or telephone equipment made available for public use on its premises, information, which shall include, but not be limited to:

(a) The identity of the alternate operator service provider, if any, that will make the charge for any calls placed from such telephone or

telephone equipment;

(b) A statement that any inter-exchange long distance carrier can be accessed by following dialing instructions or access codes provided by such other carriers;

(c) A toll free number which the caller can use to obtain information on the rates, terms or conditions for a call;

(d) A statement that, upon the request of the caller, the operator servicing the call will provide rate information;

(e) A toll free number to call for resolution of a billing or service complaint; and

(f) Where applicable, a notice that additional charges are imposed by or on behalf of the aggregator for the use of the telephone or telephone equipment for the placing of a call. Where additional charges are imposed for placing local calls, such notice shall include the amount of such surcharge.

5. No alternate operator service provider, COCOT service provider or aggregator shall restrict access or enter into any contract or agreement which restricts access to any alternate operator service provider or to a local exchange company operator or to any emergency telephone number, including where available, 911 or E911.

6. Any person who has been injured by reason of any violation of this section may bring an action to recover actual damages or three hundred fifty dollars, whichever is greater, provided, however, that any person who has been injured by reason of any violation of subdivision five of this section may bring an action to recover actual damages or five hundred dollars whichever is greater. In either case, the court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to four thousand dollars if the court finds that the defendant willfully or knowingly violated this section.

7. If any display or sign, as required by this section, is removed or defaced by vandals, the court shall consider such facts in determining any penalty or damages provided for in this section.

8. Any action brought pursuant to this section shall be commenced

within three years of the date of the original cause of such action.

9. A court may in its discretion award reasonable attorney's fees to a prevailing plaintiff in any action brought pursuant to subdivision six of this section.

§ 206-f. Information concerning services for human trafficking victims. 1. For purposes of this section, "lodging facility" shall mean any inn, hotel, motel, motor court or other establishment that provides lodging to transient guests. Such term shall not include an establishment treated as a dwelling unit for the purposes of any state or local law or regulation or an establishment located within a building that has five or less rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

2. Every keeper of a lodging facility shall make available in plain view and in a conspicuous place and manner in the public restrooms, and in the individual guest rooms, and near the public entrance or in another conspicuous location in clear view of the public and the employees where similar information is customarily displayed in such lodging facility, informational cards developed by: (i) the office of temporary and disability assistance in consultation with the New York state interagency task force on human trafficking; or (ii) the United States Department of Homeland Security; or (iii) the lodging facility. All informational cards shall only contain information concerning services for human trafficking victims and shall prominently include the national human trafficking hotline telephone number. The office of temporary and disability assistance in consultation with the New York state interagency task force on human trafficking, shall develop a notice which shall include the national human trafficking hotline telephone number, to be made available to lodging facilities to post on a voluntary basis.

§ 207. Sale of unclaimed articles and other property covered by his lien. Any keeper of a hotel, motel, apartment hotel, inn,

boarding-house, rooming house or lodging-house, except an immigrant lodging-house, who shall have a lien for fare, lodging, accommodation or board upon any goods, baggage or other chattel property, or, who, for a period of six months, shall have in custody any unclaimed trunk, box, valise, package or parcel, or other chattel property, may, in the manner provided by this section, sell the same at public auction to the highest bidder for cash, and out of the proceeds of such sale may, in case of lien, retain the amount of such lien and the expense of advertisement and sale, and the expense of storage, advertisement and sale thereof. Not less than fifteen days prior to the time of the sale, a notice of the time and place of holding the sale, and containing a brief description of the goods, baggage and articles to be sold, shall be published in a newspaper published in the city or town in which such hotel, motel, apartment hotel, inn, boarding-house, rooming-house or lodging-house is situated; but if there be none, then in such newspaper published nearest such city or town; if the name and address of said guest, boarder, roomer or owner of such chattel articles and property, appears upon the records of such keeper, such notice shall also be mailed to said guest, boarder, roomer or owner, addressed to such address; such notice shall be mailed in the manner aforesaid at least fifteen days prior to the time of the sale.

§ 208. Disposition of proceeds of sale. Such keeper shall, out of the proceeds of such sale, retain the amount of his lien or storage charges and the expense of advertising and sale, and shall make an entry of the articles sold, the amount received therefor, the amounts retained by him as aforesaid, and if there be any surplus, he shall, within ten days after such sale, upon demand, pay over such surplus to such guest, boarder, roomer or person whose property was sold. In case such surplus shall not be demanded and paid as aforesaid, within said ten days, then within five days thereafter, such keeper shall pay said surplus to the treasurer of the county or chamberlain or other chief fiscal officer of the city in which such sale took place, and shall, at the same time, file with said treasurer or chamberlain or other chief fiscal officer a statement in writing containing the name and place of residence, so far as they are known, of the guest, boarder, roomer or person whose goods,

baggage or chattel articles were sold, the articles sold and the price at which they were sold, the name and address of the auctioneer making the sale, and a copy of the notice published. Said treasurer, chamberlain or other chief fiscal officer shall keep said surplus money for and credit the same to the person named in said statement as such guest, boarder, roomer or person, and shall pay the same to him or his executors or administrators, upon demand, and upon furnishing satisfactory evidence of identity to such treasurer, chamberlain or other chief fiscal officer.

§ 209. Certain sales after eighteen months. Any keeper of a hotel, motel, apartment hotel, inn, boarding-house, rooming-house or lodging-house, except an immigrant lodging-house, whose lien for fare, lodging, accommodation or board upon any goods, baggage or other chattel property, shall not have been paid for a period of eighteen months, may sell such property at public auction for cash to the highest bidder upon mailing a notice inclosed in a securely closed postpaid wrapper, directed to the person who left such property with such keeper, at the post office of the city, town or village where such hotel, motel, apartment hotel, inn, boarding-house, rooming-house or lodging-house is situated, such notice to contain a statement of the time and place when and where such goods, baggage or other chattel property will be sold and such notice shall be mailed at least fifteen days before such sale shall take place. Such keeper shall, out of the proceeds of such sale, retain the amount of his lien and the expense of selling such property, and, if there be any surplus, he shall, within ten days after such sale, upon demand, pay over such surplus to the person whose property was sold. In case such surplus shall not be demanded and paid as aforesaid, within said ten days, then within five days thereafter, such keeper shall pay such surplus to the treasurer of the county or chamberlain or other chief fiscal officer of the city in which such sale took place, and shall, at the same time, file with said treasurer, chamberlain or other chief fiscal officer a statement in writing containing the name of the person whose property was sold, the price at which it was sold, the date of such sale and by whom sold. Such surplus shall be kept and disposed of in the manner provided in section two hundred and eight of this

chapter. Nothing contained in this article shall preclude any other remedy now existing for the enforcement and satisfaction of a lien of the keeper of a hotel, motel, apartment hotel, inn, boarding-house, rooming-house or lodging-house, except an immigrant lodging-house, nor bar his right to recover for so much of the debt as shall not be paid through such sale.

§ 209-a. Registration of hotel and motel names. Any person or corporation now owning or now engaged in and conducting the business of an hotel or motel in the state of New York may register the name by which said hotel or motel is known and designated by filing in the office of the secretary of state a petition subscribed by the petitioner and affirmed by him as true under the penalties of perjury, containing the facsimile of such name or designation and specifically describing the location of the hotel or motel to be known by such name or designation, together with the name and address of the person or corporation owning or operating the hotel or motel in addition to such other recitals as the secretary of state may require. A duplicate original or a certified copy of such petition shall also be filed in the office of the clerk of the county in which said hotel or motel is situated and a copy of said petition shall be printed once each week for three consecutive weeks in a newspaper published in the county in which said hotel or motel is located, and such person or corporation shall thereupon have the right to the exclusive use of such name or designation for an hotel or motel in the state of New York. Where it appears that the required publication has been made and this article has been in all other respects complied with the secretary of state shall deliver to such person or corporation so filing such petition a certificate under his seal of the record of such filing and such certificate shall be prima facie evidence of the right to the exclusive use in the state of New York of such name or designation by the person or corporation therein named. Any person or corporation may so register the name of an hotel or motel about to be erected, provided, however, that in the event that such person or corporation shall not begin the construction of said hotel or motel within one year thereafter and prosecute the construction thereof with reasonable dispatch, said person

or corporation shall be deemed to have abandoned the right to use such name or designation.

§ 209-b. Index of registrants and registered names. The secretary of state and the respective county clerks shall keep an alphabetical index of all persons or corporations filing petitions under the authority of section two hundred nine-a, together with a similar index of the names and designations referred to therein. For each petition filed they shall receive a fee of fifty dollars.

§ 209-c. Registration of identical, similar or misleading names prohibited. The secretary of state shall not record, register or file any name or designation identical with or similar to any other name or designation filed or registered as herein provided as would be calculated to deceive or mislead the public, unless such prior registration shall have been revoked as herein provided. The supreme court may, in an action brought for that purpose by any person or corporation aggrieved thereby against any other person or corporation who or which has already filed or registered any such name or designation, direct the revocation of any such registration where it shall be determined that the person who has already registered the same has not the right to use such name or designation because of the prior use thereof by another. No person other than the proprietor of such name or designation, which has been filed in the office of the secretary of state and in the office of the county clerk, as aforesaid, shall, without the written consent of such proprietor, in any manner whatsoever, either directly or indirectly, use such name or designation, or any other name or designation for the name of an hotel or motel in the state of New York which may be so similar as to deceive or mislead the public. Any person or corporation may assign to any other person or corporation all right, title and interest in, to and under the aforesaid certificate of the secretary of state. Nonuse of the name or designation described in any certificate of the secretary of state for the period of one year shall operate as an abandonment of the right to use such name or designation thereafter.

§ 209-d. Penalties for violation. Any person or corporation violating any provisions of sections two hundred nine-a, two hundred nine-b and two hundred nine-c shall be liable to a penalty of ten dollars for each day such violation shall continue after sixty days' written notice calling attention to such violation, to be recovered by the aggrieved party. Any person or corporation who has been granted a certificate pursuant to the foregoing provisions hereof which shall not have been thereafter revoked shall have the right of injunction. In any prosecution or action hereunder, the aforesaid certificate of the secretary of state shall be prima facie evidence of the right to the exclusive use of any such name or designation, where proof of such right is necessary.

§ 209-e. Preservation of existing remedies; use of true name. Nothing in this article shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any such name or designation might have had if the foregoing provisions relating to the registration of hotel or motel names had not been enacted; nor shall the same be retroactive; nor shall any person be prohibited from using his or her own true name in connection with the operation of any hotel or motel now in existence or hereafter constructed.

§ 209-f. Notice of assignment. Upon the assignment of any name registered as provided in this article, a written notice of such assignment, subscribed and acknowledged by the assignor, may be filed in each public office in which such name is registered, and thereupon the assignee named therein shall be deemed to be the proprietor of such name for all purposes of this article.

§ 209-g. Notice of abandonment. The proprietor of a name registered as provided in this article, may file a written notice of abandonment

thereof, subscribed and acknowledged by such proprietor in each public office in which the name is registered, and thereupon all rights of the subscriber of such notice acquired by the registration of such name pursuant to this article shall be extinguished, and the provisions thereof which prohibit the use of the same or a similar name shall no longer apply.

ARTICLE 12-B

ONLINE RETAILERS AND MERCANTILE ESTABLISHMENTS

Section 217. Definitions.

218. Defense of lawful detention.

218-a. Disclosure of refund policies.

218-aa. Warranty disclosure.

§ 217. Definitions. As used in this article, the following words and phrases shall have the following meanings:

1. "Retail mercantile establishment" shall mean a place where goods, wares or merchandise are offered to the public for sale.

2. "Restocking fee" shall mean any amount charged by a seller for accepting returned merchandise and paying a refund or credit.

3. "Online retailer" shall mean a seller of goods, wares or merchandise, primarily for personal, family or household purposes, excluding used goods, who offers to consumers in New York such items for sale online through a website, mobile application or other online platform. "Online retailer" shall not include an online marketplace where such marketplace is not the seller.

§ 218. Defense of lawful detention. In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights, brought by any person by reason of having been detained on or in the immediate vicinity of the

premises of (a) a retail mercantile establishment for the purpose of investigation or questioning as to criminal possession of an anti-security item as defined in section 170.47 of the penal law or as to the ownership of any merchandise, or (b) a motion picture theater for the purposes of investigation or questioning as to the unauthorized operation of a recording device in a motion picture theater, it shall be a defense to such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer acting pursuant to his special duties, police officer or by the owner of the retail mercantile establishment or motion picture theater, his authorized employee or agent, and that such officer, owner, employee or agent had reasonable grounds to believe that the person so detained was guilty of criminal possession of an anti-security item as defined in section 170.47 of the penal law or was committing or attempting to commit larceny on such premises of such merchandise or was engaged in the unauthorized operation of a recording device in a motion picture theater. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person (i) has concealed possession of unpurchased merchandise of a retail mercantile establishment, or (ii) has possession of an item designed for the purpose of overcoming detection of security markings attachments placed on merchandise offered for sale at such an establishment, or (iii) has possession of a recording device in a theater in which a motion picture is being exhibited and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise, or possession of such an item or device. Such detention at such vicinity shall not authorize the taking of such person's fingerprints at such vicinity unless the taking of fingerprints is otherwise authorized by section 160.10 of the criminal procedure law and are taken by the arresting or other appropriate police officer or agency described therein in accordance with section 140.20 or 140.27 of such law. Whenever fingerprints are taken, the requirements of article one hundred sixty of the criminal procedure law shall apply as if fully set forth herein.

§ 218-a. Disclosure of refund policies. 1. Every retail mercantile establishment and online retailer shall conspicuously post, in the following manner, its refund policy as to all goods, wares or merchandise offered to the public for sale:

- (a) on a sign attached to the item itself; or
- (b) on a sign affixed to each cash register or point of sale; or
- (c) on a sign so situated as to be clearly visible to the buyer from the cash register; or
- (d) on a sign posted at each store entrance used by the public; or
- (e) in case of an online retailer, by a notice displayed or made accessible by hyperlink near the item itself or by a notice displayed to or made accessible by hyperlink by the consumer prior to requesting billing information.

2. The sign, required by subdivision one of this section to be posted in every retail mercantile establishment, and notice required by subdivision one of this section, shall (a) state whether or not it is the policy of such establishment or online retailer to give refunds and, if so, under what conditions, including but not limited to whether a refund will be given:

- (i) on merchandise which had been advertised as "sale" merchandise or marked "as is;"
 - (ii) on merchandise for which no proof of purchase exists;
 - (iii) at any time or not beyond a point in time specified;
 - (iv) in cash, or as credit or store credit only; or
 - (v) subject to any fees, including a restocking fee, and the dollar or percentage amount of each fee; and
- (b) advise consumers that they are entitled to a written copy of the store's refund policy upon request.

3. Enforcement. Any retail mercantile establishment or online retailer which violates any provision of this section shall be liable, for a period of up to thirty days from the date of purchase, to the buyer for a cash refund or a credit, at the buyer's option, provided that the merchandise has not been used or damaged by the buyer and the buyer can

verify the date of the purchase with a receipt or any other purchase verification method utilized by the retail merchant.

4. Preemption. This section does not relieve any person, firm, corporation or association subject to the provisions of this section from complying with any law, ordinance, rule or regulation of any locality relating to the posting of refund policies which affords the buyer greater protection than do the provisions of this section.

§ 218-aa. Warranty disclosure. 1. As used in this section, the term "grey markets merchandise" means any brand-name consumer product normally accompanied by a warranty valid in the United States of America which is imported into the United States through channels other than the manufacturer's authorized United States distributor, for sale to the public in this state, and which, by reason of this manner of distribution, may not be accompanied by a manufacturer's express written warranty valid in the United States. Grey markets merchandise shall be limited to products purchased by a consumer for use primarily for personal, family or household purposes.

2. Every retail dealer who knowingly offers for sale grey markets merchandise shall conspicuously post, in the following manner, the information required by subdivision three of this section:

a. On a sign attached to the item itself; or

b. On a sign affixed to each cash register or point of sale at which such goods are offered for sale; or

c. On a sign so situated as to be clearly visible to the buyer from the register.

3. Every retail dealer who offers for sale grey markets merchandise shall disclose, as applicable, that either some of the products or a specific product are not:

a. accompanied by the manufacturer's warranty valid in the United States; or

b. accompanied by instructions in English; or

c. eligible for a rebate offered by the manufacturer.

4. Every retail dealer or dealer engaged in a mail-order business who offers for sale grey markets merchandise shall include the disclosure required by subdivision three of this section in any written advertisement relating to such product. Such disclosure shall be made in type of a conspicuous size.

5. Any retail dealer who violates any provision of this section shall be liable, for a period of up to twenty days from the date of purchase, to the buyer for a refund or credit on credit-card purchases provided the product purchased has not been used or damaged by the buyer.

6. Whenever there shall be a violation of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

7. Provided, however, that it shall be an affirmative defense that the consumer is provided with a written warranty which offers equal or greater protection than the manufacturer's warranty through a warrantor demonstrated to be a financially responsible retailer, distributor, importer or other third person capable of fulfilling warranty obligations.

ARTICLE 12-C
TRAMPOLINE PARK SAFETY

Section 220. Definitions.

221. Exemptions.

222. Compliance with industry standards.

223. Trampoline park employee training, equipment and supervision.

224. Availability of information; emergency response plan.

225. Inspection.

226. Insurance.

227. Required posting of safety guidelines.

228. Actions relating to trampoline parks.

§ 220. Definitions. As used in this article, the following words and phrases shall have the following meanings:

1. "commercial trampoline" shall mean a device that:

(a) incorporates a trampoline bed; and

(b) is used for entertainment or recreational jumping, springing, bouncing, acrobatics, or gymnastics in a trampoline park.

2. "emergency response plan" shall mean a written plan of action for the reasonable and appropriate contact, deployment, and coordination of services, agencies, and personnel to provide the earliest possible response to an injury or emergency.

3. "inspection" shall mean a procedure that an inspector conducts to:

(a) determine whether a trampoline park facility, including any device or material, is constructed, assembled, maintained, tested, and operated in accordance with this article and the manufacturer's recommendations;

(b) determine the operational safety of a trampoline park facility, including any device or material;

(c) determine whether the trampoline park complies with safety standards; and

(d) determine whether the trampoline park's policies, safeguards, and procedures comply with this article.

4. "inspector" shall mean an individual who:

(a) conducts an inspection of a trampoline park to certify compliance with this article and industry safety standards; and

(b) (i) is certified by:

(A) a nationally accredited organization that develops and publishes consensus standards for a wide range of materials, products, systems, and services that are used for trampolines; or

(B) a nationally accredited organization that promotes trampoline park safety;

(ii) represents the insurer of the trampoline park;

(iii) represents a nationally accredited organization that:

(A) inspects amusement and recreational facilities and equipment; and

(B) certifies and trains professional private industry inspectors through written testing and continuing education requirements; or

(iv) represents an organization that the United States Olympic Committee designates as the national governing body for gymnastics.

5. "operator" shall mean a person who manages, or controls or who has the duty to manage or control the operation of a trampoline park.

6. "owner" shall mean a person, corporation, partnership, limited liability company, or association who owns a commercial trampoline park.

7. "participant" shall mean an individual that uses trampoline park equipment.

8. "trampoline bed" shall mean the flexible surface of a trampoline on

which a user jumps or bounces.

9. "trampoline court" shall mean an area of a trampoline park comprising:

- (a) multiple commercial trampolines; or
- (b) at least one commercial trampoline and at least one associated foam or inflatable bag pit.

10. "trampoline park" shall mean a place of business that offers the recreational use of a trampoline court for a fee or charge for admission to the trampoline park for entertainment or recreational purposes.

§ 221. Exemptions. This article shall not apply to:

- 1. a playground that a school or local government operates, if:
 - (a) the playground is an incidental amenity; and
 - (b) the operating entity does not primarily derive revenue from operating the playground for a fee;
- 2. a gymnastics, dance, cheer, or tumbling facility where:
 - (a) the majority of activities are based in training or rehearsal and not recreation; and
 - (b) the facility derives revenues primarily through supervised instruction or classes; or
- 3. equipment used exclusively for exercise, an inflatable ride, or an inflatable bounce house.

§ 222. Compliance with industry standards. A trampoline park owner shall ensure that the trampoline park complies with standards developed in conjunction with industry safety organizations regarding:

- 1. signage and notification for proper use of the trampoline park, safety procedures, and education of risk as provided for in section two hundred twenty-seven of this article;

2. equipment and facilities, including materials, layout, condition, and maintenance;
3. staff training, including safety procedures and emergency response;
4. participant activities and behaviors that should be restricted;
5. separation of participants within the trampoline park based on age, size, or other necessary factors;
6. operational issues, including maintenance and injury logs and emergency response plans;
7. staff supervision and monitoring of activities;
8. statistical tracking of injuries in a manner that does not personally identify the injured participant; and
9. appropriate insurance coverage.

§ 223. Trampoline park employee training, equipment and supervision.

An owner and/or operator shall:

1. ensure that during all hours of operation the trampoline park has an operable automated external defibrillator;
2. ensure that all employees are certified in first aid and CPR;
3. ensure that all participants are instructed by an employee about the potential risks and safety guidelines;
4. require that trampoline park employees monitor the trampoline court and participants during all hours of operation;
5. ensure that the number of trampoline park employees described in

subdivision four of this section is adequate to view each area of the trampoline court; and

6. prominently display throughout the trampoline park contrasted safety, warning, advisory, and instructional signage reflecting the trampoline park's rules as provided for in section two hundred twenty-seven of this article.

§ 224. Availability of information; emergency response plan. 1. An owner and/or operator shall develop, implement, and follow an in-house injury reporting and emergency response plan for injuries to employees and participants.

2. The owner and/or operator shall retain any records for a period of at least two years related to the injury reporting system and emergency response plan described in subdivision one of this section.

3. The owner and/or operator shall make available to the department of health or the local health department, upon request:

(a) the information contained in the injury reporting system described in subdivision one of this section; and

(b) the records described in subdivision two of this section.

§ 225. Inspection. A trampoline park owner and/or operator shall:

1. ensure that an inspector conducts an inspection of the facilities and records of the trampoline park at least once per calendar year to certify compliance with:

(a) industry safety standards, including each category of standards described in this article; and

(b) safety standards described in this article;

(c) proof that the trampoline court is maintained in good repair;

(d) an emergency response plan is in place and up-to-date;

(e) maintenance, inspection, staff member training, and up-to-date injury logs; and

(f) an up-to-date insurance policy is in place; and

2. obtain from the inspector a written report documenting the inspection and a certificate certifying that:

(a) the trampoline park has successfully passed the inspection described in this section; and

(b) the trampoline park is in full compliance with this article.

§ 226. Insurance. A trampoline park owner shall:

1. maintain insurance providing liability coverage of at least one million dollars in the aggregate and five hundred thousand dollars per incident to cover injuries to participants arising out of any negligence or misconduct by the trampoline park owner, operator or staff in the construction, maintenance, or operation of the trampoline park; and

2. maintain a certificate of insurance demonstrating compliance with this section.

§ 227. Required posting of safety guidelines. 1. The owner and/or operator of a trampoline park shall conspicuously post a sign containing safety and instructional rules and guidelines to be followed by participants while at the trampoline park or using a commercial trampoline. Such sign shall include appropriate behavior and activities at the trampoline park to minimize potential risks to participants.

2. Such signs shall be conspicuously displayed near all entrances.

3. Such signs shall contain warnings that there are inherent risks in the participation in or on the commercial trampoline, since it is recognized that participation in or on the trampoline may be hazardous regardless of all feasible safety measures that can be undertaken by the device owner and/or operator; and that there is a duty for the participants, or parent or guardian in the case of a minor, to become apprised of the warnings and the risks inherent in participation in or

on a commercial trampoline if the warnings are not obeyed.

4. Prior to participating in or on such commercial trampolines, participants and parents or guardians in the case of a minor, shall familiarize themselves with the posted safety warnings so that they may make an informed decision of whether to participate in or on the trampoline notwithstanding the risks.

§ 228. Actions relating to trampoline parks. 1. In any contract or agreement between the operator or owner of a trampoline park and a participant, or parent or guardian in the case of a minor, any portion of the contract or any clause which purports to designate, restrict, or limit the venue in which a claim shall be adjudicated or arbitrated shall be deemed void as against public policy.

2. Nothing in this section shall be deemed to affect the validity of any other aspect of a contract.

ARTICLE 13

SILVER, GOLD AND DIAMONDS

Section 229-a. Marking certain articles, silver, sterling silver or solid silver.

229-b. Selling silverware marked coin or coin silver.

229-c. Marking soldered metal sterling or sterling silver.

229-d. Marking soldered metal coin or coin silver.

229-e. Marking metal placed on leather or other substances sterling or sterling silver.

229-f. Marking metal placed on leather or other substances, coin or coin silver.

229-g. Marking watch cases sterling or sterling silver.

229-h. Marking watch cases coin or coin silver.

229-i. Marking articles made of gold.

229-j. Sale of artificially colored diamonds.

§ 229-a. Marking certain articles, silver, sterling silver or solid silver. Any person, firm, corporation or association who makes or sells or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "sterling" or "sterling silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, or engraving or printing that such article is silver, sterling silver or solid silver, unless nine hundred and twenty-five one-thousandths of the component parts of the metal of which the said article is manufactured is pure silver, is guilty of a misdemeanor.

§ 229-b. Selling silverware marked coin or coin silver. Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "coin" or "coin silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing that such article is coin or coin silver, unless nine hundred one thousandths parts of the component parts of the metal of which the said article is manufactured is pure silver, is guilty of a misdemeanor.

§ 229-c. Marking soldered metal sterling or sterling silver. Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped, or branded with the words "sterling" or "sterling silver,"

unless all of said component parts shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 229-d. Marking soldered metal coin or coin silver. Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped, or branded with the words "coin" or "coin silver," unless all of said component parts shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 229-e. Marking metal placed on leather or other substances sterling or sterling silver. Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling" or "sterling silver," unless said applied or attached metal mounting shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 229-f. Marking metal placed on leather or other substances, coin or coin silver. Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless said applied or attached metal mounting shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 229-g. Marking watch cases sterling or sterling silver. Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements and a case or covering applied or attached thereto, wholly or partially concealing said works or movements marked, stamped or branded with the words "sterling" or "sterling silver," unless said case or covering shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 229-h. Marking watch cases coin or coin silver. Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements partially concealing said works or movements marked, stamped or branded with the words "coin" or "coin silver," unless said case or covering shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

§ 229-i. Marking articles made of gold. (1) Any person, firm, corporation or association who or which makes or sells or offers to sell or dispose of, has in his or its possession with intent to sell or dispose of, any article of merchandise, except watch cases and flatware, made in whole or in part of gold or of any alloy of gold and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is encased or enclosed, any mark indicating or designed or intended to indicate that the gold or alloy of gold in such article (a) is of a greater degree or karat of fineness by more than one-half of one karat than the actual quality or fineness of such gold or alloy, which actual quality or fineness shall be determined by test, analysis or assay from which there shall be excluded all solder or alloy of inferior fineness used for brazing or uniting the parts of said

article, or (b) is of a greater degree or karat of fineness by more than one karat than the actual quality or fineness of such gold or alloy which actual quality or fineness shall be determined by test, analysis or assay in which there shall be included all solder or alloy of inferior fineness used for brazing or uniting the parts of said article, is guilty of a misdemeanor.

(2) Any person, firm, corporation or association who or which makes or sells or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of any watch case or article of flatware made in whole or in part of gold or any alloy of gold and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is encased or enclosed, any mark indicating or designed or intended to indicate that the gold or the alloy of gold in such article (a) is of a greater degree or karat of fineness by more than three one-thousandths parts than the actual quality or fineness of such watch case or article of flatware, which actual quality or fineness shall be determined by test, analysis or assay from which there shall be excluded all solder or alloy of inferior fineness used for brazing or uniting the parts of said article, or (b) is of a greater degree or karat of fineness by more than one karat than the actual quality or fineness of such gold or alloy which actual quality or fineness shall be determined by test, analysis or assay in which there shall be included all solder or alloy of inferior fineness used for brazing or uniting the parts of said article, is guilty of a misdemeanor.

§ 229-j. Sale of artificially colored diamonds. Any person, firm, corporation or association, and any agent or employee thereof, who or which shall knowingly sell or offer for sale any diamond which shall have been artificially colored or tinted by coating, irradiating, heating, nuclear bombardment or by any other means, without disclosing in writing to the purchaser, or prospective purchaser, that such diamond has been artificially colored or tinted, or without disclosing in writing that the artificial coloring or tinting of such diamond is not permanent, if that be the fact, shall be guilty of a misdemeanor.

ARTICLE 13-A
PLATINUM STAMPING

Section 230. Definitions.

- 231. Application of quality mark.
- 232. Trade mark.
- 233. Quality marks; description.
- 234. Quality; contents.
- 235. Abbreviations.
- 236. Prima facie proof.
- 237. Penalties.
- 238. Effect of invalidity of any part of this article.

§ 230. Definitions. In this article unless the context otherwise requires: "Article" means any article of merchandise and includes any portion of such article, whether a distinct part thereof, or not (including every part thereof whether or not separable and also including material for manufacture).

Platinum, iridium, palladium, ruthenium, rhodium and/or osmium, include any alloy or alloys of any one or more of said metals.

"Mark" means any mark, sign, device, imprint, stamp, brand applied to any article, or to any tag, card, paper, label, box, carton, container, holder, package cover or wrapping attached to, used in conjunction with or enclosing such article or any bill, bill of sale, invoice, statement, letter, circular, advertisement, notice, memorandum, or other writing or printing.

"Apply" and "applied" include any method or means of application or attachment to, or of use on, or in connection with, or in relation to, an article, whether such application, attachment or use is to, on, by, in or with

1. The article itself, or
2. Anything attached to the article, or

3. Anything to which the article is attached, or

4. Anything in or on which the article is, or

5. Anything so used or placed as to lead to a reasonable belief that the mark on that thing is meant to be taken as a mark on the article itself.

"Quality mark" is any mark as herein defined indicating, describing, identifying or referring to or appearing or seeming or purporting to indicate, describe, identify or refer to the partial or total presence or existence of or the quality of or the percentage of or the purity of or the number of parts of platinum, iridium, palladium, ruthenium, rhodium and/or osmium in any article.

§ 231. Application of quality mark. 1. When an article is composed of mechanism, works or movements and of a case or cover containing the mechanism, works or movements, a quality mark applied to the article shall be deemed not to be, nor to be intended to be, applied to the mechanism, works or movements.

2. The quality mark applied to the article shall be deemed not to apply to springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dustbands, detachable movement rims, hat pin stems, bracelet and necklace snap tongues. In addition, in the event that an article is marked under the last paragraph of the preceding section, the quality mark applied to the article shall be deemed not to apply to pin tongues, joints, catches, lapel button backs and the posts to which they are attached, scarf pin stems, hat pin sockets, shirtstud backs, vest button backs and ear screw backs, provided such parts are made of the same quality of gold as is used in the balance of this article.

§ 232. Trade mark. If there is any quality mark printed, stamped or branded on the article itself there must also be printed, stamped or branded on the said article itself the following mark, to wit: a trade

mark duly applied for or registered under the laws of the United States of the manufacturer of such article; except that if such manufacturer has sold or contracted to sell such article to a jobber, wholesaler or retail dealer regularly engaged in the business of buying and selling similar articles, this provision shall be deemed to be complied with if there is so marked on the said article the trade mark duly registered under the laws of the United States of such jobber, wholesaler or retail dealer respectively; and in such event there may also be marked on the said article itself numerals intended to identify the article, design or pattern provided, however, that such numerals do not appear or purport to be a part of the quality mark and provided that they are not calculated to mislead or deceive anyone into believing that they are partly of the quality mark.

§ 233. Quality marks; description. All quality marks applied to any article shall be equal in size and equally visible, legible, clear and distinct and no quality mark which is false, deceptive or misleading shall be applied to any article or to any descriptive device therefor. No more than one quality mark shall be applied to any article and such quality mark shall be applied to such article in only one place thereon except as elsewhere in this article specifically permitted.

Wherever in this article provision is made for marking the number of parts or percentage of metals, such number or percentage shall refer to weight and not to volume, thickness or any other basis.

§ 234. Quality; contents. There shall not be applied to any article any quality mark nor any colorable imitation thereof, nor any contraction thereof, nor any addition thereto, nor any words or letters, nor any mark purporting to be or resembling a quality mark except as follows:

(a) An article consisting of at least 985/1000ths parts of platinum, iridium, palladium, ruthenium, rhodium and/or osmium, where solder is not used and at least 950/1000ths parts of said metal or metals where solder is used, may be marked "platinum," provided that the total of the

aforementioned metals other than pure platinum shall amount to no more than 50/1000ths parts of the contents of the entire article.

(b) An article consisting of at least 985/1000ths parts of platinum, iridium, palladium, ruthenium, rhodium and/or osmium, where solder is not used and at least 950/1000ths parts of the said metal or metals where solder is used, and provided further that at least 750/1000ths parts of said article are pure platinum, may be marked "platinum," provided immediately preceding the mark "platinum" there is the name or abbreviation as hereinafter provided, of either iridium, palladium, ruthenium, rhodium and/or osmium, which ever of said metals predominates, and provided further that such predominating other metal must be more than 50/1000ths parts of the entire article.

(c) An article consisting of at least 985/1000ths parts of platinum, iridium, palladium, ruthenium, rhodium and/or osmium, where solder is not used and at least 950/1000ths parts of said metals where solder is used, provided more than 500/1000ths parts of said article consist of pure platinum, may be marked with the word "platinum," provided that said word is immediately preceded by a decimal fraction in one-thousandths showing the platinum content in proportion to the content of the entire article, and further provided that said mark "platinum" be followed by the name or abbreviation as herein allowed, of such one or more of the following metals, to wit: iridium, palladium, ruthenium, rhodium and/or osmium, that may be present in the article in quantity of more than 50/1000ths parts of the entire article. The name of such other metal or metals other than platinum, however, shall each be immediately preceded by a decimal fraction in one-thousandths showing the content of such other metal or metals in proportion to the entire article, as for example, 600 plat., 350 pall., or 500 plat., 200 pall., 150 ruth., 100 rhod.

(d) An article consisting of 950/1000ths parts of the following metals: platinum, iridium, palladium, ruthenium, rhodium, and/or osmium with less than 500/1000ths parts of the entire article consisting of pure platinum, may be marked with the name iridium, palladium, ruthenium, rhodium and/or osmium, which ever predominates in the said article but in no event with the mark "platinum," provided, however, that the quantity of such metal other than platinum so marked, must be marked in decimal thousandths, and provided further that the name of

such metal other than platinum so used must be spelled out in full irrespective of any other provisions of this article to the contrary.

(e) An article composed of platinum and gold which resembles, appears or purports to be platinum, may be marked with a karat mark and the platinum mark, provided:

1. The platinum in such article shall be at least 985/1000ths parts pure platinum; and

2. The fineness of the gold in such article shall be correctly described by the karat mark of said gold; and

3. The percentage of platinum in such article shall be no less than five per centum in weight of the total weight of the article; and

4. The mark shall be so applied that the karat mark shall immediately precede the platinum mark, as for example, "14K & Plat.", "18 K & Plat.", as the case may be, it being expressly provided that in case the percentage of platinum exceeds the five per centum provided herein, the quality mark may also include a declaration of the percentage of platinum, as for example, "18 K & 1/10th Plat.", or "14 K & 1/8 Plat." or as the case may be.

(f) An article composed of platinum and any other material or metal not resembling, appearing or purporting to be platinum, may be marked with the quality mark platinum provided all parts or portions of such article resembling or appearing or purporting to be platinum, or reasonably purporting to be described as platinum by said quality mark, shall be at least 985/1000ths parts pure platinum.

§ 235. Whenever provided for in this article, except as specifically excepted in paragraph d of the preceding section, the word "platinum" may be applied by spelling it out in full or by the abbreviation "plat.", the word "iridium" may be applied by spelling it out in full or by the abbreviation "irid.", the word "palladium" may be applied by spelling it out in full or by the abbreviation "Pall", the word "ruthenium" may be applied by spelling it out in full or by the

abbreviation "Ruth.", the word "rhodium" may be applied by spelling it out in full or by the abbreviation "Rhod.", and the word "osmium" may be applied by spelling it out in full or by the abbreviation "Osmi.".

§ 236. Prima facie proof. 1. In any action relating to the enforcement of any provision of this article, a certificate duly issued by an assay office of the treasury department of the United States, certifying the weight of any article, or any part thereof, or of the kind, weight, quality, fineness or quantity of any ingredient thereof, shall be receivable in evidence as constituting prima facie proof of the matter or matters so certified.

2. In any action relating to the enforcement of any provision of this article, proof that an article has been marked in violation of the provisions of this article shall be deemed to be prima facie proof that such article was manufactured after this article became effective.

§ 237. Penalties. Any person or persons, firm, partnership, corporation or association or any officer, director, employee or agent thereof who makes, or sells, or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any article as herein defined to which is applied any quality mark which does not conform to all the provisions of this article, or from which is omitted any mark required by the provisions of this article, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment in the discretion of the court provided however, that it shall be a defense to any prosecution under this article for the defendant to prove that the said article was manufactured and marked with the intention of and for purposes of exportation from the United States and that the said article was either actually exported from the United States to a foreign country within six months after date of manufacture thereof with the bona fide intention of being sold in the said country and of not being re-imported, or that it was delivered within six months after date of

manufacture thereof to a person, firm or corporation whose exclusive customary business is the exportation of such articles from the United States.

§ 238. Effect of invalidity of any part of this article. If any part of this article, or the application thereof to any particular situation, is held by any court of competent jurisdiction to be invalid on account of unconstitutionality, such adjudication shall not affect the remainder of this article, or the application of such first-mentioned part of this article to any other situation.

ARTICLE 13-B
**APPRAISERS OF JEWELRY, WORKS OF ART, WATCHES AND
OBJECTS MADE FROM OR CONTAINING PRECIOUS
STONES OR METALS**

Section 239. Definitions.

239-a. Certain appraisals; penalty.

239-b. Action to restrain and prevent.

239-c. Civil liability.

§ 239. Definitions. As used in this article the term:

1. "Appraiser" shall mean any person or persons, firm, partnership, corporation or association or any officer, director, employee or agent thereof who purports to ascertain and state the true value of property.

2. "Property" shall mean jewelry, watches, and objects made from or containing precious stones or metals. "Precious stones" shall be limited to diamonds, alexandrite, cymophane, ruby, sapphire, opal, amethyst, smoky quartz, citrine, rose quartz, spinel, malachite, turquoise, emerald, aquamarine, morganite, garnet, lapis lazuli, jadeite, kunzite, topaz, tourmaline, zircon, amber, jet, pearl, coral, tanzanite. "Precious metals" shall be limited to gold, silver, platinum, iridium, ruthenium, osmium, or any alloys of any one or more of said metals.

§ 239-a. Certain appraisals; penalty. Any appraiser who knowingly gives a written appraisal of property with intent to defraud, deceive, or injure another person, firm, partnership, corporation, or association or any officer, director, employee, or agent thereof shall be guilty of a misdemeanor.

§ 239-b. Action to restrain and prevent. The attorney-general may bring an action in the name and in behalf of the people of the state against any appraiser, to restrain and prevent a violation of this article, wherever the same may have been made.

§ 239-c. Civil liability. Any person, firm, partnership, corporation, association or officer, director, employee, or agent thereof sustaining damages by reason of a knowingly misleading, deceptive or fraudulent appraisal may bring a civil action for actual damages together with costs, reasonable attorneys' fees and disbursements or an action to restrain an appraiser from violating the provisions of this article if it is found that such appraiser has willfully violated such provisions.

ARTICLE 14

AIRCRAFT

- Section 240. Definitions.
241. Qualifications of operator; federal license.
242. Possession and exhibition of license certificate.
243. Aircraft; construction, design and airworthiness; federal registration.
245. Air traffic rules.
246. Penalties for violation of the foregoing provisions.
247. Examination of wrecked aircraft before destruction or removal.
248. Aircraft on Lake Mahopac, Lake Moraine, Lake George, and Lake Oscawana, Owasco Lake and Greenwood Lake

prohibited.

248-a. Operation of aircraft on certain lakes in the town of Lewisboro, county of Westchester.

249. Location of privately-owned airports.

250. Service of summons on nonresidents or residents who depart from state.

251. Liability of an owner of aircraft.

251-a. Notice of insurance coverage in aircraft rental agreements.

251-b. Flight school background checks.

251-c. Disqualification of a flight instruction school applicant.

§ 240. Definitions. When used in this article,

1. "Aircraft" means any contrivance, now or hereafter invented, for avigation of or flight in the air, except a parachute or other contrivance designed for use, and carried primarily for safety equipment.

2. "Avigation" means the steering, directing or managing of an aircraft, in or through the air; and such term is here used as a substitute for "aerial navigation."

3. "Operating aircraft" means performing the services of aircraft pilot.

4. "Landing area" means any locality either of land or water, including airports and intermediate landing fields, which is used or intended to be used for the landing and take-off of aircraft, whether or not facilities are provided for shelter, servicing or repair of aircraft or for receiving or discharging passengers or cargo.

5. "Airport" means any landing area used regularly by aircraft for receiving or discharging passengers or cargo; or for the landing and take-off of aircraft being used for personal or training purposes.

6. "Acrobatic flying" means maneuvers not necessary for normal flight and intentionally performed by an aircraft, involving an abrupt change in its attitude, an abnormal attitude or an abnormal acceleration.

7. "Administrator of the federal aviation agency" means the administrator of the federal aviation agency of the United States.

8. "Airplane" means a mechanically propelled aircraft, the support of which in flight is derived dynamically from the reaction on surfaces in a fixed position relative to the aircraft but in motion relative to the air.

9. "Control zone" means an airspace of defined dimensions extending upwards from the surface of the ground and including one or more airports and designated as such by the administrator of the federal aviation agency.

10. "Flight visibility" means the average horizontal distance that prominent objects may be seen from the cockpit.

11. "Helicopter" means an aircraft, the support of which in the air is normally derived from airfoils mechanically rotated about an approximately vertical axis.

§ 241. Qualifications of operator; federal license. The public safety requiring, and the advantages of uniform regulation making it desirable, in the interest of aeronautical progress, that a person engaging within this state in operating aircraft, in any form of aviation for which a license to operate aircraft issued by the United States government would then be required if such aviation were interstate, should have the qualifications necessary for obtaining and holding such a license, it shall be unlawful for any person to engage in operating aircraft within the state, in any such form of aviation, unless he have such a license.

§ 242. Possession and exhibition of license certificate. The certificate of the license required by the preceding section shall be kept in the personal possession of the licensee when he is operating aircraft within this state and must be presented for inspection upon the demand of any passenger, any peace officer of this state, acting pursuant to his special duties, police officer of this state, or any official, manager or person in charge of any airport or landing field in this state upon which he shall land.

§ 243. Aircraft; construction, design and airworthiness; federal registration. The public safety requiring, and the advantages of uniform regulation making it desirable, in the interest of aeronautical progress, that aircraft to be avigated within this state should conform, with respect to design, construction and airworthiness, to standards prescribed by the United States government with respect to avigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to avigate an aircraft within this state unless it is licensed and registered by the department of transportation of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force. The license for such aircraft must be carried and conspicuously posted in the aircraft while in flight. Such license also shall be presented for inspection, on demand, to any peace officer, acting pursuant to his special duties, or police officer, or to any official, manager or person in charge of an airport or landing place where the aircraft may be. The provisions of this section shall not apply to aircraft used exclusively in the governmental service of the United States, or used exclusively in the service of the national guard or of one or more of the civil departments of this state.

§ 245. Air traffic rules. The following air traffic rules shall govern the operations and use of aircraft in New York state, except that they shall not apply to aircraft used exclusively in the governmental service of the United States, or exclusively in the service of the national guard of this state:

1. Careless or reckless operation. No person shall operate an aircraft in a careless or reckless manner so as to endanger the life or property of others.

2. Minimum safe altitudes. Except when necessary for a take-off or landing, no person shall operate aircraft below the following altitudes:

(a) General. An altitude which will permit, in the event of the failure of a power unit, an emergency landing without undue hazard to persons or property on the surface;

(b) Over congested areas. Over congested areas of cities, towns, villages or settlements, or over an open-air assembly of persons, an altitude of one thousand feet above the highest obstacle within a horizontal radius of two thousand feet from the aircraft. Helicopters may be flown at less than the minimum prescribed herein if such operations are conducted without hazard to persons or property on the surface and at an altitude which will permit an emergency landing without undue hazard to persons or property on the surface;

(c) Over other than congested areas. An altitude of five hundred feet above the surface, except over open water or sparsely populated areas, and in no event closer than five hundred feet to any person, vessel, vehicle, or structure. Helicopters may be flown at less than the minimum prescribed herein if such operations are conducted without hazard to persons or property on the surface and at an altitude which will permit an emergency landing without undue hazard to persons or property on the surface;

(d) Industrial operations. Where essential to industrial operations and except over congested areas and over an open-air assembly of persons, aircraft may fly at an altitude lower than five hundred feet if such operations are conducted with extreme care and caution and with regard to the safety of persons or property on the surface.

3. Acrobatic flying. (a) No person shall engage in acrobatic flying over congested areas of cities, towns, settlements, or over an open-air assembly of persons.

(b) Unless authorized by the federal aviation agency, no person shall engage in acrobatic flying:

(1) Within any federal airway or control zone, or

(2) When the flight visibility is less than three miles, or
(3) Below an altitude of one thousand five hundred feet above the surface.

4. Dropping objects. No person piloting an aircraft shall permit anything to be dropped from an aircraft in flight which might create any hazard to persons or property.

5. Water operations. An aircraft operating on the water shall, insofar as possible, keep clear of all vessels and avoid impeding their navigation;

(a) Crossing. The aircraft or vessel which has the other on its right shall give way so as to keep well clear;

(b) Approaching head-on. When aircraft, or an aircraft and vessel, approach head-on, or approximately so, each shall alter its course to the right to keep well clear;

(c) Overtaking. The aircraft or vessel which is being overtaken has the right-of-way, and the one overtaking shall alter its course to keep well clear.

(d) Special circumstances. When two aircraft, or an aircraft and vessel, approach so as to involve risk of collision, each shall proceed with regard to existing circumstances and conditions including the limitations of the respective craft.

6. Transportation of explosives and other dangerous articles. The transporting of any explosives and dangerous devices other than small arms ammunition in moderate quantity for personal use, necessary aircraft signaling devices, fuel and equipment necessary to the safe operation of the aircraft and materials for industrial spraying, is prohibited. Dangerous devices shall include, but not exclusively, inflammable and non-inflammable compressed gas, poison gas and liquid, poisonous liquid and solid, and tear gas. Exceptions are permitted where transportation is performed in accordance with federal rules.

* 7. Liquor and drugs. No person shall pilot an aircraft or serve as a member of the crew while under the influence of intoxicating liquor, or drugs, nor shall any person be permitted to be carried in the aircraft who is obviously under the influence of intoxicating liquor, or drugs,

except a medical patient under proper care or in case of emergency.

* NB There are 2 subs. 7

* 7. Parachutes. No pilot in command of a civil aircraft shall allow a parachute that is available for emergency use to be carried in that aircraft unless it is a type approved under regulations of the federal aviation agency.

* NB There are 2 subs. 7

9. Public streets or highways. No take-off or landing shall be made from or on a public street or highway without the prior consent of the local governing authority and the prior approval of the administrator of the federal aviation agency, except as provided for in subdivision (b) of section three hundred sixty-one of the public authorities law.

10. Lights. Aircraft shall display lights in accordance with the following rules:

(a) Between sunset and sunrise all aircraft in flight or operated or underway on the water shall display position lights;

(b) Between sunset and sunrise all aircraft parked or moved within or in dangerous proximity to that part of any airport used for, or available to, night flight operations shall be clearly illuminated or lighted unless the aircraft is parked or moved in an area marked with obstruction lights;

(c) Between the hours of sunset and sunrise all aircraft at anchor shall display an anchor light, or anchor lights, unless in an area within which lights are not required for vessels at anchor;

(d) Position lights shall be installed on all aircraft in accordance with rules and regulations affecting aircraft subject to the federal civil air regulations.

11. Deviation from air traffic rules. Air traffic rules may be deviated from when special circumstances render a departure necessary to avoid immediate danger and when such departure is required because of the stress of weather conditions or other unavoidable causes; provided, however, that aircraft carrying passengers for hire shall not deviate from the air traffic rules pertaining to minimum altitude of flight because of stress of weather conditions.

§ 246. Penalties for violation of the foregoing provisions. A person who violates any of the foregoing provisions of this article shall be guilty of a misdemeanor and punishable by a fine of not more than one hundred dollars, or by imprisonment for not more than ninety days, or both. Failure by an operator to exhibit his pilot certificate upon proper demand or failure to show the aircraft registration certificate upon proper demand shall be presumptive evidence that the operator is not duly licensed or that the aircraft is not duly registered under this article. That an act or omission with respect to rules set forth in subdivision six of section two hundred forty-five was done or made in accordance with regulations affecting aircraft subject to federal aviation regulations, or that a landing or take-off from or on a public street or highway was done with consent of local authorities and approval of the administrator of the federal aviation agency, or that an act or omission which would otherwise be a violation of a prescribed rule was an authorized deviation under subdivision eleven of section two hundred forty-five, shall be matters of defense.

§ 247. Examination of wrecked aircraft before destruction or removal. When an aircraft falls or lands in a wrecked condition or is wrecked by the fall or in landing and an occupant thereof is killed or severely injured thereby or escapes death or injury by the use of a parachute, neither such aircraft nor any part of it shall be destroyed or removed before the expiration of twenty-four hours thereafter without the permission of an inspector of the federal aviation agency or an investigator of the civil aeronautics board or a member of the state police or of a sheriff or regular deputy sheriff; and if, before it is destroyed or removed, such an inspector or member of the state police or sheriff or deputy sheriff shall appear at the scene of the wreck for the purpose of examining the aircraft it shall not be destroyed or removed until the examination is completed provided the examination be completed within forty-eight hours of the time that the aircraft fell or landed. This section shall not prevent or postpone the destruction or removal of a wrecked aircraft lying in a public street or highway in a position

that causes a blockade of traffic, or lying in a navigable waterway in a position that impedes or imperils navigation, or which lands or falls on a building or structure, or in a case where the immediate destruction or removal of the aircraft is necessary to prevent injury to persons; but such necessity in the case last mentioned, shall be a matter of defense in any prosecution for a violation of this section. A person who destroys or removes, or causes to be destroyed or removed, a wrecked aircraft in violation of the provisions of this section is guilty of a misdemeanor.

§ 248. Aircraft on Lake Mahopac, Lake Moraine, Lake George, and Lake Oscawana, Owasco Lake and Greenwood Lake prohibited. The taking off from or landing upon the surface of Lake Mahopac in the town of Carmel and county of Putnam, or upon the surface of Lake Moraine, also known as Madison reservoir, in the town of Madison and county of Madison, except when a landing and subsequent take off is necessary under actual distress conditions, and the operation of aircraft on or over the waters of Lake George, and on or over the waters of Lake Oscawana in the town of Putnam Valley, county of Putnam, or of Owasco Lake in the county of Cayuga or of Greenwood Lake in the town of Warwick, county of Orange for the carriage of passengers for hire, from and to points on such lakes or on the shores thereof, is a misdemeanor.

§ 248-a. Operation of aircraft on certain lakes in the town of Lewisboro, county of Westchester. No aircraft may take off from or land upon the surface of Lakes Waccabuc, Oscaleta, Truesdale and Rippowan, in the town of Lewisboro and Lake Kitchawan, in the towns of Lewisboro and Pound Ridge, and county of Westchester, except when a landing and subsequent take-off is necessary under actual distress conditions.

A violation of the provisions of this section is a misdemeanor.

§ 249. Location of privately-owned airports. 1. Legislative findings and purpose. The continuing development and the rapid growth of air

transportation and the use of aircraft for various purposes, both commercial and private, during the last twenty years, has substantially contributed to the economic betterment, well-being and recreational enjoyment of the people of the state. The increased number, size and growth of airports resulting from operational requirements of newer and larger aircraft operating more frequently has brought about a conflict of land use. This is of particular concern to the state in major public works construction such as highways, public buildings and facilities. There is authority for municipalities to control the establishment or improvement of publicly-owned airports and landing areas so as to assure coordination between developments in the field of public works. Uncontrolled establishment of privately-owned airports and landing areas could seriously impair the existing federal-state highway program. Federal-aid highway funds may not be used for reconstruction or relocation of any highway, the usefulness of which may be impaired by the location or extension of an airport. This activity also presents major problems for municipalities particularly where the airport or operations therefrom span more than one municipality.

The legislature, therefore, finds that in order to meet the problems of local government in the establishment of privately-owned airports and landing areas and to insure coordination between developments in the field of public works that certain criteria be met in the location of or extension of a privately-owned airport or landing area.

2. Definitions. When used in this section:

a. Airport means both an airport and landing area as defined in section two hundred forty of this article.

b. Airport improvement means the extension, alteration, addition to or realignment of the runways of an existing privately-owned airport or the modification in any way of the landing and take-off directions at such a privately-owned airport.

3. Approval of privately-owned airports. No person shall hereafter establish a privately-owned airport or make an airport improvement to an

existing privately-owned airport except by authorization of the governing body of the city, village or town in which such airport or any part thereof is proposed to be established or improved. The governing body of a city, village or town shall not authorize the establishment of such an airport or an airport improvement at a requested location unless in accordance with the standards prescribed by the commissioner of transportation. The local governing body of a city, village or town shall, prior to granting such authorization, request the commissioner of transportation to determine whether or not the establishment of such a privately-owned airport improvement complies with his standards. In order to make such a determination of compliance, the commissioner of transportation must first make findings of fact (1) that operations of such airport will not conflict with or affect the safety of public buildings or facilities, or operations on public highways or waterways; and (2) that the volume, character and direction of traffic at such airport will not constitute a menace to the safety of operations at other airports in the vicinity. Approval for the establishment of such an airport or airport improvement may be subject to any reasonable conditions which the commissioner of transportation may deem necessary to effectuate the purposes of this section.

4. Hearings. In connection with his determination as to whether the establishment of a privately-owned airport or an airport improvement as defined in this section complies with his standards the commissioner of transportation may on his own motion or upon the request of an affected or interested person or of the governing body of the city, village or town requesting such determination of compliance, hold a hearing as provided in subdivision five below.

5. Investigations, hearings. The commissioner of transportation or any officer or employee of the department of transportation designated by the commissioner of transportation, shall have the power to conduct investigations and inquiries and to hold hearings concerning matters covered by this act and the rules, regulations and orders of the commissioner of transportation. Hearings shall be held upon such call or notice as the commissioner of transportation or his duly designated representative shall deem advisable. The commissioner of transportation

and each person designated by him to conduct any investigation or inquiry, or to hold any hearing shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and order the attendance and testimony of witnesses and the production of books, papers and documents. In the case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the commissioner of transportation or his authorized representative may invoke the aid of any court of general jurisdiction of this state. The court may thereupon order such person to comply with the requirements of the subpoena or order to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof.

6. Rules and regulations. The commissioner of transportation is authorized to adopt such rules and regulations as may be necessary for the proper administration and enforcement of the provisions of this section, but not inconsistent therewith, and to amend or repeal any of such rules and regulations.

7. Delegation of powers. The commissioner of transportation may, except as to rule-making powers, by a writing filed in the office of the department designate any officer or employee of the department of transportation to carry out his duties under this section.

8. Nothing in this section shall be construed to deny the governing body of any city, village or town the right to perform any lawful regulatory activity relating to privately-owned airports, which is not within the purposes or scope of this section.

§ 250. Service of summons on nonresidents or residents who depart from state. 1. The use or operation by a nonresident of an aircraft within or above this state, or the use or operation of an aircraft within or above this state in the business of a nonresident, or the use or operation within or above this state of an aircraft owned by a nonresident, if so used or operated with his permission, express or implied, shall be deemed equivalent to an appointment by such nonresident of the secretary

of state to be his true and lawful attorney upon whom may be served the summons in any action against him, growing out of any accident or collision in which such nonresident may be involved while using or operating an aircraft or in which such aircraft may be involved while being used or operated in this state in the business of such nonresident or with the permission, express or implied, of such nonresident owner, and in which death is occasioned or injuries to person or property are sustained, in this state; and such use or operation shall be deemed a signification of his agreement that any such summons against him which is so served shall be of the same legal force and validity as if served on him personally within the state and within the territorial jurisdiction of the court from which the summons issues, and that such appointment of the secretary of state shall be irrevocable and binding upon his executor or administrator. Where such nonresident has died prior to the commencement of an action brought pursuant to this section, service of process shall be made on the executor or administrator of such nonresident in the same manner and on the same notice as is provided in the case of the nonresident himself. Where an action has been duly commenced under the provisions of this section by service upon a nonresident who dies thereafter, the court must allow the action to be continued against his executor or administrator upon motion with such notice as the court deems proper.

2. A summons in an action described in this section may issue in any court in the state having jurisdiction of the subject matter and be served as hereinafter provided. Service of such summons shall be made by mailing a copy thereof to the secretary of state at his office in the city of Albany, or by personally delivering a copy thereof to one of his regularly established offices, with a fee of ten dollars, and such service shall be sufficient service upon such nonresident provided that notice of such service and a copy of the summons and complaint are forthwith sent by or on behalf of the plaintiff to the defendant by registered mail with return receipt requested. The plaintiff shall file with the clerk of the court in which the action is pending, or with the judge or justice of such court in case there be no clerk, an affidavit of compliance herewith, a copy of the summons and complaint, and either a return receipt purporting to be signed by the defendant or a person

qualified to receive his registered mail, in accordance with the rules and customs of the post office department; or, if acceptance was refused by the defendant or his agent, the original envelope bearing a notation by the postal authorities that receipt was refused, and an affidavit by or on behalf of the plaintiff that notice of such mailing and refusal was forthwith sent to the defendant by ordinary mail. Where the summons is mailed to a foreign country, other official proof of the delivery of the mail may be filed in case the post office department is unable to obtain such a return receipt. The foregoing papers shall be filed within thirty days after the return receipt or other official proof of delivery or the original envelope bearing a notation of refusal, as the case may be, is received by the plaintiff. Service of process shall be complete when such papers are filed. The return receipt or other official proof of delivery shall constitute presumptive evidence that the summons mailed was received by the defendant or a person qualified to receive his registered mail; and the notation of refusal shall constitute presumptive evidence that the refusal was by the defendant or his agent. Service of such summons also may be made by mailing a copy thereof to the secretary of state at his office in the city of Albany, or by personally delivering a copy thereof to one of his regularly established offices, with a fee of ten dollars, and by delivering a duplicate copy thereof, with a complaint annexed thereto, to the defendant personally without the state by a resident or citizen of the state of New York or a sheriff, under-sheriff, deputy-sheriff or constable of the county or other political subdivision in which the personal service is made, or an officer authorized by the laws of this state, to take acknowledgments of deeds to be recorded in this state, or an attorney and/or counselor at law, solicitor, advocate or barrister duly qualified to practice in the state or country where such service is made, or by a United States marshal or deputy United States marshal. Proof of personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service. Personal service without the state is complete when proof thereof is filed. The court in which the action is pending may order such extensions as may be necessary to afford the defendant reasonable opportunity to defend the action.

3. The provisions of this section shall also apply (a) to a resident who departs from the state subsequent to the accident or collision and remains absent therefrom for thirty days continuously, whether such absence is intended to be temporary or permanent, and to any executor or administrator of such resident, and (b) to an executor or administrator of a resident if such executor or administrator is a nonresident or if, being a resident, he departs from the state and remains absent therefrom for thirty days continuously, whether such absence is intended to be temporary or permanent.

§ 251. Liability of an owner of aircraft. 1. Except as provided in subdivision three every owner of an aircraft shall be liable and responsible for death occasioned or injuries to person or property sustained, within or above this state, as a result of the use or operation of the aircraft in the business of the owner or otherwise, by any person using or operating the aircraft with the permission, express or implied, of such owner, in any case where the person using or operating the aircraft, or his estate, would be liable for such death or injuries.

2. As used in this section, "owner" means any person (other than a lien holder or, in the cases hereinafter described, a secured party) having the property in or title to an aircraft, and also any lessee or bailee having the exclusive use thereof, under a lease or otherwise, for a period of thirty days or more, and their liability under this section, where both are liable, shall be joint and several. If an aircraft be sold under a contract which reserves a security interest in the aircraft in favor of the vendor, such vendor or his assignee shall not, after delivery of such aircraft, be deemed an owner within the provisions of this section, but the vendee or his assignee, receiving possession thereof, shall be deemed such owner notwithstanding the terms of such contract, until the vendor or his assignee shall retake possession of such aircraft. A secured party in whose favor there is a security interest in an aircraft out of his possession shall not, by reason of such security interest, be deemed an owner within the provisions of this section.

3. Subdivision one of this section shall not apply where the permission to use or operate the aircraft is the permission of the lessor, expressed or implied, in a bona fide lease of the aircraft for a period of thirty days or more, that the aircraft be used or operated by the lessee or by persons using or operating it with the permission of the lessee.

4. All bonds executed by or policies of insurance issued to the owner of an aircraft shall contain a provision for indemnity or security against the liability and responsibility provided in this section; but this provision shall not be construed as requiring that such policy include insurance against any liability of the insured, being an individual, for death of or injuries to his or her spouse or for injury to property of his or her spouse.

5. This section does not relieve an owner of aircraft from liability under any other statute or rule of law or affect the liability of the person using or operating the aircraft.

§ 251-a. Notice of insurance coverage in aircraft rental agreements.

In addition to the requirements prescribed in section two hundred fifty-one of this article relating to liability of an owner of an aircraft:

1. Every person who, in the ordinary course of such person's business, rents an aircraft to another person, shall deliver to such renter a written notice stating the nature and extent of insurance coverage provided, if any, for the renter against loss of or damage to the hull of the aircraft, or against liability arising out of the ownership, maintenance or use of the aircraft; such notice shall contain the name of the person giving the notice, and shall be in substantially the following form:

NOTICE OF INSURANCE COVERAGE

As a renter of aircraft, you are hereby notified that:

(1) You (are) (are not) (strike phrase not applicable) insured under a policy or policies of insurance provided by the undersigned and providing liability coverage to renters of aircraft. If coverage is provided, it is in the following amount or amounts:

\$_____.

(a) The above insurance is subject to a deductible amount of \$_____.

(2) You (are) (are not) (strike phrase not applicable) insured for hull damage to the aircraft. If hull insurance is provided, it is in the amount of \$_____.

(a) The above insurance is subject to a deductible amount of \$_____.

(3) Although insurance may be provided for liability and/or hull coverage, the undersigned's insurance carrier has full rights to subrogate against you for any payments it may be required to make on account of any damage or loss arising out of your operation of the aircraft. It is suggested that you carry insurance to protect you to partially or fully cover this possibility.

(Signature of Person or Officer
of Company Renting Aircraft)

Dated_____, 19_____
(Month) (Day) (Year)

2. The notice delivered pursuant to subdivision one of this section shall constitute a material part of any rental agreement, and each renter shall give written acknowledgement of receipt of such notice.

3. Delivery of the above notice to a renter shall cover all future rentals, unless the insurance coverage set forth in the original notice has been reduced or eliminated.

4. Copies of the notices provided for in subdivision one of this section shall be maintained by the owner for a period of three years from the last date that the renter has rented an aircraft from such owner.

5. Whoever fails to deliver the notice in accordance with the provisions of subdivision one of this section shall be fined not less than one hundred dollars nor more than five hundred dollars for a first offense, and not less than five hundred dollars nor more than one thousand dollars for a second or subsequent offense.

§ 251-b. Flight school background checks. 1. For the purposes of this section:

"Criminal history information" shall mean a record of all convictions of crimes maintained on an individual by the division of criminal justice services pursuant to paragraph (c) of subdivision four of section eight hundred thirty-seven of the executive law.

2. (a) Any aeronautical facility, flight school or institution of higher learning offering air or flight instruction shall require an applicant for such instruction to provide criminal history information, as required in this section, to the division of criminal justice services.

(b) An aeronautical facility, flight school or institution of higher learning shall request and is authorized to receive from the division of criminal justice services criminal history information concerning each new and prospective applicant for flight instruction, and to consider such information in accordance with article twenty-three-A of the correction law, subject to the following restrictions:

(i) an aeronautical facility, flight school or institution of higher learning shall designate one person in its employ who shall be authorized to request, receive and review criminal history information, and only such person and the new or prospective applicant to which the criminal history information relates shall have access to such information; provided, however, that criminal history information may be disclosed to other personnel authorized by the aeronautical facility, flight school or institution of higher learning who are empowered by such aeronautical facility, flight school or institution of higher learning to make decisions concerning new or prospective applicants and provided further that such other personnel shall also be subject to the confidentiality requirements and all other provisions of this section.

An aeronautical facility, flight school or institution of higher learning shall notify the division of criminal justice services of each person authorized to have access to criminal history information pursuant to this section. The division of criminal justice services is authorized to exchange fingerprint data and criminal background information with and receive criminal history record background information from the federal bureau of investigation for use in performing background checks;

(ii) an aeronautical facility, flight school or institution of higher learning requesting criminal history information pursuant to this section shall do so by completing a form developed for such purpose by the division of criminal justice services. Such form shall include a sworn statement of the person designated by the aeronautical facility, flight school or institution of higher learning to request, receive and review criminal history information pursuant to subparagraph (i) of this paragraph certifying that (1) the person whose criminal history information is requested is not presently enrolled but has applied to be a flight student; (2) such criminal history information will be used by the aeronautical facility, flight school or institution of higher learning solely for purposes authorized by this section; and (3) the aeronautical facility, flight school or institution of higher learning and its staff are aware of and will abide by the confidentiality requirements and all other provisions of this section; and

(iii) the person designated by an aeronautical facility, flight school or institution of higher learning for receipt of criminal history information pursuant to subparagraph (i) of this paragraph shall upon receipt immediately mark such criminal history information "confidential", and shall at all times maintain such criminal history information in a secure place. Any person who willfully permits the release of any confidential criminal history information contained in the report to persons not permitted by this section to receive such information shall be guilty of a misdemeanor. Any unauthorized disclosure of fingerprints or criminal history information obtained by an aeronautical facility, flight school or institution of higher learning pursuant to this section shall also entitle the subject of such fingerprints or criminal history information to recover from the aeronautical facility, flight school or institution of higher learning a

civil award of damages resulting from such unauthorized disclosure, together with costs and reasonable attorney's fees.

3. To the extent permitted by law, an aeronautical facility, flight school or institution of higher learning may request from a new or prospective flight student a statement of his or her prior criminal convictions in this state or any other jurisdiction. Prior to requesting criminal history information concerning any new or prospective flight student, each aeronautical facility, flight school or institution of higher learning shall:

(a) inform the new or prospective flight student in writing that the aeronautical facility, flight school or institution of higher learning is required to request his or her criminal history information from the division of criminal justice services and review such information pursuant to this section;

(b) inform the new or prospective flight student that before the aeronautical facility, flight school or institution of higher learning requests such criminal history information, the new or prospective flight student has the right to obtain, review and seek correction of his or her criminal history information pursuant to regulations and procedures established by the division of criminal justice services;

(c) obtain the signed informed consent of the new or prospective flight student on a form supplied by the division of criminal justice services which indicates that such person has:

(i) been informed of the right and procedures necessary to obtain, review and seek correction of his or her criminal history information;

(ii) been informed of the reason for the request for his or her criminal history information;

(iii) consented to such request; and

(d) upon receiving such written consent, obtain the fingerprints of such new or prospective flight student pursuant to regulations established by the division of criminal justice services.

4. A new or prospective flight student may withdraw from the application process, without prejudice, at any time regardless of whether or not he or she has reviewed his or her criminal history information or the aeronautical facility, flight school or institution

of higher learning has received criminal history information. Where a new or prospective flight student withdraws from the application process, any fingerprints and criminal history information concerning such new or prospective flight student received by the aeronautical facility, flight school or institution of higher learning shall, within ninety days, be returned to such new or prospective flight student by the person designated for receipt of criminal history information pursuant to paragraph (b) of subdivision two of this section.

5. In all cases the fingerprints and criminal history information concerning a new or prospective flight student shall be returned after ninety days to such person by the person designated for receipt of criminal history information upon the denial of an application for enrollment or instruction at such aeronautical facility, flight school or institution of higher learning.

6. Within fifteen business days after receiving a request for criminal history information pursuant to this section, the commissioner of the division of criminal justice services shall review such criminal history information and, in accordance with article twenty-three-A of the correction law, determine whether clearance for such instruction shall be granted or denied. Such commissioner shall promptly notify the new or prospective student and the aeronautical facility, flight school or institution of higher education of his or her determination in this regard.

7. If such clearance is granted, the division of criminal justice services shall promptly provide requested criminal history information and return fingerprints to the aeronautical facility, flight school or institution of higher learning.

8. No applicant shall be permitted to receive air or flight instruction from an aeronautical facility, flight school or institution of higher learning unless the division of criminal justice services provides written notification to the chief administrative officer of the aeronautical facility, flight school or institution of higher learning of the commissioner of the division of criminal justice services'

determination that the applicant may receive such instruction.

9. The commissioner of the division of criminal justice services shall promulgate all rules and regulations necessary to implement the provisions of this section, which shall include convenient procedures for new and prospective flight students to promptly verify the accuracy of their criminal history information and, to the extent authorized by law, to have access to relevant documents related thereto.

10. No cause of action for damages against an aeronautical facility, flight school or institution of higher learning shall exist when an aeronautical facility, flight school or institution of higher learning has reasonably and in good faith relied upon the accuracy and completeness of a criminal history report furnished pursuant to this section.

§ 251-c. Disqualification of a flight instruction school applicant. An applicant to an aeronautical facility, flight school or institution of higher learning shall be disqualified from receiving air or flight instruction if, after reviewing criminal history information on the applicant and applying the criteria set forth in article twenty-three-A of the correction law, the commissioner of the division of criminal justice services or the authorized official of the aeronautical facility, flight school or institution of higher education determines that the individual should not be permitted to receive such instruction.

ARTICLE 15

SPECIOUS CASH SALES

Section 252. Definitions.

253. Consumer defenses.

254. Creditor relationship.

255. (Enacted without section heading).

§ 252. Definitions. For purposes of this article:

(a) The term "consumer" means an individual.

(b) The term "creditor" means a person regularly engaged in the business of making loans.

(c) The term "seller" means a person who sells or agrees to sell personal property or furnishes or renders or agrees to furnish or render services.

(d) The term "consumer loan" means a loan of money by a creditor to a consumer for which the consumer's obligation is payable in installments or for which a finance or other charge is or may be imposed.

(e) The term "consumer sale" means a sale by a seller to a consumer of personal property or services for personal, family or household purposes.

(f) The term "person related to the seller" means with respect to an individual seller:

(1) the spouse of the seller;

(2) a brother, brother-in-law, sister or sister-in-law of the seller;

(3) an ancestor or lineal descendant of the seller or his spouse; and

(4) any other relative, by blood or marriage of the seller or his spouse who shares a residence with the seller.

(g) The term "person related to the seller" means with respect to any other seller:

(1) a person directly or indirectly controlling, controlled by or under common control with the seller;

(2) an officer or director of the seller, or a person performing similar functions with respect to the seller; the spouse of any such person; and any other relative by blood or marriage of any such person who shares a residence with such person.

(h) A creditor who is not an individual shall be a "person related to the seller" if an officer of the creditor or a person performing similar functions, whose duties include participation in or supervision over the consumer loan the proceeds of which were primarily used in the consumer sale, is a person related to the seller under (f) and (g) of this section.

§ 253. Consumer defenses. A creditor, who made a consumer loan the proceeds of which were primarily used in a consumer sale, shall be

subject to all of the defenses of a consumer arising from such consumer sale, provided that the creditor knowingly participated in or was directly connected with such consumer sale. The creditor's liability under this article shall not exceed the amount owing to the creditor at the time the defenses of the consumer are asserted against the creditor. Rights of the consumer under this article can only be asserted as a matter of defense to or set-off against a claim by the creditor. The creditor shall be subrogated to the rights of the consumer arising from the consumer sale and shall have recourse against the seller to the extent of any liability incurred by the creditor pursuant to this article.

§ 254. Creditor relationship. Without limiting the scope of section two hundred fifty-three, there shall be a rebuttable presumption that the creditor shall have knowingly participated in or shall have been directly connected with a consumer sale if:

- (a) the creditor is a person related to the seller; or
- (b) the seller prepared forms or documents used to evidence or secure the consumer loan; or
- (c) the creditor supplied forms to the seller which were used by the consumer to apply for, evidence or secure the consumer loan.

§ 255. The provisions of this article shall not apply to consumer sales made pursuant to article nine of the personal property law, credit card transactions, consumer sales of personal property or services which could require or entail the execution of a promissory note pursuant to section four hundred three of the personal property law, or transactions involving the purchase of an automobile.

ARTICLE 16

ICE

Section 260. Cutting and harvesting ice by adjoining proprietors.

261. Protection of rights.

262. Center of river defined.

263. Catskill creek.

264. Mohawk basin, at Green Island.

265. Ice cutting and ice bridges.

§ 260. Cutting and harvesting ice by adjoining proprietors. Whenever the owner or lessee of lands bordering upon the Hudson river shall require the ice formed in said river between the center thereof and said lands for the purpose of filling any icehouse now erected, or which may at the time of the formation of such ice hereafter be erected on any such lands adjoining the same, such owner or lessee of said lands and icehouses shall have the exclusive privilege of cutting and harvesting all the ice so formed in said river in front of and adjacent to said lands and between the same and the center of said river; provided such owner or lessee shall have indicated his intention of exercising such privilege by staking out so much of said ice as shall be required for said purpose, which said staking out shall not be required to be done until the ice has attained a thickness of four inches; and provided, also, such owner or lessee shall surround the cuttings and openings made with fences of bushes or other safeguards to warn all persons of such cuttings and openings. And, whenever any icehouse is located on an island in said river, this article shall apply to all ice formed opposite the shores of such island in both channels into which said river shall be divided by such island, subject to the provision hereinafter contained; and it shall not be lawful for any person other than the owner or lessee of such lands and icehouses, whether located on the banks of the river or on such island, to take possession of or cut the ice so staked out in said river or channel between the center thereof and his lands, and the same is prohibited after such owner or lessee shall have complied with the foregoing requirements.

§ 261. Protection of rights. Whenever such ice shall have been so staked out, all ice lying between the center of the said river, as hereinafter defined, and such lands, or so much thereof as shall be required for the purpose of filling the icehouse erected thereon, as aforesaid, shall be and become the personal property of the owner or

lessee of such lands and icehouses, and any person trespassing upon or taking the same for commercial purposes or otherwise, shall be liable to such owner or lessee for the value of the ice so taken, and for any damage, in like manner as for an injury done to any other property, and an action may be maintained for a permanent injunction, or for the value of the ice so taken, or for any damage; and a temporary injunction may be granted, restraining any defendant from trespassing upon or taking the said ice for commercial purposes or otherwise, pending the determination of the action. Nothing contained in this article, however, shall be construed as in any manner affecting, impairing or interfering with the right of any owner, lessee or occupant of lands bordering upon or adjacent to the Hudson river or Catskill creek to the unrestricted use of the premises owned, leased or occupied by him for any lawful purpose.

§ 262. Center of river defined. The center of such river is hereby defined to be a line halfway between low-water mark on the east bank and low-water mark on the west bank of such river. Where an island intervenes, having an icehouse or icehouses thereon, the center of the river, for the purpose of this article, is hereby defined to be a line in each channel into which said river is thereby divided, halfway between low-water mark along the shore of such island bordering upon such channel and the banks of such river opposite such island. Where there are, or shall be, dykes erected along both banks of said river, or along either shore of such island and also along the bank of said river, opposite thereto, the center of said river is hereby defined to be a line halfway between said dykes. Where there is, or shall be erected, a dyke along one shore of such island, or along one bank of said river only, the center of said river is hereby defined to be a line halfway between said dyke and low-water mark along the opposite bank of said river, or along the opposite shore of such island, where an island intervenes. Nothing in this article shall be construed to deprive the public from the right to travel or drive over such ice for any or all legitimate purposes whatever.

§ 263. Catskill creek. This article shall apply to lands bordering upon navigable tide water of the Catskill creek.

§ 264. Mohawk basin, at Green Island. Whenever the owner or lessee of lands contiguous to lands of the state bordering on the Mohawk basin at Green Island, and lying between the lands of such owner or lessee and such basin, shall require the ice formed in such river between the center thereof and such lands of the state for the purpose of filling any icehouse now erected, or which may at the time of the formation of such ice hereafter be erected, on such lands contiguous to such state lands, such owner or lessee of such lands and icehouses shall have the exclusive privilege, and without obtaining any permit under any provision of the canal law, of cutting and harvesting all the ice so formed in such basin in said river in front of and adjacent to such lands of the state between the same and the center of the basin, and opposite such privately owned or leased lands; provided that the nearest boundary of said land is not more than fifty (50) feet removed from the shore line of the basin, and provided such owner or lessee shall have indicated his intention of exercising such privilege by staking out so much of said ice as shall be required for said purpose, which staking out shall not be required before the ice has a thickness of four inches, and provided, also, such owner or lessee shall surround any cuttings and openings with fences of bushes or other safeguards as a warning to all persons. It shall not be lawful for any person other than the owner or lessee of such lands and icehouses to take possession of or cut the ice so staked out within the area covered by the privilege above granted, and the same is prohibited after such owner or lessee shall have complied with the foregoing requirements. The provisions of section two hundred and sixty-one, relative to ice in the Hudson river, shall apply to ice within the area staked out in the Mohawk basin by an owner or lessee in compliance with the provisions of this section. This section shall not apply to that portion of the land where the nearest boundary recedes more than fifty (50) feet from the shore line of the basin.

§ 265. Ice cutting and ice bridges. A person or corporation cutting

ice in or upon any waters within the boundaries of this state for the purpose of removing the ice for sale or use, must surround the cuttings and openings made with fences or guards of boards or other material sufficient to form an obstruction to the free passage of persons through such fences or guards into the place where such ice is being cut. Such fences or guards must be erected at or before the time of commencing the cuttings or openings, and must be maintained until ice has again formed therein to the thickness of at least three inches, or until the ice about such openings has melted or broken up. Whoever omits to comply with this section is guilty of a misdemeanor.

ARTICLE 17

MILK CANS

Section 270. Unlawful detention of milk cans.

271. Penalty and action to recover.

272. Search warrant.

273. Railroad or steamboat company may act as agent of owner.

274. Assistance of police officer or constable.

§ 270. Unlawful detention of milk cans. No person shall, without the consent of the owner or shipper, or his agent, use, sell, dispose of, buy or traffic in any can, irrespective of its condition, or the use to which it may have been applied, belonging to any dealer in or shipper of milk or cream in this state or which may be shipped to any town, village or city in the state, which can has the name or initials of such owner, dealer or shipper stamped, marked or fastened thereupon, or wilfully mar, erase or change by re-marking or otherwise such name or initials.

If any person, without the consent of such owner, dealer or shipper, or his agent, uses, sells, disposes of, buys, traffics in or has in his possession or under his control any such can, it shall be presumptive evidence that such use, sale, disposal, purchase, traffic or possession is unlawful.

Any such owner, dealer or shipper, or his agent, may take possession

of any can used in violation of this article wherever found, and if filled or partly filled with milk or cream, and the person in whose possession it is found does not, when requested, immediately empty the same, such owner, dealer or shipper, or his agent, may empty the same into the street or elsewhere, and shall not be liable for damages for any act done pursuant to the provisions of this article.

§ 271. Penalty and action to recover. Any person violating any provision of this article shall forfeit to such owner or dealer or shipper or his agent the sum of fifty dollars for every such violation, and an action may be brought therefor in the name of any such agent without joining the real party in interest that he represents, and in any such action brought for any such violation different persons may be joined as plaintiffs, whether jointly or severally interested therein, and different persons may be joined as defendants therein who have severally violated any such provisions, and a recovery may be had in favor of one or more of such plaintiffs against one or more of such defendants.

Such action may be brought in a court of record having jurisdiction thereof, and the place of trial thereof shall in such case be laid in the county where the defendant resides at the time of the commencement thereof, or it may be brought in a justice court or other court not of record having similar jurisdiction, in the town, city or county for which such court is constituted and in which the defendant resides at the time of the commencement of the action. Any such action must be begun within one year after the cause of action accrued.

The civil court of the city of New York shall have jurisdiction over actions brought under the provisions of this article against residents of said city and such court and the judges thereof shall in such actions have and exercise all the powers now conferred by said article on courts not of record, and the sheriff of the city of New York and the marshals of said city shall have to like extent the powers of constables provided in said article.

§ 272. Search warrant. If at the time of the issue of the summons in a court not of record, the plaintiff or his agent make affidavit that he has reason to believe and does believe that any defendant has any such can or cans secreted upon his premises, the justice or other magistrate or court issuing the summons must, without requiring an undertaking, grant an order for the arrest of the defendant, which order shall also contain a direction to the officer to whom the same is issued, to immediately search the place or premises mentioned in said affidavit, and if any such can or cans are there found, to bring the same together with the defendant or other persons in whose possession said can or cans are found, before such justice, magistrate or court. The proceedings may be amended at any time by adding parties or otherwise as justice may require; and the judgment may provide for the disposition of the can or cans so found.

If upon the issue of any such process, the constable, or other officer, shall be unable to find the person or persons therein named, but shall find any can or cans, as therein set forth, he shall bring such can or cans before such justice or magistrate, who shall thereupon proceed to determine the right of such complainant thereto, and if upon such hearing had thereon he shall be satisfied that such can or cans rightfully belong to such complainant, or that he is entitled to the possession thereof, he shall forthwith deliver the same into his possession or the possession of his agent.

§ 273. Railroad or steamboat company may act as agent of owner. The several superintendents of the railroad companies, and the branches and connections thereof, and steamboat lines operating their roads or lines, or any portion thereof, in this state shall have power to collect, gather and take into possession from any person or whenever found thereupon, any cans belonging to any such owner, dealer or shipper, and return the same to such owner, dealer or shipper and may appoint an agent for that purpose, and such superintendent and such agent appointed by him shall have the same power and authority under this article as an agent of such owner, dealer or shipper.

The certificate of such superintendent appointing such agent duly acknowledged shall be presumptive evidence of the appointment and authority of such agent.

§ 274. Assistance of police officer or constable. Any person authorized by this article to seize and take into his or her possession any such cans may, in case of resistance, call to his or her aid any police officer or constable of the town, village or city who shall when so called on assist him or her in seizing or taking possession of such cans.

ARTICLE 17-A

FILING OF NAMES, MARKS AND DEVICES USED ON CERTAIN VESSELS, RECEPTACLES AND UTENSILS

- Section 275. Definitions.
276. Filing of statement.
277. Certificate of filing.
278. Filing under prior law.
279. Assignment.
- 279-a. Records.
- 279-b. Cancellation.
- 279-c. Deposits on vessels, receptacles or utensils.
- 279-d. Prohibited acts.
- 279-e. Penalties.
- 279-f. Presumption.
- 279-g. Search warrant to discover vessels, receptacles or utensils.
- 279-h. Construction.
- 279-i. Saving clause.

§ 275. Definitions. As used in this article:

(a) "Name, mark or device" means any word, name, symbol, picture, design or any combination thereof, produced upon, and used by a person

to indicate ownership of vessels, receptacles or utensils.

(b) "Person" means any individual, firm, partnership, corporation, association, union or other organization.

(c) "Produced upon" means branded, stamped, stenciled, engraved, etched, blown, embossed, impressed, or otherwise permanently placed upon any vessel, receptacle or utensil.

(d) "Vessels, receptacles and utensils" include all packages and containers and accessories used in selling or distributing any natural or processed product, compound, mixture, or substance, or any combination thereof, and designed and intended for re-use by the person filing hereunder in the normal course of trade, and includes, but is not limited to, bottles, jars, milk or cream dispensers, siphons or siphon heads, kegs, pails, cans and closures therefor, boxes, cases, crates, freezers, tubs, refrigeration boxes, blocks, moulds, trays, pans and tanks.

(e) For purposes of this article, a name, mark or device is "used in this state" when it is produced upon the vessels, receptacles or utensils and the vessels, receptacles or utensils are placed in the channels of trade.

(f) The use of the singular and plural shall be inclusive each of the other to carry out the intent and purpose of this article.

§ 276. Filing of statement. A person who uses in this state a name, mark or device to indicate ownership of vessels, receptacles or utensils may file in the office of the secretary of state, on a form to be furnished or approved by him, a statement subscribed by such person and affirmed by him as true, under the penalties of perjury setting forth, but not limited to, the following information:

(a) The name and business address of the person filing the statement; and, if a corporation, the state of incorporation.

(b) The nature of the business of the person filing.

(c) The type of vessels, receptacles and utensils in connection with which the name, mark or device is used.

The statement shall include or be accompanied by a copy, specimen, facsimile or counterpart of such name, mark or device in quadruplicate,

together with a filing fee of fifty dollars.

§ 277. Certificate of filing. Upon compliance with the requirements of this article, the secretary of state shall cause a certificate to be issued and delivered to the person filing the statement. The certificate shall be issued over the signature of the secretary of state and the seal of the department of state, and it shall show the name and business address of the person claiming ownership of the vessels, receptacles or utensils upon which the name, mark or device is produced; the nature of the business of the person filing; the type of vessels, receptacles or utensils on which the name, mark or device is produced and used; a copy, specimen, facsimile or counterpart of such name, mark or device as filed in the secretary of state's office, or a reproduction thereof; and the filing date.

Any certificate issued under the provisions hereof and duly certified by the secretary of state, or a certified copy of the statement filed, shall be admissible in evidence in any action or judicial proceedings in any court of this state as competent and sufficient proof of the filing pursuant to this article, and shall be prima facie evidence of the ownership by the person filing hereunder of all vessels, receptacles and utensils upon which such name, mark or device is produced.

§ 278. Filing under prior law. At the end of twelve months following the effective date of this article, the secretary of state shall cancel all certificates issued under sections three hundred sixty and three hundred sixty-one of article twenty-four of the general business law, unless a new statement shall have been filed under this article; provided, however, that such certificates issued under such prior law shall remain in full force and effect and shall be entitled to all of the benefits of this article during said twelve months' period or until the said statement has been filed.

§ 279. Assignment. The certificate of the filing of any name, mark or

device under this article and the benefits obtained thereunder shall be assignable with the sale of the vessels, receptacles or utensils on which the same are produced and used. Assignments shall be made upon forms supplied by the secretary of state, which shall be duly executed and may be recorded upon the payment of a fee of fifty dollars payable to the secretary of state who, after recording the assignment, may, upon request of the assignee, issue in his name a new certificate.

§ 279-a. Records. The secretary of state shall keep for public examination a record of all names, marks or devices filed under this article.

§ 279-b. Cancellation. The secretary of state shall cancel from the register:

(1) Any certificate concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the person filing or from the assignee;

(2) Any certificate in respect of which a court of competent jurisdiction shall order cancellation on any legal or equitable ground.

§ 279-c. Deposits on vessels, receptacles or utensils. The requiring, taking, paying or accepting of any deposit for any purpose upon any vessel, receptacle or utensil shall not be deemed to constitute a sale of such property, either optional or otherwise, for the purposes of this article.

§ 279-d. Prohibited acts. It is hereby declared unlawful for any person to fill or use, to give, buy, take, destroy, sell or otherwise dispose of, or traffic in, vessels, receptacles or utensils, upon which a name, mark or device which has been filed hereunder is produced, or refuse to return such vessel, receptacle or utensil on demand of the owner, or to deface, erase, obliterate, cover up or otherwise remove or conceal any such name, mark or device, unless in each case written

consent of the owner is obtained or unless the vessels, receptacles or utensils shall have been purchased from the said owner.

§ 279-e. Penalties. Any person offending against the provisions hereof shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment of not less than ten days nor more than one year, or by a fine of not less than one dollar nor more than five dollars for each and every vessel, receptacle or utensil involved, or both; and for each subsequent offense by imprisonment of not less than twenty days or more than one year, or by a fine of not less than five dollars nor more than ten dollars for each and every vessel, receptacle or utensil involved, or both, in the discretion of the magistrate or court before whom the offense shall be tried.

§ 279-f. Presumption. The possession by any junk dealer or dealer in second-hand materials or articles, without the written consent of the person who filed hereunder or his assignee, of any vessels, receptacles or utensils upon which a name, mark or device has been produced shall be presumptive evidence of a violation of this article.

§ 279-g. Search warrant to discover vessels, receptacles or utensils. Whenever any person who has filed under this article, or his authorized agent, shall make oath before any magistrate or court of competent jurisdiction that he has reason to believe, and does believe, that a violation of this article is occurring with respect to one or some of his vessels, receptacles or utensils having produced thereon a name, mark or device filed under this article, the said magistrate or court must thereupon issue a search warrant to discover and obtain the same. The said magistrate or court shall cause to be brought before him the person in whose possession the said vessels, receptacles or utensils are found and shall inquire into the circumstances of possession. If the said magistrate or court finds that such person is guilty of any of the offenses mentioned in this article, the punishment herein prescribed shall be imposed and possession of the said vessels, receptacles or

utensils obtained upon the warrant shall be awarded to the owner thereof.

§ 279-h. Construction. Nothing in this article shall be construed as preventing the enforcement of rights and remedies under any other statute concerning vessels, receptacles or utensils upon which a name, mark or device indicating ownership thereof has been produced, whether or not such name, mark or device has been filed hereunder.

§ 279-i. Saving clause. No suit, proceeding or appeal pending on the effective date of this article shall abate or be affected in any way by reason of the enactment of this article.

ARTICLE 18

FREIGHT AND BAGGAGE

Section 280. Duty of carrier as to unclaimed articles.

281. Description to be made and published.

282. Packages to be opened and contents sold; proceeds of sale.

283. Lien for expenses of proceedings.

284. Penalty for violation of preceding sections.

285. Sale of unclaimed articles by express companies; notice thereof; disposition of proceeds of sale.

286. Surplus to be paid to owner.

287. After five years if unclaimed to be paid to county treasurer.

§ 280. Duty of carrier as to unclaimed articles. The proprietors of the several lines of stages and the proprietors of the several canal boat lines, and the proprietors of the several steamboats, who shall have any unclaimed trunks, boxes or baggage within their custody, shall immediately enter the time the same was left, with a proper description thereof, in a book to be by them provided and kept for that purpose. In case the name and residence of the owner shall be ascertained it shall

be the duty of such person who shall have any such property as above specified, to immediately notify the owner thereof by mail.

§ 281. Description to be made and published. In case there shall not be any information obtained as to the owner, it shall be the duty of the person having the possession thereof, to make out a correct written description of all such property as shall have been unclaimed for thirty days, stating the time the same came into his possession, and publish said description in a newspaper designated by him in his county once a week for three weeks successively.

§ 282. Packages to be opened and contents sold; proceeds of sale. In case the said property shall remain unclaimed for sixty days after the said publication, it shall be the duty of the person or company having possession thereof, to apply to a magistrate of the town or city in which said property is retained, in whose presence and under whose direction said property shall be opened and examined, and an inventory thereof taken by said magistrate; and if the name and residence of the owner is ascertained by such examination, it shall be the duty of the magistrate forthwith to direct a notice thereof to such owner, by mail; and if said property shall remain unclaimed for three months after such examination, it shall be the further duty of the person or company having possession thereof to apply to a magistrate as aforesaid; and if said magistrate shall deem such property of sufficient value, he shall cause the same to be sold at public auction, giving six days' previous notice of the time and place of such sale; and from the proceeds of such sale he shall pay the charges and expenses legally incurred in respect to said property, or a ratable proportion thereof to each claimant, if insufficient for the payment of the whole amount; and the balance of the proceeds of such sale, if any, the said magistrate shall immediately pay to the public welfare officials of said town or city, for the use of the poor thereof; and the said public welfare officials shall make an entry of such amount, and the time of receiving the same, upon their official records, and it shall be subject, at any time within seven years thereafter, to be reclaimed by, and refunded to, the owner of such

property, his heirs or assigns, on satisfactory proof of such ownership.

§ 283. Lien for expenses of proceedings. The person making the entry of unclaimed property as above specified, shall be entitled to twelve and a half cents for each trunk, box, bale, package or bundle so entered, and shall have a lien on the property so entered, until payment shall be made; and in case any additional expense shall be incurred for printing, the lien shall continue until payment shall be made for such additional expense.

§ 284. Penalty for violation of preceding sections. In case any person shall neglect or refuse to comply with the provisions of the preceding sections of this article, he shall forfeit the sum of five dollars for each and every trunk, box or bundle of baggage so neglected as above specified, to the benefit of any person who shall sue for the same, in his own name, in an action of debt in any court having cognizance thereof.

§ 285. Sale of unclaimed articles by express companies; notice thereof; disposition of proceeds of sale. Every express company, or person engaged in the express business, who shall have had any unclaimed article, goods or things, not perishable, in its or his possession, for a period of one year at least, may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation and storage of such article, goods or thing, and the expenses of advertising and sale thereof; but no such sale shall be made, until the expiration of four weeks from the first publication of notice of such sale, in a newspaper published at or nearest the place at which such article, goods or thing was directed to be left, and also at the place where such sale is to take place; and said notice shall contain a description of such article, goods or thing, the place at which the same was to be left, as near as may be, together with the name of the person to whom directed, if known, and the expenses incurred for advertising shall be a lien upon such article, goods or thing, in a

ratable proportion, according to the value of each article, package or parcel, if more than one.

In case such unclaimed article, goods or thing shall in its nature be perishable, the same may be sold as soon as it can be, on giving the notice required in this section, after its receipt at the city, town or village to which it was directed.

§ 286. Surplus to be paid to owner. Such express company, or person engaged in the express business, shall make an entry of the balance of the proceeds of the sale, if any, of each article, goods or thing directed to the same person, as near as can be ascertained, and at any time within five years thereafter, shall refund any surplus so retained to the owner of such article, goods or thing, his heirs or assigns, on satisfactory proof of such ownership.

§ 287. After five years if unclaimed to be paid to county treasurer. In case such balance shall not be claimed by the rightful owner within five years after the sale as above specified, then it shall be paid to the county treasurer, for the use of the county poor of said county.

ARTICLE 19

OIL AND DISTILLED SPIRITS

- Section 300. Standard of domestic distilled spirits.
302. Storage of petroleum.
303. Standard test and storage of refined petroleum and kerosene oil.
304. Standard and storage of illuminating oils.
- 304-a. Unauthorized manufacture, sale or use of illuminating oils.
305. Inspectors of storage.
306. Fire and light within one hundred and fifty feet of warehouses in the counties of New York, Kings, Queens and Nassau prohibited.

306-a. Violating law to prevent conflagrations.

307. Penalties and the enforcement thereof.

308. Retail sale and delivery of certain flammable liquids and kerosene.

§ 300. Standard of domestic distilled spirits. Domestic distilled spirits, at a temperature of sixty degrees Fahrenheit, which have a specific gravity of nine thousand three hundred and thirty-five as compared with the gravity of pure distilled water at the same temperature estimated at ten thousand, shall be deemed first proof.

The strength of any such spirits below or above first proof shall be calculated decimally, or by the percentage in reference to such standard, and shall be denoted as so many per centum below or above first proof as the actual difference in strength shall be.

§ 302. Storage of petroleum. Crude petroleum, earth or rock oil, or any of its products, shall not be kept on sale or stored in any place or building within the corporate limits of any city in this state, except in the city of New York, unless in detached and properly ventilated warehouses, the exterior walls of which are stone, brick or iron, specially adapted to that purpose, with raised sills at least two feet high, or the ground floor of which is at least two feet below the level of the street or adjoining land, so as to effectually prevent the overflow of such substances beyond the premises where kept or stored.

No part of such warehouses shall be occupied as a dwelling, and if less than fifty feet from any adjacent building, such warehouse must be separated therefrom by a brick or stone wall at least ten feet in height and sixteen inches thick.

None of such articles shall be allowed to remain on the sidewalk beyond the front line of any building or in the street, a longer time than is actually necessary for the storage, shipment or delivery of the same, nor after sunset.

§ 303. Standard test and storage of refined petroleum and kerosene oil. Refined petroleum or kerosene oil shall not be kept on sale or stored in any such city, the fire test of which shall be less than one hundred and ten degrees Fahrenheit, determined by authorized inspectors using G. Tagliabue's or other improved instruments; and the barrels or packages containing the same shall be legibly stamped or marked with the inspector's official stamp or mark. If stored above the cellar or basement of any building and in barrels of not over forty-five gallons each, or in metallic vessels or tanks for the convenience of retailing, the quantity so stored shall not exceed the contents of ten barrels, unless packed in hermetically sealed metallic packages, when such quantity shall not exceed one hundred barrels. If stored in cellars or basements surrounded by walls of brick or stone, and at least two feet below the level of the sidewalk, street or adjacent land, such quantity shall not exceed the contents of one hundred and fifty barrels, unless stored in warehouses specially adapted for the purpose pursuant to this article. No more than five barrels thereof shall be kept or stored in any building occupied wholly or in part as a dwelling.

Not more than ten barrels of benzine or naphtha shall be kept or stored in any building, and not more than three barrels thereof in any building any part of which is occupied as a dwelling.

This and the preceding section shall not prevent the storage of crude or refined petroleum in wrought-iron tanks detached from any building and especially adapted for that purpose, or in other tanks so constructed that the top is at least two feet below the street or the adjoining land and covered with at least one foot of earth, and appurtenant to or connected with a refinery, with the approval of the inspectors of buildings, fire marshal or other proper authorities.

§ 304. Standard and storage of illuminating oils. No person shall manufacture or have in his possession or sell or give away for illuminating or heating purposes in lamps or stoves within this state,

any oil or burning fluid wholly or partly composed of naphtha, coal oil, petroleum or products thereof, or of other substances or materials emitting an inflammable vapor which will flash at a temperature below one hundred degrees Fahrenheit according to the tag closed tester prescribed and the method adopted by the American Society for Testing Materials for flash point of volatile flammable liquids.

No such oil or fluid which will ignite at a temperature below two hundred and ninety-five degrees Fahrenheit as determined by the standard method of test for flash and fire points by means of open cup of the American Society for Testing Materials shall be burned or be carried as freight in any passenger or baggage car or passenger boat moved by steam or electric power in this state, or in any stage or street car, however propelled, except that coal oil, petroleum and its products may be carried, when securely packed in barrels or metallic packages, in passenger boats propelled by steam when there are no other public means of transportation.

Naphtha and other illuminating products of petroleum which will not stand the flash test required by this section, may be used for illuminating or heating purposes only in the following cases:

1. In street lamps and open air receptacles apart from any building, factory or inhabited house in which the vapor is burned.
2. In dwellings, factories or other places of business when vaporized in secure tanks or metallic generators made for that purpose, in which the vapor so generated is used for lighting or heating.
3. For use in the manufacture of illuminating gas in gas manufactories situated apart from dwellings and other buildings.

Any person violating any provision of this section shall forfeit to the city or village, or if not in a city or village to the town in which the violation occurs, the sum of one hundred dollars for every such violation, and for every day or part of a day that such violation occurs.

This section shall not apply to the city of New York, and shall not supersede but shall be in addition to the ordinances or regulations of any city or village made pursuant to law for the inspection or control of combustible materials therein.

§ 304-a. Unauthorized manufacture, sale or use of illuminating oils. A person who violates any provision of this article relating to the standard, manufacture, sale, or use or storage of any oil or burning fluid, wholly or partly composed of naphtha, coal oil, petroleum or products manufactured therefrom, or of other substance or materials which will flash at a temperature below one hundred degrees Fahrenheit, or relating to the burning or carriage of any such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit, is guilty of a misdemeanor.

§ 305. Inspectors of storage. The inspectors of buildings or other proper authorities in every such city shall make an examination of all the premises where any of the articles or substances specified in the preceding sections of this article are kept or stored, and report any violation thereof to the authorities of the city whose duty it is to enforce the provisions thereof.

§ 306. Fire and light within one hundred and fifty feet of warehouses in the counties of New York, Kings, Queens and Nassau prohibited. No person shall bring, have, keep or use or suffer or permit to be brought, kept, had or used on board of any ship, vessel, canal boat, barge, lighter, boat or other craft lying at or within the distance of one hundred and fifty feet of any warehouse, yard, shed, dock, pier, bulkhead, wharf or other place within the counties of New York, Kings, Queens or Nassau at, in or upon which petroleum oil or any of its products is stored or is kept for export or in quantities exceeding ten thousand gallons, or at, in or upon any such warehouse, shed, yard, dock, pier, bulkhead or other place, any lighted match or lighted cigar,

cigarette or pipe, or any fire or light of any kind, except in strict conformity to the written permission of the owner, lessee or superintendent of such warehouse, yard, shed, dock, pier, bulkhead, wharf or other place, specifying the fire or light to be kept, had or used, the particular purpose for and the place or spot at which the same may be so kept, had or used and the particular manner of keeping, having and using the same.

This section shall not apply to steam tugs while transacting their ordinary business nor to steam fire engines engaged in extinguishing fires.

§ 306-a. Violating law to prevent conflagrations. A person who violates any of the provisions of section three hundred and six of this chapter is guilty of a misdemeanor.

§ 307. Penalties and the enforcement thereof. Every person violating the provisions of this article, relating to the test for refined petroleum and oil, shall forfeit to the people of the state the sum of five hundred dollars for each violation.

Every person violating any provision of this article, relating to the storage or keeping for sale of any article, substance or product herein specified, shall forfeit to the people of the state, the sum of two hundred and fifty dollars for each day and part of a day that such violation continues.

Every person violating any provisions of this article, relating to the incumbering of any sidewalk or street, shall forfeit the sum of twenty-five dollars for each day and part of a day that such violation continues, to be paid, if in a city or village, to such city or village, and elsewhere, to the town in which such violation occurs.

The mayor and common council of every city or other proper authorities thereof, shall, by ordinance or resolution, provide for the proper

enforcement of the provisions of the preceding sections of this article, and in every such city, the moneys collected by the city as penalties for the violation of any such ordinance or resolution or of any of such provisions, shall be applied to the support of the poor therein, except in Brooklyn, where they shall be paid into the widows and orphans' fund of the fire department, and except in Buffalo, where they shall be paid to the treasurer of the firemen's benevolent association of the city for its use and benefit.

§ 308. Retail sale and delivery of certain flammable liquids and kerosene. 1. Definition. As used in this section:

"Flammable liquid" shall mean any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a Tagliabue or equivalent closed cup test device.

2. a. No person engaged in the retail sale of flammable liquids shall deliver any such liquids from bulk storage into portable containers of five gallons capacity or less unless the container is of sound metal or other unbreakable material construction, has a tight closure with screwed or spring cover and is fitted with a spout or so designed that the contents can be poured without spilling.

b. No person shall carry a lighted cigar, cigarette or pipe, nor use a match or other open flame while he is dispensing flammable liquids at retail sale from bulk storage.

3. No person engaged in the retail sale of kerosene shall deliver any such liquid from bulk storage into portable containers of five gallons capacity or less unless the container is of sound metal or other unbreakable material construction, has a tight closure with screwed or spring cover, is fitted with a spout or so designed that the contents can be poured without spilling, and is clearly and conspicuously labeled as containing kerosene.

4. The provisions of this section shall not apply to the sale, purchase or delivery of bona fide commercial packs of household products

sold in the original sealed container as put up for package, sale or distribution by the manufacturer or packager, including but not limited to packs of medicinals, beverages or food.

5. The provisions of this section shall not apply in cities having a population of one million or more.

6. A violation of the provisions of this section shall be subject to a civil penalty of not more than one hundred dollars for each violation.

ARTICLE 20

GAS

Section 320. Standard of purity.

321. Standard of illuminating power.

322. Standard of pressure.

322-b. Explosives and combustibles.

322-c. Gas space heating appliances to be equipped with back draft diverters and automatic shutoff devices.

323. Penalty.

§ 320. Standard of purity. The gas furnished or supplied by any corporation, association, partnership or person in any city of the second class shall be free from sulphuretted hydrogen, to be determined by exposing for thirty seconds a slip of white paper saturated with acetate of lead to a jet of gas flowing about five feet per hour, and each one hundred cubic feet shall not contain more than ten grains of ammonia nor twenty grains of sulphur.

§ 321. Standard of illuminating power. The maximum illuminating power required and minimum illuminating power permitted of gas so furnished or supplied in any such city shall be as follows: If a coal gas, sixteen candles; if a mixed coal and water gas, eighteen candles; and if a carburetted water gas, twenty candles. A candle shall mean a sperm candle, six to a pound, burning at the rate of one hundred and twenty

grains of spermaceti per hour. The test for illuminating power shall be made with gas obtained from a service pipe or main located at a distance of not less than one mile nor more than one and one-half miles from any distributing holder, using, for coal gas and mixed coal and water gas containing more than fifty per centum of coal gas an F Argand burner, and for mixed coal and water gas containing fifty per centum and less of coal gas and for carburetted water gas a number seven slit union Bray burner, on a basis of consumption of five cubic feet of gas per hour.

§ 322. Standard of pressure. The minimum pressure of gas so furnished or supplied which shall be permitted in any service main in any such city shall be sufficient to balance a column of water one and one-half inches in height. The maximum pressure therein allowed shall be an amount sufficient to balance a column of water three and three-fourths inches in height, plus an allowance at the rate of one inch for variation of each one hundred feet of increase in altitude in the distributing system between the holder and the point of consumption, except that no maximum pressure shall be prescribed in service mains the pressure of gas from which is regulated by service governors, supplied and maintained without charge to consumers.

§ 322-b. Explosives and combustibles. 1. A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a misdemeanor.

2. A person who manufactures gunpowder, dynamite, nitro-glycerine, liquid or compressed air or gases, except acetylene gas and other gases used for illuminating purposes, naphtha, gasoline, benzine or any explosive articles or compounds, or manufactures ammunition, fireworks or other articles of which such substances are component parts in a cellar, room, or apartment of a tenement or dwelling-house or any building occupied in whole or in part by persons or families for living purposes, is guilty of a misdemeanor.

3. And a person who, by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substances, injures or occasions the injury of the person or property of another, is guilty of a misdemeanor.

4. Any person or persons who shall knowingly present, attempt to present, or cause to be presented or offered for shipment to any railroad, steamboat, steamship, express or other company engaged as common carrier of passengers or freight, dynamite, nitro-glycerine, powder or other explosives dangerous to life or limb, without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented, shall be guilty of a misdemeanor.

5. Any person who, while engaged in the unauthorized distillation of any liquid containing methyl or ethyl alcohol, causes injuries or occasions the injury of the person or property of another by reason of such distillation is guilty of a misdemeanor.

Nothing in this section contained shall be construed to prohibit or forbid the manufacture and sale of sodawater, seltzer-water, ginger ale, carbonic or mineral water or the charging with liquid carbonic acid gas of such waters or ordinary waters, or of beer, wines, ales or other malt and vinous beverages in such cellar, room or apartment of a tenement or dwelling-house, or any building occupied in whole or in part by persons or families for living purposes.

§ 322-c. Gas space heating appliances to be equipped with back draft diverters and automatic shutoff devices. On and after July first, nineteen hundred sixty-five it shall be unlawful to manufacture or assemble, or to sell or offer for sale, or to install, use or maintain in any building used or occupied as a residence, any space heating appliance using natural and/or manufactured gas fuel unless such appliance is equipped with (a) a back draft diverter with vents of sufficient capacity to permit the discharge of combustion gases away

from the burning gas, except where such appliance (i) is provided with a sealed combustion chamber directly vented to the outside, or (ii) is listed by an accredited third party agency as an unvented appliance in compliance with American National Standard Z21.11.2 and meets or exceeds standards established by rules and regulations promulgated, and which may be periodically amended, by the department of health and approved by the state fire prevention and building code council, and (b) an automatic shutoff device to prevent the flow of gas if the flame or pilot light, thereof is extinguished; provided, however, that nothing contained herein shall be construed as repealing or in any manner limiting, restricting or diminishing any power conferred by any provision of law upon any city having a population of one million or more, or any body, agency or officer thereof, to enact or adopt local laws, ordinances, other local enactments or rules or regulations relating in any manner to gas space heating appliances, so long as such local laws, ordinances, enactments, rules or regulations in so far as the same relate to the subject matter of this section, are not less restrictive than the provisions of this section. A violation of the provisions of this section shall constitute a misdemeanor.

§ 323. Penalty. A violation of any of the provisions of this article shall constitute a misdemeanor.

ARTICLE 20-A

PETROLEUM WELL CASINGS AND PIPES

Section 324. Definitions.

325. Prohibiting the use of petroleum well casings and pipes for transporting potable water.

326. Private right of action.

327. Violations.

§ 324. Definitions. The following terms, whenever used or referred to in this article, shall have the following meanings:

1. "Petroleum" shall mean oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, crude oil, petroleum mixed with one or more other substances, gasoline and kerosene.

2. "Petroleum well casings and pipes" shall mean those well casings and pipes which were at any time used to convey or transport therein petroleum.

3. "Consumer" shall mean a person who purchases well casings and pipes for personal, family or household purposes.

§ 325. Prohibiting the use of petroleum well casings and pipes for transporting potable water. No person shall construct a water well which is to be used to convey or transport a potable water supply using petroleum well casings and pipes.

§ 326. Private right of action. A consumer injured by a violation of this section may bring an action to recover damages. Judgment may be entered for three times the actual damages suffered by a consumer or five hundred dollars, whichever is greater. A court may also award attorneys' fees to a prevailing plaintiff consumer.

§ 327. Violations. 1. Any person who shall violate any of the provisions of this article shall be subject to a civil penalty not to exceed one thousand dollars.

2. Upon any violation of the provisions of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated this section, an injunction may

be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eight thousand three hundred three of the civil practice law and rules, and direct restitution.

In connection with an application made under this section, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 21 PUBLICATIONS

- Section 330. Publication of owner's name.
331. Penalty for failing to publish.
332. Penalty for false statement.
333. Contracts with Sunday papers.
334. Misrepresentation of circulation of newspapers or periodicals.
335. Inserting unauthorized advertisement in newspapers and magazines.
- 335-a. Magazines sold by subscription.
336. Telephone directory to contain certain notice.
- 336-a. Telephone corporation; coin operated telephones
implementation of system to call an operator without
use of coins; rules and regulations of public service
commission.
- 336-b. Public pay telephone volume controls.
- 336-b*2. Interactive information network service; disclosure.
337. Advertising to procure divorces.

§ 330. Publication of owner's name. 1. Every newspaper, magazine or other periodically printed publication published in this state, shall publish in every copy of every issue, upon the editorial page or in one

of the first four pages of the publication, the full name and address of the owner, owners, proprietor or proprietors of such publication; and if said publication shall be owned or published by a corporation, then the name of the corporation and the address of its principal place of business shall be published, together with the full names and addresses of the president, secretary and treasurer thereof; and if the said publication shall be owned or published by a partnership, limited partnership, or an unincorporated joint stock association, then the full names and addresses of the partners, or officers and managers of said partnership, limited partnership or unincorporated joint-stock association shall be published in like manner. The representative capacities of those named shall be indicated in like manner.

2. Every publication printed or reprinted after September first, nineteen hundred sixty-three which is so composed or illustrated as a whole as to be devoted to the description or portrayal of bondage, sadism, masochism or other sexual perversion or to the exploitation of sex or nudity and published in this state shall conspicuously have imprinted on the cover, title, or copyright page or at the end of the publication the true name and address of the publisher or printer.

§ 331. Penalty for failing to publish. 1. Any person, partnership, limited partnership, unincorporated joint-stock association or corporation publishing in the state of New York, a newspaper, magazine, book, pamphlet or any other periodical or printed publication which omits, fails or neglects to carry out the provisions of the preceding section shall be guilty of a misdemeanor for each issue of such publication over which such neglect or failure so to do extends; and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars.

2. Whenever such publications are discovered and the identity and address of neither the owner, the proprietor, the publisher or the printer appears as required by this article and cannot be ascertained after reasonable diligence, then upon a verified application of a peace officer, acting pursuant to his special duties, or of any police officer

showing such circumstances, a magistrate, may issue an order directing that such publications be seized and destroyed by such officer.

§ 332. Penalty for false statement. Any person, partnership, limited partnership, unincorporated joint-stock association or corporation causing or knowingly permitting his, their or its name or names to be published in such manner as to indicate or denote that he, they or it is or are the publisher or publishers of a publication such as specified in section three hundred and thirty of this article, and not indicating truly, shall be liable to the same extent as the real publisher or publishers would be in any suit for damages involving such publication in the subject-matter thereof brought against such person, partnership, limited partnership, unincorporated joint-stock association or corporation as the publisher or publishers, or as the alleged publisher or publishers of such publication.

§ 333. Contracts with Sunday papers. All contracts or agreements of any nature made with the publishers or proprietors of any paper dated, published or issued on the first day of the week shall be as valid, legal and binding, as contracts made with newspapers dated or published on any other day of the week.

§ 334. Misrepresentation of circulation of newspapers or periodicals. Every proprietor or publisher of any newspaper or periodicals who shall wilfully or knowingly misrepresent the circulation of such newspaper or periodical for the purpose of securing advertising or other patronage shall be deemed guilty of a misdemeanor.

§ 335. Inserting unauthorized advertisement in newspapers and magazines. Any person who, with intent to profit, directly or indirectly thereby, places or causes or produces an advertisement to be placed in or affixes or causes the same to be affixed to a newspaper without the consent of the publisher of said newspaper; or who directly or

indirectly places or causes or procures an advertisement to be placed in or affixes or causes the same to be affixed to a magazine or periodical without the consent of the publisher of such magazine or periodical, and in a way calculated to lead the readers thereof to believe that such advertisement was circulated by such publisher, is guilty of a misdemeanor.

The placing of an advertisement, notice, circular, pamphlet, card, hand bill, printed notice of any kind in or the affixing thereof to a newspaper, magazine, or periodical is presumptive evidence that the person or persons or corporation or corporations whose name or names appear thereon as proprietor, advertiser, vendor, or exhibitor, or whose goods, wares, and merchandise are advertised therein, caused or procured the same to be so placed or affixed with intent to profit thereby.

§ 335-a. Magazines sold by subscription. 1. Every publisher of a magazine sold by subscription shall disclose by a notice on the mailing label of each magazine mailed pursuant to subscription, the month and year in which the subscription expires. Such notice shall be printed or written in a clear, conspicuous, understandable and readable form.

1-a. Every publisher of a magazine sold by subscription shall disclose by a notice on the billing statement or invoice of each magazine, mailed pursuant to subscription, a customer service telephone number. Such notice shall be printed or written in a clear and conspicuous form.

2. Every publisher of a magazine sold by subscription shall, in any direct written communication to a subscriber inviting the subscriber to renew a subscription, clearly, conspicuously, understandably and readably:

a. disclose the month and year in which the subscription expires; or

b. include the month and year in which the subscription expires on the mailing label when the invitation to renew is packaged with an issue of the magazine, provided, however, that the location on the mailing label

of the month and year in which the subscription expires is disclosed in a clear, conspicuous, understandable and readable manner on such invitation.

3. When a subscription is renewed, the renewal period shall not commence before the expiration of any current subscription or renewals.

4. Any person, firm, association or corporation engaged in business, the principal purpose of which is to regularly solicit magazine subscription orders for delivery in this state through the mail for profit shall, in any direct written communication to a magazine subscriber inviting the subscriber to renew a subscription, clearly, conspicuously, understandably and readably:

a. disclose the month and year in which the subscription expires; or

b. include the month and year in which the subscription expires on the mailing label when the invitation to renew is packaged with an issue of the magazine, provided, however, that the location on the mailing label of the month and year in which the subscription expires is disclosed in a clear, conspicuous, understandable and readable manner on such invitation.

Nothing contained in this subdivision shall be construed to apply to any direct written communication inviting a consumer to order or renew any subscription sold by a not-for-profit entity, or by a charitable organization registered pursuant to section one hundred seventy-two of the executive law, or as part of a school fundraiser or gift subscription offer.

5. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has in fact, violated this section, an injunction may be

issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one hundred dollars for a single violation and not more than five hundred dollars for multiple violations resulting from a single act or incident. A knowing violation of this section shall be punishable by a civil penalty of not more than five hundred dollars for a single violation and not more than one thousand dollars for multiple violations resulting from a single act or incident. No person, firm, association or corporation shall be deemed to have violated the provisions of this section if such person, firm, partnership, association or corporation shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

§ 336. Telephone directory to contain certain notice. 1. Every telephone directory hereafter distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offense of "unlawfully refusing to yield a party line" provided for in the penal law, such notice to be printed in type which is not smaller than any other type on the same page and to be preceded by the word "warning" printed in type at least as large as the largest type on the same page: provided, that the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories, nor to any telephone directory heretofore

distributed to the general public. Any person, firm or corporation providing telephone service which distributes or causes to be distributed in this state copies of a telephone directory which is subject to the provisions of this subdivision and which do not contain the notice herein provided for shall be guilty of a misdemeanor.

2. Every telephone directory hereafter distributed by or on behalf of a person, firm or corporation providing telephone service to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones, of any telephone exchange located in this state shall contain a notice, in clear, concise language, which will direct the consumer to call the business office for information pertaining to the costs of all available local residential telephone services. The notice shall include the telephone number of the local business office.

3. Every telephone directory hereafter distributed by or on behalf of a person, firm or corporation providing telephone service to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones, of any telephone exchange located in this state, shall contain a notice, in clear, concise language in a prominent place in such directory, informing the consumer of all available local residential telephone services.

§ 336-a. Telephone corporation; coin operated telephones implementation of system to call an operator without use of coins; rules and regulations of public service commission. 1. All telephone corporations doing business in this state and providing coin pay telephones shall implement a system whereby calls may be made to the operator without charge and without requiring the insertion of any coins into such pay telephone pursuant to the rules and regulations promulgated by the public service commission in the manner provided for in subdivision two of this section.

2. The public service commission shall establish, by rule or regulation, the effective date for implementing the system mandated in

subdivision one of this section. Such rules and regulations shall further provide for the method and manner of implementing such system. Such rules and regulations shall be promulgated not later than one year next succeeding the effective date of this section. Notwithstanding the immediately preceding sentence, the public service commission shall forward copies of the final draft of such rules and regulations to the governor and the legislature, at least forty-five days prior to the proposed effective date of such rules and regulations. In no event shall such forwarding be made later than the two hundred seventieth day next succeeding the effective date of this section.

*** § 336-b. Public pay telephone volume controls.** 1. Each telephone corporation doing business in this state which provides public pay telephones, including those owners or providers of customer owned currency operated telephones (COCOT's), shall provide at least twenty-five percent of its public pay telephones installed on or after January first, nineteen hundred ninety-three with volume control equipment to enable deaf or hard of hearing persons to access and utilize telecommunications services. The telephones with volume control equipment shall be distributed evenly among the public pay telephones provided by the corporation. Each public pay telephone with a volume control shall have signage either on the telephone or in the immediate vicinity thereof, identifying that telephone as being equipped with a deaf or hard of hearing volume control.

2. Whenever more than two public pay telephones are installed within fifty feet of each other then at least one such telephone shall be equipped with volume control equipment.

3. The provisions of this section shall be applicable to all buildings or facilities constructed for public use.

4. For the purposes of this section the following terms shall have the following meanings:

a. "Building or facility" shall mean all or any portion of buildings,

structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property;

b. "Public use" shall mean any interior and exterior rooms or spaces made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned;

c. "Signage" shall mean the display of written, symbolic, tactile, or pictorial information.

* NB There are 2 § 336-b's

*** § 336-b. Interactive information network service; disclosure.** 1. For the purposes of this section, the term "interactive information network service" means the furnishing or provision of an entertainment service or of an information service, which is furnished, provided, or delivered by means of any telephony or telegraphy or telephone or telegraph service (whether intrastate, interstate, or international) of whatever nature, such entertainment or information services provided through 800, 888 or 900 numbers, mass announcement services, interactive information network services, collect calls or direct calls.

2. No person, partnership, firm, association or corporation or agent or employee shall advertise the services of an interactive information network service in any broadcast advertisement unless such advertisement shall conspicuously give notice setting forth the total cost of the service to the consumer, whether or not such cost will be incurred upon contacting the service or over a period of time, and the cost per call and/or the cost per minute or additional minute, if applicable, of the service, and which notice, in the case of an international call, shall set forth all costs incident to the service, whether or not such costs will be incurred upon contacting the service or over a period of time, and which costs shall include, but not be limited to, an estimate of the cost of the consumer's outgoing call based upon the established undiscounted rates of the long-distance provider which then has the most customers in this state.

3. No person, partnership, firm, association or corporation or agent or employee shall advertise the services of an interactive information network service in any publication, solicitation or print advertisement unless such advertisement shall conspicuously contain, in at least ten point bold type, a notice setting forth the total cost of the service to the consumer, whether or not such cost will be incurred upon contacting the service or over a period of time, and the cost per call and/or the cost per minute or additional minute, if applicable, of the service, and which notice, in the case of an international call, shall set forth all costs incident to the service, whether or not such costs will be incurred upon contacting the service or over a period of time, and which shall include, but not be limited to, an estimate of the costs of the consumer's outgoing call based upon the established undiscounted rates of the long-distance provider which then has the most customers in this state.

4. Nothing in this section shall apply to any television or radio broadcasting station or to any publisher or printer of a newspaper, magazine or other form of printed advertising, who broadcasts, publishes, or prints the advertisement.

5. When applicable, providers of interactive information network services shall cause the following message or words to the effect of the following to be provided to the caller, in the language in which information during such call will be provided:

"The call you are placing will cost (rate at which fees or charges are incurred). In order for you to receive the information you are calling for, that fee will be charged to your telephone bill. If you do not want to pay this amount, please hang up."

The calculation of any applicable fees by the provider of an interactive information network service shall not commence until ten seconds after the provision of the notice of fees to be charged to the consumer required by this subdivision. The provisions of this subdivision shall not apply to any service provided by: (a) a telephone corporation as that term is defined in section two of the public service law, (b) a provider of mobile service as defined in 47 U.S.C. § 153, or

(c) a cable television company as defined in section two hundred twelve of the public service law, or the affiliates of any of the foregoing.

6. For the purposes of this section any games or contests with or without prizes being offered shall be an entertainment service.

7. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

* NB There are 2 § 336-b's

§ 337. Advertising to procure divorces. Whoever prints, publishes, distributes or circulates, or causes to be printed, published, distributed or circulated any circular, pamphlet, card, hand bill, advertisement, printed paper, book, newspaper or notice of any kind offering to advise on laws of any foreign state, nation or jurisdiction for the express purpose of procuring or aiding in procuring any divorce, severance, dissolution, or annulment or any marriage, or offering to procure or to aid in procuring any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage, appear or act as attorney or counsel in any suit for alimony or divorce or the severance, dissolution or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section shall not apply to the printing or publishing of any notice or advertisement

required or authorized by any law of this state.

ARTICLE 21-A

FRAUDULENT TRANSACTIONS IN SECURITIES

Section 339. Reporting or publishing fictitious transactions in securities.

339-a. False statement or advertisement as to securities.

339-b. Manipulation of prices of securities.

339-c. Trading by brokers against customers' orders.

339-d. Transactions by brokers and dealers after insolvency.

339-e. Hypothecation of customer's securities.

339-f. Delivery to customers of memoranda of transactions by brokers.

§ 339. Reporting or publishing fictitious transactions in securities.

A person who, with intent to deceive, reports or publishes, or causes to be reported or published as a purchase or sale of the stocks, bonds or other evidences of debt of a corporation, company or association, any transaction therein, whereby no actual change of ownership or interest is effected, is guilty of a misdemeanor.

§ 339-a. False statement or advertisement as to securities. Any person, who, with intent to deceive, makes, issues or publishes, or causes to be made, issued or published, any statement or advertisement as to the value or as to facts affecting the value of the stocks, bonds or other evidences of debt of a corporation, company or association, or as to the financial condition or facts affecting the financial condition of any corporation, company or association which has issued, is issuing or is about to issue stocks, bonds or other evidences of debt, and who knows, or has reasonable ground to believe that any material representation, prediction or promise made in such statement or advertisement is false, is guilty of a misdemeanor.

§ 339-b. Manipulation of prices of securities. Any person, who inflates, depresses, or causes fluctuations in, or attempts to inflate, depress or cause fluctuations in, or combines or conspires with any other person or persons to inflate, depress or cause fluctuations in, the market prices of the stocks, bonds or other evidences of debt of a corporation, company or association, or of an issue or any part of an issue of the stock, bonds or evidences of debt of a corporation, company or association, by means of pretended purchases and sales thereof, or by any other fictitious transactions or devices, for or on account of such person or of any other person, or for or on account of the persons so combining or conspiring, whereby either in whole or in part a simultaneous change of ownership or of interest in such stocks, bonds or evidences of debt, or of such issue or part of an issue thereof, is not effected, is guilty of a misdemeanor. A pretended purchase or sale of any such stocks, bonds or other evidences of debt whereby, in whole or in part, no simultaneous change of ownership or interest therein is effected, shall be prima facie evidence of the violation of this section by the person or persons taking part in the transaction of such pretended purchase or sale.

§ 339-c. Trading by brokers against customers' orders. A broker, who, being employed by a customer to buy and carry upon margin the stocks, bonds or other evidences of debt of a corporation, company or association, while acting as broker for such customer in respect of such stocks, bonds or other evidences of debt, sells for his own account the same kind or issue of stocks, bonds or other evidences of debt of such corporation, company or association, with intent to trade against the customer's order, or, who, being employed by a customer to sell the stocks, bonds or other evidences of debt of a corporation, company or association, while acting as broker for such customer in respect to the sale of such stocks, bonds or other evidences of debt, purchases for his own account the same kind or issue of stock, bonds or other evidences of debt of such corporation, company or association, with intent to trade against the customer's order, is guilty of a misdemeanor.

§ 339-d. Transactions by brokers and dealers after insolvency. Any person, firm, association or corporation engaged in the business of purchasing and selling as broker or dealer, stocks, bonds or other evidences of debt of corporations, companies or associations who, knowing that he or it is insolvent, accepts or receives from a customer ignorant of such broker's or dealer's insolvency, money, stocks, bonds or other evidences of debt belonging to the customer otherwise than in liquidation of, or as security for, an existing indebtedness, is guilty of a misdemeanor. Any person, firm, association or corporation shall be deemed insolvent within the meaning of this section whenever the aggregate of his or its property shall not, at a fair valuation, be sufficient in amount to pay his or its debts.

§ 339-e. Hypothecation of customer's securities. Any person, firm, association or corporation engaged in the business of purchasing and selling as a broker or dealer stocks, bonds or other evidences of debt of corporations, companies or associations, who

1. Having in his or its possession, for safe keeping or otherwise, stocks, bonds or other evidences of debt of a corporation, company or association belonging to a customer, without having any lien thereon or any special property therein, pledges or disposes thereof without such customer's consent; or

2. Having in his or its possession stocks, bonds or other evidences of debt of a corporation, company or association belonging to a customer on which he or it has a lien for indebtedness due to him or it by the customer, pledges the same for more than the amount due to him or it thereon, or otherwise disposes thereof for his or its own benefit, without the customer's consent, and without having in his or its possession or subject to his or its control, stocks, bonds or other evidences of debt of the kind and amount to which the customer is then entitled, for delivery to him upon his demand therefor and tender of the amount due thereon, is guilty of a misdemeanor.

§ 339-f. Delivery to customers of memoranda of transactions by brokers. A person engaged in the business of purchasing or selling as broker stocks, bonds and other evidences of debt of corporations, companies or associations shall deliver to each customer on whose behalf a purchase or sale of such securities is made by him a statement or memorandum of such purchase or sale, a description of the securities purchased or sold, the name of the person, firm or corporation from whom such securities were purchased, or to which the same were sold, and the day, and the hours between which the transaction took place. A broker who refuses to deliver such statement or memorandum to a customer within twenty-four hours after a written demand therefor, or who delivers a statement or memorandum which is false in any material respect, is guilty of a misdemeanor.

ARTICLE 22

MONOPOLIES

Section 340. Contracts or agreements for monopoly or in restraint of trade illegal and void.

340-a. Monies recovered.

340-b. Agreements to not compete with respect to residential rental dwelling units.

341. Penalty.

342. Action to restrain and prevent.

342-a. Recovery of civil penalty by attorney-general.

342-b. Recovery of damages by attorney general.

342-c. Tolling of the period of limitations by proceedings of the United States.

343. Investigation by the attorney general.

345. Witnesses' immunity.

347. Criminal prosecution.

347-a. Fines payable to the office of victim services.

§ 340. Contracts or agreements for monopoly or in restraint of trade illegal and void. 1. Every contract, agreement, arrangement or combination whereby

A monopoly in the conduct of any business, trade or commerce or in the furnishing of any service in this state, is or may be established or maintained, or whereby

Competition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained or whereby

For the purpose of establishing or maintaining any such monopoly or unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state any business, trade or commerce or the furnishing of any service is or may be restrained, is hereby declared to be against public policy, illegal and void.

2. Subject to the exceptions hereinafter provided in this section, the provisions of this article shall apply to licensed insurers, licensed insurance agents, licensed insurance brokers, licensed independent adjusters and other persons and organizations subject to the provisions of the insurance law, to the extent not regulated by provisions of article twenty-three of the insurance law; and further provided, that nothing in this section shall apply to the marine insurances, including marine protection and indemnity insurance and marine reinsurance, exempted from the operation of article twenty-three of the insurance law.

3. The provisions of this article shall not apply to cooperative associations, corporate or otherwise, of farmers, gardeners, or dairymen, including live stock farmers and fruit growers, nor to contracts, agreements or arrangements made by such associations, nor to bona fide labor unions.

4. The labor of human beings shall not be deemed or held to be a commodity or article of commerce as such terms are used in this section and nothing herein contained shall be deemed to prohibit or restrict the right of workingmen to combine in unions, organizations and

associations, not organized for the purpose of profit.

5. An action to recover damages caused by a violation of this section must be commenced within four years after the cause of action has accrued. The state, or any political subdivision or public authority of the state, or any person who shall sustain damages by reason of any violation of this section, shall recover three-fold the actual damages sustained thereby, as well as costs not exceeding ten thousand dollars, and reasonable attorneys' fees. At or before the commencement of any civil action by a party other than the attorney-general for a violation of this section, notice thereof shall be served upon the attorney-general. Where the aggrieved party is a political subdivision or public authority of the state, notice of intention to commence an action under this section must be served upon the attorney-general at least ten days prior to the commencement of such action. This section shall not apply to any action commenced prior to the effective date of this act.

6. In any action pursuant to this section, the fact that the state, or any political subdivision or public authority of the state, or any person who has sustained damages by reason of violation of this section has not dealt directly with the defendant shall not bar or otherwise limit recovery; provided, however, that in any action in which claims are asserted against a defendant by both direct and indirect purchasers, the court shall take all steps necessary to avoid duplicate liability, including but not limited to the transfer and consolidation of all related actions. In actions where both direct and indirect purchasers are involved, a defendant shall be entitled to prove as a partial or complete defense to a claim for damages that the illegal overcharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of damages.

§ 340-a. Monies recovered. Notwithstanding any law to the contrary, all monies recovered or obtained under this article by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

§ 340-b. Agreements to not compete with respect to residential rental dwelling units. 1. As used in this section, the following terms shall have the following meanings:

(a) "Algorithm" means a computational process that uses a set of rules to define a sequence of operations.

(b) "Algorithmic device" means any machine, device, computer program or computer software that on its own or with human assistance performs a coordinating function.

(c) "Coordinating function" means performing all of the following subfunctions, provided, however, that a product used for the purpose of establishing rent or income limits in accordance with the emergency tenant protection act of nineteen seventy-four, as amended, the rent stabilization law of nineteen sixty-nine, as amended, the city rent and rehabilitation law, the emergency housing rent control law, or an affordable housing program administered by a federal, state, or local government or other political subdivision shall not be considered to be performing a coordinating function:

(i) collecting historical or contemporaneous prices, supply levels, or lease or rental contract termination and renewal dates of residential dwelling units from two or more residential rental property owners or managers, provided that at least two such residential rental property owners or managers are not wholly-owned subsidiaries of the same parent entity or otherwise owned or managed by the same residential rental property owner or manager;

(ii) analyzing or processing the information described in subparagraph (i) of this paragraph using a system, software, or process that uses computation, including by using that information to train an algorithm; and

(iii) recommending rental prices, lease renewal terms, ideal occupancy levels, or other lease terms and conditions to a residential rental property owner or manager.

(d) "Residential rental property owner or manager" means any individual or entity that owns or is a beneficial owner of, directly or indirectly, in whole or in part, or manages one or more residential rental dwelling units in New York state.

2. It shall be an unlawful violation of this article for a person or entity to knowingly or with reckless disregard facilitate an agreement between or among two or more residential rental property owners or managers to not compete with respect to residential rental dwelling units, including by operating or licensing a software, data analytics service, or algorithmic device that performs a coordinating function on behalf of or between and among such residential rental property owners or managers.

3. It shall be considered an unlawful agreement in violation of this article for a residential rental property owner or manager to knowingly or with reckless disregard set or adjust rental prices, lease renewal terms, occupancy levels, or other lease terms and conditions in one or more of their residential rental properties based on recommendations from a software, data analytics service, or algorithmic device performing a coordinating function.

4. Nothing in this section shall impair or limit the applicability of any other part of this article or any other state law.

§ 341. Penalty. Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination or who within this state shall do any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a class E felony, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding one hundred thousand dollars, or by imprisonment for not longer than four years, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding one million dollars. An indictment or information based on a violation of any of the provisions of this section must be found within three years after its commission. No criminal proceeding barred by prior limitation shall be revived by this act.

§ 342. Action to restrain and prevent. The attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this state of any act herein declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made. In such an action, the court may award to the plaintiff a sum not in excess of twenty thousand dollars as an additional allowance.

§ 342-a. Recovery of civil penalty by attorney-general. In lieu of any penalty otherwise prescribed for a violation of a provision of this article and in addition to an action pursuant to section three hundred forty-two of this article, the attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to recover a penalty in the sum specified in section three hundred forty-one of this article for the doing in this state of any act herein declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made. The action must be brought within three years after the commission of the act upon which it is based.

§ 342-b. Recovery of damages by attorney general. In addition to existing statutory authority to bring such actions on behalf of the state and public authorities, the attorney general may also bring action on behalf of any political subdivision or public authority of the state upon the request of such political subdivision or public authority to recover damages for violations of section three hundred forty of this article, or to recover damages provided for by federal law for violations of the federal antitrust laws. In any class action the attorney general may bring on behalf of these or other subordinate governmental entities, any governmental entity that does not

affirmatively exclude itself from the action, upon due notice thereof, shall be deemed to have requested to be treated as a member of the class represented in that action. The attorney general, on behalf of the state of New York, shall be entitled to retain from any moneys recovered in such actions the costs and expenses of such services.

§ 342-c. Tolling of the period of limitations by proceedings of the United States. Whenever any civil or criminal proceeding is instituted by the federal government to prevent, restrain, or punish violations of the federal antitrust laws, the running of the period of limitations in respect of every right of action arising under sections three hundred forty, three hundred forty-two and three hundred forty-two-a of this article, based in whole or in part on any matter complained of in the federal proceeding, shall be suspended during the pendency of said proceeding and for one year thereafter; provided, however, that whenever the running of the period of limitations in respect of a right of action arising under sections three hundred forty, three hundred forty-two or three hundred forty-two-a of this article is suspended hereunder, any action to enforce such right of action shall be forever barred unless commenced either within the period of suspension or within the period of limitations otherwise prescribed in this article.

§ 343. Investigation by the attorney general. Whenever it shall appear to the attorney general, either upon complaint or otherwise, that any person or persons, partnership, corporation, company, trust or association shall have engaged in or engages in or is about to engage in any act or practice by this article prohibited or declared to be illegal, or that any person, persons, partnership, corporation, company, trust or association has assisted or participated in any plan, scheme, agreement or combination of the nature described herein, or whenever he believes it to be in the public interest that an investigation be made, he may in his discretion either require or permit such person, persons, partnership, corporation, company, trust or association to file with him a statement in writing under oath or otherwise as to all the facts and circumstances concerning the subject matter which he believes is to be

to the public interest to investigate. The attorney general may also require such other data and information as he may deem relevant and may make such special and independent investigations as he may deem necessary in connection with the matter. The attorney general, his deputy, assistant, or other officer designated by him, is empowered to subpoena witnesses, compel their attendance, examine them under oath before himself or a magistrate, a court of record or a judge or justice thereof, and require the production of any books or papers which he deems relevant or material to the inquiry. Any person, persons, partnership, corporation, company, trust or association subject to service of a summons within or without the state pursuant to article three of the civil practice law and rules shall be subject to the service of a subpoena properly issued pursuant to this section. Any subpoena served hereunder without the state shall be issued on an ex-parte order of the court based upon a showing that the information or testimony sought bears a reasonable relationship to the subject matter under investigation. All papers filed in connection with the obtaining of said order may be maintained under seal by the clerk of the court upon application of the attorney general to the court. Any person, persons, partnership, corporation, company, trust, or association, who has been served with subpoena pursuant to this section may make a motion, pursuant to section twenty-three hundred four of the civil practice law and rules, to quash, fix conditions, or modify such subpoena. Any and all papers previously sealed by the court may be made available to the person making such motion. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the attorney general under this article. No person shall be excused from attending such inquiry in pursuance to the mandates of a subpoena, or from producing a paper or book, document or any other record, or from being examined or required to answer questions on the ground of failure to tender or pay a witness fee or mileage unless demand therefor is made at the time testimony is about to be taken and as a condition precedent to offering such production or testimony and unless payment thereof be not thereupon made. The provisions for payment of witness fee and/or mileage do not apply to any officer, director or person in the employ of any person, partnership, company, corporation, trust or association whose conduct or practices

are being investigated. If a person subpoenaed to attend such inquiry fails to obey the command of the subpoena without good cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to answer a question or to produce a book, paper, document or other record when ordered to do so by the officer conducting such inquiry, or if a person, partnership, corporation, company, trust or association fails to perform any act hereunder required to be performed, he shall be guilty of a misdemeanor. The foregoing shall not prevent the attorney general from instituting civil contempt proceedings under section twenty-three hundred eight (b) of the civil practice law and rules against any person who violates any of the above provisions. It shall be the duty of all public officers, their deputies, assistants, clerks, subordinates or employees, and all other persons to render and furnish to the attorney general, his deputy or other designated representative, when so requested, all information and assistance in their possession or within their power. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than the attorney general the name of any witness examined or any other information obtained upon such inquiry, except as so directed by the attorney general shall be guilty of a misdemeanor. Such inquiry may upon written authorization of the attorney general be made public.

The misdemeanors provided in this section shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

§ 345. Witnesses' immunity. Upon any investigation before the attorney general or his deputy or other officer designated by him, or in any criminal proceeding before any court or grand jury, pursuant to or for a violation of any of the provisions of this article, the attorney general, his deputy or other officer designated by him, or the court or grand jury, may confer immunity in accordance with the provisions of section section 50.20 or 190.40 of the criminal procedure law. Provided, that upon twenty-four hours written notice to the attorney general, in any such criminal proceeding at which the attorney general or his deputy

is not present, immunity may be conferred; but where such notice has not been given a witness who has had immunity otherwise properly conferred upon him shall not be deprived thereof.

§ 347. Criminal prosecution. The attorney general may prosecute every person charged with the commission of a criminal offense in violation of the laws of this state, applicable to or in respect of the practices or transactions referred to in this article. In any such prosecution by the attorney general or a district attorney hereunder, the provisions of section three hundred ninety-nine, of the code of criminal procedure shall not be applicable. In all such proceedings, the attorney general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform; or the attorney general may in his discretion transmit evidence, proof and information as to such offense to the district attorney of the county or counties in which the alleged violation has occurred, and every district attorney to whom such evidence, proof and information is so transmitted shall forthwith proceed to prosecute any corporation, company, association, or officer, manager or agent thereof, or any firm or person charged with such violation. A district attorney shall give reasonable notice to the attorney general of intention to prosecute under this article and the attorney general may appear in any criminal proceeding brought under this article. In any such proceeding, wherein the attorney general has appeared either in person or by deputy, the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney general or the deputy attorney general so appearing.

§ 347-a. Fines payable to the office of victim services. Following sentencing for a crime pursuant to section three hundred forty-one of this article or upon a judgment pursuant to section three hundred forty-two-a of this article, the court in its discretion may determine that any fine or penalty or any portion thereof shall be paid to the

office of victim services to be expended for any purpose of article twenty-two of the executive law as provided by subdivision nineteen of section six hundred twenty-three of such law.

ARTICLE 22-A

PROTECTION FROM UNFAIR, DECEPTIVE, OR ABUSIVE ACTS AND PRACTICES

- Section 349. Unfair, deceptive, or abusive acts and practices unlawful.
- 349-a. Pricing.
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 - 349-h. Observant consumer protection law.
 - 350. False advertising unlawful.
 - 350-a. False advertising.
 - 350-b. Disclosures required in advertisements using the title "doctor".
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 - 350-c. Notice of proposed action.
 - 350-d. Civil penalty.
 - 350-e. Construction.
 - 350-f. Exceptions.
 - 350-f-1. After-the-fact referral fees.

§ 349. Unfair, deceptive, or abusive acts and practices unlawful. (a) Unfair, deceptive, or abusive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this

state are hereby declared unlawful. For the purposes of this section:

(1) An act or practice is unfair when it causes or is likely to cause substantial injury which is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. The term "substantial injury" as used in this subdivision shall have the same meaning as the term "substantial injury" in the federal trade commission act, 15 U.S.C. Section 41 et seq.

(2) An act or practice is abusive when:

(i) it materially interferes with the ability of a person to understand a term or condition of a product or service; or

(ii) it takes unreasonable advantage of:

(A) a lack of understanding on the part of a person of the material risks, costs, or conditions of a product or service;

(B) the inability of a person to protect such person's interests in selecting or using a product or service; or

(C) the reasonable reliance by a person on a person engaging in the act or practice to act in the relying person's interests.

(b) (1) Whenever the attorney general shall believe from evidence satisfactory to the attorney general that any person, including but not limited to an individual, firm, corporation, company, partnership or association, or agent or employee thereof, has engaged in or is about to engage in any of the acts or practices stated to be unfair, deceptive, or abusive, the attorney general may bring an action or proceeding in the name and on behalf of the people of the state of New York to enjoin such unlawful acts or practices and to obtain restitution of any moneys or property obtained directly or indirectly by any such unlawful acts or practices. In such action or proceeding, preliminary relief may be granted under article sixty-three of the civil practice law and rules.

(2) The attorney general may bring such an action or proceeding against any person conducting any business, trade or commerce or furnishing a service in this state, whether or not the person is without the state. The attorney general may also bring such an action or proceeding against any person within the state conducting any business, trade, or commerce or furnishing a service, whether or not the business, trade, commerce, or service is conducted or furnished without the state.

(c) Before commencing an action or proceeding pursuant to this section, the attorney general shall be required to give the person

against whom such action or proceeding is contemplated notice by certified mail and an opportunity to show in writing within ten calendar days after receipt of notice why an action or proceeding should not be instituted against such person, unless the attorney general shall find, in any case in which the attorney general seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

(d) In any action or proceeding brought pursuant to this section it shall be a complete defense that the act or practice is, or if in interstate commerce would be, subject to and complies with the rules and regulations of, and the statutes administered by, the federal trade commission or any official department, division, commission or agency of the United States as such rules, regulations or statutes are interpreted by the federal trade commission or such department, division, commission or agency or the federal courts.

(e) Nothing in this section shall apply to any television or radio broadcasting station or to any publisher or printer of a newspaper, magazine or other form of printed advertising, who broadcasts, publishes, or prints the advertisement.

(f) In connection with any proposed action or proceeding under this section, the attorney general is authorized to take proof and make a determination of the relevant facts, and to issue subpoenas in accordance with the civil practice law and rules.

(g) This section shall apply to all unfair, deceptive, or abusive acts or practices, whether or not subject to any other law of this state, and shall not supersede, amend or repeal any other law of this state under which the attorney general or any other party is authorized to take any action or conduct any inquiry.

(h) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any deceptive act or deceptive practice made unlawful by this section may bring an action in such person's own name to enjoin such deceptive act or deceptive practice, an action to recover such person's actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to

a prevailing plaintiff.

(i) Notwithstanding any law to the contrary, all monies recovered or obtained under this article by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

§ 349-a. Pricing. 1. As used in this section, the following terms shall have the following meanings:

(a) "Algorithm" means a computational automated process that uses a set of rules to define a sequence of operations.

(b) "Clear and conspicuous disclosure" means disclosure in the same medium as, and provided on, at, or near and contemporaneous with every advertisement, display, image, offer or announcement of a price for which notice is required, using lettering and wording that is easily visible and understandable to the average consumer.

(c) "Consumer" means a natural person who is seeking or solicited to purchase, lease or receive a good or service for personal, family or household use.

(d) "Personal data" means any data that identifies or could reasonably be linked, directly or indirectly, with a specific consumer or device. "Personal data" shall not include location data that is used by a for-hire vehicle as defined in section 19-502 of the administrative code of the city of New York or as otherwise defined in local law or rule, or a transportation network company vehicle as defined in section sixteen hundred ninety-one of the vehicle and traffic law, solely to calculate the fare based on mileage and trip duration between the passenger's pickup and drop-off locations.

(e) "Dynamic pricing" means pricing that fluctuates dependent on conditions.

(f) "Personalized algorithmic pricing" means dynamic pricing set by an algorithm that uses personal data as defined in this section.

(g) "Entity" means any natural person, firm, organization, partnership, association, corporation, or any other entity domiciled or doing business in New York state.

2. Any entity that sets the price of a specific good or service using

personalized algorithmic pricing, and that directly or indirectly, advertises, promotes, labels or publishes a statement, display, image, offer or announcement of personalized algorithmic pricing to a consumer in New York, using personal data specific to such consumer, shall include with such statement, display, image, offer or announcement, a clear and conspicuous disclosure that states:

"THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA".

3. Exceptions. Nothing in this section shall apply to:

(a) A person, firm, partnership, association, or corporation, or agent or employee thereof, who or that is subject to the insurance law or regulations promulgated thereunder.

(b) Any financial institution or affiliate of a financial institution, all as defined in 15 U.S.C. 6809, to the extent that the financial institution or affiliate is subject to Title V of the Gramm Leach Bliley Act (15 U.S.C. § 6801, et seq., as amended) and the rules and implementing regulations promulgated thereunder.

(c) A financial institution as defined in subsection (f) of section eight hundred one of the financial services law.

(d) A price that is offered to a consumer who has an existing subscription-based contract or subscription-based agreement for goods or services with an entity and where such price is less than the price for the same good or service set forth in the subscription-based agreement or subscription-based contract.

4. Where the attorney general shall have reason to believe that there is an alleged violation of this section based upon, among other things, a consumer report of an alleged violation, the attorney general, in the name of the people of the state of New York, shall dispatch a cease and desist letter to the entity at issue, specifying the alleged violation or violations and the remedies to cure the violations within a designated timeline. Where, after receipt of the cease and desist letter and the expiration of such designated timeline, the entity continues to violate this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the respondent of not less than five days, to enjoin and

restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the respondent has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation.

This section shall not be construed to limit any other criminal or civil liability such entity may be subject to under law.

§ 349-b. Residential telephone equipment advertising, sale and warranty requirements. 1. For the purpose of this section:

(a) "Residential telephone equipment" shall mean customer premises equipment such as telephone handsets, designed for use on the residential premises of a person, other than a carrier, to originate, route or terminate telecommunications, and does not include equipment used to multiplex, maintain or terminate access lines;

(b) "New residential telephone equipment" shall mean residential telephone equipment that is neither rebuilt nor used;

(c) "Rebuilt residential telephone equipment" shall mean residential telephone equipment which has been modified, rebuilt, improved or reconditioned, either with new components or with components which were previously used in other equipment;

(d) "Used residential telephone equipment" shall mean residential telephone equipment previously used by another person and in proper working order but not modified, rebuilt, improved or reconditioned;

(e) "Consumer" or "purchaser" shall mean a retail customer who purchases such equipment for personal use in a place of residence; and

(f) "Seller" shall mean any retailer, distributor or manufacturer who sells or offers for sale new residential telephone equipment, rebuilt residential telephone equipment or used residential telephone equipment directly to a consumer or purchaser or places in the chain of distribution such equipment to be ultimately sold to a consumer or purchaser.

2. Any manufacturer of new residential telephone equipment, rebuilt residential telephone equipment or used residential telephone equipment shall specify on or in the package in which such equipment is sold, and any seller shall specify in all advertisements and catalogues excepting television, radio and cable television advertising whether such equipment employs pulse, tone, pulse-or-tone or another signalling method and a statement as to whether such equipment is capable of accessing tone-actuated computer systems.

3. Notwithstanding any other provisions of this chapter, the provisions of subdivision two of this section shall not apply to any of the following:

(a) Advertising, point-of-sale advertising, catalogues for and sales of such equipment not intended for direct connection to a telephone corporation's lines or a central switching office;

(b) Advertising for such equipment located on a customer's premises offered for sale in place; and

(c) Catalogues and equipment packages for such equipment which are in print or physical production on or before the effective date of this section.

4. Any manufacturer of such equipment shall specify on the package and any retailer shall specify in conspicuous notice at the point-of-sale, excepting sale in place:

(a) whether such equipment is rebuilt or used;

(b) whether such equipment requires a source of power or connection other than ordinary connections to the inside premises' telephone wiring of the customer.

5. Any manufacturer of such equipment, except equipment sold in place, shall specify on the package the period of warranty of such equipment. Information regarding obtaining a copy of the warranty showing the name and address of the manufacturer or other person to whom service questions or warranty claims should be addressed during the warranty duration shall be specified on or in the package.

6. Any seller of such equipment, except equipment sold in place, shall provide written warranties of not less than one year for new residential telephone equipment, not less than ninety days for rebuilt residential telephone equipment and not less than sixty days for used residential telephone equipment. All warranties shall guarantee that the equipment so warranted is fit for the use for which it is intended during the time period specified in this subdivision. The primary obligation to provide the written warranty required by this section shall be the obligation of the manufacturer or distributor of the residential telephone equipment. A retailer shall be deemed to have complied with this section if the residential telephone equipment it sells is warranted in compliance with the requirements of this section by the manufacturer or distributor. If the equipment does not conform to the written warranty and the consumer or purchaser reports, during the effective period of the warranty, such nonconformity, defect or condition to the manufacturer, the distributor, or the retailer from whom the consumer or purchaser purchased the equipment, such equipment shall be replaced or repaired, free of charge by any such seller to whom the consumer or purchaser reports the nonconformity, defect or condition.

7. It shall be an affirmative defense to any claim under this section that the nonconformity, defect or condition is the result of abuse, damage while in transit to a service location, neglect or unauthorized modifications or alterations to such telephone equipment.

8. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer or purchaser under any other law.

9. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a seller against any other seller. Any seller who repairs or replaces residential telephone equipment at the request of a consumer or purchaser shall have a right of subrogation to assert any claim the consumer or purchaser would have had against any prior seller in the chain of distribution.

10. Any person who has been injured by reason of any violation of this

section may bring an action to enjoin such unlawful act or practice and to recover actual damages or fifty dollars, whichever is greater. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars if the court finds the defendant willfully or knowingly violated this section.

11. Any agreement entered into by a consumer for the purchase of new residential telephone equipment, rebuilt residential telephone equipment or used residential telephone equipment which waives, limits or disclaims the rights set forth in this section shall be void as contrary to the public policy.

12. Any action brought pursuant to this section shall be commenced within three years of the date of original delivery of such equipment to the consumer or purchaser.

13. A court may award reasonable attorney's fees to a prevailing plaintiff.

§ 349-b-1. Voice over internet protocol 911 disclosure. 1. For the purpose of this section:

(a) "Consumer" or "purchaser" means a retail customer who purchases voice over internet protocol services for personal use in a place of residence or elsewhere in New York state;

(b) "Seller" or "reseller" means any retailer, distributor, manufacturer, or third-party who sells or offers for sale voice over internet protocol equipment or service therefor or both directly to a consumer or purchaser or places in the chain of distribution such equipment to be ultimately sold to a consumer or purchaser;

(c) "Voice over internet protocol" or "VoIP" shall have the same meaning as the term "interconnected VoIP service" as set forth in 47 C.F.R., Section 9.3, or any successor regulation adopted by the Federal Communications Commission, and which defines the term as a service that:

- (i) enables real-time, two-way voice communications,
- (ii) requires a broadband connection to the user's location,

(iii) requires internet protocol-compatible customer premises equipment (CPE), and

(iv) permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN. For purposes of this section, three different types of VoIP service offered to consumers are addressed as defined in this paragraph: fixed, nomadic and foreign exchange;

(d) "E911 system" or "enhanced 911" has the meaning provided for by subdivision three of section three hundred one of the county law;

(e) "Basic 911" or "911" means a service that connects the caller to a public service answering point (PSAP);

(f) "Public service answering point" or "PSAP" has the meaning provided for in subdivision six of section three hundred one of the county law;

(g) "Fixed VoIP consumer" means a consumer whose VoIP service permits the placement of a telephone call from only the location where such service is being provided;

(h) "Nomadic VoIP consumer" means a consumer whose VoIP service provider and service allows such consumer to make calls from any location where such consumer can obtain access to internet service;

(i) "Foreign exchange VoIP consumer" means a consumer whose VoIP service provider and service allow such consumer in one telephone exchange to receive telephone calls placed as local calls in another exchange that such consumer has selected (e.g. a consumer located in the city of Amsterdam or the city of Utica with a New York city local telephone number).

2. (a) All VoIP sellers and resellers shall provide consumers with notification, before service commencement and during service provision, regarding any material limitations associated with their basic or enhanced 911 service, and whether such service is basic 911 service or enhanced 911 service.

(b) Such notice shall be provided to consumers in the marketing material used for television, radio, and printed media; in the terms and conditions of service; in on-line material; through VoIP sellers' and resellers' customer service representatives; in consumer service contracts; and in VoIP services starter and installation kits.

(c) Such sellers and resellers shall also secure consumers' express acknowledgement that they are aware of any limitations upon basic or enhanced 911 services from the VoIP services offered by such sellers and resellers prior to providing consumers with VoIP service.

(d) Where service limitations exist, or both basic and enhanced 911 service are unavailable to the consumer, VoIP sellers and resellers shall provide consumer notification during service provision, and by issuing warning stickers to be affixed to telephone sets through any subsequent advertising, and annually in the customer's billing insert.

(e) All VoIP sellers and resellers shall provide nomadic VoIP consumers with notification, both before service commencement and during service provision, regarding the necessity (if applicable) of re-initializing or resetting or reactivating such consumers' basic or enhanced 911 services at each new location from which such consumers access VoIP services.

(f) All VoIP sellers and resellers shall use all reasonable efforts to prevent basic or enhanced 911 calls from foreign exchange VoIP consumers from being routed to the wrong PSAP.

3. Nothing in this section shall in any way limit the rights or remedies that are otherwise available to a consumer or purchaser under any other law.

4. Nothing in this section shall in any way limit the rights or remedies that are otherwise available to any seller or reseller against any other seller or reseller of VoIP services or equipment or both.

5. The attorney general may bring a civil action against any seller or reseller who violates any provision of this section to enforce the violation and may recover any or all of the following:

(a) up to one hundred thousand dollars for a knowing pattern or practice of such violations;

(b) costs and reasonable attorney's fees; and

(c) whenever the attorney general believes from evidence satisfactory to him or her that a knowing violation of this section or a pattern or practice of violating this section has occurred or is about to occur, an order to enjoin such violation.

6. Nothing in this section is intended to extend, limit or conflict with the notice and related obligations of providers subject to 47 C.F.R. part 9 or any successor regulation or law.

§ 349-c. Additional civil penalty for consumer frauds against elderly persons. 1. Definition. As used in this section elderly person means a person who is sixty-five years of age or older.

2. Supplemental civil penalty. (a) In addition to any liability for damages or a civil penalty imposed pursuant to sections three hundred forty-nine, three hundred fifty-c and three hundred fifty-d of this chapter, regarding deceptive practices and false advertising, and subdivision twelve of section sixty-three of the executive law, regarding proceedings by the attorney general for equitable relief against fraudulent or illegal consumer fraud, a person or entity who engages in any conduct prohibited by said provisions of law, and whose conduct is perpetrated against one or more elderly persons, may be liable for an additional civil penalty not to exceed ten thousand dollars, if the factors in paragraph (b) of this subdivision are present.

(b) In determining whether to impose a supplemental civil penalty pursuant to paragraph (a) of this subdivision, and the amount of any such penalty, the court shall consider, in addition to other appropriate factors, the extent to which the following factors are present:

(1) Whether the defendant knew that the defendant's conduct was directed to one or more elderly persons or whether the defendant's conduct was in willful disregard of the rights of an elderly person;

(2) Whether the defendant's conduct caused an elderly person or persons to suffer severe loss or encumbrance of a primary residence, principal employment or source of income, substantial loss of property set aside for retirement or for personal and family care and maintenance, substantial loss of payments received under a pension or retirement plan or a government benefits program; or assets essential to the health or welfare of the elderly person or whether one or more elderly persons were substantially more vulnerable to the defendant's

conduct because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability, and actually suffered physical, emotional, or economic damage resulting from the defendant's conduct.

3. There is hereby established in the state treasury a special fund to be known as the elderly victim fund, which shall consist of and into which shall be paid all moneys derived from supplemental civil penalties imposed pursuant to this section. The moneys in such fund shall be administered by the department of law and shall be expended solely for the investigation of and prosecution of consumer frauds against elderly persons. The moneys in the fund shall be paid out on the audit and warrant of the comptroller on vouchers certified or approved by the attorney general. Notwithstanding any other provision of law to the contrary, any balance in the said fund on March thirty-first of any fiscal year shall not revert to the general fund of the state.

4. Restitution to be given priority. Restitution ordered pursuant to the provisions of law listed in subdivision two of this section shall be given priority over the imposition of civil penalties designated by the court under this section.

§ 349-d. Energy services company consumers bill of rights. 1. For the purpose of this section:

(a) "Energy services" shall mean electricity and/or natural gas;

(b) "Energy services company" or "ESCO" shall mean an entity eligible to sell energy services to end-use customers using the transmission or distribution system of a utility;

(c) "Customer" shall mean any person who is sold or offered an energy services contract by an ESCO (i) for residential utility service, or (ii) through door-to-door sales; and

(d) "Door-to-door sales" shall mean the sale of energy services in which the ESCO or the ESCO's representative personally solicits the sale, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller; provided that such term shall not include any sale which is conducted and consummated entirely by mail, telephone or other electronic means, or during a scheduled

appointment at the premises of a buyer of nonresidential utility service, or through solicitations of commercial accounts at trade or business shows, conventions or expositions.

2. Any person who sells or offers for sale any energy services to a customer for or on behalf of an ESCO shall (a) properly identify himself or herself and the energy services company or companies which he or she represents; (b) explain that he or she does not represent a distribution utility; (c) explain the purpose of the solicitation; (d) provide each prospective customer with a copy of the "ESCO consumers bill of rights" developed by the public service commission, in consultation with the Long Island power authority, the state consumer protection board and the department of law; and (e) provide any written materials, including contracts and the "ESCO consumers bill of rights", in the same language utilized to solicit the prospective customer.

3. No person who sells or offers for sale any energy services for, or on behalf of, an ESCO shall engage in any deceptive acts or practices in the marketing of energy services.

4. No contract for provision of energy services by an ESCO shall require any customer prepayment for energy services. However, an ESCO may offer a customer an option of prepayment. Any contract providing for prepayment may be cancelled by the customer, without any penalty or obligation, within ninety calendar days. Any unused portion of the prepayment shall be returned to the customer by the ESCO within thirty business days following receipt of notice of cancellation.

5. No contract for provision of energy services by an ESCO shall require the customer to pay any fee for termination or early cancellation of a contract in excess of either (a) one hundred dollars for any contract with a remaining term of less than twelve months; (b) two hundred dollars for any contract with a remaining term of twelve months or more; or (c) twice the estimated bill for energy services for an average month. To charge a fee based on the estimated bill for energy services for an average month, an ESCO must have provided the customer, at the time that the contract is offered, with an estimate of the

average monthly bill that customer would be charged for energy services and the fee that would be charged based on such estimate.

6. No material change shall be made in the terms or duration of any contract for the provision of energy services by an ESCO without the express consent of the customer. A change in price or a change to or from fixed or variable pricing shall be deemed to be material. This shall not restrict an ESCO from renewing a contract by clearly informing the customer in writing, not less than thirty days nor more than sixty days prior to the renewal date, of the renewal terms and of his or her option not to accept the renewal offer; provided, however, that no fee pursuant to subdivision five of this section shall be charged to a customer whose express consent has not been obtained to any change in material terms and conditions, or who objects to such renewal not later than three business days after receiving the first billing statement from the ESCO under the terms of the contract as renewed. The public service commission and the Long Island power authority may adopt additional guidelines, practices, rules or regulations governing the renewal process.

7. In every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified. In any notice regarding contract renewability, the provider shall disclose the following information as it exists at the time of such notice: (i) the price charged for energy services; (ii) the price it proposes to charge upon renewal; (iii) the price that is charged by the customer's distribution utility; and (iv) information notifying the customer how they may compare past bills with what they would have been charged had they received energy services from their respective distribution utility, including, the internet address of any bill calculator offered by such customer's distribution utility's website.

8. Any contract for energy services which does not comply with the applicable provisions of this section shall be void and unenforceable as contrary to public policy. Any waiver by a buyer of energy services of the provisions of this section shall be deemed void and unenforceable by

the ESCO as contrary to public policy.

9. (a) The first page of each billing statement from an ESCO delivered to the customer, whether by the ESCO directly, by a utility corporation, by a municipality, or by any other method, shall include a side-by-side comparison showing both the price charged by the ESCO for commodity service and the price charged to the customer for delivery service during the prior billing period, and the price the customer would have paid had the customer taken both commodity and delivery service from their local utility corporation or municipality, as applicable. Such statement shall also include, separately and apart from the price charged by the ESCO for commodity service and the price charged to the customer for delivery service, an itemized list of prices charged by the ESCO for any energy-related value-added products provided by the ESCO during the prior billing period.

(b) For the purposes of this subdivision and subdivision ten of this section, "customer" shall mean a person receiving residential utility service from an ESCO or a small non-residential customer, as that term is defined in section sixty-six-w of the public service law, receiving utility service from an ESCO.

10. Every twelve months, an ESCO shall provide each of its customers with a statement comparing the price charged by the ESCO for commodity service, the price charged to the customer for delivery service and any other energy-related value-added products charged to the customer as a customer of the ESCO over the prior twelve-month period with the price such customer would have paid had such customer taken both commodity and delivery service from the local utility corporation or municipality, as applicable, for such period. Such statement shall convey such information in a manner that unambiguously conveys whether the customer is saving money or paying a premium for service from the ESCO over such period.

10-a. (a) ESCOs shall be responsible for any costs incurred by a utility corporation or municipality to comply with subdivisions nine and ten of this section, and any such costs incurred by a utility corporation or municipality shall be recoverable from the ESCO, in a

manner prescribed by the public service commission. ESCOs shall not recover any costs from customers related to compliance with subdivisions nine and ten of this section.

(b) For the purposes of this subdivision, "customer" shall mean a person receiving energy service from an ESCO.

11. The attorney general, upon their own motion or upon referral from the public service commission, the Long Island power authority or the department of state, may bring a civil action against any energy services company that violates any provision of this section and may recover (a) a civil penalty not to exceed one thousand dollars per violation; and (b) costs and reasonable attorney's fees. In any such proceeding the court may direct restitution.

12. In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in their own name to enjoin such unlawful act or practice, an action to recover their actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to ten thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

13. Nothing in this section shall be deemed to limit any authority of the public service commission or the Long Island power authority, which existed before the effective date of this section, to limit, suspend or revoke the eligibility of an energy services company to sell or offer for sale any energy services for violation of any provision of law, rule, regulation or policy enforceable by such commission or authority.

14. Nothing in this section shall be deemed to limit any authority of the public service commission or the Long Island power authority, which existed before the effective date of this section, to adopt additional guidelines, practices, policies, rules or regulations relating to the marketing practices of energy services companies to residential and

commercial customers, whether in person (including door to door), or by mail, telephone or other electronic means, that are not inconsistent with the provisions of this section.

§ 349-e. Counterfeit and non-functional airbags. 1. As used in this section:

(a) "Airbag" shall mean any component of an inflatable restraint system, as such term is defined in section one hundred nineteen-b of the vehicle and traffic law, and that is designed for the specific make, model, and year of the motor vehicle to be installed and to operate in the event of a crash. Airbag components include but are not limited to the cover, sensors, controllers, inflator, wiring, and the airbag itself.

(b) "Counterfeit airbag" shall mean an airbag that bears, without authorization, a mark identical with, or substantially similar to, the genuine mark of the manufacturer of such motor vehicle.

(c) "Non-functional airbag" shall mean a replacement airbag that has been previously deployed or damaged, or that has an electrical fault that is detected by the readiness indicator light, as such term is defined in section one hundred nineteen-b of the vehicle and traffic law, after the installation procedure is completed. "Non-functional airbag" shall also mean any object, including a counterfeit or repaired airbag component installed to deceive the vehicle owner or operator into believing a functional airbag is installed.

(d) "Person" shall mean any person, partnership, firm, corporation, company, trust, association, or any agent or employee thereof.

2. (a) It shall be unlawful for any person to knowingly:

(i) make, offer to distribute or distribute, offer to sell or sell a counterfeit or a non-functional airbag;

(ii) install or reinstall a counterfeit airbag or a non-functional airbag in any motor vehicle, as that term is defined in section one hundred twenty-five of the vehicle and traffic law;

(iii) offer to distribute or distribute, offer to sell or sell, install or reinstall a counterfeit or non-functional airbag so that the readiness indicator light, as such term is defined in section one

hundred nineteen-b of the vehicle and traffic law, falsely displays that the airbag is in proper working order; or

(iv) represent to another person that a counterfeit airbag or a non-functional airbag installed or reinstalled in a motor vehicle is an airbag.

(b) Any person who violates any provision of this subdivision is guilty of a class A misdemeanor punishable as provided for in the penal law.

3. Whenever there shall be a violation of this section involving twenty-five or more counterfeit and/or non-functional airbags, or any second or subsequent violation of subdivision two of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Any person who violates this section and such violation involves twenty-five or more counterfeit and/or non-functional airbags, or a second or subsequent violation of subdivision two of this section shall be subject to a civil penalty of not more than one thousand dollars for each violation. No person shall be deemed to have violated the provisions of this section if such person, shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

§ 349-f. Pension poaching prevention. 1. For purposes of this section:

(a) The term "veterans' benefits matter" means the preparation,

presentation, or prosecution of any claim affecting any person who has filed or expressed an intent to file a claim for any benefit, program, service, commodity, function, or status, entitlement which is determined under the laws and regulations administered by the United States department of veterans affairs or the New York state division of veterans' affairs pertaining to veterans, their dependents, their survivors, and any other party eligible for such benefits.

(b) The term "compensation" means money, property, or anything else of value.

(c) The term "entity" includes, but is not limited to, any natural person, corporation, trust, partnership, alliance, or unincorporated association.

2. (a) No entity shall solicit, contract for, charge, or receive, or attempt to solicit, contract for, charge, or receive, any fee or compensation with respect to any veterans' benefits matter, except as permitted under title 38 of the United States code and the corresponding provisions within title 38 of the United States code of federal regulations with respect to veterans' benefits matters before the United States department of veterans affairs, or as permitted under state law or rules issued by the commissioner of veterans' services with respect to veterans' benefits matters before the department of veterans' services.

(b) No entity shall receive compensation for referring any party to another individual to advise or assist this party with any veterans' benefits matter.

(c) Any entity seeking to receive compensation for advising or assisting any party with any veterans' benefits matter shall, before rendering any services, memorialize all terms regarding the party's payment of fees for services rendered in a written agreement, signed by both parties, that adheres to all criteria specified within title 38, section 14.636, of the United States code of federal regulations.

(d) No entity shall receive any fees for any services rendered before the date on which a notice of disagreement is filed with respect to the party's case.

(e) No entity shall guarantee, either directly or by implication, that any party is certain to receive specific veterans' benefits or that any

party is certain to receive a specific level, percentage, or amount of veterans' benefits.

(f) No entity shall receive excessive or unreasonable fees as compensation for advising or assisting any party with any veterans' benefits matter. The factors articulated within title 38, section 14.636 of the code of federal regulations shall govern determinations of whether a fee is excessive or unreasonable.

3. (a) No entity shall advise or assist for compensation any party with any veterans' benefits matter without clearly providing, at the outset of this business relationship, the following disclosure, both orally and in writing: "this business is not sponsored by, or affiliated with, the United States department of veterans affairs, the New York state division of veterans' affairs, or any other congressionally chartered veterans service organization. Other organizations, including but not limited to the New York state division of veterans' affairs, your local county veterans service agency, and other congressionally chartered veterans service organizations, may be able to provide you with this service free of charge. Products or services offered by this business are not necessarily endorsed by any of these organizations. You may qualify for other veterans' benefits beyond the benefits for which you are receiving services here." The written disclosure must appear in at least twelve-point font and must appear in a readily noticeable and identifiable place in the entity's agreement with the party seeking services. The party must verbally acknowledge understanding of the oral disclosure and must provide his or her signature to represent understanding of these provisions on the document in which the written disclosure appears. The entity offering services must retain a copy of the written disclosure while providing veterans' benefits services for compensation to the party and for at least one year after the date on which this service relationship terminates.

(b) No entity shall advertise for-compensation services in veterans benefits matters without including the following disclosure: "this business is not sponsored by, or affiliated with, the United States department of veterans affairs, the New York state division of veterans' affairs, or any other congressionally chartered veterans service organization. Other organizations, including but not limited to the New

York state division of veterans' affairs, your local county veterans service agency, and other congressionally chartered veterans service organizations, may be able to provide you with these services free of charge. Products or services offered by this business are not necessarily endorsed by any of these organizations. You may qualify for other veterans' benefits beyond the services that this business offers." If the advertisement is printed, including but not limited to advertisements visible to internet users, the disclosure must appear in a readily visible place on the advertisement. If the advertisement is verbal, the spoken statement of the disclosure must be clear and intelligible.

4. (a) Any violation of this section shall constitute a deceptive act in the conduct of business, trade, or commerce, and except as otherwise provided in this section, shall be subject to the provisions of section three hundred forty-nine of this article, including any right of action and corresponding penalties described within such section.

(b) If an entity's violation of this section concerns a party who is sixty-five years of age or older, said entity may be liable for supplemental civil penalties as established within, and subject of the terms of, section three hundred forty-nine-c of this article.

(c) Notwithstanding any provision of section three hundred forty-nine of this article to the contrary:

(i) An individual who is harmed by an entity as a result of an entity's violation of this section may bring an action in their own name against an entity to enjoin such unlawful act or practice, an action to recover their actual damages or twenty-five hundred dollars, whichever is greater, or both such actions, in addition to any other remedy available in law or equity. The court may award costs and reasonable attorney's fees to a prevailing plaintiff.

(ii) Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each violation.

(iii) Any violation of paragraph (a) of subdivision two of this section shall be a class A misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and

imprisonment; provided however, a second or subsequent offense shall be punishable by a fine of not more than three thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. In addition, the court may order as part of the sentence imposed restitution or reparation to the victim of the crime pursuant to section 60.27 of the penal law. The attorney general shall have the power to prosecute any violation of paragraph (a) of subdivision two of this section.

(iv) The civil and criminal remedies set forth in this section shall not preclude any individual or entity or government authority from seeking relief under any other statutory or common law right to relief.

5. (a) In addition to any liability for damages or a civil penalty imposed pursuant to sections three hundred forty-nine, three hundred fifty-c and three hundred fifty-d of this chapter, regarding deceptive practices and false advertising, and subdivision twelve of section sixty-three of the executive law, regarding proceedings by the attorney general for equitable relief against fraudulent or illegal consumer fraud, a person or entity who engages in any conduct prohibited by such provisions of law, and whose conduct is perpetrated against one or more persons seeking or using services in connection with a veterans' benefits matter, may be liable for an additional civil penalty not to exceed ten thousand dollars, in accordance with paragraph (b) of this subdivision.

(b) In determining whether to impose a supplemental civil penalty pursuant to paragraph (a) of this subdivision, and the amount of any such penalty, the court shall consider, in addition to other appropriate factors as determined by the court, the extent to which the following factors are present:

(i) whether the defendant knew that such defendant's conduct was directed to one or more persons seeking or using services in connection with a veteran's benefits matter or whether such defendant knowingly acted with disregard for the rights of a person seeking or using services in connection with a veterans' benefits matter;

(ii) whether the defendant's conduct:

(1) caused a person seeking or using services to suffer loss or encumbrance of a primary residence, loss of employment or source of

income, substantial loss of property or assets essential to the health or welfare of the person seeking or using services in connection with a veteran's benefits matter; or

(2) whether one or more persons seeking or using services in connection with a veteran's benefits matter were substantially more vulnerable to such defendant's conduct because of disability, impaired understanding, or any other perceived disadvantage, and actually suffered physical or economic damage resulting from such defendant's conduct.

(c) Restitution ordered pursuant to the provisions of law listed in paragraph (a) of this subdivision or pursuant to any other section of law shall be given priority over the imposition of civil penalties ordered by the court under this subdivision.

6. If any clause, sentence, paragraph or part of this section or the application thereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 349-g. Restrictions on applications for and use of credit cards and medical financial products. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "Medical financial products" shall mean medical credit cards and third-party medical installment loans.

(b) "Health care provider" shall mean a health care professional licensed, registered or certified pursuant to title eight of the education law.

(c) "Medical credit card" shall mean a credit card issued under an open-end or closed-end plan offered specifically for the payment of health care services, products, or devices provided to a person.

2. It shall be prohibited for any hospital or health care provider, or employee or agent of a hospital or health care provider, to complete any portion of an application for medical financial products for the patient

or otherwise arrange for or establish an application that is not completely filled out by the patient.

§ 349-h. Observant consumer protection law. 1. No person selling or exposing for sale any mezuzah or tefillin which, to the seller's knowledge, does not satisfy orthodox Hebrew ritual requirements shall represent, by direct or implied oral or written statement, that such mezuzah or tefillin is kosher or meets orthodox Hebrew religious requirements.

2. No manufacturer, fabricator or importer of mezuzahs or tefillin shall sell or transfer for sale any mezuzah or tefillin unless the following truthful consumer information is printed legibly upon the article itself, upon its packaging, or upon a label securely attached thereto:

- (a) the name and address of the manufacturer, fabricator, or importer;
- (b) in the case of any mezuzah or tefillin that, in the form reasonably expected to be sold at retail, is not in accordance with orthodox Hebrew ritual requirements, the word "non-kosher."

3. No person selling or exposing for sale any mezuzah or tefillin shall sell such article without the accompanying consumer information specified in subdivision two of this section.

4. Any sale, transfer for sale, or exposure for sale in violation of the provisions of this section shall be deemed a deceptive practice within the meaning of section three hundred forty-nine of this chapter, and any remedy provided therein shall be available for the enforcement of this section.

5. (a) "Mezuzah" means the religious article designed to be affixed, according to Jewish law, to the doorposts of rooms in a home, including the parchment or other matter upon which passages from the Bible are written, and the writing thereon.

(b) "Tefillin" means the religious article, also known as "phylacteries," designed to be worn, according to Jewish law, on the

upper arm and head during morning prayers, including the parchment or other matter upon which passages from the Bible are written, the writing thereon, the capsules in which the parchment is contained, and the straps affixed thereto.

§ 350. False advertising unlawful. False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

§ 350-a. False advertising. 1. The term "false advertising" means advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. For purposes of this article, with respect to the advertising of an employment opportunity, it shall be deemed "misleading in a material respect" to either fail to reveal whether the employment available or being offered requires or is conditioned upon the purchasing or leasing of supplies, material, equipment or other property or whether such employment is on a commission rather than a fixed salary basis and, if so, whether the salaries advertised are only obtainable if sufficient commissions are earned.

2. Any written or electronic communication which simulates a document authorized, issued or approved by any court, official, agency of this state or a political subdivision thereof, or of another state or official governmental entity, foreign or domestic, or which creates a false impression as to such document's source, authorization or approval, shall be considered false advertising unless the person, firm,

corporation or association, or agent or employee thereof, has received express permission from such court, official, or agency for the use of such document. This subdivision shall be construed to prohibit any false representation or implication, written or verbal, that a person, firm, corporation or association, or agent or employee thereof, selling a commodity or service is vouched for, approved of, bonded by, operating with or on behalf of, or otherwise affiliated with this state or a political subdivision thereof, or of another state or official governmental entity, foreign or domestic, unless such person, firm, corporation or association, or agent or employee thereof, has received express permission from such state or political subdivision for such affiliation.

3. An employer shall not be liable under this section as a result of a failure to disclose all material facts relating to terms and conditions of employment if the aggrieved person has not suffered actual pecuniary damage as a result of the misleading advertising of an employment opportunity or if the employer has, prior to the aggrieved person suffering any pecuniary damage, disclosed in writing to that person a full and accurate description of the kind, character, terms and conditions of the employment opportunity.

4. It shall constitute false advertising to display or announce, in print or broadcast advertising, the price of an item after deduction of a rebate unless the actual selling price is displayed or announced, and clear and conspicuous notice is given in the advertisement that a mail-in rebate is required to achieve the lower net price.

§ 350-b. Disclosures required in advertisements using the title "doctor". 1. Any person who uses the title "doctor" in making representations for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of (a) drugs, devices or cosmetics, as defined in section sixty-eight hundred two of the education law, or (b) other goods or services intended to diagnose, treat, mitigate, prevent or cure any human disease, pain, injury, deformity, nutritional deficiency or physical condition, or which are

intended to appear to the purchaser of such goods or services to have done so, shall conspicuously disclose the profession in which he or she is licensed, except that, where no license is required by the department of education, such person shall conspicuously disclose the major subject in which the degree was earned and the name of the institution that issued the degree provided, however, that such person shall be prohibited from using the title "doctor" unless the degree was conferred by an institution of higher education authorized by law to confer doctoral degrees in the state where it is located. For the purposes of this section, "conspicuously" shall mean equally in size, type or prominence and positioned adjacent to the title "doctor". The requirements of this subdivision supplement, and shall not be construed to limit, the obligations of health professionals pursuant to the education law and regulations thereunder, nor shall they be construed to authorize the practice of any licensed profession nor the offer of professional services by any unlicensed person.

2. In addition to any civil penalty available under section three hundred fifty-d of this article, whenever there shall be an actual or threatened violation of this section an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, to enjoin and restrain such actual or threatened violation; if it shall appear to the satisfaction of the court or justice that the defendant is in fact assuming, adopting or using such title or is about to assume, adopt or use such title and that the assumption, adoption or use of such title may deceive or mislead the public, an injunction may be issued by said court or justice enjoining and restraining such actual or threatened violation without requiring proof that any person has in fact been deceived or misled thereby.

§ 350-b-1. Disclosures required in advertisements using a senior specific designation. 1. For purposes of this section, "senior specific designation" shall mean a title, professional designation, credential, certification, or professional description that indicates the person has expertise or training in issues specifically related to seniors in their

field.

2. (a) Any person or business who uses a senior specific designation in making representations for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of the individual's services shall clearly and prominently disclose, in any advertisement and in writing to any prospective client at the initial meeting or consultation with such prospective client, the basis or source of such senior specific designation, including whether the senior specific designation was created by the person or business using it. For the purposes of this section, "clearly and prominently" means:

(1) in written communications, including print and those made through an electronic medium, the message shall be in a type size sufficiently noticeable for an ordinary consumer to read and comprehend it, in type that contrasts with the background against which it appears; and

(2) in oral communications, the message shall be delivered in a volume sufficient for an ordinary consumer to hear it and comprehend it. Such message shall be in understandable language and syntax regardless of how the message is disseminated.

(b) If any communication is presented solely through oral, written, or visual means, the message disseminated pursuant to paragraph (a) of this subdivision shall be made through the same means.

(c) The requirements of this subdivision supplement, and shall not be construed to limit, the obligations of any professional registered or licensed pursuant to any other section of law and regulations thereunder, nor shall they be construed to authorize the practice of any licensed profession nor the offer of professional services by any unlicensed person.

3. In addition to any civil penalty available under section three hundred fifty-d of this article, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in

fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution.

§ 350-c. Notice of proposed action. Before the attorney-general commences an action pursuant to section three hundred fifty-d of this article he shall be required to give the person against whom such action is contemplated appropriate notice by certified mail and an opportunity to show, either orally or in writing, why such action should not be commenced. In such showing, said person may present, among other things, evidence that the advertisement is subject to and complies with the rules and regulations of, and the statutes administered by, the Federal Trade Commission or any official department, division, commission or agency of the state of New York.

§ 350-d. Civil penalty. (a) Any person, firm, corporation or association or agent or employee thereof who engages in any of the acts or practices stated in this article to be unlawful shall be liable to a civil penalty of not more than five thousand dollars for each violation, which shall accrue to the state of New York and may be recovered in a civil action brought by the attorney general. In any such action it shall be a complete defense that the advertisement is subject to and complies with the rules and regulations of, and the statutes administered by the Federal Trade Commission or any official department, division, commission or agency of the state of New York.

(b) Notwithstanding subdivision (a) of this section, any firm, corporation or association or agent or employee thereof who engages in any of the acts or practices stated in section three hundred forty-nine

of this article to be unlawful in connection with or during an abnormal disruption of the market shall be liable to a civil penalty of not more than fifteen thousand dollars for each violation or three times the actual restitution needed, whichever is greater, which shall accrue to the state of New York and may be recovered in a civil action brought by the attorney general. In any such action it shall be a complete defense that the advertisement is subject to and complies with the rules and regulations of, and the statutes administered by the Federal Trade Commission or any official department, division, commission or agency of the state of New York. For the purposes of this subdivision, "abnormal disruption of the market" shall mean any change in the market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor.

§ 350-e. Construction. 1. This article neither enlarges nor diminishes the rights of parties in private litigation except as provided in this section.

2. This article does not repeal the provisions of subdivision twelve of section sixty-three of the executive law.

3. Any person who has been injured by reason of any violation of section three hundred fifty or three hundred fifty-a of this article may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages, up to ten thousand dollars, if the court finds that the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

§ 350-f. Exceptions. Nothing in this article shall apply to any television or sound radio broadcasting station or to any publisher or printer of a newspaper, magazine, or other form of printed advertising, who broadcasts, publishes, or prints such advertisement.

§ 350-f-1. After-the-fact referral fees. 1. No person, firm, partnership, corporation, association, or other entity shall demand or receive a referral fee or compensation of any kind for (i) a referral from any person or other entity relative to finding a seller of real property after a bona fide real estate listing agreement has been signed, (ii) a referral from any person or other entity relative to finding a buyer for real property after a bona fide offer to purchase real property is accepted, or (iii) a referral from any person or other entity relative to finding real property after a bona fide buyer's agency agreement has been signed, unless reasonable cause for payment of such compensation exists.

2. Any violation of subdivision one of this section shall constitute a deceptive act or practice within the meaning of section three hundred forty-nine of this article.

ARTICLE 22-B

WATER TREATMENT UNITS

Section 350-g. Definitions.

350-h. Water treatment units.

350-i. Performance data sheet.

§ 350-g. Definitions. When used in this article, the following terms shall have the meaning ascribed to them:

1. "Water treatment unit" shall mean a product, device or system designed for personal, family or household use and for which a claim or claims are made that it will improve the quality of water by reducing

one or more contaminants through mechanical, physical, chemical or biological processes or combinations thereof. Each model of a system or a device shall be deemed a distinct water treatment unit.

2. "Contaminant" shall mean only those physical, chemical, microbiological, or radiological substances in water for which a federal maximum contaminant level exists pursuant to the federal Safe Drinking Water Act or a state maximum contaminant level exists pursuant to the public health law or a guideline exists which has been established by the commissioner of health.

3. "Person" shall mean an individual, corporation, partnership, joint venture, or any business entity.

4. "Label" shall mean the written, printed or graphic matter (i) affixed or attached to or printed on the water treatment unit, or (ii) placed on or otherwise made a part of the containers or wrappers of such units.

5. "Performance data sheet" shall mean a booklet, document, label or other printed material containing, at a minimum, the information required pursuant to section three hundred fifty-i of this article.

6. "Catalogue sale" shall mean any sale by means of printed material received by the consumer, including advertisements in newspapers, magazines or similar publications which contains the terms of sale, retail price, and instructions for ordering from which a consumer can order such unit.

7. "Qualified laboratory" shall mean:

a. A laboratory equipped and staffed to perform water treatment unit product validation testing using, where applicable:

(i) United States Environmental Protection Agency standards for drinking water quality and maximum contaminant levels, or their equivalent, and

(ii) Testing protocols developed pursuant to a peer review process

within the water treatment unit industry; or

b. A laboratory certified under any state's water treatment unit law or regulation, provided that certification standards are at least as stringent as those of the state of New York, if any standards exist.

§ 350-h. Water treatment units. 1. No person shall sell, offer for sale, rent, lease or possess for the purpose of resale or distribution any water treatment unit for use in this state unless each water treatment unit has a conspicuous and legible label stating, "IMPORTANT NOTICE, Read the Performance Data Sheet." and is accompanied by a performance data sheet placed on, in, or otherwise made a part of the containers or wrappers of such units.

2. No person, firm or corporation shall engage in the following practices in the sale, offer for sale, rental, lease or other distribution of water treatment units, as defined in section three hundred fifty-g of this article:

a. Make materially false or misleading claims concerning the quality of a prospective purchaser's public water supply or private well water;

b. Make materially false or misleading claims which state the kind and degree of problems caused by water from a public water supply;

c. Make materially false or misleading claims that state or clearly imply scientific certainty regarding the relationship between acute or chronic illnesses and water quality, unless based on valid scientific studies;

d. Make product performance claims and product benefit claims unless such claims are based on factual data obtained from tests conducted by a qualified laboratory following scientifically valid test procedures, and for which data is in existence at the time such claims are made;

e. Make uses of pictures, exhibits, graphs, charts or other graphic

portrayals in advertisements in a materially false or misleading manner;

f. Make materially false or misleading claims that state or clearly imply that serious harm may or will occur or be prevented if the product is not purchased, or may or will be prevented if the product is purchased;

g. State or clearly imply that the water flowing from a water treatment unit is pure unless such water meets or exceeds all federal or state drinking water guidelines and maximum contaminant levels;

h. Make claims that state or clearly imply that a water treatment unit would provide a health benefit or diminish a health risk unless reasonably defined;

i. Make materially false or misleading statements that the contaminants reduced by a water treatment unit are present in excess of permitted levels in the drinking water of the person to whom the statement is made;

j. Make use of endorsements or testimonials which do not state the qualifications of the person giving them; are materially false or misleading; or which do not accurately reflect the context in which they were made or given;

k. Knowingly omit facts from advertisements to mislead or to misrepresent;

l. Make use of tests or test results of a consumer's drinking water in a materially false or misleading manner in order to induce a person to purchase a water treatment unit; or

m. Make materially false or misleading claims that the following characteristics are in and of themselves health-threatening contaminants or contaminations: color, odor, taste, corrosivity, pH, total dissolved solids, turbidity, hardness, iron, manganese, sodium, chlorine, sulfate, zinc, copper, foaming agents, or chloride, unless designated to be a

primary contaminant by the United States Environmental Protection Agency, or if existing characteristics exceed any federal or state drinking water guidelines or maximum contaminant levels.

§ 350-i. Performance data sheet. 1. A performance data sheet shall be provided pursuant to subdivision one of section three hundred fifty-h of this article and made available to the prospective purchaser, renter or lessee, prior to the consummation of any sale, rental or lease of a water treatment unit. In the case of a catalogue sale, the consummation of the sale is three days after the purchaser has received the water treatment unit. If the purchaser cancels the sale and returns the unit within any refund period allowed by the seller or by law, the purchaser may do so without cost. Catalogues shall contain a notice that customers are entitled to a copy of the performance data sheet upon request prior to the consummation of the sale. The performance data sheet shall contain information including, but not limited to:

- a. the name and mailing address of the manufacturer or distributor;
- b. the name, brand or trademark under which the unit is sold, and its model number;
- c. performance and test data obtained pursuant to tests of the water treatment unit performed by a qualified laboratory. Data shall include but not be limited to: the list of contaminants the manufacturer is claiming will be reduced by the unit; the influent concentration level of each contaminant or its surrogate; the effluent concentration of each contaminant or its surrogate; where applicable, the maximum contaminant level (MCL) promulgated pursuant to the federal Safe Drinking Water Act, or promulgated pursuant to section two hundred twenty-five of the public health law; where applicable, the approximate capacity of the unit, expressed in gallons and/or period of time, during which the unit is effective in reducing each contaminant or its surrogate based upon the influent concentration level used in the tests; and the temperature, flow rate, pressure, pH, alkalinity and acidity of the water used in the test;

d. a summary of installation instructions which shall include measures to avoid contamination from improper handling and installation;

e. a summary of recommended operational procedures and requirements necessary for the proper operation of the unit including but not limited to: electrical requirements; maximum and minimum operating pressure; maximum operating temperature; maintenance requirements; inflow rate and outflow rate; replacement frequencies; and an explanation of any performance indicator, if available;

f. the manufacturer's limited warranty if applicable; and

g. a statement that performance of the water treatment unit will vary based on local water conditions; and

h. a conspicuous and legible notice at the top of the first page of the performance data sheet stating, "IMPORTANT NOTICE, Read this Performance Data Sheet and compare the capabilities of this unit with your actual water treatment needs. It is recommended that, before purchasing a water treatment unit, you have your water supply tested to determine your actual water treatment needs."

2. In the case of customized water treatment units or systems, integrated or assembled on site or designed for site-specific needs to reduce a specified contaminant or contaminants, the seller shall provide the consumer with the results of analysis from a qualified laboratory which document the effectiveness of the water treatment unit in reducing the specified contaminants, the approximate capacity and a recommended schedule for monitoring the unit's effectiveness.

3. Any person in violation of this article or any person who knowingly and willingly falsifies any performance data shall be subject to the remedies and penalties available pursuant to section three hundred forty-nine of this chapter and, in addition, shall be subject to a civil penalty of not more than five hundred dollars for each violation, which penalty shall accrue to the state and may be recovered in a civil action

brought by the attorney general.

4. Nothing in this section shall preclude an action taken pursuant to any other section of law.

ARTICLE 23

BUCKET SHOPS

Section 351. Acts prohibited; penalty for violation.

351-a. Exhibiting quotations; penalty for violation.

351-b. Written statement to be furnished; presumption.

351-c. Corporations; additional penalty for second offense.

351-d. Definitions.

351-e. Witnesses' immunity.

§ 351. Acts prohibited; penalty for violation. Any person, copartnership, firm, association or corporation, whether acting in his, their or its own right or as the officer, agent, servant, correspondent or representative of another, who shall: 1. Make or offer to make, or assist in making or offering to make any contract respecting the purchase or sale, either upon credit or margin, of any securities or commodities, including all evidences of debt or property and options for the purchase thereof, shares in any corporation or association, bonds, coupons, scrip, rights, choses in action and other evidences of debt or property and options for the purchase thereof or anything movable that is bought and sold, intending that such contract shall be terminated, closed or settled according to, or upon the basis of the public market quotations of or prices made on any board of trade or exchange or market upon which such commodities or securities are dealt in, and without intending a bona fide purchase or sale of the same; or,

2. Makes or offers to make or assists in making or offering to make any contract respecting the purchase or sale, either upon credit or margin, of any such securities or commodities intending that such contract shall be deemed terminated, closed and settled when such market quotations of or such prices for such securities or commodities named in

such contract shall reach a certain figure, without intending a bona fide purchase or sale of the same; or,

3. Makes or offers to make, or assists in making or offering to make any contract respecting the purchase or sale, either upon credit or margin of any such securities or commodities, not intending the actual bona fide receipt or delivery of any such securities or commodities, but intending a settlement of such contract based upon the difference in such public market quotations of or such prices at which said securities or commodities are, or are asserted to be, bought or sold; or,

4. Shall, as owner, keeper, proprietor or person in charge of, or as officer, director, stockholder, agent, servant, correspondent or representative of such owner, keeper, proprietor or person in charge of, or as officer, director, stockholder, agent, servant, correspondent, or representative of such owner, keeper, proprietor or person in charge, or of any other person, keep, conduct or operate any bucket shop, as hereinafter defined; or knowingly permit or allow or induce any person, copartnership, firm, association or corporation whether acting in his, their or its own right, or as the officer, agent, servant, correspondent or representative of another to make or offer to make therein, or to assist in making therein, or in offering to make therein, any of the contracts specified in any of the three preceding subdivisions of this section.

Shall be guilty of a felony. The prosecution, conviction and punishment of a corporation hereunder shall not be deemed to be a prosecution, conviction or punishment of any of its officers, directors or stockholders.

§ 351-a. Exhibiting quotations; penalty for violation. Any person, firm, copartnership, association or corporation receiving, communicating, exhibiting or displaying in any manner any statement of quotations of prices of any such securities or commodities with an intent to make or offer to make or to assist in making or offering to make any contract prohibited in this article shall be guilty of a felony

and on conviction thereof shall be punished as provided in the preceding section.

§ 351-b. Written statement to be furnished; presumption. Every person, firm, association, copartnership or corporation shall furnish upon written demand to any customer, or principal for whom such person has executed an order for the actual purchase or sale of any such securities or commodities, either for immediate or future delivery, a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, place where, the amount of and the price at which the same was either bought or sold; and if such person, firm, association, copartnership or corporation shall refuse or neglect to furnish such statement within forty-eight hours after such demand, such refusal shall be prima facie evidence that such purchase or sale was made in violation of this article.

§ 351-c. Corporations; additional penalty for second offense. If a domestic corporation shall be convicted of a second offense hereunder the supreme court shall have jurisdiction upon an action brought by the attorney-general, in the name of the people, for that purpose, to dissolve such corporation; and if a foreign corporation shall be convicted of a second offense, such court shall have jurisdiction in an action brought in like manner to restrain such corporation from doing business in this state.

§ 351-d. Definitions. "Bucket shop" shall mean any building, or any room, apartment, booth, office or store therein or any other place where any contract prohibited by this article is made or offered to be made.

§ 351-e. Witnesses' immunity. In any criminal proceeding before any court or grand jury for a violation of any of the provisions of this article, the court or grand jury may confer immunity in accordance with

the provisions of section 50.20 or 190.40 of the criminal procedure law.

ARTICLE 23-A

**FRAUDULENT PRACTICES IN RESPECT TO STOCKS,
BONDS AND OTHER SECURITIES**

- Section 352. Investigation by attorney-general.
- 352-a. Foreign corporation to make designation.
- 352-b. Non-resident brokers, dealers, salesmen and investment advisors; designation of secretary of state as agent for service of process; service of process.
- 352-c. Prohibited acts constituting misdemeanor; felony.
- 352-d. Effect of prosecution under previous section.
- 352-e. Real estate syndication offerings.
- 352-ee. Conversion of non-residential property to residential cooperative or condominium ownership.
- 352-eee. Conversions to cooperative or condominium ownership in certain cities, towns and villages located in the counties of Nassau, Westchester and Rockland.
- 352-eeee. Conversions to cooperative or condominium ownership in the city of New York.
- 352-eeeeee. Conversions to condominium ownership for the preservation of expiring affordable housing in the city of New York.
- 352-f. Description of realty bonds.
- 352-g. Exemptions.
- 352-h. Trust funds.
- 352-i. Injunctive relief.
- 352-j. Application of article.
- 352-k. Broker dealer minimum capital requirements.
- 352-l. Cooperative corporations.
353. Action by attorney-general.
- 353-a. Receivers.
354. Examination of witnesses and preliminary injunction.
355. Procedure on hearing.
356. Powers of referee.

- 357. Application of provisions of civil practice law and rules.
- 358. Criminal prosecution.
- 359. Immunity.
- 359-a. Appointment of deputies.
- 359-b. Effect of unconstitutionality of part of article.
- 359-c. Publication of state notices.
- 359-e. Definitions.
- 359-ee. Report of existence.
- 359-eee. Definitions.
- 359-f. Exemptions from certain provisions of section three hundred fifty-nine-e.
- 359-ff. Registration of intra-state offerings.
- 359-fff. Chain distributor schemes prohibited.
- 359-g. Violations and penalties.
- 359-h. Destruction of certain records, books and other data by the attorney-general.

§ 352. Investigation by attorney-general. 1. Whenever it shall appear to the attorney-general, either upon complaint or otherwise, that in the advertisement, investment advice, purchase or sale within this state of any commodity dealt in on any exchange within the United States of America or the delivery of which is contemplated by transfer of negotiable documents of title all of which are hereinafter called commodities, or that in the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice or distribution within or from this state, of any stocks, bonds, notes, evidences of interest or indebtedness or other securities, including oil and mineral deeds or leases and any interest therein, sold or transferred in whole or in part to the purchaser where the same do not effect a transfer of the title in fee simple to the land, or negotiable documents of title, or foreign currency orders, calls or options therefor hereinafter called security or securities, any person, partnership, corporation, company, trust or association, or any agent or employee thereof, shall have employed, or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining money or property by means of any

false pretense, representation or promise, or that any person, partnership, corporation, company, trust or association, or any agent or employee thereof, shall have made, makes or attempts to make within or from this state fictitious or pretended purchases or sales of securities or commodities or that any person, partnership, corporation, company, trust or association, or agent or employee thereof shall have employed, or employs, or is about to employ, any deception, misrepresentation, concealment, suppression, fraud, false pretense or false promise, or shall have engaged in or engages in or is about to engage in any practice or transaction or course of business relating to the purchase, exchange, investment advice or sale of securities or commodities which is fraudulent or in violation of law and which has operated or which would operate as a fraud upon the purchaser, or that any broker, dealer, or salesman, as defined by section three hundred fifty-nine-e of this article, or any agent or employee thereof, has sold or offered for sale or is attempting to sell or is offering for sale any security or securities in violation of the provisions of said section or section three hundred fifty-nine-ee, or that any other section of this article has been violated, any one or all of which devices, schemes, artifices, fictitious or pretended purchases or sales of securities or commodities, deceptions, misrepresentations, concealments, suppressions, frauds, false pretenses, false promises, practices, transactions and courses of business are hereby declared to be and are hereinafter referred to as a fraudulent practice or fraudulent practices or he believes it to be in the public interest that an investigation be made, he may in his discretion either require or permit such person, partnership, corporation, company, trust or association, or any agent or employee thereof, to file with him a statement in writing under oath or otherwise as to all the facts and circumstances concerning the subject matter which he believes it is to the public interest to investigate, and for that purpose may prescribe forms upon which such statements shall be made. The attorney-general may also require such other data and information as he may deem relevant and may make such special and independent investigations as he may deem necessary in connection with the matter.

2. The attorney-general, his deputy or other officer designated by him

is empowered to subpoena witnesses, compel their attendance, examine them under oath before him or a magistrate, a court of record or a judge or justice thereof and require the production of any books or papers which he deems relevant or material to the inquiry. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the attorney-general under this article.

3. No person shall be excused from attending such inquiry in pursuance to the mandates of a subpoena, or from producing a paper or book, or from being examined or required to answer a question on the ground of failure of tender or payment of a witness fee and/or mileage, unless at the time of such appearance or production, as the case may be, such witness makes demand for such payment as a condition precedent to the offering of testimony or production required by the subpoena and unless such payment is not thereupon made. The provisions for payment of witness fee and/or mileage do not apply to any officer, director or person in the employ of any person, partnership, corporation, company, trust or association whose conduct or practices are being investigated.

4. If a person subpoenaed to attend such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce a book or paper when ordered so to do by the officer conducting such inquiry, or if a person, partnership, corporation, company, trust or association fails to perform any act required hereunder to be performed, he shall be guilty of a misdemeanor.

5. It shall be the duty of all public officers, their deputies, assistants, subordinates, clerks or employees and all other persons to render and furnish to the attorney-general, his deputy or other designated officer when requested all information and assistance in their possession or within their power. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than the attorney-general the name of any witness examined or any other information obtained upon such inquiry except as directed by the attorney-general shall be guilty of a

misdemeanor.

§ 352-a. Foreign corporation to make designation. 1. If the stocks, bonds or other securities of a foreign corporation, association, common law trust or similar organization are offered or advertised for sale within the state of New York and such corporation, association, common law trust or other organization has not filed pursuant to laws heretofore or hereafter existing the designation of a person upon whom process against it may be served or the designation of the secretary of state as such person pursuant to section thirteen hundred four of the business corporation law or other laws heretofore or hereafter existing or, in lieu thereof, an instrument in writing duly acknowledged and filed in the office of the secretary of state designating the secretary of state as the person upon whom may be served any subpoena, subpoena duces tecum or other process directed to such foreign corporation, association, common law trust or similar organization and issued in any investigation, examination or proceeding pending or about to be instituted under and pursuant to the provisions of this article, the attorney-general may serve a notice upon such corporation, association, common law trust or similar organization, or upon any nonresident officer thereof, by mailing the same in a securely sealed postpaid wrapper addressed to such corporation, association, common law trust or similar organization or officer thereof at its or his last known place of business or residence, and may in such notice require that such corporation, association, common law trust or similar organization or such officer furnish a written statement, verified as required in said notice, giving the information therein specified relating to the stocks, bonds or other securities of such corporation, association, common law trust or similar organization or, in the alternative, that such corporation, association, common law trust or other organization, by its proper officer or officers, or such officer, shall appear within a reasonable time from the date of mailing of such notice at a designated place within this state for examination and shall produce at the time and place of such examination such books and papers of such corporation, association, common law trust or similar organization as may be designated in such notice.

2. If such corporation, association, common law trust or similar organization or such officer thereof shall fail to furnish the statement called for by such notice, or shall fail to appear pursuant thereto or to produce the books and papers required thereby to be produced, or refuse to submit to examination or to answer any proper question, the proof of such failure or refusal shall constitute prima facie evidence that the sale or offering for sale or advertisement of the stocks, bonds or other securities of such corporation, association, common law trust or similar organization constitutes a fraudulent practice within the meaning of this article and may in the discretion of the court be treated as a sufficient basis for a permanent injunction against the continuance of such fraudulent practice.

3. The department of state shall keep a record of each process served upon the secretary of state under this chapter, including the date of service. It shall, upon request made within ten years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service and the receipt of the statutory fee. Process served upon the secretary of state under this chapter shall be destroyed by him after a period of ten years from such service.

§ 352-b. Non-resident brokers, dealers, salesmen and investment advisors; designation of secretary of state as agent for service of process; service of process. 1. Any person, partnership, corporation, company, trust or association resident or having his or its principal place of business without the state or organized under and by virtue of the laws of a foreign state, who or which shall do business in this state as a broker, dealer, salesman or investment advisor, as defined in section three hundred fifty-nine-e or three hundred fifty-nine-eee of this article, or any partner, principal, officer or director of such broker, dealer or investment advisor shall be deemed to have irrevocably appointed the secretary of state as his or its agent upon whom may be served any summons, complaint, subpoena, subpoena duces tecum, notice, order, judgment or other process directed to such person, partnership,

corporation, company, trust or association, or any partner, principal, officer or director thereof, in any action, investigation or proceeding brought or conducted by the attorney general under the provisions of this article arising out of or in connection with any transaction, matter or thing relating to the practices, affairs, management or business of such person, partnership, corporation, company, trust or association, or any partner, principal, officer or director thereof. Any such person, partnership, corporation, company, trust or association, or any partner, principal, officer or director thereof, may file with the secretary of state a designation, in terms complying herewith, duly acknowledged, irrevocably appointing the secretary of state as his or its agent upon whom may be served any such process; provided, however, that a designation filed with the secretary of state pursuant to section three hundred fifty-two-a of this article or section thirteen hundred four of the business corporation law shall serve also as such designation.

2. Service of such process upon the secretary of state shall be made by personally delivering to and leaving with him or a deputy secretary of state a copy thereof at the office of the department of state in the city of Albany, and such service shall be sufficient service provided that notice of such service and a copy of such process are forthwith sent by the attorney general to such person, partnership, corporation, company, trust or association, by registered or certified mail with return receipt requested, at his or its office as set forth in the "broker-dealer's statement", "salesman's statement" or "investment advisor's statement" filed in the department of law pursuant to section three hundred fifty-nine-e or section three hundred fifty-nine-eee of this article, or in default of the filing of such statement, at the last address known to the attorney general. Service of such process shall be complete on receipt by the attorney general of a return receipt purporting to be signed by the addressee or a person qualified to receive his or its registered or certified mail, in accordance with the rules and customs of the post office department, or, if acceptance was refused by the addressee or his or its agent, on return to the attorney general of the original envelope bearing a notation by the postal authorities that receipt thereof was refused.

3. The department of state shall keep a record of each process served upon the secretary of state under this chapter, including the date of service. It shall, upon request made within ten years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service and the receipt of the statutory fee. Process served upon the secretary of state under this chapter shall be destroyed by him after a period of ten years from such service.

§ 352-c. Prohibited acts constituting misdemeanor; felony. 1. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to use or employ any of the following acts or practices:

(a) Any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

(b) Any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(c) Any representation or statement which is false, where the person who made such representation or statement: (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made;

where engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of any securities or commodities, as defined in section three hundred fifty-two of this article, regardless of whether issuance, distribution, exchange, sale, negotiation or purchase resulted.

2. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to engage in any artifice, agreement, device or scheme to obtain money, profit or property by any of the means prohibited by this section.

3. It shall be illegal and prohibited for any person, partnership,

corporation, company, trust or association, or any agent or employee thereof, engaged in the sale of any securities or commodities, as defined in section three hundred fifty-two of this article, within or from the state of New York to represent that they are an "exchange" or use the word "exchange," or any abbreviation or derivative thereof, in its name or assumed name unless it is registered with the Securities and Exchange Commission as a national securities exchange, pursuant to section six of the Securities and Exchange Act of 1934, or unless it has been designated as a contract market by the Commodity Futures Trading Commission, pursuant to section five of the Commodity Exchange Act.

4. Except as provided in subdivision five or six, a person, partnership, corporation, company, trust or association, or any agent or employee thereof, using or employing any act or practice declared to be illegal and prohibited by this section, shall be guilty of a misdemeanor.

5. Any person, partnership, corporation, company, trust or association, or any agent or employee thereof who intentionally engages in any scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation or purchase of any securities or commodities, as defined in this article, shall be guilty of a class E felony.

6. Any person, partnership, corporation, company, trust or association, or any agent or employee thereof who intentionally engages in fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale, or who makes any material false representation or statement with intent to deceive or defraud, while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of any securities or commodities, as defined in this article, and thereby wrongfully obtains property of a value in excess of two hundred fifty dollars, shall be guilty of a class E felony.

§ 352-d. Effect of prosecution under previous section. A person, partnership, corporation, company, trust or association or any agent or employee thereof that, having engaged in any act or practice constituting a violation of section three hundred fifty-two-c of this article, commits additional acts under such circumstances as to constitute a felony, the crime of conspiracy, petit larceny, or more than one of the aforesaid, is punishable therefor, as well as for the violation of that section, and may be prosecuted for each crime, separately or in the same information or indictment, notwithstanding any other provision of law.

§ 352-e. Real estate syndication offerings. 1. (a) It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to make or take part in a public offering or sale in or from the state of New York of securities constituted of participation interests or investments in real estate, mortgages or leases, including stocks, bonds, debentures, evidences of interest or indebtedness, limited partnership interests or other security or securities as defined in section three hundred fifty-two of this article, when such securities consist primarily of participation interests or investments in one or more real estate ventures, including cooperative interests in realty, unless and until there shall have been filed with the department of law, prior to such offering, a written statement or statements, to be known as an "offering statement" or "prospectus" concerning the contemplated offering which shall contain the information and representations required by paragraph (b) of this subdivision unless the security offering is exempted hereunder or under section three hundred fifty-nine-f, subdivision two, of this article by rule or action of the attorney general. The term "real estate" as used in the paragraph shall not include mineral, oil or timber leases or properties, or buildings, structures, land or other realty housing or containing business offices or industry, owned or leased by the issuer, where the issuer is not primarily engaged in the business of buying and selling such building or other realty or leases

or interests therein. The circulation or dissemination of a non-firm offer (including circulation or dissemination of a preliminary prospectus pursuant to section ten (b) of the securities act of nineteen hundred thirty-three, and the rules thereto appertaining) shall not constitute making or taking part in a public offering within the meaning of this section.

(b) The detailed terms of the transaction; a description of the property, the nature of the interest, and how title thereto is to be held; the gross and net income for a reasonable period preceding the offering where applicable and available; the current gross and net income where applicable and available; the basis, rate and method of computing depreciation; a description of major current leases; the essential terms of all mortgages; the names, addresses and business background of the principals involved, the nature of their fiduciary relationship and their financial relationship, past, present and future, to the property offered to the syndicate and to those who are to participate in its management; the interests and profits of the promoters, offerors, syndicate organizers, officers, directors, trustees or general partners, direct and indirect, in the promotion and management of the venture; all restrictions, if any, on transfer of participants' interests; a statement as to what stock or other security involved in the transaction, if any, is non-voting; a statement as to what disposition will be made of the funds received and of the transaction if not consummated, which statement shall represent that all moneys received from the sale of such securities until actually employed in connection with the consummation of the transaction as therein described, shall be kept in trust and that in the event insufficient funds are raised through the offering or otherwise to effectuate the purchase or purchases or other consummation of the contemplated transaction, or that the intended acquisition shall not be completed for any other reason or reasons, then such moneys, less such amounts actually employed in connection with the consummation of the transaction, shall be fully returned to the investor; which of the securities offered are unsecured; clearly distinguish between leasehold and fee ownership, between fact and opinion; a commitment to submit annual reports to all participants, including an annual balance sheet and profit and loss statement certified by an independent certified

public accountant; clearly distinguish between those portions of promised distributions which are income and those which are a return of principal or capital; in the case of qualified leasehold condominiums, as defined in section three hundred thirty-nine-e of the real property law, a disclosure of the unique requirements imposed on the unit owners of such condominiums by the provisions of sections three hundred thirty-nine-bb and three hundred thirty-nine-cc of such law; and such additional information as the attorney general may prescribe in rules and regulations promulgated under subdivision six hereof as will afford potential investors, purchasers and participants an adequate basis upon which to found their judgment and shall not omit any material fact or contain any untrue statement of a material fact.

(c) All advertising in connection with an offering of securities described in this subdivision shall be consistent with the representations and information required to be set forth as hereinbefore in this subdivision provided.

2. Unless otherwise provided by regulation issued by the attorney general, the offering statement or statements or prospectus required in subdivision one of this section shall be filed with the department of law at its office in the city of New York, prior to the public offering of the security involved. No offer, advertisement or sale of such securities shall be made in or from the state of New York until the attorney general has issued to the issuer or other offeror a letter stating that the offering has been filed. The attorney general, not later than thirty days after the submission of such filing, shall issue such a letter or, in the alternative, a notification in writing indicating deficiencies in the offering statement, statements or prospectus; provided, however, that in the case of a building or group of buildings to be converted to cooperative or condominium ownership which is occupied in whole or in part for residential purposes and which is not the subject of a preservation plan submitted pursuant to section three hundred fifty-two-eeeeee of this article, such letter or notification shall be issued in not sooner than four months and not later than six months from the date of submission of such filing. The attorney general may also refuse to issue a letter stating that the offering statement or statements or prospectus has been filed whenever

it appears that the offering statement or statements or prospectus does not clearly set forth the specific property or properties to be purchased, leased, mortgaged, or otherwise to be acquired, financed or the subject of specific investment with a substantial portion of the offering proceeds.

2-a. (a) For the purposes of this subdivision the following words shall have the following meanings:

(i) "Plan". Every offering statement or prospectus submitted to the department of law for the conversion of a building or group of buildings or development from residential rental status to cooperative or condominium ownership, other than a plan governed by the provisions of either section three hundred fifty-two-eee, three hundred fifty-two-eeee or section three hundred fifty-two-eeeeee of this article, or a plan for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(ii) "Non-purchasing tenant". A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(iii) "Eligible senior citizens". Non-purchasing tenants who are sixty-two years of age or older on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this subdivision; provided that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(iv) "Eligible disabled persons". Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent

and which prevent the tenant from engaging in any substantial gainful employment on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this subdivision; provided, however, that if the disability first occurs after acceptance of the plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty days following the acceptance of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit or the shares allocated thereto on the terms then offered to tenants in occupancy.

(b) The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of this section has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless the plan provides that:

(i) No eviction proceedings will be commenced, except as hereinafter provided, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability, such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his obligations to the owner of the dwelling unit or

the shares allocated thereto and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(ii) Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(iii) The rights granted under the plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(iv) Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person must apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue his determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules, which proceeding must be commenced within thirty days after such determination by the attorney general becomes final.

(c) The provisions of this subdivision shall be applicable in any city, town or village not covered by the provisions of section three hundred fifty-two-eeee of this chapter, or which has not elected to be covered by section three hundred fifty-two-eee of this chapter, provided the local legislative body elects, by majority vote to adopt by resolution, coverage provided by this section. A certified copy of such resolution shall be filed in the office of the attorney general at Albany and shall become effective on the date of such filing.

2-b. In the case of offerings of cooperatives, condominiums, interest in homeowners association and other cooperative interests in realty, including homes subject to deed or covenant or agreements requiring investment therein, the attorney general may refuse to issue a letter of acceptance unless the offering statement, prospectus or plan shall

provide that all deposits, down-payments or advances made by purchasers of residential units shall be held in a special escrow account pending delivery of the completed apartment or unit and a deed or lease whichever is applicable, unless insurance of such funds in a form satisfactory to the attorney general has been obtained prior thereto. In addition to the general regulatory authority provided in this section, the attorney general is hereby authorized to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this subdivision, including, but not limited to, determining when escrow funds may be released, the nature of escrowees, and other terms and conditions relating thereto deemed necessary in the public interest.

2-c. Payment of legal fees for representation of a tenant or tenant's association in a residential building undergoing conversion to cooperative or condominium ownership shall not be made from any reserve fund, working capital fund, or other fund established to cover expenses, repairs and capital improvements of buildings converted to cooperative or condominium ownership, unless made pursuant to a retainer agreement entered into before this subdivision shall have become a law. Payment of legal fees may be made, however, from another fund specifically designated for such purpose.

2-d. (a) For the purposes of this subdivision the term "self-dealing contract" shall be defined as any contract or portion thereof which is entered into after October eighth, nineteen hundred eighty, and which:

(i) provides for operation, maintenance, or management of a condominium or cooperative association in a conversion project, or of property serving the condominium or cooperative unit owners in such projects;

(ii) is between such unit owners or such association and the developer or an affiliate of the developer;

(iii) was entered into while such association was controlled by the developer through special developer control or because the developer held a majority of the votes in such association;

(iv) is for a period of more than three years, including any automatic renewal provisions which are exercisable at the sole option of the developer or an affiliate of the developer; and

(v) may not be terminated without penalty by such unit owners or such association.

(b) In the case of offerings of cooperatives, condominiums or other interests in realty covered by the provisions of section six hundred eight of the Condominium and Cooperative Abuse Relief Act of 1980, 15 U.S.C. 3607, the attorney general shall refuse to issue a letter of acceptance unless the offering statement, prospectus or plan provides that the tenant shareholders or owners entitled to vote to terminate a self-dealing contract pursuant to such section twice be notified of such right in writing (i) once within thirty days of the date that the right to terminate pursuant to subsection (b) of such section commences and (ii) secondly at least six months prior to the date that such right to terminate will expire.

3. No offering literature shall be employed in the offering of securities as defined in subdivision one of this section except by the offering statement or statements filed in the department of law pursuant to the provisions of this section. All advertising in whatever form, including periodicals or on radio or television shall contain a statement that no offer of such securities is made except by such offering statement or statements.

4. In all literature employed in the offer and sale of securities defined in subdivision one of this section and in all advertising in connection therewith there shall be contained, in easily readable print on the face thereof, a statement that the filing of an offering statement or statements or prospectus as required by subdivision one of this section with the department of law does not constitute approval of the issue or the sale thereof by the department of law or the attorney general of this state.

5. No offering or sale whatever of securities described in subdivision one of this section shall be made except on the basis of information, statements, literature, or representations constituting the offering statement or statements or prospectus described in such subdivision, and no information, statements, literature, or representations shall be used in the offering or sale of securities described in such subdivision

unless it is first so filed and the prospective purchaser furnished with true copies thereof.

6. (a) The attorney general is hereby authorized and empowered to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this section, including regulations for the method, contents and filing procedures with respect to the statements required by subdivision one and the making of amendments thereto.

(b) The attorney general is hereby authorized and empowered to adopt, promulgate, amend and rescind suitable rules and regulations relating to the information furnished to investors of the sources of any distribution or distributions made by any issuer in connection with the sale of realty securities since January first, nineteen hundred sixty-one within the provisions of section three hundred fifty-two-e and section three hundred fifty-two-g of this article.

7. (a) The department of law shall collect the following fees for the filing of each offering statement or prospectus as described in subdivision one of this section: seven hundred fifty dollars for every offering not in excess of two hundred fifty thousand dollars; for every offering in excess of two hundred fifty thousand dollars, four-tenths of one percent of the total amount of the offering but not in excess of sixty thousand dollars of which one-half of said amount shall be a nonrefundable deposit paid at the time of submitting the offering statement to the department of law for review and the balance payable upon the issuance of a letter of acceptance for filing said offering statement. The department of law shall, in addition, collect a fee of seven hundred fifty dollars for each other amendment to an offering statement. For each application granted by the department of law, which permits the applicant to solicit public interest or public funds preliminary to the filing of an offering statement or for the issuance of a "no-filing required" letter and any amendment thereto, the department of law shall collect a fee of seven hundred fifty dollars. For each application granted pursuant to section three hundred fifty-two-g of this article, the department of law shall collect a fee of two-tenths of one percent of the amount of the offering of securities; however, the minimum fee shall be seven hundred fifty

dollars, and the maximum fee shall be sixty thousand dollars. All revenue from that portion of any fee imposed pursuant to this paragraph, which exceeds twenty thousand dollars for offering statements, and five hundred twenty-five dollars for all other filings, shall be paid by the department of law to the state comptroller to be deposited in and credited to the real estate finance bureau fund, established pursuant to section eighty of the state finance law.

(b) The attorney general may, in his discretion, require an inspection to be made by the department of law in connection with a real estate syndication, cooperative, or condominium offering, of lands and property thereon, situated outside of the state of New York, involved in such offering. In such case, prior to the acceptance of such filing, there shall be remitted to the department of law an amount equivalent to the cost of travel from New York to the location of the property involved in the offering and return, as estimated by the department of law, and a further reasonable amount estimated to be necessary to cover the additional expenses of such inspection. The department of law shall return to the person making the remittance any amount advanced in excess of the actual expenses incurred, and where there is a deficiency, the department of law shall be empowered to collect the difference between the actual expenses and the amount advanced.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, the department of law shall not collect any fees for the filing of an offering statement or prospectus or any amended filings thereto as described in subdivision one of this section whenever: (i) a conversion of a mobile home park, building or group of buildings or development from residential rental status to cooperative or condominium ownership is being made pursuant to article eleven, eighteen, nineteen or twenty of the private housing finance law; or (ii) the offering statement or prospectus or amendment thereto is submitted to the department of law pursuant to section three hundred fifty-two-eeeeee of this article. For submissions made pursuant to section three hundred fifty-two-eeeeee of this article, the department of law shall instead collect the fees set forth in subdivision thirty-one of such section. All revenue from that portion of any fee imposed pursuant to subdivision thirty-one of section three hundred fifty-two-eeeeee of this article shall be paid by the department of law to the state comptroller to be

deposited in and credited to the real estate finance bureau fund, established pursuant to section eighty of the state finance law.

8. Within four months after the end of its fiscal year, every syndicate which shall have been required to file an offering statement or statements or prospectus under subdivision one of this section shall file with the department of law at its office in the city of New York an annual report of the syndicate operation, including an annual balance sheet and profit and loss statement certified by an independent certified public accountant. The department of law shall collect a fee of five dollars for the filing of each such annual report.

9. Each offering statement or prospectus as described in subdivision one of this section, and all exhibits or documents referred to therein shall be available for inspection by any person who shall have purchased a security described in this section or shall have participated in the offering of such security.

§ 352-ee. Conversion of non-residential property to residential cooperative or condominium ownership. 1. The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units located in a city of over one million in population pursuant to a plan for the alteration or conversion of the building to residential use under cooperative or condominium ownership, other than a plan relating to a building already in compliance with section three hundred one of the multiple dwelling law, unless the offering statement or prospectus contains the following:

(i) a statement that a copy of plans for such alteration or conversion, approved in accordance with section three hundred of the multiple dwelling law, has been submitted to the attorney general prior to the issuance by the attorney general of a letter stating that the offering statement or prospectus has been filed;

(ii) a report prepared by an architect or engineer licensed by the

state which sets forth such alterations to the public portions and common areas of the building and such alterations to individual spaces or dwelling units as may be necessary to obtain a permanent certificate of occupancy for permanent residential use of the premises;

(iii) a statement, satisfactory to the attorney general, that it is the obligation of the sponsor to complete all alterations and improvements to the public portions and common areas of the building in compliance with such approved plans within the time specified in the plan;

(iv) a statement, satisfactory to the attorney general, that it is the obligation of the sponsor to complete all alterations and improvements to individual spaces or dwelling units in compliance with such approved plans within the time specified in the plan or, if the sponsor does not undertake such obligation, that it is the obligation of the individual owners of shares in the cooperative corporation or of condominium units, under the supervision of the cooperative corporation or, in the case of a condominium, under the supervision of the board of managers, to complete such alterations and improvements within the time specified in the plan; and

(v) a statement that a permanent certificate of occupancy is required for permanent residential use of the premises, that a temporary certificate of occupancy may only be renewed for a total period of two years from the date of its original issuance and that, if the temporary certificate of occupancy shall have expired prior to obtaining a permanent certificate of occupancy, residential occupancy of the premises will be in violation of the multiple dwelling law, subjecting the occupants and the cooperative corporation and its board of directors or, in the case of a condominium, the unit owners and board of managers, to penalties under the multiple dwelling law including eviction of residential occupants.

2. "Residential use" shall mean, for the purposes of this section, space to be used for either living or joint living-work and shall be presumed if the offering statement or prospectus sets forth items which relate to residential use of the space, including but not limited to, income tax benefits under section two hundred sixteen of the internal revenue code, real property tax benefits available to residential

property or alterations required for the issuance of a permanent certificate of occupancy for permanent residential use of the premises.

§ 352-eee. Conversions to cooperative or condominium ownership in certain cities, towns and villages located in the counties of Nassau, Westchester and Rockland. 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Plan". Every offering statement or prospectus submitted to the department of law pursuant to section three hundred fifty-two-e of this article for the conversion of a building or group of buildings or development from residential rental status to cooperative or condominium ownership or other form of cooperative interest in realty, other than an offering statement or prospectus for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(b) "Non-eviction plan". A plan which may not be declared effective until at least fifteen percent of those bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the plan is declared effective shall have executed and delivered written agreements to purchase under the plan. As to tenants who were in occupancy on the date a letter was issued by the attorney general accepting the plan for filing, the purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements.

(c) "Eviction plan". A plan which, pursuant to the provisions of this section, can result in the eviction of a non-purchasing tenant by reason of the tenant failing to purchase pursuant thereto, and which may not be declared effective until written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements shall have been executed and delivered by: (i) at least fifty-one percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and

eligible disabled persons; and (ii) at least thirty-five percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general including, for the purposes of determining the number of bona fide tenants in occupancy on such date eligible senior citizens and eligible disabled persons.

(d) "Purchaser under the plan". A person who owns the shares allocated to a dwelling unit or who owns such dwelling unit itself.

(e) "Non-purchasing tenant". A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(f) "Eligible senior citizens". Non-purchasing tenants who are sixty-two years of age or older on the date the plan is declared effective and the spouses of any such tenants on such date; provided that such tenant shall not be precluded from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(g) "Eligible disabled persons". Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided, however, that if the disability first occurs after acceptance of the plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty days following the acceptance of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the

apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit or the shares allocated thereto on the terms then offered to tenants in occupancy.

2. The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this chapter has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless:

(a) The plan provides that it will be deemed abandoned, void and of no effect if it does not become effective within twelve months from the date of issue of the letter of the attorney general stating that the offering statement or prospectus has been accepted for filing and, in the event of such abandonment, no new plan for the conversion of such building or group of buildings or development shall be submitted to the attorney general for at least fifteen months after such abandonment.

(b) The plan provides either that it is an eviction plan or that it is a non-eviction plan.

(c) The plan provides, if it is a non-eviction plan, as follows:

(i) The plan may not be declared effective until at least fifteen percent of those bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the plan is declared effective shall have executed and delivered written agreements to purchase under the plan. As to tenants who were in occupancy on the date a letter was issued by the attorney general accepting the plan for filing, the purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements.

(ii) No eviction proceedings will be commenced at any time against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the non-purchasing tenant of his obligations to the owner of the

dwelling unit or the shares allocated thereto; and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(iii) Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to the conversion of the building or group of buildings or development to cooperative or condominium ownership shall continue to be subject thereto.

(iv) The rentals of non-purchasing tenants who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and non-purchasing tenants who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing by the attorney general shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy. In determining comparability, consideration shall be given to such factors as building services, level of maintenance and operating expenses.

(v) The plan may not be amended at any time to provide that it shall be an eviction plan.

(vi) The rights granted under the plan to purchasers under the plan and to non-purchasing tenants may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(vii) After the issuance of the letter from the attorney general stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been filed, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and ninetieth day after such date and at least once every thirty days until the plan is declared effective or is abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the plan, (1) file with the attorney general a written statement, under oath, setting forth the percentage of bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development who have executed and delivered written agreements to purchase under the plan as

of the date of such statement, (2) before noon on the day such statement is filed post a copy of such statement in a prominent place accessible to all tenants in each building covered by the plan.

(d) The plan provides, if it is an eviction plan, as follows:

(i) The plan may not be declared effective unless: (1) at least fifty-one percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons; and (2) at least thirty-five percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general including, for the purposes of determining the number of bona fide tenants in occupancy on such date eligible senior citizens and eligible disabled persons; shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements.

(ii) No eviction proceedings will be commenced against a non-purchasing tenant for failure to purchase or any other reason applicable to expiration of tenancy until the later to occur of (1) the date which is the expiration date provided in such non-purchasing tenant's lease or rental agreement, and (2) the date which is three years after the date on which the plan is declared effective.

Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to conversion shall continue to be subject thereto during the period of occupancy provided in this paragraph. Thereafter, if a tenant has not purchased, he may be removed by the owner of the dwelling unit or the shares allocated to such dwelling unit.

(iii) No eviction proceedings will be commenced, except as hereinafter provided, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible

senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability, such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto; and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(iv) Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(v) The rights granted under the plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(vi) Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person must apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue his determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules, which proceeding must be commenced within thirty days after such determination by the attorney general becomes final.

(vii) After the issuance of the letter from the attorney general stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has

been accepted for filing, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and ninetieth days after such date and at least once every thirty days until the plan is declared effective or abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the plan, (1) file with the attorney general a written statement, under oath, setting forth the percentage of bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general who have executed and delivered written agreements to purchase under the plan as of the date of such statement, and (2) before noon on the day such statement is filed post a copy of such statement in a prominent place accessible to all tenants in each building covered by the plan.

(viii) If the plan is amended before it is declared effective to provide that it shall be a non-eviction plan, any person who has agreed to purchase under the plan prior to such amendment shall have a period of thirty days after receiving written notice of such amendment to revoke his agreement to purchase under the plan.

(ix) The tenants in occupancy on the date the attorney general accepts the plan for filing shall have the exclusive right to purchase their dwelling units or the shares allocated thereto for ninety days after the plan is accepted for filing by the attorney general, during which time a tenant's dwelling unit shall not be shown to a third party unless he has, in writing, waived his right to purchase; subsequent to the expiration of such ninety day period, a tenant in occupancy of a dwelling unit who has not purchased shall be given the exclusive right for an additional period of six months from said expiration date to purchase said dwelling unit or the shares allocated thereto on the same terms and conditions as are contained in an executed contract to purchase said dwelling unit or shares entered into by a bona fide purchaser, such exclusive right to be exercisable within fifteen days from the date of mailing by registered mail of notice of the execution of a contract of sale together with a copy of said executed contract to said tenant.

(e) The attorney general finds that an excessive number of long-term vacancies did not exist on the date that the offering statement or

prospectus was first submitted to the department of law. "Long-term vacancies" shall mean dwelling units not leased or occupied by bona fide tenants for more than five months prior to the date of such submission to the department of law. "Excessive" shall mean a vacancy rate in excess of the greater of (i) ten percent and (ii) a percentage that is double the normal average vacancy rate for the building or group of buildings or development for two years prior to the January preceding the date the offering statement or prospectus was first submitted to the department of law.

(f) The attorney general finds that, following the submission of the offering statement or prospectus to the department of law, each tenant in the building or group of buildings or development was provided with a written notice stating that such offering statement or prospectus has been submitted to the department of law for filing. Such notice shall be accompanied by a copy of the offering statement or prospectus and a statement that the statements submitted pursuant to subparagraph (vii) of paragraph (c) or subparagraph (vii) of paragraph (d) of this subdivision, whichever is applicable, will be available for inspection and copying at the office of the department of law where the submission was made and at the office of the offeror or a selling agent of the offeror. Such notice shall also be accompanied by a statement that tenants or their representatives may physically inspect the premises at any time subsequent to the submission of the plan to the department of law, during normal business hours, upon written request made by them to the offeror, provided such representatives are registered architects or professional engineers licensed to practice in the state of New York. Such notice shall be sent to each tenant in occupancy on the date the plan is first submitted to the department of law and to the clerk of the municipality wherein such building or group of buildings or development is located.

3. All dwelling units occupied by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building or group of buildings or development. Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. The offeror shall guarantee the obligation of the managing agent to provide all such

services and facilities until such time as the offeror surrenders control to the board of directors or board of managers, at which time the cooperative corporation or the condominium association shall assume responsibility for the provision of all services and facilities required by law on a non-discriminatory basis.

4. It shall be unlawful for any person to engage in any course of conduct, including, but not limited to, interruption or discontinuance of essential services, which substantially interferes with or disturbs the comfort, repose, peace or quiet of any tenant in his use or occupancy of his dwelling unit or the facilities related thereto. The attorney general may apply to a court of competent jurisdiction for an order restraining such conduct and, if he deems it appropriate, an order restraining the owner from selling the shares allocated to the dwelling unit or the dwelling unit itself or from proceeding with the plan of conversion; provided that nothing contained herein shall be deemed to preclude the tenant from applying on his own behalf for similar relief.

5. Any local legislative body may adopt local laws and any agency, officer or public body may prescribe rules and regulations with respect to the continued occupancy by tenants of dwelling units which are subject to regulation as to rentals and continued occupancy pursuant to law, provided that in the event that any such local law, rule or regulation shall be inconsistent with the provisions of this section, the provisions of this section shall control.

6. Any provision of a lease or other rental agreement which purports to waive a tenant's rights under this section or rules and regulations promulgated pursuant hereto shall be void as contrary to public policy.

7. The provisions of this section shall only be applicable in the cities, towns and villages located in the counties of Nassau, Westchester and Rockland which by resolution adopted by the respective local legislative body of such city, town or village, elect that the provisions hereof shall be applicable therein. A certified copy of such resolution shall be filed in the office of the attorney general at Albany and shall become effective on the date of such filing.

§ 352-eeee. Conversions to cooperative or condominium ownership in the city of New York. 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Plan". Every offering statement or prospectus submitted to the department of law pursuant to section three hundred fifty-two-e of this article for the conversion of a building or group of buildings or development from residential rental status to cooperative or condominium ownership or other form of cooperative interest in realty, other than an offering statement or prospectus for such conversion pursuant to section three hundred fifty-two-eeeeee of this article or article two, eight or eleven of the private housing finance law.

(b) "Non-eviction plan". A plan which may not be declared effective until written purchase agreements have been executed and delivered for at least fifty-one percent of all dwelling units in the building or group of buildings or development by bona fide tenants who were in occupancy on the date a letter was issued by the attorney general accepting the plan for filing; provided, however, that for a building containing five or fewer units, and where the sponsor of the offering plan offers the unit that they or their immediate family member has occupied for at least two years, the plan may not be effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units in the building subscribed for by bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family occupy the dwelling unit when it becomes vacant. The purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements.

(c) "Eviction plan". A plan which, submitted prior to the effective date of the chapter of the laws of two thousand nineteen that amended this section, pursuant to the provisions of this section, can result in the eviction of a non-purchasing tenant by reason of the tenant failing to purchase pursuant thereto, and which may not be declared effective until at least fifty-one percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or

development on the date the offering statement or prospectus was accepted for filing by the attorney general (excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons) shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements.

(d) "Purchaser under the plan". A person who owns the shares allocated to a dwelling unit or who owns such dwelling unit itself.

(e) "Non-purchasing tenant". A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(f) "Eligible senior citizens". Non-purchasing tenants who are sixty-two years of age or older on the date the plan is submitted to the department of law or on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the plan is submitted to the department of law or on the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(g) "Eligible disabled persons". Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the plan is submitted to the department of law or on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the plan is submitted to the department of

law or on the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided, however, that if the disability first occurs after acceptance of the plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty days following the acceptance of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit or the shares allocated thereto on the terms then offered to tenants in occupancy.

2. The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless:

(a) The plan provides that it will be deemed abandoned, void and of no effect if it does not become effective within fifteen months from the date of issue of the letter of the attorney general stating that the offering statement or prospectus has been accepted for filing and, in the event of such abandonment, no new plan for the conversion of such building or group of buildings or development shall be submitted to the attorney general for at least twelve months after such abandonment.

(b) The plan provides either that it is an eviction plan or that it is a non-eviction plan.

(c) The plan provides, if it is a non-eviction plan, as follows:

(i) (1) Subject to the provisions of clause two of this subparagraph, the plan may not be declared effective until written purchase agreements have been executed and delivered for at least fifty-one percent of all dwelling units in the building or group of buildings or development subscribed for by bona fide tenants in occupancy on the date a letter was issued by the attorney general accepting the plan for filing for which purchase agreement shall be executed and delivered pursuant to an

offering made without discriminatory repurchase agreements or other discriminatory inducements.

(2) For buildings containing five or fewer units, the plan may not be declared effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units in the building subscribed for by bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family occupy the dwelling unit when it becomes vacant, provided that the sponsor of the offering plan offers the unit that they or their immediate family member have occupied for at least two years. As to tenants who were in occupancy on the date a letter was issued by the attorney general accepting the plan filing, the purchase agreement shall be executed and delivered pursuant to an offering made without discriminatory repurchase agreements or other discriminatory inducements.

(ii) No eviction proceedings will be commenced at any time against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the non-purchasing tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto; and provided further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(iii) No eviction proceedings will be commenced, except as hereinafter provided, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability,

such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto.

(iv) Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(v) The rights granted under the plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(vi) Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person must apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue his determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules, which proceeding must be commenced within thirty days after such determination by the attorney general becomes final.

(vii) Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to the conversion of the building or group of buildings or development to cooperative or condominium ownership shall continue to be subject thereto.

(viii) The rentals of non-purchasing tenants who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and non-purchasing tenants who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing by the attorney general shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy. In determining

comparability, consideration shall be given to such factors as building services, level of maintenance and operating expenses.

(ix) The plan may not be amended at any time to provide that it shall be an eviction plan.

(x) The rights granted under the plan to purchasers under the plan and to non-purchasing tenants may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(xi) After the issuance of the letter from the attorney general stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been accepted for filing, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and ninetieth day after such date and at least once every thirty days until the plan is declared effective or abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the plan, (1) file with the attorney general a written statement, under oath, setting forth the percentage of bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general who have executed and delivered written agreements to purchase under the plan as of the date of such statement, and (2) before noon on the day such statement is filed post a copy of such statement in a prominent place accessible to all tenants in each building covered by the plan.

(xii) The tenants in occupancy on the date the attorney general accepts the plan for filing shall have the exclusive right to purchase their dwelling units or the shares allocated thereto for ninety days after the plan is accepted for filing by the attorney general, during which time a tenant's dwelling unit shall not be shown to a third party unless he or she has, in writing, waived his or her right to purchase; subsequent to the expiration of such ninety day period, a tenant in occupancy of a dwelling unit who has not purchased shall be given the exclusive right for an additional period of six months from said expiration date to purchase said dwelling unit or the shares allocated thereto on the same terms and conditions as are contained in an executed contract to purchase said dwelling unit or shares entered into by a bona fide purchaser, such exclusive right to be exercisable within fifteen

days from the date of mailing by registered mail of notice of the execution of a contract of sale together with a copy of said executed contract to said tenant.

(d) The plan provides, if it is an eviction plan, as follows:

(i) The plan may not be declared effective unless at least fifty-one percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general (excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons) shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements.

(ii) No eviction proceedings will be commenced against a non-purchasing tenant for failure to purchase or any other reason applicable to expiration of tenancy until the later to occur of (1) the date which is the expiration date provided in such non-purchasing tenant's lease or rental agreement, and (2) the date which is three years after the date on which the plan is declared effective.

Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to conversion shall continue to be subject thereto during the period of occupancy provided in this paragraph. Thereafter, if a tenant has not purchased, he may be removed by the owner of the dwelling unit or the shares allocated to such dwelling unit.

(iii) No eviction proceedings will be commenced, except as hereinafter provided, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability,

such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto.

(iv) Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(v) The rights granted under the plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

(vi) Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person must apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue his determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules, which proceeding must be commenced within thirty days after such determination by the attorney general becomes final.

(vii) After the issuance of the letter from the attorney general stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been accepted for filing, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and ninetieth day after such date and at least once every thirty days until the plan is declared effective or abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the plan, (1) file with the attorney general a written statement, under oath, setting forth the percentage of bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general who have executed and delivered written

agreements to purchase under the plan as of the date of such statement, and (2) before noon on the day such statement is filed post a copy of such statement in a prominent place accessible to all tenants in each building covered by the plan.

(viii) If the plan is amended before it is declared effective to provide that it shall be a non-eviction plan, any person who has agreed to purchase under the plan prior to such amendment shall have a period of thirty days after receiving written notice of such amendment to revoke his agreement to purchase under the plan.

(ix) The tenants in occupancy on the date the attorney general accepts the plan for filing shall have the exclusive right to purchase their dwelling units or the shares allocated thereto for ninety days after the plan is accepted for filing by the attorney general, during which time a tenant's dwelling unit shall not be shown to a third party unless he has, in writing, waived his right to purchase; subsequent to the expiration of such ninety day period, a tenant in occupancy of a dwelling unit who has not purchased shall be given the exclusive right for an additional period of six months from said expiration date to purchase said dwelling unit or the shares allocated thereto on the same terms and conditions as are contained in an executed contract to purchase said dwelling unit or shares entered into by a bona fide purchaser, such exclusive right to be exercisable within fifteen days from the date of mailing by registered mail of notice of the execution of a contract of sale together with a copy of said executed contract to said tenant.

(e) The attorney general finds that an excessive number of long-term vacancies did not exist on the date that the offering statement or prospectus was first submitted to the department of law. "Long-term vacancies" shall mean dwelling units not leased or occupied by bona fide tenants for more than five months prior to the date of such submission to the department of law. "Excessive" shall mean a vacancy rate in excess of the greater of (i) ten percent and (ii) a percentage that is double the normal average vacancy rate for the building or group of buildings or development for two years prior to the January preceding the date the offering statement or prospectus was first submitted to the department of law.

(f) The attorney general finds that, following the submission of the

offering statement or prospectus to the department of law, each tenant in the building or group of buildings or development was provided with a written notice stating that such offering statement or prospectus has been submitted to the department of law for filing. Such notice shall be accompanied by a copy of the offering statement or prospectus and a statement that the statements submitted pursuant to subparagraph (xi) of paragraph (c) of this subdivision, whichever is applicable, will be available for inspection and copying at the office of the department of law where the submission was made and at the office of the offeror or a selling agent of the offeror. Such notice shall also be accompanied by a statement that tenants or their representatives may physically inspect the premises at any time subsequent to the submission of the plan to the department of law, during normal business hours, upon written request made by them to the offeror, provided such representatives are registered architects or professional engineers licensed to practice in the state of New York. Such notice shall be sent to each tenant in occupancy on the date the plan is first submitted to the department of law.

3. All dwelling units occupied by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building or group of buildings or development. Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. The offeror shall guarantee the obligation of the managing agent to provide all such services and facilities until such time as the offeror surrenders control to the board of directors or board of managers, at which time the cooperative corporation or the condominium association shall assume responsibility for the provision of all services and facilities required by law on a non-discriminatory basis.

4. It shall be unlawful for any person to engage in any course of conduct, including, but not limited to, interruption or discontinuance of essential services, which substantially interferes with or disturbs the comfort, repose, peace or quiet of any tenant in his use or occupancy of his dwelling unit or the facilities related thereto. The attorney general may apply to a court of competent jurisdiction for an

order restraining such conduct and, if he deems it appropriate, an order restraining the owner from selling the shares allocated to the dwelling unit or the dwelling unit itself or from proceeding with the plan of conversion; provided that nothing contained herein shall be deemed to preclude the tenant from applying on his own behalf for similar relief.

5. Any local legislative body may adopt local laws and any agency, officer or public body may prescribe rules and regulations with respect to the continued occupancy by tenants of dwelling units which are subject to regulation as to rentals and continued occupancy pursuant to law, provided that in the event that any such local law, rule or regulation shall be inconsistent with the provisions of this section, the provisions of this section shall control.

6. Any provision of a lease or other rental agreement which purports to waive a tenant's rights under this section or rules and regulations promulgated pursuant hereto shall be void as contrary to public policy.

7. The attorney general is hereby authorized and empowered to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this section, including issuing waivers of the requirements of this section to the extent the requirements would not carry out the intent of this section or the Martin Act.

8. The provisions of this section shall only be applicable in the city of New York.

*** § 352-eeeeee. Conversions to condominium ownership for the preservation of expiring affordable housing in the city of New York.** 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Annual update amendment". An annual update amendment is an amendment to the preservation plan that shall be submitted to the attorney general every year that a dwelling unit is unsold, with the first such annual update amendment due within forty-five days of the anniversary of the acceptance of the post-closing amendment to the

preservation plan. An annual update amendment shall supply the evidence, data and information required in this section, and such other information as the attorney general's regulations shall require, so that the attorney general is satisfied that the preservation plan as amended discloses the information necessary for a reasonable investor to make their purchase decision and that the preservation plan is otherwise complete, current and accurate.

(b) "Bona fide purchaser". A bona fide purchaser is either (i) a tenant in occupancy who enters into a purchase agreement for a dwelling unit pursuant to their or its exercise of one of the rights accorded to tenants in occupancy in subdivision five of this section, or (ii) a bona fide non-tenant purchaser.

(c) "Bona fide non-tenant purchaser". A bona fide non-tenant purchaser is a purchaser of a dwelling unit who has represented that they or a member or members of their immediate family intend to occupy the dwelling unit when it becomes vacant. A bona fide non-tenant purchaser shall not include any purchaser who is an offeror, the selling agent, or the managing agent or is a principal of the offeror, the selling agent or the managing agent or is related to the sponsor, the selling agent or the managing agent or to any principal of the sponsor or the selling agent or the managing agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner; except that such a purchaser other than the offeror or a principal of the sponsor may be included as a bona fide non-tenant purchaser if the offeror has submitted proof satisfactory to the department of law establishing that the purchaser is bona fide.

(d) "Commercially reasonable good faith effort". A commercially reasonable good faith effort on the part of an offeror of a preservation plan shall, at minimum, include (i) the filing of an annual update amendment to the preservation plan; (ii) all of the condominium's dwelling units other than any income-restricted rental units as the units being offered for sale under the preservation plan, each at an offering price that is consistent with comparable dwelling units recently sold within the locality; and (iii) entering into a written agreement with a licensed real estate broker or selling agent in connection with the sale of dwelling units offered for sale under the preservation plan. For the avoidance of doubt, a commercially reasonable

good faith effort shall not require an offeror to sell dwelling units at a price substantially below the market-rate for comparable units recently sold within the locality, nor shall it require an offeror to offer for sale dwelling units that are occupied by non-purchasing tenants.

(e) "Condominium". A condominium shall also include a qualified leasehold condominium as defined in subdivision twelve of section three hundred thirty-nine-e of the real property law.

(f) "Consummation of the preservation plan". Consummation of the preservation plan shall refer to the filing of the declaration for the condominium and the first transfer of title to at least one purchaser under the preservation plan following a declaration of effectiveness by the department of law declaring the preservation plan effective.

(g) "Eligible disabled persons". Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the preservation plan is submitted to the department of law or on the date the attorney general has accepted the preservation plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the preservation plan is submitted to the department of law or on the date the attorney general has accepted the preservation plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided, however, that if the disability first occurs after acceptance of the preservation plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty days following the acceptance of the preservation plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(h) "Eligible project". An eligible project shall refer to a building

or group of buildings or development with one hundred or more dwelling units built after nineteen hundred ninety-six that is the subject of a preservation plan under this section, which shall meet the criteria set forth in subdivision two of this section. An eligible project shall not include any building or group of buildings or development owned under article two, four or five of the private housing finance law. For the avoidance of doubt, no building, group of buildings or development other than an eligible project shall convert to condominium status under this section, the status of which shall be confirmed by the relevant housing finance agency prior to the date of submission of the preservation plan.

(i) "Eligible senior citizens". Non-purchasing tenants who are sixty-two years of age or older on the date the preservation plan is submitted to the department of law or on the date the attorney general has accepted the preservation plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the preservation plan is submitted to the department of law or on the date the attorney general has accepted the preservation plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(j) "Extended affordability term". The extended affordability term for the income-restricted rental units shall be in perpetuity for so long as the building or group of buildings or development are in existence, and subject to any obligation to rebuild in the event of condemnation, damage or destruction required by the regulatory agreement with the relevant housing finance agency.

(k) "Inclusionary housing unit". An inclusionary housing unit is an income-restricted rental unit that is located within a building that received an increase in the maximum permitted floor area pursuant to sections 23-154 and 23-90 of the zoning resolution or is located in a mandatory inclusionary housing area, as such sections may be amended from time to time.

(l) "Inclusionary housing designated area". An inclusionary housing designated area is a specified area in which the inclusionary housing program (also known as the voluntary inclusionary housing program) is

applicable, pursuant to the regulations set forth for such areas in section 23-90 of the zoning resolution, as such section may be amended from time to time. The locations of inclusionary housing designated areas are identified in either (i) appendix "F" of the zoning resolution or (ii) in a special purpose district as described in section 15-011 of the zoning resolution, as such appendix or section may be amended from time to time.

(m) "Income-restricted rental unit". An income-restricted rental unit shall refer to a dwelling unit located in a building or group of buildings or development of an eligible project that is the subject of a preservation plan submitted to the attorney general pursuant to this section, and such dwelling unit:

(i) meets the definition of a "low-income unit" as such term is defined in section forty-two of the internal revenue code and is subject to a regulatory agreement with a relevant housing finance agency; or

(ii) meets the definition of a "low-income unit" as such term is defined in subdivision (d) of section one hundred forty-two of the internal revenue code and is subject to a regulatory agreement with a relevant housing finance agency; or

(iii) previously met the definition of "low-income unit" pursuant to subparagraph (i) or (ii) of this paragraph, and notwithstanding the expiration of a regulatory agreement with a relevant housing finance agency, the owner of such dwelling unit affirms, under the penalty of perjury and provides other documentation to the satisfaction of the relevant housing finance agency, that it has continuously operated and rented the dwelling unit (A) as if it remained an income-restricted rental unit and (B) as if all of the restrictions of the expired regulatory agreement had continuously been extended or otherwise remained in effect; or

(iv) is a dwelling unit located within a building or group of buildings or development that, in accordance with provisions of subdivisions one through fifteen of section four hundred twenty-one-a of the real property tax law, the relevant housing finance agency shall have required to be a unit affordable to families of low and moderate income;

(v) is a dwelling unit that is rented to persons of low income or families of low income as defined in subdivision nineteen of section two

of the private housing finance law or as otherwise required by a federal, state, or local law or mandate; or

(vi) is a dwelling unit located in a building, group of buildings or development subject to a regulatory agreement due to bond financing provided by the relevant housing finance agency that required dwelling units be affordable to families of low or moderate income.

(n) "Mandatory inclusionary housing area". A mandatory inclusionary housing area is a specified area in which the inclusionary housing program is applicable, pursuant to the regulations set forth for such areas in section 23-90 of the zoning resolution, as such section may be amended from time to time. The locations of mandatory inclusionary housing areas are identified in either (i) appendix "F" of the zoning resolution or (ii) in a special purpose district as described in section 15-011 of the zoning resolution, as such appendix or section may be amended from time to time.

(o) "Non-purchasing tenant". A person who has not purchased under the preservation plan from offeror and who is a tenant entitled to possession at the time the preservation plan is declared effective or a person to whom a dwelling unit is rented from offeror after the preservation plan was declared effective, which solely for purposes of this section, shall include any person who is a tenant regardless of whether (i) such person was a tenant entitled to possession at the time the preservation plan was declared effective, or (ii) such person rented a dwelling unit from offeror after the preservation plan was declared effective. A person who sublets a dwelling unit from a purchaser under the preservation plan shall not be deemed a non-purchasing tenant. A tenant entitled to possession of an income-restricted rental unit at the time the preservation plan is declared effective or a person to whom an income-restricted rental unit is rented from offeror or qualified owner after the preservation plan is declared effective is a non-purchasing tenant, notwithstanding that the income-restricted rental units are not offered for sale pursuant to such preservation plan.

(p) "Post-closing amendment". A post-closing amendment is an amendment to a preservation plan filed with the attorney general confirming that the preservation plan has been consummated. A post-closing amendment must be submitted to the attorney general no more than forty-five days after the first closing of a dwelling unit to a bona fide purchaser

under the preservation plan.

(q) "Preservation plan". An offering statement or prospectus submitted to the department of law pursuant to this section for the conversion of a building or group of buildings or development of an eligible project from rental status to condominium ownership, wherein the offeror documents that it has entered into a regulatory agreement with a relevant housing finance agency in which it agreed to an extended affordability term for the income-restricted rental units with a relevant housing finance agency.

(r) "Purchaser under the preservation plan". A purchaser under the preservation plan is a person who purchases a dwelling unit from offeror pursuant to the terms of a preservation plan that has been accepted for filing by the attorney general. A person or entity that acquires dwelling units and assumes certain obligations of offeror shall not be considered a purchaser under the preservation plan.

(s) "Qualified owner". A qualified owner refers to the entity approved by the relevant housing finance agency on or before the date of submission of a preservation plan to the department of law that will own, operate and maintain the income-restricted rental unit or units that are in the building, group of buildings or development that are the subject of the preservation plan. The entity which is a qualified owner shall only be either: (i) a housing development fund company incorporated pursuant to article eleven of the private finance housing law; or (ii) a community land trust or other charitable corporation organized under the not-for-profit corporation law that has as its primary charitable purpose the ownership, operation and maintenance of multifamily housing for persons and families of low income as defined by subdivision nineteen of section two of the private finance housing law.

(t) "Relevant housing finance agency". Relevant housing finance agency shall refer to a city or state agency with oversight over income-restricted rental units prior to the date of submission of a preservation plan. For purposes of this section, a relevant housing finance agency shall also refer to the city or state agency that will continue to have oversight of income-restricted rental units after consummation of the preservation plan and in accordance with the terms of a regulatory agreement.

(u) "Regulatory agreement". A regulatory agreement shall refer to the

written agreement with a relevant housing finance agency that restricts the income and rents of income-restricted rental units that is either: (i) in effect prior to the date of submission of a preservation plan; or (ii) in effect after consummation of the preservation plan. Any regulatory agreement in effect at the date of the submission of the preservation plan shall remain in effect until the consummation of the preservation plan unless otherwise agreed to by the relevant housing finance agency. A regulatory agreement that shall take effect after consummation of the preservation plan shall require that at least twenty percent of all units be income-restricted rental units, and require further that all existing income-restricted rental units, as of the effective date of this act, shall remain income-restricted in perpetuity.

(v) "Rent stabilization". Rent stabilization shall mean, collectively, the rent stabilization law of nineteen sixty-nine, and the emergency tenant protection act of nineteen seventy-four together with any other successor statutes thereto.

(w) "Zoning resolution". Zoning resolution shall refer to the zoning resolution of the city of New York.

2. The attorney general shall refuse to accept for submission a preservation plan for the conversion of a building or group of buildings or development if the relevant housing finance agency has not confirmed in writing through the issuance of a letter of support as described in subdivision three of this section and that the preservation plan is for an eligible project, which shall be defined as a building or group of buildings or development that meets the definition of an eligible project and one or more of the following requirements as of the date of submission of the preservation plan:

(a) The preservation plan is for a building or group of buildings or development that (i) receives a partial property tax exemption pursuant to subdivisions one through fifteen of section four hundred twenty-one-a of the real property tax law, (ii) contains income-restricted rental units, and (iii) is not otherwise prohibited by any federal, state, or local law, rule, or regulation or subject to an existing regulatory agreement that prohibits the conversion of the dwelling units to condominium ownership; or

(b) The preservation plan is for a building or group of buildings or development that (i) receives low income housing tax credits pursuant to section forty-two of the internal revenue code, (ii) contains income-restricted rental units, (iii) is not subject to any agreement providing for a right of first refusal with a not-for-profit corporation unless evidence deemed satisfactory to the department of law has been provided that such right of first refusal has either expired or that such not-for-profit declined to exercise such right, and (iv) is not otherwise prohibited by any federal, state, or local law, rule, or regulation or subject to an existing regulatory agreement that prohibits the conversion of the dwelling units to condominium ownership; or

(c) The preservation plan is for a building or group of buildings or development that (i) receives bond financing under subsection (d) of section one hundred forty-two of the internal revenue code, (ii) contains income-restricted rental units, and (iii) is not otherwise prohibited by any federal, state, or local law, rule, or regulation or subject to an existing regulatory agreement that prohibits the conversion of the dwelling units to condominium ownership; or

(d) The preservation plan is for a building or group of buildings or development, that (i) contains one or more inclusionary housing units, (ii) is not otherwise prohibited by any federal, state, or local law, rule, or regulation or subject to an existing regulatory agreement that prohibits the conversion of the dwelling units to condominium ownership, and (iii) contains a representation that an agreement has been reached with the relevant housing finance agency to increase the total number of income-restricted rental units in the building or group of buildings or development to thirty percent for the extended affordability term upon consummation of the preservation plan; or

(e) The preservation plan is for a building or group of buildings or development that (i) contains exclusively moderate income units as required for bond financing with the relevant housing finance agency, (ii) the total number of income-restricted rental units in the building or group of buildings or development is less than twenty percent, (iii) is not subject to an existing regulatory agreement that prohibits the conversion of the dwelling units to condominium ownership, and (iv) contains a representation that an agreement has been reached with the relevant housing finance agency to increase the total number of

income-restricted rental units in the building or group of buildings or development to at least twenty percent for the extended affordability term upon consummation of the preservation plan.

3. At the time of submission of the preservation plan, the offeror shall provide a letter of support from the relevant housing finance agency demonstrating that a regulatory agreement has been entered into between the offeror, the qualified owner, and the relevant housing finance agency regarding the income-restricted rental units during the extended affordability term, and that such regulatory agreement will, among other things, require the offeror to include the following disclosures in the preservation plan:

(a) A list of the proposed income-restricted rental units;

(b) The proposed qualified owner of the income-restricted rental units, which qualified owner shall take title to the income-restricted rental units no later than three hundred sixty-five days from the date of consummation of the preservation plan;

(c) The operating expenses and revenues applicable to the income-restricted rental units, which shall be reflected in the updated Schedule A and Schedule B for the first year of operation of the condominium, the allocation of common interests, projected common charges, estimated real estate taxes, and rents to be collected from each income-restricted rental unit, and the allocation of common expenses under section three hundred thirty-nine-m of the real property law, applicable to the income-restricted rental units, which shall be used to limit certain condominium expenses allocable to the income-restricted rental units and to cover any shortfall in the revenue from rent to cover the costs of operation of the income-restricted rental units;

(d) A description of any financing encumbering the income-restricted rental units, and whether a tax exemption or abatement is in place to reduce real estate taxes for the income-restricted rental units;

(e) A description of any regulatory agreement or agreements to be recorded against the income-restricted rental units and the term thereof and the relevant housing finance agency or agencies with supervisory oversight;

(f) A description of the provisions of the declaration and by-laws for

the condominium that provides for the special allocation of common expenses in accordance with section three hundred thirty-nine-m of the real property law, and any specific requirements set forth in a regulatory agreement requiring unit owners in the condominium to cover any shortfall in the revenue from rent to cover the costs of operation of the income-restricted rental units;

(g) A description of the contemplated structure of the board of managers of the condominium, including specifically an explanation as to how the interests of the qualified owner of the income-restricted rental units are to be adequately represented;

(h) A description of the building-wide amenities and a representation that the declaration and by-laws for the condominium shall require that tenants of the income-restricted rental units be provided an opportunity to use commonly accessible amenities of the condominium and not unique to an individual unit, including but not limited to: pools, fitness centers, storage spaces, parking, and roofs or gardens accessible on a building-wide basis, and that the tenants of the income-restricted rental units may only be charged a nominal and reasonable fee for such use, as approved by the relevant housing finance agency in accordance with the regulatory agreement, and which shall not be treated as rent under any rental agreement;

(i) The name, address and contact details for the relevant housing finance agency or agencies with supervisory oversight of the income-restricted rental units and the occupants within;

(j) That the regulatory agreement contains a provision which requires that once a vacancy occurs of an income-restricted rental unit, after consummation of the preservation plan, then said unit shall only be leased to low income households whose annual household income is not greater than sixty percent of area median income at the time of the initial lease, and such unit shall be marketed and leased in compliance with the relevant housing finance agency's leasing requirements, which may include leasing through New York city's housing connect portal;

(k) A representation by offeror that the regulatory agreement includes and accounts for (i) all of the existing on-site income-restricted rental units in an existing building or group of buildings or development, or (ii) all of the income-restricted rental units associated with an existing building or group of buildings or

development located on a zoning lot where one or more buildings were set aside as affordable housing for purposes of qualifying for a partial property tax exemption pursuant to section four hundred twenty-one-a of the real property tax law;

(l) To the extent not already subject thereto prior to the consummation of the preservation plan, a representation by offeror that the regulatory agreement shall require all income-restricted rental units be subject to rent stabilization during the extended affordability term, and that no income-restricted rental units shall be removed from rent stabilization pursuant to the exemption for units owned as a condominium under section 26-504 of the administrative code of the city of New York; and

(m) The recording of the condominium declaration and commencement of condominium operations does not modify the requirement under section four hundred twenty-one-a of the real property tax law that all residential rental apartments are subject to rent stabilization.

4. Upon submission of the preservation plan to the department of law, each tenant in occupancy of any unit, including but not limited to any income-restricted rental unit, in the eligible project that is the subject of such preservation plan shall be provided with a written notice stating that such preservation plan has been submitted to the department of law. Written notice to each tenant in occupancy shall contain or be accompanied by:

(a) a copy of the proposed preservation plan that has been submitted to the department of law;

(b) a statement that tenants of the dwelling units being offered for sale pursuant to the preservation plan or their representatives may physically inspect the premises at any time subsequent to the submission of the preservation plan to the department of law, during normal business hours, upon written request made by them to the offeror, provided such representatives are registered architects or professional engineers licensed by the office of the professions of the education department of the state of New York; and

(c) a statement to tenants of the income-restricted rental units that the dwelling units they occupy are not being offered for sale, but their tenancies shall continue undisturbed during and after the conversion of

the property to condominium ownership. The statement shall also disclose that all income-restricted rental units shall be subject to rent stabilization throughout the extended affordability term.

5. The tenants in occupancy of dwelling units being offered for sale on the date the attorney general accepts the preservation plan for filing shall have the exclusive right to purchase their dwelling units for ninety days after the preservation plan has been accepted for filing by the attorney general, during which time the offering price available to the tenant in occupancy shall not be increased and a tenant's dwelling unit shall not be shown to a third party unless such tenant has, in writing, waived their right to purchase. Subsequent to the expiration of such ninety-day period, a tenant in occupancy of a dwelling unit who has not purchased shall be given the exclusive right for an additional six months from said expiration date to purchase said dwelling unit on the same terms and conditions as are contained in any executed contract to purchase said dwelling unit entered into by a purchaser under the preservation plan, such exclusive right to be exercisable within fifteen days from the date of mailing by registered mail of notice of the execution of a contract of sale together with a copy of said executed purchase agreement to said tenant.

6. The preservation plan shall also disclose that the offeror shall:

(a) market and sell all the dwelling units (other than the income-restricted rental units) in the building or group of buildings or development, as each such dwelling unit becomes vacant, to a purchaser under the preservation plan through the use of commercially reasonable good faith efforts;

(b) fund the reserve fund and dedicated capital fund in the manner and amounts as provided in section three hundred thirty-nine-mm of the real property law;

(c) file an annual update amendment every year which shall include an updated Schedule A of all dwelling units being offered for sale under the preservation plan; and

(d) exercise commercially reasonable good faith efforts to sell at least fifty-one percent of the total number of dwelling units offered for sale under the preservation plan (excluding any income-restricted

rental units not offered for sale) within five years from the date of consummation of the preservation plan.

7. After the issuance of the letter from the attorney general stating that the preservation plan has been accepted for filing, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and ninetieth day after such date and at least once every thirty days until the preservation plan is declared effective or abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the preservation plan:

(a) file with the attorney general a written statement under oath setting forth the percentage of bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the preservation plan was accepted for filing by the attorney general who have executed and delivered written agreements to purchase under the preservation plan as of the date of such written statement under oath; and

(b) before noon on the day such statement is filed post a copy of such written statement under oath in a prominent place accessible to all tenants in each building covered by the preservation plan.

8. A preservation plan shall not be declared effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units offered for sale in the building or group of buildings or development from either (a) bona fide tenants who were in occupancy on the date a letter was issued by the attorney general accepting the preservation plan for filing or (b) bona fide non-tenant purchasers. The purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements. A negotiated reduction from the original offering price extended shall not, by itself, be deemed a discriminatory inducement.

9. Those written statements under oath that the offeror is required to file with the attorney general pursuant to subdivision seven of this section shall also include:

(a) the total number of written agreements to purchase under the

preservation plan received from bona fide non-tenant purchasers;

(b) the total number of written agreements to purchase under the preservation plan received from all bona fide tenants in occupancy;

(c) the percentage of dwelling units under contract, calculated by adding the number of written purchase agreements for a unit that were received from (i) all bona fide tenants in occupancy plus (ii) all bona fide non-tenant purchasers and then dividing the sum of those two numbers by the total number of dwelling units offered for sale under the preservation plan;

(d) whether or not the offeror intends to claim a credit against the mandatory initial contribution the offeror is obligated to deposit into the condominium's reserve fund pursuant to subdivision three of section three hundred thirty-nine-mm of the real property law for the actual cost of capital replacements which the offeror has begun after the preservation plan was submitted for filing to the department of law but before the preservation plan is declared effective, together with their actual or estimated costs which credit shall not exceed the actual cost of the credit;

(e) whether or not the offeror shall be making its reserve fund contributions required pursuant to section three hundred thirty-nine-mm earlier or in an amount greater than required; and

(f) a representation that no purchaser counted for purposes of declaring the preservation plan effective is the offeror, the selling agent or the managing agent, or is a principal of the offeror, the selling agent, or the managing agent or is related to any principal of the offeror, any principal of the selling agent or any principal of the managing agent by blood, marriage, or adoption, or is an affiliate, business associate, an employee, a shareholder, a member, a manager, a director, an officer, a limited partner of the offeror, selling agent or managing agent.

10. The preservation plan shall provide that it will be deemed abandoned, void and of no effect if it does not become effective within fifteen months from the date of issue of the letter of the attorney general stating that the preservation plan has been accepted for filing and, in the event of such abandonment, no new plan, including but not limited to a preservation plan, for the conversion of such building or

group of buildings or development shall be submitted to the attorney general for at least twelve months after such abandonment.

11. No closings of title of a dwelling unit to a purchaser under the preservation plan shall take place until the attorney general shall have also accepted for filing an amendment that declares the preservation plan effective. Within forty-five days of the first closing of title of a dwelling unit to a purchaser under the preservation plan, the offeror shall submit to the attorney general its post-closing amendment to the preservation plan. Thereafter, the preservation plan shall continually be updated with the filing of an annual update amendment, no later than thirty days from the anniversary of the date the attorney general accepted the post-closing amendment for filing. An offeror or successor offeror shall only be relieved of its obligation to file an annual update amendment to the preservation plan after the last dwelling unit offered for sale is conveyed to a purchaser under the preservation plan.

12. After the date of acceptance for filing of the post-closing amendment, the offeror or successor offeror shall continue to make commercially reasonable good faith efforts to sell the dwelling units it owns.

13. The attorney general shall refuse to accept for filing an annual update amendment to the preservation plan unless:

(a) The annual update amendment discloses, in addition to the other disclosures required elsewhere in this section or the regulations of the attorney general, the following data and information:

(i) an accounting of the dwelling units sold and closed by the offeror in the preceding twelve months, with an indication if the dwelling unit was conveyed to a purchaser under the preservation plan or to a successor offeror;

(ii) an inventory of the offeror's unsold dwelling units at the end of the preceding twelve months, in form and substance as shall satisfy the attorney general; and

(iii) all the information, data and literature presented by the board of managers in its semi-annual reports on the status of the reserve fund as required under subdivision five of section three hundred

thirty-nine-mm of the real property law.

(b) The annual update amendment shall be accompanied by an affidavit from a principal of the offeror attesting to the following data and information with respect to all the dwelling units the offeror then owns:

(i) the dwelling units' identifying information and general location;

(ii) whether, on the date of submission of the annual update amendment, the unsold dwelling unit is subject to a fully executed purchase agreement, and if so, whether the purchaser is a purchaser under the preservation plan or otherwise;

(iii) whether, on the date of submission of the annual update amendment, the dwelling unit is occupied or vacant, and if occupied, an indication that occupancy is:

(A) by a rent-regulated tenant;

(B) by a market-rate tenant;

(C) a month-to-month tenancy;

(D) a tenancy at sufferance; or

(E) other.

(iv) regardless of the occupancy status of a dwelling unit on the date of submission of the annual update amendment, an indication if the dwelling unit was vacant for more than one of the twelve preceding months. For each dwelling unit so indicated, the offeror shall also disclose:

(A) the date range that the dwelling unit was vacant;

(B) the date range for any period of time that the dwelling unit was marketed for sale;

(C) date of sale;

(D) the date the dwelling unit was leased by a tenant; and

(E) the date the lease is set to expire (if applicable).

14. No eviction proceedings shall be commenced at any time against non-purchasing tenants for failure to purchase or for any other reason applicable to expiration of tenancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the non-purchasing tenant of their obligations to the owner of the dwelling unit; and provided further that an owner of a unit shall not

commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that they seek the dwelling unit for the use and occupancy of themselves or their family's use and occupancy.

15. No eviction proceedings shall be commenced, except as provided in this subdivision, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the preservation plan has been accepted for filing shall not be subject to unconscionable increases which, solely for the purposes of this subdivision, and notwithstanding any exemptions for housing accommodations owned as condominiums provided for under subdivision seven of section two hundred fourteen of the real property law, and regardless of whether such non-purchasing tenant has a rent that exceeds two hundred forty-five percent of the fair market rent, all rent increases for eligible senior citizens and eligible disabled persons shall be considered unconscionable if such increases exceed the permissible increases provided for under the good cause eviction law under article six-A of the real property law; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of their obligations to the owner of the dwelling unit.

16. Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

17. The rights granted under the preservation plan to eligible senior citizens and eligible disabled persons shall not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

18. Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person shall apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue a determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules, which proceeding shall be commenced within thirty days after such determination by the attorney general becomes final.

19. Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to the conversion of the building or group of buildings or development to condominium ownership shall continue to be subject thereto.

20. The rentals of non-purchasing tenants who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and non-purchasing tenants who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the preservation plan has been accepted for filing by the attorney general shall not be subject to unconscionable increases which, solely for the purposes of this subdivision, and notwithstanding any exemptions for housing accommodations owned as condominiums provided for under subdivision seven of section two hundred fourteen of the real property law, in the event the rent of a non-purchasing tenant shall be less than two hundred forty-five percent of the fair market rent, then such increases for such non-purchasing tenant shall be governed by article six-A of the real property law.

21. The rights granted under the preservation plan to purchasers under the preservation plan and to non-purchasing tenants shall not be abrogated or reduced notwithstanding any expiration of, or amendment to,

this section.

22. Any local legislative body may adopt local laws and any agency, officer or public body may prescribe rules and regulations with respect to the continued occupancy by tenants of dwelling units which are subject to regulation as to rentals and continued occupancy pursuant to law, provided that in the event that any such local law, rule or regulation shall be inconsistent with the provisions of this section, the provisions of this section shall control.

23. The attorney general shall refuse to accept for filing a preservation plan when the attorney general determines: (a) that one or more of the income-restricted rental units within the building, group of buildings or development was vacant on the date of submission; or (b) of the dwelling units that are not income-restricted rental units, an excessive number of long-term vacancies existed on the date that the preservation plan was first submitted to the department of law. For purposes of this subdivision, "long-term vacancies" shall mean dwelling units not leased or occupied by bona fide tenants for more than five months prior to the date of such submission to the department of law; and "excessive" shall mean a vacancy rate in excess of the greater of (i) ten percent and (ii) a percentage that is double the normal average vacancy rate for the building or group of buildings or development for two years prior to the January preceding the date the preservation plan was first submitted to the department of law.

24. All dwelling units occupied by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building or group of buildings or development. Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. The offeror shall guarantee the obligation of the managing agent to provide all such services and facilities until such time as the offeror surrenders control of the board of managers, at which time the board of managers of the condominium shall assume responsibility for the provision of all services and facilities required by law on a non-discriminatory basis. Such managing agent shall also ensure that non-purchasing tenants be

provided an opportunity to use commonly accessible amenities of the condominium and not unique to an individual unit, including but not limited to pools, fitness centers, storage spaces, parking and roofs or gardens accessible on a building-wide basis, and that the tenants of the income-restricted rental units may only be charged a nominal and reasonable fee for such use, as approved by the relevant housing finance agency in accordance with the regulatory agreement, and which shall not be treated as rent under any rental agreement.

25. It shall be unlawful for any person to engage in any course of conduct, including, but not limited to, interruption or discontinuance of essential services, which substantially interferes with or disturbs the comfort, repose, peace or quiet of any tenant in their use or occupancy of their dwelling unit or the facilities related thereto. The attorney general may apply to a court of competent jurisdiction for an order restraining such conduct and, if they deem it appropriate, an order restraining the owner from selling the dwelling unit itself or from proceeding with the preservation plan of conversion; provided that nothing contained herein shall be deemed to preclude the tenant from applying on their own behalf for similar relief.

26. Any provision of a lease or other rental agreement which purports to waive a tenant's rights under this section or rules and regulations promulgated pursuant hereto shall be void as contrary to public policy.

27. Notwithstanding the requirements of this section regarding the preservation of an income-restricted rental unit or units as permanently affordable, and to the extent permitted under existing law as it relates to the income-restricted rental unit or units, the income-restricted rental unit or units in a building or group of buildings or development of an eligible project may be converted to a limited equity housing cooperative pursuant to article eleven of the private housing finance law under a separate offering statement or prospectus, if the relevant housing finance agency ensures that the proposed offering statement or prospectus discloses that the regulatory agreement provides as follows:

(a) the offering prices are affordable to the existing tenants and/or the qualified low-income purchasers who meet the definition of persons

of low income or families of low income as defined by subdivision nineteen of section two of the private housing finance law;

(b) any tenant of an income-restricted rental unit that chooses not to buy the income-restricted rental unit such tenant occupies shall continue to be protected under rent stabilization throughout the process of conversion to a limited equity housing cooperative and thereafter, and that no existing tenant of an income-restricted rental unit shall be evicted solely due to such tenant's decision not to purchase their income-restricted rental unit;

(c) the regulatory agreement and certificate of incorporation of the limited equity housing cooperative shall ensure that the income-restricted rental units converted to a limited equity housing cooperative shall be reserved for occupancy by persons of low income and families of low income in perpetuity;

(d) the regulatory agreement and certificate of incorporation of the limited equity housing cooperative shall ensure that, notwithstanding the creation of a separate condominium, any obligations that the non-income-restricted rental unit owners may have to ensure the financial viability and delivery of services in a non-discriminatory manner, prior to the date of conversion to a limited equity housing cooperative, shall not be abrogated and shall remain in full force and effect;

(e) the relevant housing finance agency shall have oversight authority over the limited equity housing cooperative in the regulatory agreement, condominium declaration, condominium by-laws and certificate of incorporation of the limited equity housing cooperative, including the ability to appoint a new board of directors of the limited equity housing cooperative in the event of a violation of a term of, or an event of default by the limited equity housing cooperative under any of its governing documents, requiring purchasers of such units to attend homeownership training, and providing for the procedures to sell the units upon vacancy; and

(f) that the ownership of the dedicated capital account by the qualified owner, and the funding of the dedicated capital account by the offeror of the preservation plan, shall each be subject to the oversight authority of the relevant housing finance agency as provided in section three hundred thirty-nine-mm of the real property law.

28. It shall be unlawful for an offeror, its designees and/or successors to have or exercise voting control of the condominium's board of managers for more than ninety days from the fifth anniversary date of the first closing of title to a dwelling unit, or whenever the unsold dwelling units constitute less than fifty percent of the common interests appurtenant to all dwelling units, whichever is sooner.

29. The attorney general may, in their discretion, waive the requirement in paragraph (d) of subdivision six of this section that an offeror sell at least fifty-one percent of the dwelling units offered for sale under the preservation plan when the offeror provides proof satisfactory to the attorney general that five years of commercially reasonable good faith efforts did not result in the sale of fifty-one percent of the dwelling units. If such waiver is granted, the offeror shall be required to disclose the new date by which it will sell at least fifty-one percent of the dwelling units offered for sale under the preservation plan in its subsequent annual update amendment. Any waiver granted hereunder shall not alleviate an offeror, its designees and/or successors of the obligation set forth in subdivision twenty-eight of this section.

30. Within three hundred and sixty-five days of the effective date of this section, the attorney general shall submit a notice of proposed rulemaking for publication in the state register which shall contain the suitable rules necessary to carry out the provisions of this section. The authority of the attorney general to promulgate, adopt, publish, notify, review, amend, modify, reconsider, or rescind any rule or regulation as may be conferred anywhere within this section shall comply with the state administrative procedure act in all respects. Notwithstanding the foregoing, an offeror may submit a preservation plan to the department of law regardless of whether the attorney general has adopted suitable rules to carry out this section, and the department of law shall not rely on the lack of rulemaking to refuse to accept a preservation plan for submission or filing if offeror has otherwise complied with the requirements of this section.

31. For any offering statement or prospectus (including, without limitation, a preservation plan and any amended filings thereto), submitted to the department of law pursuant to this section, the filing fees set forth in paragraph (a) of subdivision seven of section three hundred fifty-two-e of this article shall not apply. Instead, an offeror shall tender the following filing fee with and for its submission:

(a) seven hundred fifty dollars for every offering not in excess of two hundred fifty thousand dollars;

(b) for every offering in excess of two hundred fifty thousand dollars, four-tenths of one percent of the total amount of the offering but not in excess of sixty thousand dollars, of which one-half of said amount shall be a nonrefundable deposit paid at the time of submitting the preservation plan to the department of law for review and the balance payable upon the attorney general's issuance of a letter of acceptance of the preservation plan for filing;

(c) seven hundred fifty dollars for each price change amendment to a preservation plan;

(d) seven hundred fifty dollars for any other amendment to a preservation plan; and

(e) seven hundred fifty dollars for each such application, and an additional seven hundred fifty dollars for each and every amendment submitted in furtherance of such an application to permit an offeror to solicit public interest prior to the filing of a preservation plan to the department of law.

32. The relevant housing finance agency may promulgate regulations, rules, and other guidance documents necessary to carry out the provisions of this section, as it deems necessary.

33. The provisions of this section shall only be applicable in the city of New York.

34. The attorney general shall make any offering statement or prospectus (including, without limitation, a preservation plan and any amended filings thereto), submitted pursuant to this section available to the public in a searchable repository on its official internet website.

§ 352-f. Description of realty bonds. Whenever hereafter any person, partnership, corporation, company, trust or association, or any agent or employee thereof, makes or takes part in an offering or sale of securities described in subdivision one of section three hundred fifty-two-e of this article, and such securities consist of bonds or other evidence of indebtedness, there shall be included in numeral form, in bold print on the first page of all offering literature employed in the solicitation and sale of such securities, the actual interest rate payable on such securities. Such rate shall not include any return of principal.

§ 352-g. Exemptions. The attorney general, upon application, may exempt from the provisions of sections three hundred fifty-two-e, three hundred fifty-two-f and three hundred fifty-two-h any offerings of securities (1) made to persons not exceeding forty in number or (2) which securities have been fully registered with the securities and exchange commission of the United States of America or have received an exemption therefrom for reasons other than said offering is an intrastate offering to residents of the state of New York only.

§ 352-h. Trust funds. Whenever hereafter any person, partnership, corporation, company, trust or association, offers or sells securities described in subdivision one of section three hundred fifty-two-e of this article to the public in or from the state of New York, then all moneys received in connection therewith, including deposits or advances therefor, shall continue to be the money of the person making such purchase, deposit or advance, and shall be held in trust by the person, partnership, corporation, company, trust or association offering or selling such securities and shall not be commingled with the personal moneys or become an asset of the person, partnership, corporation, company, trust or association receiving the same, and shall not be subject to attachment, levy or other encumbrance in any action by a

third party against such person, partnership, corporation, company, trust or association; and said funds shall remain in trust until actually employed in connection with the consummation of the transaction; and in the event insufficient funds are raised to effectuate the consummation of the transaction, or if the transaction does not result in the acquisition of the real estate, mortgage or lease involved for any reason or reasons, then all moneys so collected less such amounts actually employed in connection with the consummation of the transaction shall be fully returned to the investors. Any provision of any contract or agreement or understanding, whether oral or in writing, whereby a person who so purchases such securities waives any provision of this section is absolutely void. Nothing herein contained shall be deemed to preclude an action against a defaulting investor.

§ 352-i. Injunctive relief. Any person, partnership, corporation, company, trust or association, or any agent or employee thereof, who violates any of the provisions of sections three hundred fifty-two-e, three hundred fifty-two-ee, three hundred fifty-two-f, three hundred fifty-two-g, three hundred fifty-two-h or three hundred fifty-nine-ff of this article or of any regulations issued by the attorney general pursuant thereto shall be deemed to have committed a fraudulent practice, upon which the supreme court may issue a permanent injunction, as provided in section three hundred fifty-three of this article, upon application by the attorney general.

§ 352-j. Application of article. All the provisions of this article shall be fully applicable to real estate syndication offerings and security transactions described in subdivision one of section three hundred fifty-two-e of this article, with the exception that the additional provisions contained in sections three hundred fifty-two-e, three hundred fifty-two-ee, three hundred fifty-two-f, three hundred fifty-two-g, three hundred fifty-two-h and three hundred fifty-two-i shall also be applicable to such transactions.

§ 352-k. Broker dealer minimum capital requirements. 1. Every broker-dealer registered or required to be registered in this state shall have and maintain a net capital of not less than five thousand dollars. The term net capital shall be deemed to mean the net worth of a broker or dealer (that is, the excess of total assets over total liabilities), adjusted by

(a) adding unrealized profits (or deducting unrealized losses) in the accounts of the broker or dealer and, if such broker or dealer is a partnership, adding equities (or deducting deficits) in accounts of partners, as hereinafter defined;

(b) deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness secured thereby) including, among other things, real estate; furniture and fixtures; exchange memberships; prepaid rent, insurance and expenses; good will; organization expenses; all unsecured advances and loans; customers' unsecured notes and accounts; and deficits in customers' accounts, except in bona fide cash accounts within the meaning of section 4(c) of regulation T of the board of governors of the federal reserve system;

(c) deducting the percentages specified below of the market value of all securities, long and short (except exempted securities) in the capital, proprietary and other accounts of the broker or dealer, including securities loaned to the broker or dealer pursuant to a satisfactory subordination agreement, as hereinafter defined, and if such broker or dealer is a partnership, in the accounts of partners, as hereinafter defined:

(1) in the case of non-convertible debt securities having a fixed interest rate and a fixed maturity date which are not in default, if the market value is not more than five per cent below the face value, the deduction shall be five per cent of such market value; if the market value is more than five per cent but not more than thirty per cent below the face value, the deduction shall be a percentage of market value, equal to the percentage by which the market value is below the face value; and if the market value is thirty per cent or more below the face value, such deduction shall be thirty per cent;

(2) in the case of cumulative, non-convertible preferred stock ranking prior to all other classes of stock of the same issuer, which is not in arrears as to dividends, the deduction shall be twenty per cent;

(3) on all other securities, the deduction shall be thirty per cent; provided, however, that such deduction need not be made in the case of (1) a security which is convertible into or exchangeable for other securities within a period of thirty days, subject to no conditions other than the payment of money, and the other securities into which such security is convertible, or for which it is exchangeable, are short in the accounts of such broker or dealer or partner, or (2) a security which has been called for redemption and which is redeemable within ninety days.

(d) deducting thirty per cent of the market value of all "long" and all "short" future commodity contracts (other than those contracts representing spreads or straddles in the same commodity and those contracts offsetting or hedging any "spot" commodity positions) carried in the capital, proprietary or other accounts of the broker or dealer and, if such broker or dealer is a partnership, in the accounts of partners as hereinafter defined;

(e) deducting, in the case of a broker or dealer who has open contractual commitments, the respective percentages specified in subparagraph (c) above of the value (which shall be the market value whenever there is a market) of each net long and each net short position contemplated by any existing contractual commitment in the capital, proprietary and other accounts of the broker or dealer and, if such broker or dealer is a partnership, in accounts of partners, as hereinafter defined; provided, however, that this deduction shall not apply to exempted securities, and that the deduction with respect to any individual commitment shall be reduced by the unrealized profit, in an amount not greater than the percentage deduction provided for in subparagraph (c), (or increased by the unrealized loss) in such commitment; and that in no event shall an unrealized profit on any closed transactions operate to increase net capital;

(f) excluding liabilities of the broker or dealer which are subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement as herein defined; and

(g) deducting, in the case of a broker or dealer who is a sole proprietor, the excess of (1) liabilities which have not been incurred in the course of business as a broker or dealer over (2) assets not used in the business.

(h) For the purposes of this section only the term "exempted securities" shall mean:

(1) obligations issued or guaranteed by the United States, a state, territory or any political subdivision thereof, or of any instrumentality, authority, commission, or agency, of the United States, a state, territory, or any political subdivision thereof, and

(2) any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not more than nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, and which is such as is sold in the open market in the usual course of business of broker-dealers.

(i) the term "accounts of partners", where the broker or dealer is a partnership, shall mean accounts of partners who have agreed in writing that the equity in such accounts maintained with such partnership shall be included as partnership property;

(j) the term "contractual commitments" shall include underwriting, when-issued, when-distributed and delayed delivery contracts, endorsement of puts and calls, commitments in foreign currencies, and spot (cash) commodities contracts, but shall not include uncleared regular way purchases and sales of securities and contracts in commodities futures; a series of contracts of purchase or sale of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment;

(k) the term "satisfactory subordination agreement" shall mean a written agreement between the broker or dealer and a lender, which agreement is binding and enforceable in accordance with its terms upon the lender, his creditors, heirs, executors, administrators, and assigns, and which agreement satisfies all of the following conditions:

(1) it effectively subordinates any right of the lender to demand or receive payment or return of the cash or securities loaned to the claims of all present and future general creditors of the broker or dealer;

(2) it is not subject to cancellation at the will of either party and is for a term of not less than one year;

(3) it provides that it shall not be terminated, rescinded or modified by mutual consent or otherwise, if the effect thereof would be to make

the agreement inconsistent with the conditions of this rule, or to reduce the net capital of the broker or dealer below the amount required by this section;

(4) it provides that no default in the payment of interest or in the performance of any other covenant or condition by the broker or dealer shall have the effect of accelerating the maturity of the indebtedness;

(5) it provides that any notes or other written instruments evidencing the indebtedness shall bear on their face an appropriate legend stating that such notes or instruments are issued subject to the provisions of a subordination agreement which shall be adequately referred to and incorporated by reference;

(6) it provides that any securities or other property loaned to the broker or dealer pursuant to its provisions may be used and dealt with by the broker or dealer as part of his capital and shall be subject to the risks of the business;

(7) the term "customer" shall mean every person except the broker or dealer; provided, however, that partners who maintain "accounts of partners" as herein defined shall not be deemed to be customers insofar as such accounts are concerned.

2. Every broker-dealer shall file, as required by the attorney-general, a financial statement setting forth its assets, liabilities and net worth as computed in subdivision one above.

3. The provisions of this section shall not be applicable to issuers of their own securities who are deemed to be broker-dealers solely for such reason or to banks, private banks, trust companies or other organizations engaged in a banking business and in the conduct of such banking business are subject to examination, supervision and control of the banking authorities of any state or of the United States or any insular possession thereof.

4. Upon a showing by the attorney-general that a broker-dealer has failed to maintain a net capital as hereinbefore prescribed, the supreme court after a hearing may issue an injunction in the form and manner provided for in subdivision one of section three hundred fifty-three of this article in the case of one who actually has or is engaged in any

fraudulent practice, for such period of time during which such broker-dealer shall not have and maintain such minimum net capital. The failure, without reasonable cause therefor, of a broker-dealer to file financial statements as may be required by the attorney-general, shall be prima facie proof that such broker-dealer has failed to maintain the minimum net capital required hereunder and an injunction may issue from the supreme court as hereinbefore set forth without any further showing by the attorney-general.

5. The attorney-general may from time to time in the public interest make, amend and rescind such rules, regulations and forms as are necessary to carry out the provisions of this section, including rules, regulations and forms governing financial statements and filings thereof. For the purpose of such rules, regulations and forms, the attorney-general may classify securities, persons and matters within his jurisdiction and may prescribe different forms and requirements for different classes.

6. Any false statement of a material fact contained in any such financial statement, in any certificate attached thereto or any papers submitted in connection therewith shall constitute a violation of this section within the meaning of section three hundred fifty-nine-g of this article.

§ 352-1. Cooperative corporations. 1. For the purposes of this section, "non-occupying owner" shall mean the owner of shares in a cooperative corporation who does not occupy the dwelling units to which his or her shares are allocated.

2. If a non-occupying owner rents any dwelling unit to a tenant and then fails to make payments due for maintenance, assessments or late fees for such unit within sixty days of the expiration of any grace period after they are due, upon notice in accordance with subdivision three of this section, all rental payments from the tenant shall be directly payable to the cooperative corporation.

3. If the maintenance, assessments or late fees due for any unit have not been paid in full within sixty days after the expiration of any grace period of the earliest due date, the board of directors shall provide written notice to the rental tenant and the non-occupying owner providing that, commencing immediately and until such time as all payments for maintenance, assessments or late fees are made current, all rental payments due subsequent to the issuance of such notice are to be made payable to the cooperative corporation at the address listed on the notice. Where a majority of the board of directors has been elected by and from among the owners who are in occupancy, the board may elect not to require that rental payments be made payable to the cooperative corporation. At such time as payments for maintenance, assessments and late fees from the non-occupying owner are once again current, notice of such fact shall be given within three business days to the rental tenant and non-occupying owner. Thereafter all rental payments for such unit shall be made payable to the non-occupying owner or to a designated agent. A non-occupying owner who disputes the cooperative corporation's claim to rental payments pursuant to this section shall be entitled to present facts supporting such owner's position at the next scheduled meeting of the board of directors, which must be held within thirty days of the date that such board receives notice that such owner seeks to dispute such claim.

4. Nothing in this section shall limit any rights of shareholders or of the board of directors existing under any other law or agreement.

5. Payment by a rental tenant to the cooperative corporation made in connection with this section shall relieve that rental tenant from the obligation to pay such rent to the non-occupying owner and shall be an absolute defense in any non-payment proceeding commenced by such non-occupying owner against such tenant for such rent.

§ 353. Action by attorney-general. 1. Whenever the attorney-general shall believe from evidence satisfactory to him that any person, partnership, corporation, company, trust or association has engaged in, is engaged or is about to engage in any of the practices or transactions

heretofore referred to as and declared to be fraudulent practices, he may bring an action in the name and on behalf of the people of the state of New York against such person, partnership, corporation, company, trust or association, and any other person or persons theretofore concerned in or in any way participating in or about to participate in such fraudulent practices, to enjoin such person, partnership, corporation, company, trust or association and such other person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or, if the attorney-general should believe from such evidence that such person, partnership, corporation, company, trust or association actually has or is engaged in any such fraudulent practice, he may include in such action an application to enjoin permanently such person, partnership, corporation, company, trust or association, and such other person or persons as may have been or may be concerned with or in any way participating in such fraudulent practice, from selling or offering for sale to the public within this state, as principal, broker or agent, or otherwise, any securities issued or to be issued. In said action an order or a judgment may be entered awarding the relief applied for or so much thereof as the court may deem proper. Upon a showing by the attorney-general in his application for a permanent injunction hereunder that the defendant named in the action or an officer thereof has refused to be sworn or to be examined or to answer a material question or to produce a book or paper relevant to the inquiry when duly ordered so to do by the officer or judge duly conducting an inquiry into the subject matter forming the basis of the application for such injunction, such refusal shall be prima facie proof that such defendant is or has been engaged in fraudulent practices as set forth in such application and a permanent injunction may issue from the supreme court without any further showing by the attorney-general. In such an action, the court may award to the plaintiff a sum not in excess of two thousand dollars as an additional allowance.

2. Upon a showing by the attorney-general in an application for an injunction that any person engaged in the purchase, sale, offer to purchase or sell, issuance, exchange, promotion, negotiation, advertisement or distribution within this state of any security or

securities, either as principal, partner, officer, agent, employee or otherwise, has ever been convicted by a court of competent jurisdiction in any state or country of any felony; or of any other criminal offense by any such court, whether or not constituting a felony, involving securities, the supreme court after a hearing may issue a permanent injunction awarding the relief applied for, or so much thereof as the court may deem proper, against such person shown to have been so convicted, in the form and manner provided for in subdivision one of this section in case of one who actually has or is engaged in any fraudulent practice.

3. Upon a showing by the attorney general that a fraudulent practice as defined by this article has occurred, he may include in an action under this article an application to direct restitution of any moneys or property obtained directly or indirectly by any such fraudulent practice.

4. Notwithstanding any law to the contrary, all monies recovered or obtained under this article by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

§ 353-a. Receivers. In any action brought by the attorney-general as provided in this article, the court at any stage of the proceedings may appoint a receiver of any and all property derived by the defendant or defendants or any of them by means of any such fraudulent practices, including also all property with which such property has been mingled if such property can not be identified in kind because of such commingling, together with any or all books of account and papers relating to the same. The judgment entered in such action may provide that such receiver shall take title to any or all such property and books of account and papers relating to the same and liquidate such property or any part thereof for the benefit of all persons intervening in the said action and establishing an interest in such property. The judgment may also provide that all such property, the title to or interest in which has not been established in such action by intervenors or otherwise by due

process to be in a person or persons other than defendant or defendants, shall be returned to the defendant or defendants as their interest may appear. Such receiver shall be subject to all the duties of receivers appointed in a civil action as far as practicable except that such provisions relating to commissions or compensation of receivers shall not be applicable to receivers appointed pursuant to this section, but such commissions or compensation shall be fixed by the court in any amount which it may determine to be just and equitable. In any action brought by the attorney-general as provided in this article the court may grant such other and further relief as may be proper.

§ 354. Examination of witnesses and preliminary injunction. Whenever the attorney-general has determined to commence an action under this article, he may present to any justice of the supreme court, before beginning such action, an application in writing for an order directing the person or persons mentioned in the application to appear before the justice of the supreme court or referee designated in such order and answer such questions as may be put to them or to any of them, or to produce such papers, documents and books concerning the alleged fraudulent practices to which the action which he has determined to bring relates, and it shall be the duty of the justice of the supreme court to whom such application for the order is made to grant such application. The application for such order made by the attorney-general may simply show upon his information and belief that the testimony of such person or persons is material and necessary. The provisions of the civil practice law and rules, relating to an application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examination, shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made with such preliminary injunction or stay as may appear to such justice to be proper and expedient and shall specify the time when and place where the witnesses are required to appear. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him and all must be filed in the office of the clerk of the county in which such

order for examination is filed.

§ 355. Procedure on hearing. The order for such examination must be signed by the justice making it and service of a copy thereof with an endorsement by the attorney-general signed by him or his deputy, to the effect that the person named therein is required to appear and be examined at the time and place and before the justice or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce at such examination all books, papers and documents in his possession or under his control relating to the subject of such examination. The order shall be served upon the person named in the endorsement aforesaid by delivering to and leaving with him a certified copy thereof, endorsed as above provided, subject to the payment of witness fees and mileage as and when provided to be paid by section three hundred fifty-two, subdivision three of this article in connection with attendance pursuant to subpoenas authorized to be issued under said action. Service of an order pursuant to section three hundred fifty-four of this article may be made under section three hundred fifty-two-b of this article in cases falling thereunder.

§ 356. Powers of referee. The referee appointed as provided in this article possesses all the powers and is subject to all the duties of a referee appointed in a civil action, so far as practicable, and may punish for contempt a witness duly served with the papers as prescribed in this article for non-attendance or refusal to be sworn or to testify or to produce books, papers and documents according to the direction of the endorsement aforesaid, in the same manner and to the same extent as a referee to hear, try and determine an issue of fact or of law.

§ 357. Application of provisions of civil practice law and rules. The provisions of the civil practice law and rules shall apply to all actions brought under this article except as herein otherwise provided.

§ 358. Criminal prosecution. The attorney-general may prosecute every person charged with the commission of a criminal offense in violation of the laws of this state, applicable to or in respect of the practices or transactions which in this article are referred to as fraudulent practices. In all such proceedings, the attorney-general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform; or the attorney-general may in his discretion transmit evidence, proof and information as to such offense to the district attorney of the county or counties in which the alleged violation has occurred, and every district attorney to whom such evidence, proof and information is so transmitted shall forthwith proceed to prosecute any corporation, company, association, or officer, manager or agent thereof, or any firm or person charged with such violation. In any such proceeding, wherein the attorney-general has appeared either in person or by deputy, the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney-general or the deputy attorney-general so appearing.

§ 359. Immunity. Upon any investigation before the attorney-general or his deputy or other officer designated by him, or in any criminal proceeding before any court or grand jury, pursuant to or for a violation of any of the provisions of this article, the attorney-general, his deputy or other officer designated by him, or the court or grand jury, may confer immunity in accordance with the provisions of section 50.20 or 190.40 of the criminal procedure law.

§ 359-a. Appointment of deputies. For the purposes of this article, the attorney-general may in his discretion, and without civil service examination, appoint and employ, and at pleasure remove, such deputies, officers and other persons as he deems necessary, and determine their duties and fix their compensation.

§ 359-b. Effect of unconstitutionality of part of article. Should any section or provision of this article be declared unconstitutional, by the decision of any court, such decision shall affect the section or provision so declared unconstitutional and shall not affect any other section or provision of the article.

§ 359-c. Publication of state notices. 1. Every state notice filed in the department of state pursuant to this article shall be published by such department in the next issue of the state bulletin following the receipt thereof, except that a notice received by the department less than five days before the next issue may be published either in such next issue or the next issue but one, at the convenience and in the discretion of such department.

2. The department of state shall collect a fee of seventy-five dollars for filing and publishing each state notice and each further state notice.

§ 359-e. Definitions. Registration requirements.

1. The following terms, whenever used or referred to in this article, shall have the following meaning unless a different meaning clearly appears from the context:

(a) A "dealer" shall mean and include any person, firm, association or corporation engaged in the business of buying and selling securities from or to the public within or from this state for his or its own account, through a broker or otherwise, except a bank unless such bank is considered a dealer under the federal securities exchange act of 1934, but does not include any person, firm, association or corporation in so far as he or it buys or sells securities for his or its bona fide investment account, either individually or in some fiduciary capacity. The term "dealer" shall, except as otherwise provided in this article, also include a person, firm, association or corporation selling or offering for sale from or to the public within or from this state

securities issued by it. No person shall be deemed to be a "dealer", as defined in this subdivision, or a broker, as defined in subdivision (b) of this section, solely by reason of the fact that he is engaged in the business of (i) selling, offering for sale, purchasing or offering to purchase any security or securities to, from or through any bank, dealer or broker, or to or from any syndicate, corporation or group formed for the specific purpose of acquiring such securities for resale to the public directly or through other syndicates or groups, or (ii) any offer, sale or distribution by an issuer of stock dividends, nontransferable warrants or transferable warrants exercisable within ninety days of their issuance to existing stockholders, securities issued upon conversion of convertible securities and exercise of warrants and securities issued as part of a recapitalization or reclassification to existing stockholders of the same issuer, or (iii) selling, offering for sale, purchasing or offering to purchase any security or securities on the floor of any securities exchange registered as a national securities exchange under the securities exchange act of nineteen hundred thirty-four. No person, firm, association or corporation shall be deemed to be a "dealer", as defined in this subdivision, solely by reason of selling or offering for sale any security or securities to any bank, corporation, savings institution, trust company, insurance company, investment company, as defined in the federal investment company act of nineteen hundred forty, pension or profit-sharing trust, or other financial institution or institutional buyer, whether the purchaser is acting for himself or itself or in some fiduciary capacity, as part of a private placement of securities.

(b) A "broker" shall mean and include any person, firm, association or corporation, other than a dealer, engaged in the business of effecting transactions in securities for the account of others within or from this state, but does not include a bank unless such bank is considered a broker under the federal securities exchange act of 1934.

(c) A "salesman" shall mean and include every person employed by a broker or dealer as said terms are defined in this section, for the purpose of representing such broker or dealer in the sale or purchase of securities to or from the public within or from this state.

(d) A "principal" shall mean and include every person or firm directly

or indirectly controlling any broker or dealer.

(e) A "bank" shall mean and include a state or national bank, trust company or savings institution incorporated under the laws and subject to the examination, supervision and control of any state or of the United States or of any insular possession thereof.

2. No dealer or broker shall sell or offer for sale to or purchase or offer to purchase from the public within or from this state, as principal, or broker, any securities issued or to be issued unless and until a notice, to be known as the "state notice," containing the name, business or post office address of such dealer or broker and if a corporation the state or country of incorporation thereof, and if a partnership the names of the partners, shall have been filed in the department of state. Such notice shall be in the following form:

STATE NOTICE

Name(s) of dealer(s), broker(s)

Business address(es) or post office address(es) (state which)

.....

If a corporation, the state or country in which incorporated.

.....

If a partnership, the names of the partners

3. It shall be unlawful for any dealer, broker or salesman to sell or offer for sale to or purchase or offer to purchase from the public within or from this state, any securities issued or to be issued, unless and until such dealer, broker or salesman shall have filed with the department of law a registration statement as provided herein. A real estate broker or salesman licensed under article twelve-A of the real property law who is not acting as a dealer shall be deemed to be in compliance with such registration statement filing requirements with respect to the sale of securities constituting cooperative interests in real estate, including shares of cooperative apartment corporations, commercial cooperative corporations, condominiums, and interests in homeowners associations.

(a) The registration statement relating to dealers and brokers, to be known as the "broker-dealer statement" shall contain such information pertaining to the business history for the last preceding five years,

criminal record, and educational background of the applicant and his or its partners, officers, directors or other principals thereof deemed pertinent by the attorney-general. The attorney-general may prescribe forms for the use of such applicants.

(b) The registration statement relating to salesmen, to be known as the "salesman's statement," shall contain such information pertaining to the business history for the last preceding five years, criminal record and educational background of the applicant deemed pertinent by the attorney-general. The attorney-general may prescribe forms for use of such applicants and, as a condition of registration, shall require that prior to the filing of such a registration statement any such applicant shall undertake and successfully complete the uniform securities agent state law examination ("series 63") or the uniform combined state law examination ("series 66") as administered by or on behalf of the North American Securities Administrators Association, Inc. (NASAA) by any national securities association or national securities exchange; provided that, if an applicant registers with the attorney-general solely for the purpose of selling condominiums, shares of cooperative apartment corporations or commercial cooperative corporations, interests in homeowners associations or interests in timeshare projects, such applicant shall not be required to undertake the aforementioned examination as a condition of registration.

(c) The registration of brokers, dealers and salesmen shall be for periods of four years commencing on January fifth, nineteen hundred sixty. Such statements for brokers, dealers or salesmen shall be filed every four years within sixty days prior to the expiration of the four year period, provided that previously filed statements shall continue to be effective for a period of ninety days following the end of the four year period. Initial statements for those having no previous filing may be made at any time and shall be effective from the date of filing for a period of four years. All statements filed pursuant to prior provisions of law shall remain in effect until January fifth, nineteen hundred sixty.

4. The attorney-general may by rule or order provide for the filing of supplemental statements prescribed by him which shall contain such information as the attorney-general may deem necessary to keep

reasonably current the information on file.

5. The department of law shall collect the following fees: (a) twelve hundred dollars for each broker-dealer's statement; (b) twelve hundred dollars for each broker-dealer's statement filed by a person, firm, association or corporation selling or offering for sale from or to the public within or from this state securities issued by it for any amount in excess of five hundred thousand dollars; (c) three hundred dollars for each broker-dealer's statement filed by a person, firm, association or corporation selling or offering for sale from or to the public within or from this state securities issued by it for any amount of five hundred thousand dollars or less; (d) three hundred dollars for each broker-dealer's statement filed by a person, firm, association or corporation solely for the purpose of selling or offering for sale from or to the public within or from this state securities consisting of condominiums, shares of cooperative apartment corporations or commercial cooperative corporations, interests in homeowners associations or interests in timeshare projects, plus fifteen dollars for each partner, officer, director or principal of any such firm, association or corporation; (e) one hundred fifty dollars for each salesman's statement; (f) thirty dollars for each supplemental statement; (g) three hundred dollars for each application granted pursuant to subdivision two of section three hundred fifty-nine-f of this article; and (h) two hundred twenty-five dollars for the issuance of a "no filing required letter"; these fees shall obtain for both original statements and their renewals. No fee, however, shall be collected for filing a supplemental statement by a salesman cancelling his prior registration as such salesman.

Any partner, officer, director or principal who is named as such in a broker-dealer statement and who shall act as a salesman for such broker or dealer, shall not be required to register as a salesman.

6. Any false statement of a material fact contained in any such broker-dealer or salesman's statement or supplemental statement or in any certificate attached thereto shall constitute a violation of this section within the meaning of section three hundred fifty-nine-g of this

article.

7. Any person, partnership, corporation, company, trust or association representing in any manner that the state, the department of law or any officer thereof has recommended the purchase of any stocks, bonds, or other securities, in advertising or offering such stocks, bonds or other securities for sale shall be guilty of a misdemeanor punishable as provided in subdivision two of section three hundred fifty-nine-g of this article.

8. After this subdivision as hereby amended takes effect no dealer shall sell or offer for sale to the public within this state as principal or agent, any securities issued or to be issued which are not exempted from the provisions of this subdivision by section three hundred and fifty-nine-f hereof unless and until such dealer shall cause to be filed a "further state notice" containing the information, other than the names of partners, required to be published by subdivision two of this section, but opposite the heading "name of dealer", if the person or persons causing such notice to be filed are acting pursuant to the provisions of this subdivision, there shall be added either the words "syndicate manager" or "syndicate managers" as the case may be; and in addition thereto and as part of each such further state notice the name of the security or securities, name, post office address and state or country of incorporation or organization of the corporation, association, common law trust or similar organization issuing or to issue the security or securities to be sold or offered for sale, in the following form:

FURTHER STATE NOTICE

Name of security or securities
Name of issuer of securities
Post Office address of issuer of securities
The state or country in which organized

Two or more dealers may jointly file such further state notice required by this subdivision, and a dealer or exchange must file a further state notice for each issue about to be offered which has not heretofore been published by the issuer. A syndicate manager or

co-manager with an office in this state may file on behalf of an entire syndicate.

9. A broker-dealer or salesman registration statement or any other document is filed when it is received in the New York city office of the attorney-general.

10. The attorney-general may from time to time in the public interest make, amend, and rescind such forms as are necessary to carry out the provisions of this act, including forms governing registration statements and applications. For the purpose of forms, the attorney-general may classify securities, persons and matters within his jurisdiction, and may prescribe different forms and requirements for different classes.

11. It is unlawful for any broker or dealer to employ a salesman unless the salesman is registered. The registration of a salesman is suspended during any period when he is not associated with a particular broker or dealer registered under this act or a particular issuer. When a salesman begins or terminates a connection with a broker or dealer, or begins or terminates those activities which make him a salesman, the salesman as well as the broker or dealer shall promptly notify the attorney-general.

12. All persons, including partners, officers, directors and salesmen employed by a member or a member organization of a national securities exchange, a national securities association, or any other broker-dealer, registered with the federal securities exchange commission or any broker or dealer required to be registered with the department of law pursuant to this article except those dealers required to be registered solely by reason of the fact that they are engaged in selling or offering for sale securities issued by themselves, and any employee of a clearing corporation affiliated with any such registered national securities exchange or with any national securities association registered with the federal securities exchange commission, employed on or after September first, nineteen hundred sixty-nine, who are regularly employed within the state of New York shall, as a condition of employment, be

fingerprinted. Every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the attorney general for appropriate processing, except that individuals fingerprinted in compliance with the rules of the securities and exchange commission need not file with the attorney general so long as records of those fingerprints, as well as information received in response to their filing, are available to the attorney general for inspection. The department of law shall collect from a member or member organization of a national securities exchange, a national securities association, or any registered broker-dealer as described above or a clearing corporation affiliated with any such registered national securities exchange or with any such registered national securities association submitting fingerprints to the attorney general for processing a fee in the amount prescribed therefor by the division of criminal justice services for each set of fingerprints submitted. Failure to comply with this section shall be deemed a violation of and a fraudulent practice within the meaning of this article.

12-a. Any employee of a national securities exchange or national securities association registered with the federal securities and exchange commission, and any employee of a clearing corporation or securities information processor affiliated with any such registered national securities exchange or national securities association, and who are regularly employed within the state of New York, shall, as a condition of employment, be fingerprinted. Every national securities exchange, national securities association, clearing corporation or securities information processor that is required to submit fingerprints pursuant to this section shall also obtain fingerprints from any individual not employed by such organization who provides services to such organization within the state of New York provided that the individual has access to records including electronic records, as defined by section three hundred two of the state technology law, or other material or secure buildings or secure property, which place the security of such organization at risk.

Every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the federal bureau of investigation for the

purpose of a nationwide criminal history check. Such reports received from the federal bureau of investigation shall be kept confidential, although the contents of any such report may be disclosed to exchange officials involved in personnel and security matters, to the attorney general, to law enforcement authorities and to the securities and exchange commission. Unless inconsistent with federal law, fingerprints supplied by such employee or employment applicant shall be returned to such person upon termination or denial of such employment. Fingerprints supplied by such other individuals providing services shall be returned upon completion of such services.

12-b. Any employee of a designated contract market, as that term is defined in the Commodity Exchange Act, under the authority of the federal Commodity Futures Trading Commission, and any employee of a derivatives clearing organization, as that term is defined under the Commodity Exchange Act, that is affiliated with any such designated contract market, and who are regularly employed within the state of New York, shall, as a condition of employment, be fingerprinted. Every designated contract market and derivatives clearing organization that is required to submit fingerprints pursuant to this section shall also obtain fingerprints from any individual not employed by such organization who provides services to such organization within the state of New York provided that the individual has access to records including electronic records, as defined by section three hundred two of the state technology law, or other material or secure buildings or secure property, which place the security of such organization at risk.

Every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the federal bureau of investigation for the purpose of a nationwide criminal history check. Such reports received from the federal bureau of investigation shall be kept confidential, although the contents of any such report may be disclosed to designated contract market or derivatives clearing organization officials involved in personnel and security matters, to the attorney general, to law enforcement authorities and to the Commodity Futures Trading Commission. Unless inconsistent with federal law, fingerprints supplied by such employee or employment applicant shall be returned to such person upon

termination or denial of such employment. Fingerprints supplied by such other individuals providing services shall be returned upon completion of such services.

13. (a) The attorney general may by regulation, rule or order provide an alternative method of registration by which any dealer, broker or salesman acting as such or as principal in more than one state or who engages in multi-state securities offerings may supply the information otherwise required to be furnished in the state notice, registration statement, supplemental statements and further state notice mandated by subdivisions two, three, four and eight of this section. Such alternative method, when complied with, shall be deemed to fulfill the filing requirements of subdivisions two, eight and nine of this section, and shall be in lieu thereof. The regulation, rule or order of the attorney general may also provide for alternative filing periods and expiration dates and an alternate method for the payment of fees, to be known as "in lieu filing fees", which shall be collected pursuant to such regulation, rule or order of the attorney general in the same amounts as, and for the same information otherwise required to be collected for statements filed as specified by subdivision five of this section.

(b) No alternative method may be provided by the attorney general which does not have, as its purpose, the facilitation of a central registration depository whereby brokers, dealers or salesmen can centrally or simultaneously register and pay fees for all states in which they plan to transact business which requires registration. The attorney general is hereby authorized to enter into an agreement or otherwise facilitate such alternative method with any national securities association, national securities exchange, national association of state securities administrators or similar association or agents thereof to effectuate the provisions of this subdivision.

(c) Any false statement of a material fact contained in any substitute for a broker-dealer statement or salesman's statement or supplemental statement which is provided pursuant to the attorney general's regulation, rule or order specified in paragraph (a) of this subdivision, shall constitute a violation of this section within the meaning of section three hundred fifty-nine-g of this article.

(d) It shall be unlawful for any dealer, broker or salesman to sell or offer for sale to or purchase or offer to purchase from the public within or from this state, any securities issued or to be issued, unless and until such dealer, broker or salesman shall have complied with the requirements of either: (i) the regulation, rule or order of the attorney general specified in paragraph (a) of this subdivision; or (ii) the filing of a state notice and registration statement and supplemental statements and further state notice as applicable to said dealer, broker or salesman, in accordance with subdivisions two, three, four and eight of this section.

(e) To the extent inconsistent therewith, the provisions of this subdivision shall supersede the provisions of any other subdivision of this section.

14. (a) Definitions. For purposes of this subdivision the following definitions shall apply:

(i) "Commodity" means, except as otherwise specified by the attorney general by rule, regulation or order, any agricultural, grain, animal, chemical, metal or mineral product or byproduct, any gem or gemstone (whether characterized as precious, semi-precious or otherwise), any fuel (whether liquid, gaseous or otherwise), any foreign currency, and any other good, article, or material.

(ii) "Commodity contract" means any account, agreement or contract for the purchase or sale of, or any option or right to purchase or sell, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, one or more commodities, whether for immediate or subsequent delivery or for storage and whether or not delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise. Any commodity contract offered for sale or sold to a person other than a producer, processor, merchant, handler, commercial user or ultimate consumer of the commodity shall, in the absence of evidence to the contrary, be presumed to be offered for sale or sold for speculation or investment purposes.

(iii) "Commodity broker-dealer" means any person engaged in the

business of selling or offering to sell commodities through commodity contracts to the public within or from the state of New York.

(iv) "Commodity salesperson" means any person employed by or representing a commodity broker-dealer in selling or offering for sale commodities through commodity contracts to the public within or from the state of New York.

(v) "Commodity investment advisor" means any person who, for compensation, within or from the state of New York, engages in the business of advising members of the public, either directly or through publications or writings, as to the advisability of investing in, purchasing, selling or holding commodity contracts.

(b) Any person acting as a commodity broker-dealer, commodity salesperson or commodity investment advisor and any person who manages or supervises any such broker-dealer, salesperson or investment advisor shall file a registration statement with the attorney general as a commodity broker-dealer, commodity salesperson, or commodity investment advisor relating to the activity actually engaged in.

(c) The attorney general may adopt rules and regulations governing the form and content of such registration statements for each such activity which may include information pertaining to the business history for the last preceding five years, record of criminal convictions, litigation history, and educational background of the registrant and the registrant's partners, officers, directors or other principals deemed pertinent by the attorney general and the names of persons employed as commodity salespersons or commodity investment advisors by the registrant.

(d) The registration statement shall be effective for a period of one year from the date of filing.

(e) The attorney general shall by rule or regulation provide for the method of renewing such registration statements and may require the filing of supplemental statements which shall contain such information as the attorney general may deem necessary to keep reasonably current the information on file.

(f) The attorney general shall collect the following annual fees: one hundred dollars for each commodity broker-dealer registration statement or commodity investment advisor registration statement; twenty-five dollars for each commodity salesperson registration statement; and ten

dollars for each supplemental statement.

(g) The provisions of this subdivision shall not apply to (i) any person who is a member or member firm of a national securities exchange, board of trade designated as a contract market by the Commodity Futures Trading Commission pursuant to the commodity exchange act, as amended, the National Association of Securities Dealers, Inc., or the National Futures Association, Inc., or is an affiliate of such a member or member firm, or employed by such a member or member firm or by an affiliate of such a member or member firm; (ii) any board of trade designated as a contract market as aforesaid; (iii) any other person registered, temporarily licensed, or exempt from registration under the commodity exchange act, as amended, or the rules and regulations promulgated thereunder where such registration, license or exemption relates directly to the activity engaged in; and (iv) any bank or trust company as defined in this article or any person acting as an employee of any bank or trust company or any licensed money transmitter or employee thereof.

(h) In addition to those persons exempt under paragraph (g) of this subdivision, no person shall be required to register as a commodity investment advisor pursuant to paragraph (b) of this subdivision who is (i) a lawyer, accountant, engineer, or teacher who renders investment advice solely incidental to the practice of his or her profession; (ii) a broker or dealer in securities or a commodity broker-dealer or a commodity salesperson who renders investment advice solely incidental to the conduct of his or her business as a broker or dealer in securities or a commodity broker-dealer or a commodity salesperson respectively, and who receives no special compensation for such advice; (iii) a publisher of, editor of, or writer for a bona fide newspaper or news magazine, whether published in print or by electronic means; or (iv) a person who during the course of the preceding twelve months has not advised more than fifteen persons as to the advisability of investing in, purchasing, selling or holding commodity contracts and who does not hold himself out generally to the public as engaging in any of the activities set forth in subparagraph (iii), (iv) or (v) of paragraph (a) of this subdivision.

(i) The provisions of this subdivision shall not apply to any contract or transaction involving the sale of commodities by the owner or lessee

of real property upon which such commodities are grown or raised, the sale of items by art dealers or licensed auctioneers at public auction or the sale or resale by a distributor or wholesaler of goods for consumption by the public.

(j) Any person required to be registered by this subdivision who is not registered shall be guilty of a misdemeanor punishable as provided in the penal law.

(k) Any person who engages in a business requiring registration under this article and who knowingly employs two or more persons for the purpose of engaging in conduct requiring registration as a commodity broker-dealer, commodity salesperson or commodity investment advisor under this article with the knowledge that they are not so registered shall be guilty of a class E felony.

(l) A violation of this subdivision shall constitute a fraudulent practice as that term is used in this article.

(m) If any provision of this subdivision or the application thereof to any persons or circumstances is held invalid, the validity of the remainder of this subdivision or of the application of such provision to other persons and circumstances shall not be affected thereby.

§ 359-ee. Report of existence. 1. Every person, partnership, corporation, company, trust or association which caused to be filed in the department of law a "dealer's statement" on or before June thirtieth, nineteen hundred fifty-three, shall on or before February first, nineteen hundred fifty-nine, file in the department of law a certificate which shall be entitled and endorsed, "Certificate of Report of Existence of.....(state name of dealer), pursuant to section three hundred fifty-nine-ee, of the general business law" and shall state: (a) The name of the dealer, and if it was changed, the name under which last registered. (b) The date of the last filing of the dealer's statement in the department of law. (c) That its existence is hereby continued. Such certificate shall be signed and certified by the dealer or any principal officer thereof.

2. On or before January first, nineteen hundred fifty-nine, notice of the enactment of this section shall be given by the attorney-general to

each dealer to which this section applies by mailing a copy of such notice to said dealer directed to said dealer at the address stated in the "dealer's statement" filed by said dealer in the department of law and then on file there. A copy of this section shall be endorsed or annexed to each such notice.

3. On March fifteenth, nineteen hundred fifty-nine, the attorney-general shall make a list containing the names of all such dealers, who have not filed the certificate of report of existence required by subdivision one of this section.

4. The attorney-general shall make a proclamation under his hand and seal of office as to the dealers whose names are included in such list, declaring the "dealers' statements" theretofore filed by such dealers as void pursuant to the provisions of this section. He shall file the original proclamation in his office and shall publish a copy thereof in the April or May issue of the state bulletin in the year nineteen hundred fifty-nine.

5. Upon the publication of such proclamation in the manner aforesaid, the "dealer's statement" of each dealer named therein shall be deemed void as of May thirty-first, nineteen hundred fifty-nine, without further proceedings, except as otherwise provided in subdivision six of this section.

6. After this section takes effect, no dealer whose statement has been voided by subdivision five of this section shall sell or offer for sale to the public within this state, as principal, broker or agent, or otherwise, any securities issued or to be issued, unless and until such dealer shall have caused to be filed in the department of law a new "dealer's statement" as required by section three hundred fifty-nine-e of this article.

7. After this section takes effect, no dealer whose statement has been voided by subdivision five of this section shall sell or offer for sale to the public within this state, as principal, broker or agent, or otherwise, any securities issued or to be issued, unless and until such

dealer shall have caused to be filed in the department of state a new "state notice" as required by section three hundred fifty-nine-e of this article, and, as to any securities which are not exempted from the provisions of subdivision eight of section three hundred fifty-nine-e of this article by section three hundred fifty-nine-f hereof, until and unless such dealer shall have caused to be filed in the department of state a further "state notice" as required by such section three hundred fifty-nine-e.

8. The fee of the attorney-general for filing a certificate under subdivisions one or six of this section shall be five dollars, and the fee of the department of state for filing any notice under subdivision seven of this section shall be two dollars.

§ 359-eee. Definitions. Registration requirements for investment advisers. 1. The following terms, whenever used or referred to in this article, shall have the following meaning unless a different meaning clearly appears from the context:

(a) "Investment adviser" shall mean any person who, for compensation, engages in the business of advising members of the public, either directly or through publications or writings within or from the state of New York, as to the value of securities or as to the advisability of investing in, purchasing, or selling or holding securities, or who, for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities to members of the public within or from the state of New York. "Investment adviser" shall not include:

(1) A bank or trust company unless it is considered an investment adviser under the federal investment advisers act of 1940;

(2) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of this profession;

(3) A broker or dealer whose performance of these services is solely incidental to the conduct of his business as broker or dealer and who receives no special compensation for them;

(4) A publisher of any bona fide newspaper or news magazine;

(5) A person who sold, during the preceding twelve month period,

investment advisory services to fewer than six persons residing in this state, exclusive of financial institutions and institutional buyers as may be defined by rule or regulation of the attorney general;

(6) A federally covered investment adviser;

(7) A person who would otherwise be required or permitted to register with the federal securities and exchange commission as an investment adviser were it not for the exemption from registration under section 203(b)(3) of the federal Investment Advisers Act of 1940. For purposes of this exemption, the provisions of Rule 203(b)(3)-1 thereunder shall apply; and

(8) Such other person as may be excluded from the definition of investment adviser or federally covered investment adviser or exempted from the provisions of subdivision two of this section by rules or regulations prescribed by the attorney general.

(b) A "person" under this section shall mean a natural person, corporation, company, partnership, trust or association.

(c) "Federally covered investment adviser" shall mean a person who is registered under section 203 of the federal investment advisers act of 1940, 15 U.S.C. § 80b et seq. Such term shall not include any person who is excluded from the term "investment adviser" pursuant to subparagraphs one through five, seven, and eight of paragraph (a) of this subdivision.

2. (a) It shall be unlawful for any investment adviser, as defined in this section, to engage as such within or from the state of New York unless and until such person shall have filed with the department of law a registration statement as provided herein.

(b) The attorney general may prescribe an alternative filing method that facilitates a central registration depository whereby investment advisers or federally covered investment advisers can centrally or simultaneously register or submit a notice filing, as applicable, and pay fees for all states in which they plan to transact business which require registration or notice filings. The attorney general is hereby authorized to enter into an agreement or otherwise facilitate such alternative method with any national securities association, national securities exchange, national association of state securities administrators or similar association or agents thereof to effectuate the provisions of this subdivision.

3. A registration statement relating to persons who must register under this section, to be known as the "investment adviser statement" shall contain such information pertaining to the business history for the last preceding five years, criminal record, educational background of the applicant and his or its partners, officers, directors or other principals thereof deemed pertinent by the attorney general. The attorney general may prescribe forms for the use of such applicants and, as a condition of registration, may by rule or regulation prescribe that all applicants or any class of applicants, as well as any persons who represent or will represent an investment adviser in doing any of the acts that make such person an investment adviser, shall undertake and successfully complete examination requirements. The attorney general may by rule or regulation dispense with the requirement of the above information from persons already filed as brokers or dealers under this article who constitute investment advisers under this section. The attorney general may by rule or regulation designate other qualifications and credentials that will be accepted in lieu of meeting the examination requirement.

4. (a) The registration or notice filing of persons required to file under this section shall be for a period of one year, commencing on January first, two thousand three, provided that registrations in effect prior to such date shall be deemed effective until such date. Renewal statements shall be filed within sixty days prior to each following January first. Initial filings may be made after January first of any year by any person whose activities require registration under this section, but such filing must be made within ten days prior to engaging in such activities.

(b) A federally covered investment adviser shall file with the attorney general, prior to acting as a federally covered investment adviser in this state, such documents as have been filed with the securities and exchange commission as the attorney general, by rule or regulation, prescribes.

5. The attorney general by rule or order may provide for the filing of prescribed updates and amendments which shall contain such information

as the attorney general may deem necessary to keep reasonably current the information on file.

6. The attorney general may from time to time in the public interest make, amend and rescind such rules, regulations and forms as are necessary to carry out the provisions of this section, including rules, regulations and forms governing registration statements and applications. For the purpose of such rules, regulations and forms, the attorney general may classify securities, persons and matters within his jurisdiction and may prescribe different forms and requirements for different classes.

7. The department of law shall collect the following fees: two hundred dollars for initial and renewal investment advisory statements submitted by investment advisers and federally covered investment advisers.

8. All investment advisers as defined herein and all brokers or dealers in securities (except those brokers or dealers whose performance of investment advisory services is solely incidental to the conduct of their business as brokers or dealers and who receive no special compensation for such services) shall file with the department of law of the state of New York at its New York city offices on the date of issue or publication to the investing public one copy of any prospectus, pamphlet, circular, form letter or other sales literature addressed or intended for general distribution to clients or prospective clients of an investment adviser and one copy of any advertisement offering investment advisory services to such clients or prospective clients. The attorney general shall be empowered to destroy all literature and documents submitted under this subdivision.

9. (a) Every person required to register under this section shall annually file such financial or other reports as the attorney general by rule or regulation prescribes.

(b) Except as prohibited by federal law, the attorney general may by rule or regulation require investment advisers as defined herein:

(1) To satisfy specified minimum financial responsibility requirements;

(2) To file with the attorney general specified financial and other information;

(3) To make and maintain specified records and to preserve such records for five years or such other period as may be specified.

10. If the information contained in any registration statement filed with the attorney general under this article becomes inaccurate or incomplete in any material respect, the registrant shall promptly file with the department of law updates and amendments. The attorney general may prescribe by regulations the circumstances under which the updates and amendments are to be filed pursuant to this section and provide forms therefor.

§ 359-f. Exemptions from certain provisions of section three hundred fifty-nine-e. 1. The provisions of subdivision eight of section three hundred and fifty-nine-e shall not apply to any transactions relating to the sale or offering for sale of any of the following described securities by a dealer therein:

(a) Any security issued, or guaranteed by the United States or any territory or insular possession thereof, or by the District of Columbia, or by any state or political subdivision or agency thereof.

(b) Any security issued or guaranteed by the Dominion of Canada or by any foreign government with which the United States is at the time of the sale or offer for sale thereof maintaining diplomatic relations, or by any province or political subdivision thereof.

(c) Any security issued by a national bank or by any federal land bank or joint-stock land bank or national farm loan association under the provisions of the federal farm loan act of July seventeenth, nineteen hundred and sixteen, or by any corporation created or acting as an instrumentality of the government of the United States pursuant to authority granted by the congress of the United States.

(d) Any securities issued or guaranteed by a public service or utility corporation, including a railroad corporation, provided such corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a public commission, board or officer of the government of the United States, or of any

territory, or insular possession thereof, or of any state or municipality or other political subdivision thereof, or of the Dominion of Canada, or any province thereof; also equipment and trust certificates or equipment notes or bonds based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased or sold to or furnished for the use of or upon such a railroad or other public-service utility corporation, or equipment trust certificates, or equipment notes or bonds where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, or of any state, territory or insular possession thereof, or of the District of Columbia, or of the Dominion of Canada, or of any province thereof, to secure the payment of such equipment trust certificates, bonds or notes.

(e) Any security issued by a corporation organized exclusively for educational, benevolent, fraternal, or reformatory purposes, and not for pecuniary profit.

(f) Any capital stock issued by a state bank, trust company or saving institution incorporated under the laws of and subject to the examination, supervision and control of any state or of the United States or of any insular possession thereof.

(g) Any security which under the laws of this state is a legal investment for savings banks or trust funds, and any securities which are underwritten or sold by any corporation under the supervision of the superintendent of financial services of the state of New York.

(h) Any security, other than common stock, outstanding for a period of not less than five years, upon which no default exists in the payment of principal or interest and upon which no such default has occurred for a continuous immediately preceding period of five years, or in the case of preferred stock upon which dividends specified in the certificates of such stock have been paid for a continuous immediately preceding period of five years.

(i) Negotiable promissory notes, drafts, and commercial paper provided that such issue of notes, drafts and commercial paper mature in not more than twelve months from date of issue and shall be issued within three months after the date of sale.

(j) Any bond and mortgage sold or offered for sale in an undivided

whole.

(k) Securities which on January first, nineteen hundred and twenty-five, have been fully listed upon any exchange, located in the state of New York, which on said date was organized and in operation, any securities senior thereto and additional amounts of all such securities which thereafter become so listed so long as the same shall remain so listed. Securities which shall become fully listed upon any such exchange subsequent to said January first, nineteen hundred and twenty-five, shall not be exempted as herein provided unless and until such exchange shall cause to be duly published pursuant hereto in the state paper as defined herein, a notice which shall contain the name of the corporation, association, common law trust or similar organization issuing the securities so listed, the business or post office address thereof, the state or country where incorporated or organized, the date of such listing and a brief description of the securities so listed. After such publication of said notice as aforesaid, securities so listed subsequent to January first, nineteen hundred and twenty-five, any securities senior thereto and additional amounts of all such securities which thereafter become so listed, shall be exempted hereunder so long as the same shall remain so listed.

(l) Securities sold or offered for sale at any judicial, executor's, administrator's, guardian's, or conservator's sale, or any sale by a receiver or trustee in insolvency or bankruptcy, or at a public sale by auction held at an advertised time and place.

(m) Sales by or for the account of a pledgee or mortgagee selling or offering for sale or delivery, in the ordinary course of business, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(n) Negotiable documents of title, foreign currency orders and calls or options therefor.

2. The attorney general may upon application, in writing, grant exemptions from the provisions of section three hundred fifty-nine-e, subdivisions two, three, four, five and six to any person, partnership, corporation, company, trust or association which is a dealer as defined in section three hundred and fifty-nine-e, solely by reason of the fact that it is offering to sell or selling or offering to purchase or

purchasing to or from the public, within or from this state any one or more of the securities which are specified in any one or more of the following paragraphs of this subdivision two of section three hundred fifty-nine-f:

(a) Securities of a corporation which has been in existence for a period of not less than ten years or which is a consolidation, merger, or successor of one or more corporations which has been in existence for a period of not less than ten years, and which have not defaulted in the payment of principal or interest on any of its obligations for a continuous immediately preceding period of ten years, and in the case of preferred stock, upon which dividends specified in the certificates of such stock have been paid for a continuous immediately preceding period of six years, and in the case of common stock, upon which dividends have been paid annually for a continuous immediately preceding period of six years at the rate of not less than three per cent of the book value of such common stock as shown by its balance sheet at the date of the close of the fiscal year in which such dividends were paid, as certified by an independent certified public accountant.

(b) Securities which are fully listed on any securities exchange located in this state so long as the same shall remain so listed, and any securities senior thereto and additional amounts of any such securities which are so listed or which it is planned, at the time of the offering thereof, to list.

(c) All securities which are mentioned in section three hundred fifty-nine-f, subdivision one, with the exception of such securities as are specified in subdivisions h and k thereof.

(d) Securities which are to be sold in a limited offering to not more than forty persons; but the attorney-general may grant an exemption for offerings made to more than forty persons when he deems such an exemption within the purposes of this subdivision.

(e) Securities issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan.

§ 359-ff. Registration of intra-state offerings. 1. It is unlawful for any person, directly or indirectly, to offer or sell any security which is part of an issue offered and sold only to persons resident within

this state unless an offering prospectus which makes full and fair disclosure of all material facts is first filed by the issuer of such security with the department of law. Such offering prospectus shall include, without limitation, a description of the securities offered and terms of the offering, the nature of the issuer's business, the purpose of the offering and the application of the proceeds thereof by the issuer, background of management, and pending material litigation. Such offering prospectus shall also include (i) the issuer's profit and loss statements for its three fiscal years (or such lesser number of fiscal years during which the issuer has been in existence) immediately preceding the date of filing, (ii) if such latest fiscal year ended more than one hundred twenty days prior to the date of filing, a profit and loss statement for a period from the end of such latest fiscal year to a date within one hundred twenty days prior to the date of filing, and (iii) the issuer's balance sheet as of the end of the last such fiscal year and as of the end of such additional period, if any, for which a profit and loss statement has been filed, all of which profit and loss statements and balance sheets shall be prepared in accordance with generally accepted accounting principles. Such offering prospectus shall be lawful for use in connection with the offer and sale of such securities from and after the fifteenth day following such filing unless prior thereto the attorney general shall notify the person making such filing by letter indicating the respects in which the offering prospectus fails to make adequate disclosure. No offer or sale of any such security shall be made by any person unless prior to or at the time thereof there shall have been delivered to the purchaser an offering prospectus lawful for use under the provisions of this section.

2. The attorney general is hereby authorized and empowered to adopt suitable rules and regulations to carry out the provisions of this section, including regulations applicable to the method, contents and filing procedures with respect to the prospectus required by subdivision one and the making of amendments thereto, and the use of advertising material.

The attorney general is also hereby authorized and empowered to adopt suitable rules and regulations requiring the issuer of any security sold

pursuant to an offering prospectus under this section to maintain accurate books and records of account and to furnish to investors and to the department of law annual reports containing financial statements prepared in accordance with generally accepted accounting principles; provided, however, that no such rules and regulations shall apply to any issuer required to file reports pursuant to section 13 or 15 of the securities exchange act of 1934, as amended.

3. The attorney general is hereby authorized and empowered to exempt by rule, regulation or order any person, security or transaction or any class or classes of persons, securities or transactions from any provision of this section or of any rule or regulation thereunder if the attorney general finds that such action is not inconsistent with the public interest or the protection of investors.

4. A "person" shall mean an individual person, firm, corporation, partnership, limited partnership, trust, syndicate or association, but shall not include a bank as defined in this article.

5. This section shall not be applicable to offerings or sales of securities (a) with respect to which offerings a registration statement has been filed, and with respect to which sales a registration statement has become effective, with the United States securities and exchange commission pursuant to the securities act of 1933, as amended; (b) with respect to which a registration statement is not required to be filed under said act or the rules and regulations thereunder for reasons other than the exemption contained in section 3 (a) (11) of said act; (c) of an issuer any class of whose securities are registered under the securities exchange act of 1934, as amended; (d) subject to the provisions of section three hundred fifty-two-e or article twenty-six-A of the general business law; (e) described in section three hundred fifty-nine-f, subdivision l, paragraphs (d), (l) and (m) of the general business law; or (f) which constitutes an insurance or endowment policy or annuity contract or interest or participation therein, whether payable in fixed or variable dollar amounts or both, issued by an institution subject to the supervision of the superintendent of financial services of this state.

6. A non-returnable fee of one-half of one percent of the maximum aggregate offering price at which the total of all securities to be offered pursuant to an offering prospectus filed under subdivision one hereof shall be payable to the department of law at the time of each filing, but the fee shall in no case be less than twenty-five dollars or more than fifteen hundred dollars.

7. The provisions of the following sections of this article twenty-three-A shall be fully applicable to intrastate offerings described in subdivision one of this section; section three hundred fifty-two; section three hundred fifty-two-b; section three hundred fifty-two-c; section three hundred fifty-two-d; sections three hundred fifty-four through three hundred fifty-nine-b; section three hundred fifty-nine-e; subdivision two of section three hundred fifty-nine-f and sections three hundred fifty-nine-g and three hundred fifty-nine-h.

§ 359-fff. Chain distributor schemes prohibited. 1. It shall be illegal and prohibited for any person, partnership, corporation, trust or association, or any agent or employee thereof, to promote, offer or grant participation in a chain distributor scheme.

2. As used herein a "chain distributor scheme" is a sales device whereby a person, upon condition that he make an investment, is granted a license or right to solicit or recruit for profit or economic gain one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for such license or right to recruit or solicit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme. As used herein, "investment" means any acquisition, for a consideration other than personal services, of property, tangible or intangible, and includes without limitation, franchises, business opportunities and services, and any other means, medium, form or channel

for the transferring of funds, whether or not related to the production or distribution of goods or services. It does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale.

3. A chain distributor scheme shall constitute a security within the meaning of this article and shall be subject to all of the provisions of this article.

§ 359-g. Violations and penalties. 1. (a) Any person, partnership, corporation, company, trust or association having been served with an order issued pursuant to the provisions of section three hundred and fifty-four staying or enjoining any practices or transactions, or with any order or with a final judgement in an action brought by the attorney-general, as in this article provided, staying or enjoining any practices or transactions, and any person, partnership, corporation, company, trust or association having knowledge of the issuance of any such order or judgment who, while such order or judgment is in effect, shall disobey the same, shall be deemed in contempt of court and shall be guilty of a misdemeanor and in addition for every violation or attempted violation of such order or such judgment shall be liable to a civil penalty of three thousand dollars, recoverable in an action brought by and in the name of the people of the state of New York. Such penalty shall be cumulative and more than one penalty shall be recoverable in the same action in any court of competent jurisdiction. Any person, partnership, corporation, company, trust or association who has previously been convicted of a violation of this article, or who has been previously convicted within the five years immediately preceding, of any crime in this state, or any offense without the jurisdiction of this state for which a sentence to a term of imprisonment in excess of one year was authorized, and which crime or offense involved the issuance, distribution, exchange, sale, negotiation or purchase of securities or commodities, by fraud, deception, concealment, suppression, false pretense, false promise, theft or fictitious purchase or sale, or who has been previously found in contempt of court hereunder under this article and who subsequently violates the provisions of this

section or any other provision of this article shall be guilty of a Class E felony.

(b) For purposes of this section the term "security" shall be as defined in this article or in section two of the United States Securities Exchange Act of 1934, 15 U.S.C. § 78c and the term "commodity" shall be as defined in this article or in section two of the United States Commodities Exchange Act, 7 U.S.C. § 2.

(c) An appeal from an order or judgment entered under the provisions of this article shall not operate as a stay of proceedings to enforce such order or judgment, or suspend the injunction thereby granted unless a justice of the supreme court, assigned to the appellate division to which such appeal is taken, shall, upon notice to the attorney-general, make an order granting such stay or suspending such injunction upon such terms as he deems proper.

2. Any person, partnership, corporation, company, trust or association violating any of the provisions of this article shall be guilty of a misdemeanor, except where otherwise provided herein, punishable by a fine of not more than five hundred dollars, or imprisonment for not more than one year or both.

3. Modification or dissolution of a permanent injunction. Any person against whom an injunction has been granted under the provisions of this article may apply to the supreme court at any time after five years from the date such permanent injunction became effective, upon at least sixty days notice to the attorney-general, for an order dissolving such injunction or modifying the same upon such terms and conditions as the court deems necessary or desirable. Such application for dissolution or modification of such injunction shall contain a recitation of the facts and circumstances which caused the granting of the injunction; the occupation and employment of the person making the application and his financial remuneration therefrom since the time the injunction was granted; his net worth at the time of the application and the source thereof, together with any other facts bearing upon the reasonableness of the application and the character of the applicant, as may enable the court to issue an order that will properly dispose of such application in the interests of justice. A copy of such application, together with

copies of any other papers in support thereof, shall be served upon the attorney-general at least sixty days prior to the return date thereof. In addition thereto the applicant shall file with the court a good and sufficient surety bond in the sum of one thousand dollars guaranteeing that he will pay all costs and expenses of an investigation by the attorney-general of such applicant and the statements and claims alleged in the application together with any further investigation which the attorney-general may deem necessary or desirable to determine whether he should consent to the application, oppose the same, or make such other recommendations to the court as in his opinion are desirable to be included in any modification of such injunction. Should it appear in the course of such investigation by the attorney-general that said sum is not sufficient, the attorney-general may apply to the court by usual notice of motion or order to show cause for an increase in the amount of security or further surety bond necessary to fully pay all of the costs of the investigation and the court may require such further bond as the situation requires to fully pay the costs and expenses of the investigation. Upon the completion of such investigation, the attorney-general may file an answer to such application setting forth such facts as are pertinent to the determination by the court of the matter before it and whether said injunction should be dissolved, modified or continued in whole or in part and what conditions, if any, shall be attached to any dissolution or modification of said injunction. After a hearing upon such application and after any further investigation, proof or testimony which the court may desire has been offered, or at any adjourned dates thereof, the court may make a final order dissolving the permanent injunction or modifying the same upon such terms and conditions as in its opinion are just and desirable, or in its discretion, may deny the application. Such order shall contain a direction that the applicant pay to the attorney-general the costs and expenses of the investigation in connection with the proceeding, and any judgment entered thereon may be enforced directly against the surety on the bond. The court shall grant no temporary or other relief from the injunction in force pending a final determination of such application. No application under this subdivision shall be entertained: (a) where the injunction was granted as an incident to a crime of which the applicant had been or was later convicted, nor (b) in any case where the

applicant has been convicted of a felony or a crime that would be a felony if committed in the state of New York since the issuance of the injunction or (c) convicted at any time of any crime involving stocks, bonds, investments, securities, or like instruments, which are the subject matter of this article. Nor shall anything contained in this subdivision be construed to deny to or interfere with the power of the attorney-general to bring any other action or proceeding, civil or criminal, against the applicant at any time.

§ 359-h. Destruction of certain records, books and other data by the attorney-general. Any and all books, registers, cards, indices, office records and other documentary evidence seized and held by the department of law under a subpoena or order of the court in proceedings commenced under article twenty-three-a of the general business law, may be destroyed after a period of six years from the date of closing said case on its office records, when no proceeding shall have been instituted to compel the return of such records by the defendants.

ARTICLE 23-B

TRANSACTIONS WITH OR BY FIDUCIARIES

Section 359-i. Definitions.

359-l. Deposit of moneys by fiduciary.

§ 359-i. Definitions. 1. In this article unless the context or subject matter otherwise requires:

"Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

"Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, committee, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

"Person" includes a corporation, partnership, or other association, or

two or more persons having a joint or common interest.

"Principal" includes any person to whom a fiduciary as such owes an obligation.

2. An act is done "in good faith" when it is done in fact honestly, whether it be done negligently or not.

§ 359-1. Deposit of moneys by fiduciary. If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account against which he is empowered to sign as a fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, the bank receiving such deposit may assume, if acting in good faith and without actual knowledge to the contrary, that the funds so deposited by the fiduciary are funds to which the fiduciary is personally entitled. Nothing contained in this section shall be deemed to modify or otherwise affect any provision of section ninety-five of the negotiable instruments law, nor to relieve such bank from any liability imposed upon it by law to the extent of any payment or amount which such bank may receive for its benefit from any withdrawal or application of such funds so deposited.

ARTICLE 24

TRADEMARKS

Section 360. Definitions.

360-a. Registrability.

360-b. Application for registration.

360-c. Filing of applications.

360-d. Certificate of registration.

360-e. Duration and renewal.

360-f. Assignments, changes of name and other instruments.

360-g. Records.

360-h. Cancellation.

360-i. Classification.

360-j. Fraudulent registration.

360-k. Infringement.

360-l. Injury to business reputation; dilution.

360-m. Remedies.

360-n. Forum for actions regarding registration; service on out
of state registrants.

360-o. Common law rights.

360-p. Fees.

360-q. Rules and regulations.

360-r. Severability.

§ 360. Definitions. (a) The term "trademark" as used herein means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

(b) The term "service mark" as used herein means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

(c) The term "mark" as used herein includes any trademark or service mark, entitled to registration under this article whether registered or not.

(d) The term "trade name" means any name used by a person to identify a business or vocation of such person.

(e) The term "person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this article includes a juristic person as well as a natural person. The term "juristic person" includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.

(f) The term "applicant" as used herein embraces the person filing an application for registration of a mark under this article, and the legal representatives, successors, or assigns of such person.

(g) The term "registrant" as used herein embraces the person to whom the registration of a mark under this article is issued, and the legal representatives, successors, or assigns of such person.

(h) The term "use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this article, a mark shall be deemed to be in use (1) on goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state, and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(i) A mark shall be deemed to be "abandoned" when either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(j) The term "secretary" as used herein means the secretary of the state or the designee of the secretary.

§ 360-a. Registrability. A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(a) consists of or comprises immoral, deceptive or scandalous matter;
or

(b) consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;
or

(c) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of

any foreign nation, or any simulation thereof; or

(d) consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's written consent; or

(e) consists of a mark which, (1) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (3) is primarily merely a surname, provided, however, that nothing in this subdivision shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by, the applicant in this state for the five years before the date on which the claim of distinctiveness is made; or

(f) consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

§ 360-b. Application for registration. Subject to the limitations set forth in this article, any person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(a) the name and business address of the person applying for such registration; and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary,

(b) the goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall,

(c) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest, and

(d) a statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive.

The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office; and, if so, the applicant shall provide full particulars with respect thereto including the filing date and serial number of each application, the status thereof and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application.

The application shall be signed and verified by oath, affirmation or declaration subject to perjury laws by the applicant or by a member of the firm or an officer of the corporation or association applying.

The application shall be accompanied by three specimens showing the mark as actually used.

The application shall be accompanied by the application fee payable to the secretary of state.

§ 360-c. Filing of applications. (a) Upon the filing of an application for registration and payment of the application fee, the secretary may

cause the application to be examined for conformity with this article.

(b) The applicant shall provide any additional pertinent information requested by the secretary including a description of a design mark and may make, or authorize the secretary to make, such amendments to the application as may be reasonably requested by the secretary or deemed by the applicant to be advisable to respond to any rejection or objection.

(c) The secretary may require the applicant to disclaim an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter be or shall have become distinctive of the applicant's or registrant's goods or services.

(d) Amendments may be made by the secretary upon the application submitted by the applicant upon applicant's agreement; or a fresh application may be required to be submitted.

(e) If the applicant is found not to be entitled to registration, the secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until (1) the secretary finally refuses registration of the mark or (2) the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

(f) If the secretary finally refuses registration of the mark, the applicant may commence a proceeding pursuant to article seventy-eight of the civil practice law and rules for an order to compel such registration. Such writ may be granted, but without costs to the secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(g) In the instance of applications concurrently being processed by the secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If a prior-filed

application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of this article.

§ 360-d. Certificate of registration. Upon compliance by the applicant with the requirements of this article, the secretary shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration. Any certificate of registration issued by the secretary under the provisions hereof or a copy thereof duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this state.

§ 360-e. Duration and renewal. A registration of mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term, in a manner complying with the requirements of the secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee, payable to the secretary, shall accompany the application for renewal of the registration. A registration may be renewed for successive periods of ten years in like manner. Any registration in force on the date on which this article shall become effective shall continue in full force and effect for the unexpired term

thereof and may be renewed by filing an application for renewal with the secretary complying with the requirements of the secretary and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration. All applications for renewal under this article, whether of registrations made under this article or of registrations effected under any prior law, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

§ 360-f. Assignments, changes of name and other instruments. (a) Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon the payment of the recording fee payable to the secretary who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this article shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary within three months after the date thereof or prior to such subsequent purchase.

(b) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of the recording fee. The secretary may issue in the name of the assignee a certificate of registration of an assigned application. The secretary may issue in the name of the assignee, a new certificate or registration for the remainder of the term of the registration or last renewal thereof.

(c) Other instruments which relate to a mark registered or application pending pursuant to this article, such as, by way of example, licenses, security interests or mortgages, may be recorded in the discretion of the secretary, provided that such instrument is in writing and duly executed.

(d) Acknowledgement shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution.

(e) A photocopy of any instrument referred to in subdivision (a), (b) or (c) of this section, shall be accepted for recording if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original.

§ 360-g. Records. The secretary shall keep for public examination a record of all marks registered or renewed under this article, as well as a record of all documents recorded pursuant to section three hundred sixty-f of this article.

§ 360-h. Cancellation. The secretary shall cancel from the register, in whole or in part:

(a) any registration concerning which the secretary shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(b) all registrations granted under this article and not renewed in accordance with the provisions hereof;

(c) any registration concerning which a court of competent jurisdiction shall find:

(1) that the registered mark has been abandoned,

(2) that the registrant is not the owner of the mark,

(3) that the registration was granted improperly,

(4) that the registration was obtained fraudulently,

(5) that the mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered,

(6) that the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that, should the registrant prove that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office

covering an area including this state, the registration hereunder shall not be cancelled for such area of the state, or

(d) when a court of competent jurisdiction shall order cancellation of a registration on any ground.

§ 360-i. Classification. The secretary shall by regulation establish a classification of goods and services for convenience of administration of this article, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.

§ 360-j. Fraudulent registration. Any person who shall for himself or herself, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

§ 360-k. Infringement. Subject to the provisions of this section, any person who shall:

(a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this article in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as

to the source of origin of such goods or services; or

(b) reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services; shall be liable in a civil action by the registrant for any and all of the remedies provided in section three hundred sixty-1 of this article, except that under this subdivision the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

§ 360-1. Injury to business reputation; dilution. Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark or trade name shall be a ground for injunctive relief in cases of infringement of a mark registered or not registered or in cases of unfair competition, notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

§ 360-m. Remedies. 1. Any owner of a mark registered under this article may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed or donated. The court, in its discretion, may enter judgment for an amount not to exceed three times such profits and damages and/or reasonable attorneys' fees of the prevailing party in such cases where the court finds the other party committed such wrongful acts with knowledge or in bad faith

or otherwise as according to the circumstances of this case. The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under the penal law.

2. If a court makes a determination that the counterfeit or imitation products should be donated, then notice of that determination shall be given to the lawful mark owner of the products. The notice shall state that the court intends to donate the seized products to help indigent individuals and that the donation will proceed unless the lawful mark owner objects to the donation, in writing. The lawful mark owner will have thirty days to object to the court to the donation. If the lawful mark owner does not object, or gives no response within that period despite having received the notice, then the court shall take that as a granting of consent by the lawful mark owner that the donation should proceed.

3. The counterfeit or imitation products may only be given to a not-for-profit corporation that has an established history of providing goods and services to indigent individuals. Organizations may petition the court to be considered a recipient of the counterfeit or imitation products. The judge, in his or her sole discretion, shall determine whether an organization qualifies pursuant to this subdivision and which organization shall receive the counterfeit or imitation products.

4. Any counterfeit or imitation products received by an organization through this section may not be sold by the organization, nor may any person or entity in possession of any of these products sell such products.

5. Any not-for-profit corporation that has received counterfeit or imitation products through this section must have the products' identifying lawful mark tags removed or have the products marked, altered, imprinted or indelibly stamped so as to prevent their resale or any confusion with the actual products of the lawful mark owner. Such products must also be inspected by the not-for-profit corporation to ensure that they are in a condition consistent with the federal consumer safety standards that would ordinarily apply to the sale of comparable

legitimate products.

6. Provided, however, that the only counterfeit or imitation products that may be donated pursuant to this section shall be clothing, including shoes, and all other counterfeit or imitation products must be destroyed in accordance with this section or any other provision of applicable law.

§ 360-n. Forum for actions regarding registration; service on out of state registrants. (a) Actions to require cancellation of a mark registered pursuant to this article or in mandamus to compel registration of a mark pursuant to this article shall be brought in the supreme court. In an action in mandamus, the proceeding shall be based solely upon the record before the secretary. In an action for cancellation, the secretary shall not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall be given the right to intervene in the action.

(b) In any action brought against a non-resident registrant, service may be effected upon the secretary as agent for service of the registrant in accordance with the procedures established for service upon non-resident corporations and business entities.

§ 360-o. Common law rights. Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

§ 360-p. Fees. The application for registration or renewal shall be accompanied by a filing fee or fifty dollars payable to the secretary of state.

§ 360-q. Rules and regulations. The secretary of state may from time to time make regulations for carrying into effect the provisions of this

article provided, however, that such supplementary regulations shall be strictly limited in their application to the means and methods of compliance with the provisions of this article to which such power relates.

§ 360-r. Severability. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this article shall not be affected thereby.

ARTICLE XXIV-A

FAIR TRADE LAW

- Section 369-a. Price-fixing prohibited.
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§ 369-a. Price-fixing prohibited. Any contract provision that purports to restrain a vendee of a commodity from reselling such commodity at less than the price stipulated by the vendor or producer shall not be enforceable or actionable at law.

§ 369-b. Manufacturer's warranty and guarantee.

A warranty or guarantee of merchandise may not be limited by a manufacturer doing business in this state solely for the reason that such merchandise is sold by a particular dealer or dealers, or that the dealer who sold the merchandise at retail has, since the date of sale, either gone out of business or no longer sells such merchandise. Any attempt to limit the manufacturer's warranty or guarantee for the

aforesaid reason is void.

§ 369-c. Definitions. The following terms, as used in this article, are hereby defined as follows: "Producer" means grower, baker, maker, manufacturer or publisher. "Commodity" means any subject of commerce.

§ 369-d. Effect of partial invalidity. If any provision of this article is declared unconstitutional it is the intent of the legislature that the remaining portions thereof shall not be affected but that such remaining portions remain in full force and effect.

§ 369-e. Use of games of chance in selling commodities. 1. Every person, firm or corporation proposing to engage in any game, contest or other promotion or advertising scheme or plan in connection with the promotion, advertising or sale of consumer products or services which offers the opportunity to receive gifts, prizes or gratuities, as determined by chance, without any consideration therefor, where the total announced value of the prizes offered is in excess of five thousand dollars shall file with the secretary of state, at least thirty days prior to the commencement of such game, contest or promotion upon a form that he shall provide, a statement setting forth: the minimum number of participating objects to be made available; the minimum number of prize-winning objects that will be included in such promotion or advertising scheme or plan; the proportionate opportunity of winning prizes; the minimum value of prizes to be made available; and the rules and regulations pertaining to such promotion or advertising scheme or plan, which shall include the period of time and the geographic area to be covered by the contest and such other information as the secretary of state may, from time to time, require. The non-refundable filing fee of one hundred dollars shall accompany each such statement.

Failure to file such statement shall be a class B misdemeanor.

2. Every person, firm or corporation, engaging in any promotion or

advertising game or contest of the type set forth in subdivision one of this section, shall cause to be posted in a conspicuous and prominent location in every retail establishment offering the opportunity to participate in such game or contest and published in all advertising copy used in connection therewith, a statement showing the minimum number and value of prizes available to be won over a stated period of time and stated geographic area, and the rules and regulations pertaining to such promotion or advertising scheme or plan. Failure to cause such posting and publication shall be a class B misdemeanor.

3. Every person, firm or corporation who manipulates or rigs any promotion or advertising scheme or plan of the type set forth in subdivision one of this section so that prize-winning objects are dispersed to predetermined individuals or retail establishments shall be guilty of a class B misdemeanor, provided, however, that this subdivision shall not prevent distribution of prize-winning objects of equal value to retail establishments in a uniform ratio to the number of participating objects distributed to those establishments.

4. Every person, firm or corporation engaging in any promotion or advertising game or contest of the type set forth in subdivision one of this section shall establish and maintain a special trust account in a branch of a national or state chartered banking institution with a balance sufficient to pay or purchase the total value of prizes offered. In lieu of establishing such trust account, said operator may furnish a bond, with sufficient sureties, in an amount equal to the total value of all prizes offered; such bond shall be in favor of the people of the state of New York. A copy of a certificate of deposit indicating the balance of said trust account or a copy of the surety bond shall be filed with the office of the secretary of state simultaneously with the filing of the statement required by subdivision one hereof. The monies so held in escrow or said surety bond shall at all times equal the total amount of prizes so offered. The monies may be withdrawn, from time to time, in order to pay, award or purchase prizes offered only upon certification to the secretary of state of the names and addresses of the winners and the amount or value of the respective prizes.

5. Every person, firm or corporation engaging in any promotion or advertising scheme or plan of the type set forth in subdivision one of this section shall within ninety days following the completion of said promotion or advertising scheme or plan, file with the secretary of state a listing of the name and address of each winner of every prize having a value of more than twenty-five dollars, the description of the prize won by each such person, and the date when such prize was delivered to each such person, and shall maintain complete records of such promotion or advertising scheme or plan for a period of six months thereafter. Failure to file such listing with the secretary of state or to maintain such records shall be a class B misdemeanor. A copy of such listing shall be furnished, without charge, to any person who requests the same from said promoter. Nothing herein shall prohibit a requirement that such request must be accompanied by a stamped, self-addressed envelope provided such requirement shall be included in and made a part of the rules and regulations filed pursuant to subdivision one of this section.

6. Every person, firm or corporation who prints, publishes or circulates literature or advertising material, used in connection with any promotion or advertising scheme or plan of the type set forth in subdivision one of this section, which is false, deceptive or misleading, shall be guilty of a class B misdemeanor.

7. Every person, firm or corporation who coerces a retail dealer to participate in any promotion or advertising scheme or plan of the type set forth in subdivision one of this section shall be guilty of a class B misdemeanor. Such coercion includes, but is not limited to, circumstances in which a course of business conduct extending over a period of one year or longer between a supplier and a dealer is materially changed, for no legitimate business reason, coincident with a failure or refusal of the dealer to participate in such games.

8. Whenever the attorney general shall have reason to believe that any promotion or advertising scheme or plan of the type set forth in subdivision one of this section is being operated in violation of this section, he may bring an action in the supreme court, in the name and on

behalf of the people of the state of New York to enjoin the continued operation of such promotion or advertising scheme or plan. An action for violation of this section may be instituted by the attorney general in the name of the people of the state of New York, and in any such action, the attorney general shall exercise all of the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or to perform therein.

§ 369-ee. Prize award schemes. 1. Written disclosure. (a) Unless written disclosure is made as provided in paragraph (c) of this subdivision, it shall be unlawful for any person, firm or corporation to offer a consumer a prize as part of any prize award scheme.

(b) For purposes of this section, "prize award scheme" shall mean a promotion, solicitation, or advertisement either oral, written, or otherwise for the purchase or lease of a product, real estate, an investment, services, a membership, or any other item: (i) in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill or performance of the consumer may also be a factor therein; (ii) where the consumer is told that he has won or may win a prize or award, or is told that he or she is or may be the winner of a contest, or where similar language is used which would lead a consumer to believe that he or she has won or may win a prize or award; and (iii) which requires the consumer to do something (including, but not limited to, traveling to a location to accept the prize, listening to a sales presentation, submitting one's credit card account number, allowing a sales person into one's home or responding orally or in writing).

(c) Such written disclosure must be furnished to the consumer at the time he is notified of the prize and must be written or printed in a size equal to at least that type used for the standard text on the front of the first page of the offer. The written disclosure must clearly and conspicuously disclose all of the following: (i) a full description of the exact prize won by the consumer including a list price which does not appreciably exceed the highest price at which substantial sales are made in the offering area; (ii) all material terms and conditions attached to the prize; (iii) a statement, where applicable, that the

consumer must submit to a sales presentation; (iv) a full description of the product, real estate, investment, services, membership or any other item to be offered for sale, including the price of the least expensive and the most expensive item or parcel; (v) a notice that if the consumer decides to purchase any item offered for sale he has three business days in which to cancel such sale; and (vi) the odds of winning each prize must be conspicuously disclosed in the same type face, size and boldness and adjacent to the most prominent listing of the prizes on the front of the first page of the offer, with the odds stated in arabic numbers and identify the total number of prizes to be given away and the total number of offerings to be distributed.

(d) It shall be unlawful to (i) represent that a person is a "winner" or has been "selected", or words of similar import when all or a substantial number of those solicited receive the same "prize" or "opportunity" or (ii) deliver, or cause to be delivered, a prize notice or offering, which simulates or falsely represents that it is a document authorized, issued or approved by any court, official, or agency of the United States or any state, lawyer, law firm, or insurance or brokerage company, or which creates a false impression as to its source, authorization, or approval; or (iii) deliver, or cause to be delivered, a prize notice or offering which is in the form of, or a prize notice or offering which includes, a document which simulates a bond, check or other negotiable instrument, whether or not that document contains a statement or some other indication which suggests that it is non-negotiable.

2. Right of cancellation. In addition to any other right to revoke an offer, the consumer may cancel a sale made as a result of a prize award solicitation until midnight of the third business day after the day on which he signed a sales agreement. Cancellation occurs when written notice of cancellation is given to the seller. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage pre-paid.

2-a. Prize claims by pay-per-call services. It shall be unlawful for any person, firm or corporation to offer a consumer a prize, if in order to claim the prize, the consumer must call a pay-per-call service where

the charge for such pay-per-call service is greater than the service charge authorized by the appropriate regulatory commission. As used in this subdivision "pay-per-call service" means any telephone service for which the calling party is assessed, by virtue of completing the call, a charge for which the caller pays a per-call or per-time charge.

3. Form of notice. (a) In a sale consummated as a result of or made in association with a prize award scheme, the seller shall furnish to the buyer (i) a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g. Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in not less than ten-point bold face type, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."; and

(ii) at the time the buyer signs the contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in not less than ten-point bold face type the following information and statements in the same language, e.g. Spanish, as that used in the contract:

NOTICE OF CANCELLATION
(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL

BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO

(Name of Seller),

AT Address of Seller

(Place of Business)

NOT LATER THAN MIDNIGHT OF

(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)

and the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(a-1) In a sale or lease to be consummated as a result of or made in association with a prize award scheme, the seller shall not employ a courier to pick up and deliver or a courier pick-up and delivery service to retrieve a buyer's deposit or payment unless the seller is otherwise

authorized to do business in this state in accordance with the requirements of the business corporation law or the not-for-profit corporation law. If the seller fails to comply with this section, the buyer or any other person obligated for any part of the purchase price may cancel the contract or lease at any time by notifying the seller in any manner and by any means of his or her intention to cancel.

(b) In a sale consummated as a result of or made in association with a prize award scheme, the seller shall inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel. Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the contract by notifying the seller in any manner and by any means of his intention to cancel. The period prescribed by this subdivision shall begin to run from the time the seller complies with this section.

(c) A prize award scheme contract or receipt shall not include any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically his right to cancel the sale in accordance with the provisions of this article.

(d) This section shall not apply to the use of promotional materials, gifts or prizes distributed without charge or expense to any person, firm or corporation.

(e) This section shall not apply to the use of promotional materials, gifts, or prizes by a retail store primarily engaged in the retail sale of goods or services for which this type of promotion is incidental and which requires the customer only to travel to the merchant's regular place of business to receive the gift, prize or award.

(f) This section shall not apply to the solicitation or representations offering a consumer a prize in connection with: (i) the sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the federal trade commission pursuant to Code of Federal Regulations, title 16, part 425.1 concerning use of negative option plans by sellers in commerce; (ii) the sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to

receive the goods and after receipt of the goods is given a reasonable opportunity to examine the goods and to receive a full refund of charges for the goods, upon return of the goods undamaged; or (iii) sales by a catalog seller. For purposes of this section, "catalog seller" shall mean any entity (and its subsidiaries) or person at least fifty percent of whose annual revenues are derived from the sale of products sold in connection with the distribution of catalogs of at least twenty-four pages, which contain written descriptions or illustrations and sale prices for each item of merchandise and which are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand.

4. Violations. Upon any violation of this section, an application may be made by the attorney general in the name of the people of the state to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine a violation of this section has occurred, it may impose a civil penalty of not more than one thousand dollars for each violation. In connection with an application made under this subdivision, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

5. Effect of other laws. The obligations imposed by this section shall be in addition to and not in derogation of the requirements of any other law.

6. Applicability. The provisions of subdivisions two and three of this section shall not apply to membership campground operators as defined in

section six hundred fifty-one of this chapter.

§ 369-eee. Telecommunication-related and energy-related prohibitions as to prize boxes. 1. No box or container used to collect entries for sweepstakes or a contest may, at the same time, be used to collect letters of authorization or other documents that constitute authorizations by consumers to change their primary long distance carriers or to receive or purchase natural gas, electric service, or any other telecommunication services.

2. Enforcement by attorney general. Whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant fact and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 24-C

TAX PREPARERS

Section 371. Definitions.

372. Consumer bill of rights regarding tax preparers.

373. Applicability.

§ 371. Definitions. For the purposes of this article:

(a) "Facilitator" means a person who individually or in conjunction or cooperation with another person: (i) solicits the execution of, processes, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check; (ii) serves or collects upon a refund anticipation loan or refund anticipation check; or (iii) in any other manner that facilitates the making of a refund anticipation loan or refund anticipation check. This term excludes any employees of a facilitator who provide only clerical or other comparable support services to such facilitator.

(b) "Tax preparer" or "preparer" means a person, partnership, corporation or other business entity, that in exchange for consideration advises or assists or offers to advise or assist in the preparation of income tax returns for another.

(c) "Refund anticipation check" means a check, stored value card, or other payment mechanism: (i) representing the proceeds of a tax refund; (ii) which was issued by a depository institution or other person that received a direct deposit of the tax refund or tax credits; and (iii) for which a fee or other consideration has been paid for such payment mechanism.

(d) "Refund anticipation loan" means a loan that is secured by or that the creditor arranges to be repaid directly or indirectly from the proceeds of an income tax refund or tax credits. A refund anticipation loan also includes any sale, assignment, or purchase of tax refund at a discount or for a fee, whether or not the amount is required to be repaid to the buyer or assignee if the internal revenue service or the department denies or reduces the amount of the tax refund.

(e) "Department" means the department of taxation and finance.

§ 372. Consumer bill of rights regarding tax preparers. (a) A tax preparer shall provide his or her customers with a receipt containing an address and phone number at which the preparer can be contacted throughout the year.

(b) The department shall, in accordance with regulations promulgated by the commissioner of taxation and finance, produce and make available to taxpayers and tax preparers an informational flier regarding consumers' rights and laws concerning tax preparers to be called a "consumer bill of rights regarding tax preparers". The department shall consult with the department of state, to enhance distribution of fliers to consumers. The flier shall also be made available on the department and the department of state's internet site, and shall contain information including, but not limited to, the following:

(1) postings required by state and federal laws, such as price posting and posting of qualifications;

(2) explanations of some of the commonly offered services and industry jargon, such as preparation of short and long federal forms, refund, electronic filing, express mail, direct deposit, refund anticipation check, refund anticipation loan, quick, instant, rapid, fast, fee, and interest;

(3) basic information on what a tax preparer is and is not required to do for a consumer, such as the preparer's responsibility to sign a return, that a tax preparer may not be required to accompany a consumer to an audit but the company may have a voluntary policy to accompany consumers to audits; and

(4) the telephone numbers of the department for information and complaints.

The flier shall be in a form which is easily reproducible by photocopy machine.

(c) The department shall coordinate its response to consumer tax preparer complaints with the department of state, as the department deems appropriate.

(d) A copy of the consumer bill of rights regarding tax preparers shall be provided to individuals or businesses on request to the department, and shall be sent by the department no later than October fifteenth of each year to each tax preparer who has been found to be in violation of this subdivision or any other provision of this section within the previous calendar year. Each tax preparer subject to this section shall obtain a current consumer's bill of rights regarding tax preparers from the department and shall reproduce it so that it is clear

and legible. As of January first of each year, each tax preparer shall give to each customer, free of charge, a current, legible copy of the consumer's bill of rights regarding tax preparers prior to any discussion with the customer. Each such tax preparer shall also verbally direct the consumer to review the consumer bill of rights regarding tax preparers and shall answer any questions the consumer may have about its contents.

(e) (1) Any tax preparer who advertises the availability of a refund anticipation loan or refund anticipation check may not directly or indirectly represent such a loan as a refund. Any advertisement which mentions a refund anticipation loan must state conspicuously that it is a loan and that a fee or interest will be charged by the lending institution. The advertisement must also disclose the name of the lending institution.

(2) (i) Before any taxpayer enters into a refund anticipation loan, the tax preparer facilitating such loan shall provide the following disclosure to the taxpayer in writing in at least fourteen-point type:

"YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND ANTICIPATION LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION.

IF YOU DO SIGN A CONTRACT FOR A REFUND ANTICIPATION LOAN, YOU WILL BE TAKING OUT A LOAN. YOU WILL BE RESPONSIBLE FOR REPAYMENT OF THE ENTIRE LOAN AMOUNT AND ALL RELATED COSTS AND FEES, REGARDLESS OF HOW MUCH MONEY YOU ACTUALLY RECEIVE IN YOUR TAX REFUND. IF YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL COSTS.

IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU ARE ELIGIBLE TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY \$(insert amount).

IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU WILL BE RESPONSIBLE TO PAY \$(insert amount) IN FEES FOR THE LOAN. AFTER THESE FEES ARE PAID, YOU WILL RECEIVE APPROXIMATELY \$ (insert amount) AS YOUR LOAN.

THE ESTIMATED ANNUAL PERCENTAGE RATE OF YOUR REFUND ANTICIPATION LOAN IS (insert amount)%. THIS IS BASED ON THE ACTUAL AMOUNT OF TIME YOU WILL BE LENT MONEY THROUGH THIS REFUND ANTICIPATION LOAN.

IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN EXPECT TO RECEIVE YOUR LOAN WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date).

IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date). IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date)."

(ii) Before any taxpayer enters into an agreement to receive a refund anticipation check, the tax preparer facilitating the agreement shall provide the following disclosure to the taxpayer in writing in at least fourteen-point type:

"YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND ANTICIPATION CHECK AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION. IF YOU DO TAKE OUT THIS REFUND ANTICIPATION CHECK, YOU WILL BE RESPONSIBLE TO PAY \$(insert amount) IN FEES FOR THE CHECK TO BE ISSUED BY (insert name of issuer of refund anticipation check). YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN THE SAME AMOUNT OF TIME BY HAVING YOUR REFUND DIRECTLY DEPOSITED INTO YOUR OWN BANK ACCOUNT. YOU CAN ALSO WAIT FOR THE FEDERAL OR STATE REFUND TO BE MAILED TO YOU.

IF YOU DO ENTER INTO THIS REFUND ANTICIPATION CHECK AGREEMENT, YOU CAN EXPECT TO RECEIVE YOUR CHECK BY APPROXIMATELY TWO BUSINESS DAYS OF (insert date).

IF YOU DO NOT ENTER INTO THIS REFUND ANTICIPATION CHECK AGREEMENT, YOU CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date). IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert

date)."

(iii) It shall be the obligation of the tax preparer to complete the required disclosures accurately with all relevant information for each taxpayer and to ensure that the completed disclosure form is signed by the taxpayer before he or she enters into a refund anticipation loan or a refund anticipation check, with a copy of the same provided to the taxpayer. The name and the unique identification number of the tax return preparer (and facilitator, if different) assigned pursuant to section thirty-two of the tax law must be included on the disclosure form provided to the taxpayer.

(f)(1) If a taxpayer applies for a refund anticipation loan, the facilitator must also orally inform the taxpayer in the language primarily used for oral communications between the facilitator and taxpayer:

- (i) that the product is a loan that only lasts one to two weeks;
- (ii) if the tax refund is less than expected, the taxpayer is liable for the full amount of the loan and must repay any difference;
- (iii) if the refund is delayed for any reason, there may be additional costs, such as additional interest, that the taxpayer will have to pay;
- (iv) the amount of the refund anticipation loan fee; and
- (v) the refund anticipation loan interest rate.

(2) If a taxpayer applies for a refund anticipation check, the facilitator must also orally inform the taxpayer in the language primarily used for oral communications between the facilitator and taxpayer:

- (i) the amount of the refund anticipation check fee; and
- (ii) that the taxpayer can receive a refund in the same amount of time without a fee if the tax return is filed electronically, and the consumer chooses direct deposit to their own personal bank account.

(g) Any person, partnership, corporation or other business entity who violates any provision of this section or any of the regulations promulgated pursuant to this section shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars for the first violation and for each succeeding violation a civil penalty of not less than five hundred dollars nor more than seven hundred fifty dollars. The penalties provided for by this subdivision must be paid upon notice and demand and will be assessed, collected and

paid in the same manner as taxes under article twenty-seven of the tax law.

(h) Apart from subdivision (e) of this section and the accompanying penalties as listed in subdivision (f) of this section, the provisions of this section shall not apply to:

(1) an officer or employee of a corporation or business enterprise who, in his or her capacity as such, advises or assists in the preparation of income tax returns relating to such corporation or business enterprise;

(2) an attorney at law who advises or assists in the preparation of income tax returns in the practice of law and the employees thereof;

(3) a fiduciary and the employees thereof who advise or assist in the preparation of income tax returns on behalf of the fiduciary estate, the testator, trustee, grantor or beneficiaries thereof;

(4) a certified public accountant licensed pursuant to the education law or licensed by one or more of the states or jurisdictions of the United States, and the employees thereof;

(5) a public accountant licensed pursuant to the education law and the employees thereof;

(6) an employee of a governmental unit, agency or instrumentality who advises or assists in the preparation of income tax returns in the performance of his or her official duties; or

(7) an agent enrolled to practice before the internal revenue service pursuant to section 10.4 of subpart A of part ten of title thirty-one of the code of federal regulations.

§ 373. Applicability. (a) The provisions of this article shall not apply to tax preparers operating within any city having a population of one million or more.

(b) Except as provided in subdivision (c) of this section, this article shall supersede and preempt all rules, regulations, codes, statutes or ordinances of all cities, counties, municipalities, and local agencies regarding disclosures required to be made by tax preparers.

(c) The provisions of this section shall not be construed to limit in any way the authority of a city with a population of one million or more

to enact, implement and continue to enforce local laws and regulations governing tax preparers that were in effect prior to the effective date of this article, or to enact, implement and enforce any amendments thereto after the effective date of this article.

ARTICLE 24-D

RESEARCH RELATING TO ELECTRONIC CIGARETTES

Section 375. Research relating to electronic cigarettes.

§ 375. Research relating to electronic cigarettes. Any provision or restriction in a contract or other agreement relating to the development of electronic cigarettes and products relating to their use including, but not limited to, components of such devices, heretofore or hereafter made or entered into, which limits, restrains, prohibits or otherwise provides for the suppression of research into the health consequences of the use of electronic cigarettes, is hereby declared to be void as against public policy and wholly unenforceable.

ARTICLE 25

FAIR CREDIT REPORTING ACT

Section 380. Short title.

380-a. Definitions.

380-b. Permissible dissemination of reports.

380-c. Preparation and/or procurement of investigative consumer reports.

380-d. Disclosure to consumers.

380-e. Methods and conditions of disclosure to consumers.

380-f. Procedure for resolving disputes.

380-g. Public record information.

380-h. Restrictions on investigative consumer reports.

380-i. Requirements on users of consumer reports.

380-j. Prohibited information.

380-k. Compliance procedures.

380-l. Civil liability for willful noncompliance.

- 380-m. Civil liability for negligent noncompliance.
- 380-n. Jurisdiction of courts; limitation of actions.
- 380-o. Obtaining or introducing information under false pretenses; penalty.
- 380-p. Unauthorized disclosures by officers or employees; penalty.
- 380-q. Disclosure of medical information.
- 380-r. Disclosures to governmental agencies.
- 380-s. Theft of identity.
- 380-t. Security freeze.
- 380-u. Security record freeze for protected minors.
- 380-v. Severability.

§ 380. Short title. This article may be cited as the "fair credit reporting act".

§ 380-a. Definitions. As used in this article:

(a) The term "person" means any individual, partnership, corporation, trust, estate, co-operative, association, government or governmental subdivision, agency or other entity.

(b) The term "consumer" means an individual.

(c) (1) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or part for the purpose of serving as a factor in establishing the consumer's eligibility for (i) credit or insurance to be used primarily for personal, family, or household purposes, (ii) employment purposes, or (iii) other purposes authorized under section three hundred eighty-b of this article.

(2) The term "consumer report" does not include (i) any report containing information solely as to transactions or experiences between the consumer and the person making the report, (ii) any authorization or approval of a specific extension of credit directly or indirectly by the

issuer of a credit card or similar device, or (iii) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section three hundred eighty-i of this article.

(d) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(e) The term "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or investigative consumer reports to third parties.

(f) The term "file" when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(g) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(h) The term "adverse information" means information that is likely to have a negative effect upon the ability or eligibility of a consumer to obtain credit, insurance, employment, or other benefits, goods or services or information that is either wholly or partially responsible for increases in charges for credit or insurance.

(i) The term "user" when discussed in connection with the use of a consumer report means any person receiving or requesting a consumer report or an investigative consumer report other than the subject thereof.

(j) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(k) The term "consumer credit reporting agency" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing consumer credit reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business.

(l) The term "consumer credit report" means a consumer report assembled, evaluated or maintained by a consumer credit reporting agency, bearing on a consumer's credit worthiness, credit standing, or credit capacity.

(m) The term "security freeze" or "freeze" means a notice placed in the consumer credit report of or relating to a consumer, at the request of such consumer and subject to certain exceptions, that prohibits the consumer credit reporting agency from releasing the consumer credit report, the contents of such report or the credit score of such consumer.

(n) The term "proper identification" means information generally deemed sufficient to identify a person.

(o) The term "protected consumer" means an individual who is under the age of eighteen years at the time a request for the placement of a security freeze is made.

(p) The term "record" means a compilation of information that (1) identifies a protected consumer; (2) is created by a consumer credit reporting agency solely for the purpose of complying with section three hundred eighty-u of this article; and (3) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for any purpose listed in this

article.

(q) The term "representative" means a person who provides to a consumer credit reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(r) The term "security freeze for a protected consumer" means (1) if a consumer credit reporting agency does not have a file pertaining to a protected consumer, a restriction that: (i) is placed on the protected consumer's record in accordance with section three hundred eighty-u of this article; and (ii) prohibits the consumer credit reporting agency from releasing the protected consumer's record except as provided in this section; or

(2) if a consumer credit reporting agency has a file pertaining to the protected consumer, a restriction that (i) is placed on the protected consumer's consumer credit report in accordance with this section; and (ii) prohibits the consumer credit reporting agency from releasing the protected consumer's consumer credit report or any information derived from the protected consumer's consumer credit report except as provided in this section.

(s) The term "sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected consumer. "Sufficient proof of authority" shall include, but not be limited to, (1) an order issued by a court of law; or (2) a written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(t) The term "sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protected consumer. "Sufficient proof of identification" shall include, but not be limited to, (1) a social security number or a copy of a social security card issued by the social security administration; (2) a certified or official copy of a birth certificate; or (3) a copy of a driver's license, an identification card issued by the department of motor vehicles, or any other government-issued photo identification.

(u) The term "members of a consumer's social network" means a group of individuals authorized by a consumer to be part of his or her social media communications and network.

(v) The term "medical debt" means any obligation or alleged obligation

of a consumer to pay any amount whatsoever related to the receipt of health care services, products, or devices provided to a person by a hospital licensed under article twenty-eight of the public health law, a health care professional authorized under title eight of the education law, or an ambulance service certified under article thirty of the public health law. Medical debt does not include debt charged to a credit card unless the credit card is issued under an open-ended or closed-ended plan offered specifically for the payment of health care services, products, or devices provided to a person.

(w) The term "consumer credit history" means an individual's credit worthiness, credit standing, credit capacity or payment history, as indicated by:

(1) a consumer credit report;

(2) credit score; or

(3) information an employer obtains directly from the individual regarding (i) details about credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, items in collections, credit limit or prior credit report inquiries, or (ii) bankruptcies, judgments or liens.

A consumer credit report shall include any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity or credit history.

(x) The term "employer" means any individual, partnership, corporation or association engaged in a business who has employees including the state and its political subdivisions.

§ 380-b. Permissible dissemination of reports. (a) A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or

(2) In accordance with the written instructions of the consumer to whom it relates, or

(3) To a person whom it has reason to believe intends to use the

information (i) in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer, or (ii) for employment purposes, except that a consumer report may be furnished for such purposes only if such report excludes information that bears on a consumer's credit worthiness, credit standing, credit capacity or credit history and is based on the consumer's financial transactions, except that such information is permitted to be disseminated to employers or persons set forth in paragraph two of subdivision (d) of this section, or (iii) in connection with the underwriting of insurance involving the consumer, or (iv) in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status, or (v) to a person in connection with a business transaction involving the consumer where the user has a legitimate business need for such information, or (vi) in connection with the rental or lease of a residence.

(b) No person shall request a consumer report, other than an investigative consumer report, in connection with an application made after the effective date of this article, for credit, employment, insurance, or rental or lease of residences, unless the applicant is first informed in writing or in the same manner in which the application is made that (i) a consumer report may be requested in connection with such application, and (ii) the applicant upon request will be informed whether or not a consumer report was requested, and if such report was requested, informed of the name and address of the consumer reporting agency that furnished the report.

(c) Where the notice provided pursuant to subdivision (b) of this section further indicates that subsequent consumer reports, other than investigative consumer reports, may be requested or utilized in connection with an update, renewal, or extension of the credit, employment, insurance, or rental or lease of residences for which application was made, no additional notice to the consumer shall be required at the time such subsequent report is requested.

(d) (1) Except as provided in this subdivision, it shall be an unlawful discriminatory practice for an employer, labor organization,

employment agency or any agent thereof to request or to use for employment purposes the consumer credit history of an applicant for employment or employee, or otherwise discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or employee.

(2) Paragraph one of this subdivision shall not apply to:

(i) an employer, or agent thereof, that is required by state or federal law or by a self-regulatory organization as defined in section 3(a)(26) of the securities exchange act of 1934, as amended to use an individual's consumer credit history for employment purposes;

(ii) persons applying for positions as or employed as peace officers or police officers, as such terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, respectively, or in a position with a law enforcement or investigative function in a law enforcement agency;

(iii) persons in a position that is subject to background investigation by a state agency;

(iv) persons in a position in which an employee is required to be bonded under state or federal law;

(v) persons in a position in which an employee is required to possess security clearance under federal law or the law of any state;

(vi) persons in a non-clerical position having regular access to trade secrets, intelligence information or national security information;

(vii) persons in a position: (A) having signatory authority over third party funds or assets valued at ten thousand dollars or more; or (B) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at ten thousand dollars or more on behalf of the employer; or

(viii) persons in a position with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases.

(3) As used in this subdivision the following terms shall have the following meanings:

(i) "intelligence information" means records and data compiled for the purpose of criminal investigation or counterterrorism, including records and data relating to the order or security of a correctional facility,

reports of informants, investigators or other persons, or from any type of surveillance associated with an identifiable individual, or investigation or analysis of potential terrorist threats;

(ii) "national security information" means any knowledge relating to the national defense or foreign relations of the United States, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States government and is defined as such by the United States government and its agencies and departments; and

(iii) "trade secrets" means information that: (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and (C) can reasonably be said to be the end product of significant innovation. The term "trade secrets" does not include general proprietary company information such as handbooks and policies. The term "regular access to trade secrets" does not include access to or the use of client, customer or mailing lists.

(4) Nothing in this subdivision shall preclude an employer from requesting or receiving consumer credit history information pursuant to a lawful subpoena, court order or law enforcement investigation.

(5) Paragraph one of this subdivision shall not be construed to affect the obligations of persons required by state or local law relating to disclosures by public employees of conflicts of interest.

(e) (1) Except as otherwise provided in this subdivision, it shall be an unlawful discriminatory practice for any state or municipal agency to request or use for licensing or permitting purposes information contained in the consumer credit history of an applicant, licensee or permittee for licensing or permitting purposes.

(2) Paragraph one of this subdivision shall not apply to an agency required by state or federal law to use an individual's consumer credit history for licensing or permitting purposes.

(3) Paragraph one of this subdivision shall not be construed to affect the ability of an agency to consider an applicant's, licensee's, registrant's or permittee's failure to pay any tax, fine, penalty or fee for which liability has been admitted by the person liable therefor, or

for which judgment has been entered by a court or administrative tribunal of competent jurisdiction, or any tax for which a government agency has issued a warrant, or a lien or levy on property.

(4) Nothing in this subdivision shall preclude a licensing agency from requesting, receiving, or using consumer credit history information obtained pursuant to a lawful subpoena, court order or specific law enforcement investigation.

(f) This section does not annul, alter, affect or exempt any employer, labor organization, employment agency or any agent thereof subject to the provisions of this section from complying with any local law, ordinance or regulation with respect to the use of consumer credit history for employment purposes except to the extent that those laws are inconsistent with any provision of this section, and then only to the extent of such inconsistency. For purposes of this subdivision, a local law, ordinance or regulation is not inconsistent with this section if the protection such law or regulation affords an employee or job applicant is greater than the protection provided by this section.

(g) The notice requirements of this section shall not be applicable to the update, renewal, or extension of credit, employment, insurance, or rental or lease of residences for which initial application was made prior to the effective date of this article.

§ 380-c. Preparation and/or procurement of investigative consumer reports. (a) No person may procure or cause to be prepared an investigative consumer report on any consumer unless such person:

(1) has first provided the consumer with notice of the procurement or preparation as described in subdivision (b) of this section, and

(2) has first received from the consumer an authorization for preparation or procurement of such investigative consumer report as described in subdivision (c) of this section.

(b) The notice required by this section shall be in writing if a written application is made by the consumer, or may be in writing or oral in all other circumstances. Such notice shall inform the consumer that:

(1) an investigative consumer report may be requested on the consumer, and

(2) the consumer upon written request will be informed whether or not an investigative consumer report was requested, and if such report was requested, the name and address of the consumer reporting agency to whom the request was made. Upon the furnishing to the consumer of the name and address of the consumer reporting agency to whom the request was made the consumer shall also be informed he may inspect and receive a copy of such report by contacting such agency. Additionally, if such report was requested with respect to an offer of employment the person, firm, partnership, corporation or other entity requesting such report shall in such notice also provide the subject of such report with a copy of article twenty-three-A of the correction law governing the licensure and employment of persons previously convicted of one or more criminal offenses.

(c) The authorization required by this section shall be given in writing or in the same manner as the notice pursuant to this section is required to be given.

(d) If a person applying for credit, insurance, or employment refuses to authorize the procurement or preparation of an investigative consumer report, the prospective creditor, insurer or employer may decline to grant credit, insurance or employment on the grounds that the applicant refused to execute such authorization.

(e) Where a parent applies for insurance on behalf of or to cover his child, or an adult applies for insurance on behalf of or to cover a minor, the execution of an authorization and receipt of notice pursuant to this section by the parent or adult shall also be deemed to be receipt of notice and execution of an authorization by the child or minor.

(f) The notice and authorization requirements of this section shall not be applicable to investigative consumer reports procured or prepared in connection with the renewal of a casualty insurance policy where the initial application for such policy preceded the effective date of this article.

§ 380-d. Disclosure to consumers. (a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) all information in its files at the time of the request concerning such consumer; and

(2) the sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed; provided, however, that in the event an action is brought under section three hundred eighty-n of this article, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought; and

(3) the recipients of any consumer report on the consumer which it has furnished;

(i) for employment purposes within the two-year period preceding the request, and

(ii) for any other purpose within the six month period preceding the request.

(b) The requirements of subdivision (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this article except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

(c) Notwithstanding any other provision of this article, every consumer reporting agency, upon contact by a consumer by phone, mail or in person regarding information which may be contained in the agency's files which has been or may be used for the purpose of providing a consumer report regarding that consumer, shall promptly advise the consumer of the obligation of the agency to provide disclosure of the files in person, by mail or by telephone pursuant to this section, including the obligation of the agency to provide a decoded written version of the file or a written copy of the file with an explanation of any code used, if the consumer so requests. The disclosure shall be provided in the manner selected by the consumer. All consumers shall be specifically advised that if they have been denied credit in the past thirty days they are entitled to receive a written copy of their complete file, at no charge whatsoever, should they choose to request such a copy.

§ 380-e. Methods and conditions of disclosure to consumers. (a) A consumer reporting agency shall make the disclosures required under section three hundred eighty-d of this article during normal business hours and on reasonable notice.

(b) The disclosure required under section three hundred eighty-d of this article shall be made to the consumer by one or more of the following methods:

(1) in person if he appears in person and furnishes proper identification, in which case the consumer shall be permitted a personal visual inspection of his file and, if he so requests, shall be furnished a copy of his entire file or any part thereof,

(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer, and at the time of the disclosure by telephone the consumer shall be advised of the right to receive a complete written disclosure of the information pertaining to him, or

(3) by mailing a copy or transcription of all information in the consumer's file to him, if he has made a written request with proper identification.

(c) Every consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him either by personal interview or telephone communication, and information furnished by mail must be accompanied by an explanation of such information if provided in code or trade terminology.

(d) The consumer who seeks disclosure by means of a personal interview pursuant to paragraph one of subdivision (b) of this section shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such other person's presence.

(e) (1) A consumer reporting agency shall make all disclosures authorized under section three hundred eighty-d of this article without charge to any person who receives a notification of adverse action pursuant to section three hundred eighty-i of this article, or receives

notification from a debt collection agency affiliated with such consumer reporting agency stating the consumer's credit rating may be or has been adversely affected if, within thirty days of receipt of such notification, the consumer makes a request for such disclosure. A written statement by a consumer indicating that he has been denied credit in the past thirty days or has been contacted by a debt collection agency as described in this paragraph is sufficient to require the disclosure without charge.

(2) In all other cases where such disclosure is requested, the consumer reporting agency may impose a reasonable charge for such disclosure, provided that such charges are indicated to the consumer prior to making disclosure.

(3) Notwithstanding any provision of paragraph two of this subdivision, the charge imposed for the furnishing of information shall not exceed the charge the consumer reporting agency would impose for providing such information to its regular customers.

(4) No charge may be made for notifying any person of the deletion of information which is found to be in error or which can no longer be verified.

(f) In addition to the disclosure provided by this section and any disclosures received by the consumer, the consumer shall be advised of the right to request and receive a decoded written version of the file or a written copy of the file, with an explanation of any code used, without charge as subject to subdivision (e) of this section.

§ 380-f. Procedure for resolving disputes. (a) If a consumer disputes any item of information contained in his file, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall promptly re-investigate and record the current status of such information, unless it has reasonable grounds to believe that the dispute by the consumer is frivolous, and it shall promptly notify the consumer of the result of its investigation, its decision on the status of the information and his rights pursuant to this section. The presence of contradictory information in a consumer's file shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous.

(b) If, after conducting the re-investigation required by subdivision (a) of this section, the consumer reporting agency finds that an item is in error or that it can no longer be verified, it shall:

- (1) promptly expunge the item and otherwise correct the file,
- (2) refrain from reporting the item in subsequent consumer reports,
- (3) clearly and conspicuously disclose to the consumer his rights to make a request for notification and upon request of the consumer, promptly notify any person designated by the consumer who has received information regarding the item during the previous year that an error existed, and shall furnish such person with the corrected information, and

- (4) where applicable forward a copy of the consumer's statement pursuant to subdivision (c) of this section.

(c) If, after conducting a re-investigation pursuant to this section, the consumer reporting agency is unable to resolve any remaining differences between the statements made by its sources and the consumer, it shall:

- (1) promptly indicate in the file that the item is disputed,
- (2) permit the consumer to file a statement concerning the nature of the dispute, which statement may be limited by the agency to not more than one hundred words if such agency provides the consumer with assistance in writing a clear summary of the dispute,
- (3) include the consumer's statement of the dispute in all subsequent credit reports containing the information in question, and
- (4) clearly note in all subsequent consumer reports that the item is disputed by the consumer.

(d) Notwithstanding any other provision of this section, if any item disputed and reinvestigated is found to be in error or can no longer be verified, upon completion of the reinvestigation of all items disputed, the agency shall promptly mail the consumer a corrected written copy of the file, reflecting any changes, with an explanation of any code used, at no charge to the consumer.

§ 380-g. Public record information. A consumer reporting agency which compiles and reports items of information on consumers which are matters of public record shall:

(a) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(b) maintain reasonable procedures designed to insure that whenever public record information is reported it is complete and up to date to the extent practicable. It shall be deemed a reasonable procedure for a consumer reporting agency to accurately report the status of public record information as of the date recorded in its files provided such information is updated on a regular basis.

(c) When conducting a reinvestigation as required by subdivision (a) of section three hundred eighty-f of this article, a consumer reporting agency shall promptly record and report the current status of the public record.

(d) When a consumer reporting agency provides a consumer report that contains criminal conviction information, permitted by paragraph one of subdivision (a) of section three hundred eighty-j of this article, to a user, the person, firm, corporation or other entity requesting such report shall provide the subject of such report a printed or electronic copy of article twenty-three-A of the correction law governing the licensure and employment of persons previously convicted of one or more criminal offenses.

§ 380-h. Restrictions on investigative consumer reports. (a) Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in such report, other than information which is a matter of public record, may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, unless the adverse information was received within the three month period preceding the date upon which the subsequent report is furnished.

(b) Each investigative consumer report shall be in writing, and a copy thereof shall be retained by the consumer reporting agency for at least one year after it is issued.

§ 380-i. Requirements on users of consumer reports. (a) Whenever credit or insurance for personal, family or household purposes is denied, or whenever a residential rental or lease is denied, or the charge for such credit or insurance, or rental or lease is increased, either wholly or partly because of information contained in a consumer report, the user of the report shall:

(1) advise the consumer against whom such adverse action has been taken of such action,

(2) supply the name and address of the consumer reporting agency making the report, and

(3) inform the consumer of his right to inspect and receive a copy of such report by contacting the consumer reporting agency.

(b) In addition to the requirements of subdivision (a) of this section, the user of any such report for purpose of evaluating an application for credit shall furnish to the consumer the reasons for any adverse action in relation to such application in conformance with the requirements of the federal equal credit opportunity act (P.L. 93-435, 15 USC 1691 et seq) as that statute may from time to time be amended.

(c) Every user of a consumer report or an investigative consumer report shall be prohibited from disseminating any such report to any other person unless such other person has a legitimate business need for the information in connection with a business transaction involving the consumer.

§ 380-j. Prohibited information. (a) No consumer reporting agency shall report or maintain in the file on a consumer, information:

(1) relative to an arrest or a criminal charge unless there has been a criminal conviction for such offense, or unless such charges are still pending,

(2) relative to a consumer's race, religion, color, ancestry or ethnic origin,

(3) relative to a medical debt as defined in this statute; or

(4) which it has reason to know is inaccurate.

(b) Notwithstanding the provisions of paragraph one of subdivision (a) of this section, a consumer reporting agency may collect, evaluate,

prepare, use or report information relative to a detention of an individual by a retail mercantile establishment, provided that:

(1) the individual has executed an uncoerced admission of wrongdoing;

(2) with respect to a detention made on or after the effective date of this article the retail mercantile establishment has, prior to transmitting to a consumer reporting agency information concerning such detention, delivered to the individual a written notice containing:

(i) a statement that the information may be furnished to a consumer reporting agency, and that such information may be reported to a retail mercantile establishment for employment purposes,

(ii) a statement that the individual may request disclosure by the consumer reporting agency of information in the agency's file on such individual, and that the completeness or accuracy of such information may be disputed by the individual, and

(iii) the name and address of such consumer reporting agency; and

(3) the user of such information certifies to the consumer reporting agency that such information will be used only in connection with employment purposes.

(c) In the event that a criminal charge is filed subsequent to the detention described in subdivision (b) of this section, the disposition of such charge shall be recorded by the consumer reporting agency in the file on such individual upon the request of such individual and upon his furnishing proof of such disposition.

(d) No consumer reporting agency shall issue a consumer report which lists a person as having been denied credit if the sole reason for such denial is lack of sufficient information to grant credit, unless the report states that the denial was for such reason.

(e) Consumer reporting agencies shall maintain reasonable procedures designed to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(f) (1) Except as authorized under paragraph two of this subdivision, no consumer reporting agency may make any consumer report containing any of the following items of information.

(i) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years;

(ii) judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has

expired, whichever is the longer period; or judgments which, from date of entry, having been satisfied within a five year period from such entry date, shall be removed from the report five years after such entry date;

(iii) paid tax liens which, from date of payment, antedate the report by more than seven years or, a paid, satisfied or vacated tax lien involving a purchaser, transferee or assignee in a bulk sale transaction who has been deemed liable by the state tax commission for sales taxes due from a seller, transferrer or assignor under subdivision (c) of section eleven hundred forty-one of the tax law, where the receipt by a credit reporting agency from such purchaser, transferee or assignee of a notice, or true copy thereof, from the state tax commission to such purchaser, transferee or assignee that his liability has been wholly paid or satisfied or no longer exists, antedates the report by more than thirty days;

(iv) accounts placed for collection or charged to profit and loss which antedate the report by more than seven years; or accounts placed for collection or charged to profit and loss, which have been paid and which antedate the report by more than five years;

(v) records of conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years;

(vi) information regarding drug or alcoholic addiction where the last reported incident relating to such addiction antedates the consumer report or investigative consumer report by more than seven years;

(vii) information relating to past confinement in a mental institution where the date of last confinement antedates the report by more than seven years;

* (viii) information relating to a medical debt regardless of the date it was incurred; or

* NB Effective until May 26, 2027

* (viii) information relating to a medical debt regardless of the date it was incurred;

* NB Effective May 26, 2027 until July 1, 2032

* (viii) information relating to a medical debt regardless of the date it was incurred; or

* NB Effective July 1, 2032

* (ix) any other adverse information which antedates the report by

more than seven years.

* NB Effective until May 26, 2027

* (ix) late payments of any fees or other costs associated with or related to the installation, maintenance including repair or replacement, and removal of an intelligent speed assistance device pursuant to a local law or ordinance adopted in accordance with article thirty-nine of the vehicle and traffic law; or

* NB Effective May 26, 2027 until July 1, 2032

* (ix) any other adverse information which antedates the report by more than seven years.

* NB Effective July 1, 2032

* (x) any other adverse information which antedates the report by more than seven years.

* NB Effective May 26, 2027

* NB Repealed July 1, 2032

(2) The provisions of this subdivision shall not apply to:

(i) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of fifty thousand dollars or more;

(ii) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of fifty thousand dollars or more; or

(iii) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal twenty-five thousand dollars, or more.

(g) No consumer reporting agency shall collect, evaluate, report, or maintain in the file on a consumer any results, opinions, analyses, transcripts or information of any nature concerning, related to, or derived from a polygraph examination, an examination by any device or instrument of any type used to test or question individuals for the purpose of detecting deception, verifying truthfulness, or measuring deceptive tendencies, or the questioning or interviewing of an individual by the examiner prior to or after such an examination.

(h) No consumer reporting agency shall collect, evaluate, report, or maintain in the file on a consumer the credit worthiness, credit standing or credit capacity of members of the consumer's social network for purposes of determining the credit worthiness of the consumer; the

average credit worthiness, credit standing or credit capacity of members of the consumer's social network; or any group score that is not the consumer's own credit worthiness, credit standing or credit capacity. The provisions of this subdivision shall be enforced concurrently by the superintendent of financial services and the director of the division of consumer protection and each shall utilize their consumer complaint and assistance hotlines to document complaints by consumers who believe that group credit ratings of their social media network are being used to deny them credit.

§ 380-k. Compliance procedures. Every consumer or reporting agency shall maintain reasonable procedures designed to avoid violations of sections three hundred eighty-b, three hundred eighty-j and three hundred eighty-t of this article and to limit the furnishing of consumer reports to the purposes listed under said section three hundred eighty-b. These procedures shall require all prospective users of the information to identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section three hundred eighty-b of this article.

§ 380-l. Civil liability for willful noncompliance. Any person, firm, partnership, corporation, or association whose knowing and willful violation of section three hundred eighty-s of this article resulted in the transmission or provision to a consumer reporting agency of information that would otherwise not have been transmitted or provided, and any consumer reporting agency or user of information who or which willfully and knowingly fails to comply with any requirement imposed under this article with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) Any actual damages sustained by the consumer as a result of such failure or as a result of a violation of section three hundred eighty-s of this article;

(b) Such amount of punitive damages as the court may allow; and

(c) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 380-m. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information who or which is negligent in failing to comply with any requirement imposed under this article, other than a violation of section three hundred eighty-t of this article, with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) Any actual damages sustained by the consumer as a result of the failure;

(b) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 380-n. Jurisdiction of courts; limitation of actions. An action to enforce any liability, created under this article may be brought in any court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this article to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this article, the action may be brought at any time within two years after the discovery by the individual of the misrepresentation.

§ 380-o. Obtaining or introducing information under false pretenses; penalty. 1. Any person who knowingly and willfully obtains information concerning a consumer from a consumer reporting agency under false

pretenses shall, upon conviction, be fined not more than five thousand dollars or imprisoned not more than one year, or both.

2. Any person who knowingly and willfully introduces, attempts to introduce or causes to be introduced, false information into a consumer reporting agency's files for the purpose of wrongfully damaging or wrongfully enhancing the credit information of any individual shall, upon conviction, be fined not more than five thousand dollars or imprisoned not more than one year, or both.

3. This section shall not apply to statements filed pursuant to paragraph two of subdivision (c) of section three hundred eighty-f of this chapter.

§ 380-p. Unauthorized disclosures by officers or employees; penalty.

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall, upon conviction, be fined not more than five thousand dollars or imprisoned not more than one year, or both.

§ 380-q. Disclosure of medical information. Whenever any provision of this article requires disclosure of medical information, or the disclosure of a reason for adverse action which involves medical information, such information or reason shall be disclosed only to a physician designated by the consumer for such purpose.

§ 380-r. Disclosures to governmental agencies. Notwithstanding the provisions of section three hundred eighty-b of this article, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment to a governmental agency.

§ 380-s. Theft of identity. No person, firm, partnership, corporation, or association or employee thereof shall knowingly and with the intent to defraud, obtain, possess, transfer, use, or attempt to obtain, possess, transfer, or use credit, goods, services or anything else of value in the name of another person without his or her consent.

§ 380-t. Security freeze. (a) A consumer may request that a security freeze be placed on his or her consumer credit report by sending a request in writing with confirmation of delivery requested or via telephone, secure electronic means, or other methods developed by the consumer credit reporting agency to a consumer credit reporting agency at an address, telephone number or secure website designated by such agency to receive such requests. Consumer credit reporting agencies shall have a secure website and a separately dedicated toll-free number to offer information, to process requests and deliver the services provided for under this section.

(b) A consumer credit reporting agency that receives from a consumer a request in accordance with subdivision (a) of this section shall, provided such request is accompanied by proper identification, place a security freeze on the consumer credit report of or relating to such consumer no later than four business days after receiving such request, provided further, however, that for requests received on or after January first, two thousand nine, such consumer credit reporting agency shall place a security freeze on the consumer credit report of or relating to such consumer no later than three business days after receiving such request and for requests received on or after January first, two thousand ten, such consumer credit reporting agency shall place a security freeze on the consumer credit report of or relating to such consumer no later than one business day after receiving such request. Nothing in this subdivision shall be construed to prevent a consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer credit report of or relating to such consumer. No consumer credit reporting agency shall advise in any manner a third party, of the fact that the consumer requesting the freeze is alleging to be the victim of domestic violence or identity theft, without the written authorization of the consumer.

(c) The consumer credit reporting agency shall send a written confirmation of the placement of a security freeze to the consumer within five business days of placing such freeze. Upon placing the security freeze on the consumer credit report of or relating to such consumer, the consumer credit reporting agency shall provide the consumer with a unique personal identification number or password, or other device which shall only be used by the consumer when providing authorization for the release of his or her consumer credit report for a specific party or specific period of time. The unique personal identification number or password, or other device to be used by the consumer shall not be a social security number or a sequential portion thereof. Any use of the unique personal identification number or password or other device other than provided for in this section is prohibited.

(d) If the consumer wishes to allow his or her consumer credit report to be accessed for a specific party or a specific period of time while a freeze is in place, he or she shall contact the consumer credit reporting agency via mail with confirmation of delivery, telephone, secure electronic means or other method developed by such consumer credit reporting agency pursuant to subdivision (f) of this section using a point of contact designated by such consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) proper identification;

(2) the unique personal identification number or password provided by the consumer credit reporting agency pursuant to subdivision (c) of this section; and

(3) the proper information regarding the party to which the consumer credit report should be available or the time period for which the consumer credit report shall be available to users of such report.

(e) (1) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer credit report pursuant to subdivision (d) of this section, shall comply with the request: (i) no later than three business days after receiving such request; (ii) as of September first, two thousand nine, a consumer credit reporting agency that receives a request via the use of a telephone or secure electronic method provided by the agency, pursuant

to subdivision (d) of this section, shall release a consumer's credit report as requested by the consumer within fifteen minutes after the request is received by the consumer credit reporting agency.

(2) A consumer credit reporting agency is not required to temporarily lift a security freeze within the time provided in subparagraph (ii) of paragraph one of this subdivision if:

(i) the consumer fails to meet the requirements of subdivision (b) of this section; or

(ii) the consumer credit reporting agency's ability to temporarily lift the security freeze within fifteen minutes is prevented by:

(A) an act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena;

(B) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;

(C) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;

(D) governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

(E) regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems; or

(F) commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.

(f) A consumer credit reporting agency may develop procedures involving other secure methods of communication, including the use of the internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer credit report pursuant to subdivision (d) of this section in an expedited manner.

(g) The department of state shall monitor the state of technology relating to the means available to process requests for the lifting or removal of a security freeze, and shall report to the legislature when it is determined that the technology to process requests for the lifting or removal of a security freeze in a shorter period of time than that set forth in subdivision (e) of this section is available.

(h) A consumer credit reporting agency shall remove or temporarily

lift a freeze placed on the consumer credit report of or relating to a consumer only in the following cases:

(1) upon consumer request, pursuant to subdivision (d) or (k) of this section; or

(2) if the consumer credit report of or relating to such consumer was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer credit report pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing, by first class mail, within three business days prior to removing the freeze on such consumer credit report.

(i) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her consumer credit report to be accessed for that period of time, the third party may treat the application as incomplete.

(j) If a consumer requests a security freeze, the consumer credit reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from such consumer credit report for a specific party or a period of time while the freeze is in place.

(k) (1) A security freeze shall remain in place until the consumer requests, using a point of contact designated by the consumer credit reporting agency, that the security freeze be removed and provides the following:

(i) proper identification; and

(ii) the unique personal identification number or password or similar device provided by the consumer credit reporting agency pursuant to subdivision (c) of this section.

(2) A consumer credit reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer pursuant to paragraph one of this subdivision.

(l) A consumer credit reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(m) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) a person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;

(3) any state or local agency, law enforcement agency, court, private collection agency, or person acting pursuant to a court order, warrant, or subpoena;

(4) a child support agency acting pursuant to title iv-d of the social security act (42 U.S.C. et seq.);

(5) the state or its political subdivisions or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities provided such responsibilities are consistent with a permissible purpose under 15 U.S.C. section 1681b;

(6) the use of credit information for the purposes of prescreening as provided for by the federal fair credit reporting act;

(7) any person or entity administering a credit file monitoring subscription or similar service to which the consumer has subscribed; or

(8) any person or entity for the purpose of providing a consumer with a copy of his or her consumer credit report or score upon the request of such consumer.

(n) No consumer credit reporting agency shall charge a fee to any consumer for the placement of any security freeze, the removal of any security freeze, the temporary lift of any security freeze for a specific party or period of time, or the issuance of any replacement

personal identification number or password when the consumer fails to retain the personal identification number or password provided to such consumer by such consumer credit reporting agency pursuant to subdivision (c) of this section.

(3)(i) Upon a breach of the security of the system of a consumer credit reporting agency which includes any social security number, such agency shall offer to each consumer, whose information, including social security number, was breached or is reasonably believed to have been breached, reasonable identity theft prevention services and, if applicable, identify theft mitigation services for a period not to exceed five years at no cost to such consumers. Such agency shall provide all information necessary for such consumers to enroll in such services and shall include information on how such consumers can request a security freeze. A consumer credit reporting agency shall not be required to offer such services if, after an appropriate investigation, the agency reasonably determines that the breach of security is unlikely to result in harm to the consumers whose information has been breached.

(ii) "Breach of the security of the system" as used in this paragraph shall have the same definition as in paragraph (c) of subdivision one of section eight hundred ninety-nine-aa of this chapter.

(o) If a security freeze is in place, a consumer credit reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the file of or relating to such consumer: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of the official information of or relating to such consumer, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

(p) The following entities are not required to place a security freeze on a consumer credit report:

(1) a consumer credit reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer credit reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent

data base of credit information from which new consumer credit reports are produced. However, a consumer credit reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer credit reporting agency;

(2) a check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; or

(3) a deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(q) (1) Any time a consumer credit reporting agency is required to send a summary of rights required under 15 U.S.C. section 1681g, to a consumer residing in this state the following notice shall be included with such summary of rights:

"NEW YORK CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE.

YOU HAVE A RIGHT TO PLACE A "SECURITY FREEZE" ON YOUR CREDIT REPORT, WHICH WILL PROHIBIT A CONSUMER CREDIT REPORTING AGENCY FROM RELEASING INFORMATION IN YOUR CREDIT REPORT WITHOUT YOUR EXPRESS AUTHORIZATION. A CONSUMER CREDIT REPORTING AGENCY IS PROHIBITED FROM CHARGING YOU A FEE FOR THE PLACEMENT, REMOVAL, OR TEMPORARY LIFT OF A SECURITY FREEZE, OR FOR THE ISSUANCE OF A REPLACEMENT PERSONAL IDENTIFICATION NUMBER (PIN) OR PASSWORD IN THE EVENT THAT YOU FAIL TO RETAIN THE ORIGINAL PIN OR PASSWORD PROVIDED TO YOU BY SUCH CONSUMER CREDIT REPORTING AGENCY. A SECURITY FREEZE MUST BE REQUESTED IN WRITING DELIVERY CONFIRMATION REQUESTED OR VIA TELEPHONE, SECURE ELECTRONIC MEANS, OR OTHER METHODS DEVELOPED BY THE CONSUMER CREDIT REPORTING AGENCY. THE SECURITY FREEZE IS DESIGNED TO PREVENT CREDIT, LOANS, AND SERVICES FROM BEING APPROVED IN YOUR NAME WITHOUT YOUR CONSENT. HOWEVER, YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO TAKE CONTROL OVER WHO GETS ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN YOUR CREDIT REPORT MAY DELAY, INTERFERE WITH, OR PROHIBIT THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION YOU MAKE REGARDING A NEW LOAN, CREDIT, MORTGAGE,

GOVERNMENT SERVICES OR PAYMENTS, INSURANCE, RENTAL HOUSING, EMPLOYMENT, INVESTMENT, LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN EXTENSION OF CREDIT AT POINT OF SALE. WHEN YOU PLACE A SECURITY FREEZE ON YOUR CREDIT REPORT, YOU WILL BE PROVIDED A PERSONAL IDENTIFICATION NUMBER OR PASSWORD TO USE IF YOU CHOOSE TO REMOVE THE FREEZE ON YOUR CREDIT REPORT OR AUTHORIZE THE RELEASE OF YOUR CREDIT REPORT TO A SPECIFIC PARTY OR FOR A PERIOD OF TIME AFTER THE FREEZE IS IN PLACE. TO PROVIDE THAT AUTHORIZATION YOU MUST CONTACT THE CONSUMER CREDIT REPORTING AGENCY AND PROVIDE ALL OF THE FOLLOWING:

- (1) THE PERSONAL IDENTIFICATION NUMBER OR PASSWORD;
- (2) PROPER IDENTIFICATION TO VERIFY YOUR IDENTITY; AND
- (3) THE PROPER INFORMATION REGARDING THE PARTY OR PARTIES WHO ARE TO RECEIVE THE CREDIT REPORT OR THE PERIOD OF TIME FOR WHICH THE REPORT SHALL BE AVAILABLE TO USERS OF THE CREDIT REPORT.

A CONSUMER CREDIT REPORTING AGENCY MUST AUTHORIZE THE RELEASE OF YOUR CREDIT REPORT NO LATER THAN THREE BUSINESS DAYS AFTER RECEIVING THE ABOVE INFORMATION. EFFECTIVE SEPTEMBER FIRST, TWO THOUSAND NINE, A CONSUMER CREDIT REPORTING AGENCY THAT RECEIVES A REQUEST VIA TELEPHONE OR SECURE ELECTRONIC METHOD SHALL RELEASE A CONSUMER'S CREDIT REPORT WITHIN FIFTEEN MINUTES WHEN THE REQUEST IS RECEIVED.

A SECURITY FREEZE DOES NOT APPLY TO CIRCUMSTANCES IN WHICH YOU HAVE AN EXISTING ACCOUNT RELATIONSHIP AND A COPY OF YOUR REPORT IS REQUESTED BY YOUR EXISTING CREDITOR OR ITS AGENTS OR AFFILIATES FOR CERTAIN TYPES OF ACCOUNT REVIEW, COLLECTION, FRAUD CONTROL OR SIMILAR ACTIVITIES.

IF YOU ARE ACTIVELY SEEKING CREDIT, YOU SHOULD UNDERSTAND THAT THE PROCEDURES INVOLVED IN LIFTING A SECURITY FREEZE MAY SLOW YOUR APPLICATION FOR CREDIT. YOU SHOULD PLAN AHEAD AND LIFT A FREEZE, EITHER COMPLETELY IF YOU ARE SHOPPING AROUND, OR SPECIFICALLY FOR A CERTAIN CREDITOR, BEFORE APPLYING FOR NEW CREDIT. WHEN SEEKING CREDIT OR PURSUING ANOTHER TRANSACTION REQUIRING ACCESS TO YOUR CREDIT REPORT, IT IS NOT NECESSARY TO RELINQUISH YOUR PIN OR PASSWORD TO THE CREDITOR OR BUSINESS; YOU CAN CONTACT THE CONSUMER CREDIT REPORTING AGENCY DIRECTLY. IF YOU CHOOSE TO GIVE OUT YOUR PIN OR PASSWORD TO THE CREDITOR OR

BUSINESS, IT IS RECOMMENDED THAT YOU OBTAIN A NEW PIN OR PASSWORD FROM THE CONSUMER CREDIT REPORTING AGENCY."

(2) If a consumer requests information about a security freeze, such consumer shall be provided with the notice set forth in paragraph one of this subdivision and with any other information necessary to place, temporarily lift or permanently lift a security freeze, including but not limited to the address, telephone number or point of contact at which the consumer credit reporting agency receives such requests.

(r) When a consumer credit reporting agency erroneously releases a consumer credit report subject to a security freeze or any information contained in such consumer credit report, the consumer credit reporting agency shall send written notification to the affected consumer within three business days following discovery or notification of such erroneous release. Such notification shall also inform the consumer of the nature of the information released and identify and provide contact information for the recipient of such information or consumer credit report.

(s) Whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 380-u. Security record freeze for protected minors. (a) A consumer credit reporting agency shall place a security freeze for a protected consumer if:

(1) The consumer credit reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

(2) The protected consumer's representative (i) submits the request to the consumer credit reporting agency at the address or other point of contact and in the manner specified by the consumer credit reporting agency; (ii) provides to the consumer credit reporting agency sufficient proof of identification of the protected consumer and the representative; (iii) provides to the consumer credit reporting agency sufficient proof of authority to act on behalf of the protected consumer; and (iv) pays to the consumer credit reporting agency a fee, if any, as provided in this section.

(b) If a consumer credit reporting agency does not have a file pertaining to a protected consumer when the consumer credit reporting agency receives a request under subdivision (a) of this section, the consumer credit reporting agency shall create a record for the protected consumer.

(c) Within thirty days after receiving a request that meets the requirements of paragraph two of subdivision (a) of this section, a consumer credit reporting agency shall place a security freeze for the protected consumer on the record created for the protected consumer or on the file pertaining to the protected consumer in the event that the consumer reporting agency already has a file pertaining to the protected consumer.

(d) Unless a security freeze for a protected consumer is removed in accordance with this section, a consumer credit reporting agency may not release the protected consumer's consumer credit report, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

(e) A security freeze for a protected consumer placed under this section shall remain in effect until:

(1) The protected consumer or the protected consumer's representative requests the consumer credit reporting agency to remove the security

freeze for a protected consumer in accordance with subdivision (f) of this section; or

(2) The security freeze is removed in accordance with subdivision (i) of this section.

(f) If a protected consumer or a protected consumer's representative wishes to remove a security freeze for the protected consumer, the protected consumer or the protected consumer's representative shall:

(1) Submit a request for the removal of the security freeze to the consumer credit reporting agency at the address or other point of contact and in the manner specified by the consumer credit reporting agency;

(2) Provide to the consumer credit reporting agency: (i) in the case of a request by the protected consumer: (A) proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid or that the protected consumer has attained the age of sixteen; and (B) sufficient proof of identification of the protected consumer; or (ii) in the case of a request by the representative of a protected consumer: (A) sufficient proof of identification of the protected consumer and the representative; and (B) sufficient proof of authority to act on behalf of the protected consumer; and (C) payment to the consumer credit reporting agency of a fee, if any, as provided in subdivision (h) of this section.

(g) Within thirty days after receiving a request that meets the requirements of subdivision (f) of this section, the consumer credit reporting agency shall remove the security freeze for the protected consumer.

(h)(1) A consumer credit reporting agency may charge a reasonable fee, not exceeding fifteen dollars, for each placement or removal of a security freeze for a protected consumer as provided for in subparagraph (iv) of paragraph two of subdivision (a) or clause (C) of subparagraph (ii) of paragraph two of subdivision (f) of this section. A consumer credit reporting agency shall not charge a fee for any other service performed under this section.

(2) Notwithstanding paragraph one of this subdivision, a consumer credit reporting agency may not charge any fee under this section if: (i) the protected consumer's representative: (A) has obtained a report

of alleged identity theft or fraud against the protected consumer; and (B) provides a copy of the report to the consumer credit reporting agency; or (ii) the consumer credit reporting agency has a consumer credit report pertaining to the protected consumer.

(i) A consumer credit reporting agency shall remove a security freeze for a protected consumer, or delete a record of a protected consumer, if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(j) This section does not apply to:

(1) A person administering a credit file monitoring subscription service to which: (i) the protected consumer has subscribed; or (ii) the representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer credit report upon the request of the protected consumer or the protected consumer's representative;

(3)(i) An entity listed in paragraphs three through eight of subdivision (m) of section three hundred eighty-t of this article; (ii) an entity listed in subdivision (p) of section three hundred eighty-t of this article; or (iii) a consumer credit reporting agency's database or file that consists of information concerning, and used for, one or more of the following: criminal record information, fraud prevention or detection, personal loss history information, and employment, tenant, or background screening.

(k) Notwithstanding any other provision of law, the exclusive remedy for a violation of this section shall be in an action commenced by the attorney general.

§ 380-v. Severability. If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

ARTICLE 25-A
ARTICLES OF BEDDING

- Section 383. Definitions.
384. Registration of manufacturers of new bedding.
385. Registration of manufacturers of used bedding and
repairer-renovators or rebuilders of bedding.
- 385-a. Registration of sellers of used bedding.
- 385-b. Transport, storage and sale of used bedding.
386. Fees.
387. Inspections.
388. Suspension and revocation of registrations.
389. Deceptive acts or practices prohibited.
- 389-a. Label requirements for used bedding.
- 389-b. Label requirements for new bedding.
- 389-c. Special application of section three hundred forty-nine
of this chapter.

§ 383. Definitions. For the purposes of this article:

1. "Bedding" shall mean any mattress or box spring which can be used by any human being for sleeping or reclining purposes;
2. "New" shall mean any material or article which has not been previously used for any purpose, including by-products produced in the manufacture of new fabric, and material reclaimed from new fabric;
3. "Used" shall mean any components, articles or materials from bedding not classified as new.

§ 384. Registration of manufacturers of new bedding. 1. Every manufacturer of new bedding sold in this state shall file a notice with the department of state which: (a) states its name and address; and (b) affirms that it uses new material when it manufactures new bedding.

2. Each registration shall expire one year from the date of issue.

§ 385. Registration of manufacturers of used bedding and repairer-renovators or rebuilders of bedding. 1. Every manufacturer of used bedding sold in this state and repairer-renovator or rebuilder of bedding sold in this state shall file a notice with the department of state which: (a) states its name and address; and (b) affirms that it sanitizes its used bedding in accordance with the standards established in regulation by the department of state in consultation with the department of health.

2. Each registration shall expire one year from the date of issue.

§ 385-a. Registration of sellers of used bedding. 1. Every person engaged in the sale of used bedding, including any mattress or boxspring which in its entirety is used and not repaired or renovated, shall file a notice with the department of state which: (a) states such person's name and address; and (b) affirms that such used bedding has been sanitized in accordance with the standards established in regulation by the department of state in consultation with the department of health.

2. The provisions of this section shall not apply to a person selling used bedding in a private sale from his or her home directly to the consumer.

3. Each registration shall expire one year from the date of issue.

§ 385-b. Transport, storage and sale of used bedding. 1. No used bedding shall be in direct contact with new bedding in a storage warehouse, or stored or sold with new bedding unless the used bedding has been sanitized in accordance with the standards established in regulation by the department of state pursuant to section three hundred eighty-five of this article.

2. No used bedding shall be transported with new bedding unless the used bedding has been sanitized in accordance with the standards established in regulation by the department of state pursuant to section three hundred eighty-five of this article or enclosed in non-permeable plastic, polyethylene film or similar material designed to prevent the passage of contaminants.

§ 386. Fees. 1. Every manufacturer of new or used bedding and each repairer-renovator or rebuilder of bedding shall pay a registration fee of one hundred fifty dollars to the department of state.

2. Every person engaged in the sale of used bedding shall pay a registration fee of one hundred dollars to the department of state.

§ 387. Inspections. Every place where articles of bedding are made, remade or renovated, or materials therefor are prepared or sterilized, or where such articles or materials are sold, shall be subject to inspection by the secretary of state who shall have power to inspect the manufacture, sale or delivery, and sanitization of all articles or materials covered by this article, to open and examine the contents thereof and power to seize and hold for evidence any article of bedding, in whole or in part, which the secretary has reason to believe is made or sold or held in possession in violation of this article. The frequency of such inspections shall be at the discretion of the secretary of state. For the purpose of administering and enforcing the provisions of this article the secretary shall have and may use the powers conferred on him by the executive law in addition to the powers conferred in this article.

§ 388. Suspension and revocation of registrations. The secretary of state shall have the power to revoke or suspend any registration or deny any registration upon proof (a) that the applicant or registrant has violated any of the provisions of this article or the rules and

regulations promulgated hereunder; (b) that the applicant or registrant has practiced fraud, deceit or misrepresentation; or (c) that the applicant or registrant has made a false statement in the notice of registration.

§ 389. Deceptive acts or practices prohibited. It shall be a deceptive act or practice and unlawful, under section three hundred forty-nine of this chapter, for any merchant, as defined in section 2-104 of the uniform commercial code, to manufacture, rebuild or sell bedding in this state that contains any used material, or to sell any mattress or boxspring which is made, in whole or part, from used materials, unless it bears a conspicuous yellow label notifying the consumer of that fact.

§ 389-a. Label requirements for used bedding. The label indicating that an article of bedding contains used material, in whole or in part, shall be at least fifteen square inches in area, contain the phrase "used material" or "used bedding", as the case may be, in prominent print, be yellow in color, and be stitched or otherwise securely attached to the bedding in such a manner that it may be seen by consumers prior to purchase.

§ 389-b. Label requirements for new bedding. The label indicating that an article of bedding contains new material must be at least six square inches in area, contain the phrase "new material" in prominent print, and be stitched or otherwise securely attached to the bedding in such a manner that it may be seen by consumers prior to purchase.

§ 389-c. Special application of section three hundred forty-nine of this chapter. In addition to the power set forth in subdivision (b) of section three hundred forty-nine of this chapter, the attorney general shall have the power to assess a fine of up to one thousand dollars for each violation of this article; and the defense under subdivision (d) of section three hundred forty-nine of this chapter shall not be available

in connection with any violation of this article.

ARTICLE 25-B

USE OF SAFETY GLAZING MATERIALS

Section 389-m. Definitions.

389-n. Labeling required.

389-o. Safety glazing materials required.

389-p. Employees not covered.

389-q. Penalty.

389-r. Local ordinances.

§ 389-m. Definitions. As used in this article, the following words and phrases shall have the following meanings:

(1) "Safety glazing material". Any glazing material, such as tempered glass, laminated glass, wire glass or rigid plastic, which meets the test requirements of the American National Standards Institute Standard (ANSI Z-97.1-1972), and which are so constructed, treated or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material.

(2) "Hazardous locations". Those structural elements, glazed or to be glazed, in industrial, commercial and public buildings known as framed or unframed glass entrance doors; and those structural elements, glazed or to be glazed in residential buildings and other structures used as dwellings, industrial buildings, commercial buildings and public buildings, known as sliding glass doors, storm doors except operating vents only on jalousie type doors, shower doors, bathtub enclosures and those fixed glazed panels immediately adjacent to entrance and exit doors which may be mistaken for doors; whether or not the glazing in such doors, panels and enclosures is transparent.

(3) "Fixed glazed panels immediately adjacent to entrance and exit doors". Means the first fixed glazed panel on either or both sides of the doors, forty-eight inches or less in width, within six feet horizontally of the nearest vertical edge of the door.

§ 389-n. Labeling required. (1) Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the state of New York shall be permanently labeled by such means as etching, sandblasting, firing of ceramic material, hot-die stamping on the safety glazing material, or by other suitable means. The label shall identify the manufacturer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of the American National Standards Institute Standard ANSI Z-97.1-1971.

The label must be legible after installation.

(2) Such safety glazing labeling shall not be used on other than safety glazing materials.

(3) Permanent labeling of wire glass, laminated glass and rigid plastics shall not be required where the seller or installer of such wire glass furnishes each buyer thereof a certificate stating that such wire glass meets the test requirements of the American National Standards Institute Standard ANSI Z-97.1-1972.

§ 389-o. Safety glazing materials required. It shall be unlawful within the state of New York to knowingly sell, fabricate, assemble, glaze, install, consent or cause to be installed glazing materials other than safety glazing materials in or for use in, any "hazardous locations".

§ 389-p. Employees not covered. No liability under this article shall be created as to workmen who are employees of a contractor, subcontractor, or other employer responsible for compliance with the provisions of this article.

§ 389-q. Penalty. Violation of or noncompliance with the provisions of this article shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than ten thousand dollars or by

imprisonment for one year or by both.

§ 389-r. Local ordinances. This article and the provisions contained therein shall supersede any special law, local law or ordinances inconsistent therewith.

ARTICLE 25-C

PRODUCTS CONTAINING LEAD

Section 389-s. Manufacture and sale of seasonal and decorative lighting products containing lead.

389-t. Labeling of solder.

§ 389-s. Manufacture and sale of seasonal and decorative lighting products containing lead. 1. When used in this title, "seasonal and decorative lighting product" shall mean portable, plug-connected, temporary-use lighting products and accessories that have a nominal 120-volt input voltage rating.

(a) Lighting products within the scope of this rule are factory-assembled with push-in, midget or miniature screw base lamp holders connected in series or parallel, directly across the 120-volt input.

(b) Such lighting products include, but are not limited to lighted decorative outfits such as wired holiday string lights, pre-lit artificial Christmas trees, plants, flowers or wreaths, stockings, stars, candles and light sculptures.

2. On each seasonal and decorative lighting product manufactured, sold or delivered by a manufacturer or distributed within this state after the effective date of this section that contains an electrical cord casing in which lead is present in a quantity greater than one hundred parts per million, there shall be printed thereon or attached thereto a warning label.

3. Such warning label shall contain the following statement: "WARNING:

HANDLING THE COATED ELECTRICAL WIRE OF THIS PRODUCT MAY EXPOSE YOU TO LEAD. WASH HANDS THOROUGHLY AFTER USE."

4. Any manufacturer who violates this section shall be subject to a civil penalty of not more than five hundred dollars for each such violation.

§ 389-t. Labeling of solder. 1. No person, firm, or corporation shall sell or offer for sale any solder unless there is printed on the package in which such solder is sold or offered for sale a conspicuous notice stating the percentage of lead contained in such solder. Any solder containing more than two-tenths of one percent lead shall contain a warning label, prominently displayed, which states, "Contains lead which may be harmful to your health. Not to be used for joints on potable water service piping."

2. Any violation of this section shall be punishable by a civil penalty not to exceed five hundred dollars.

ARTICLE 26

MISCELLANEOUS

Section 390.	Substitution of spurious oils for internal combustion engines.
390-a.	Optical discs; requirements.
390-b.	Anti-phishing act of 2006.
390-bb.	Cramming prohibited.
390-c.	Prohibit persons under eighteen years of age in certain facilities.
390-c*2.	Posting of warnings by commercial entities offering internet access to the public.
390-d.	Information concerning services for human trafficking victims in facilities at truck stops.
390-e.	Unauthorized installation of certain security devices prohibited.
390-e*2.	Skimming awareness notice.

- 391. Marking retreaded, recapped or recut tires.
- 391-a. Unlawful acts relating to liquid fuels, lubricating oils and similar products.
- 391-b. Prohibit any sale of dangerous clothing articles.
- 391-c. Sale of bicycles.
- 391-cc. Sale of bicycles with electric assist and micromobility devices.
- 391-d. Sale of matchbooks.
- 391-e. Promotion of camps by certain organizations.
- 391-f. Promotion of private schools by certain organizations.
- 391-g. Rental of motor vehicles; discrimination on the basis of age prohibited.
- 391-h. Lubricating oils; container; notice required.
- 391-i. Sale of urea-formaldehyde foam insulation; notice.
- 391-j. Sale of fire extinguishers.
- 391-jj. Sale of electric space heaters.
- 391-k. Automatic garage door opening systems.
- 391-l. Personal emergency response service agreements; required cancellation provisions.
- 391-l*2. Rental of motor vehicles; discrimination on the basis of credit card ownership.
- 391-m. Manufacture and sale of in-line skates; regulation of.
- 391-n. Sale of reptiles; notice.
- 391-oo. Sale of over-the-counter diet pills and dietary supplements for weight loss or muscle building.
- 391-p. Prohibit the rental of clothing articles previously worn.
- 391-q. Rebates.
- 391-s. Sale and distribution of novelty lighters prohibited.
- 391-t. Sale of small animals; instructions on care.
- 391-u. Pricing goods and services on the basis of gender prohibited.
- 391-u*2. Restrictions on the sale and use of firefighting equipment containing PFAS chemicals.

391-v. Third-party food delivery agreements.
391-w. Unauthorized restaurant reservations.
391-x. Hair relaxer labeling.
392. Second-hand watches.
392-a. Sale of new computers.
392-b. False labels and misrepresentations.
392-c. Obliteration of marks of origin.
392-d. Using false marks as to manufacture.
392-e. Using false statements or altering mileage
registering devices.
392-f. Taximeters.
392-g. Sale of ultraviolet radiation devices.
392-h. Trash receptacles; dumpsters.
392-i. Prices reduced to reflect change in sales tax
computation.
392-j. Sales of sparkling devices.
392-k. Motor vehicle glass repair and replacement;
calibration and recalibration of advanced driver
assistance systems; consumer disclosure.
393. Lime; standard barrels.
393-a. Non fire rated wood paneling.
393-b. Written solicitation.
393-c. Sale of required labor postings.
393-d. Sale of certified copies of property deeds.
393-e. Sale of abandoned property location services.
393-f. Voluntary third-party notification.
394. Lost or destroyed certificate of stock.
394-a. Proof of lost negotiable paper.
394-b. Limitations on certain contracts for instruction or
use of physical or social training facilities.
394-c. Limitations on certain contracts involving social
referral services.
394-cc. Internet dating safety.
394-ccc. Social media networks; hateful conduct prohibited.
394-d. Privity of contract between franchise seller and
customer or patron of dealer.
394-e. Report on request for abortifacient services.

- 394-f. Warrants for electronic data related to legally protected health activities.
- 394-g. Geofencing of health care facilities.
- 394-h. Electronic health information protections.
- 394-i. Legally protected health activities.
- 395. Required disclosure of prior use.
- 395-a. Maintenance agreements.
- 395-b. Unlawfully installing or maintaining a two-way mirror or other viewing device.
- 396. Unlawful selling practices.
- 396-a. Representation by savings and loan association of insurance on accounts.
- 396-aa. Simulated check.
- 396-aa*2. Unsolicited telefacsimile advertising.
- 396-aaa. Public display of tobacco and electronic cigarette advertisements and smoking paraphernalia prohibited.
- 396-b. Advertisements.
- 396-bb. Sale of motor fuels to disabled persons.
- 396-c. Advertisements by persons engaged in dental business relating to dentures and bridges.
- 396-cc. Notification of enclosure requirements for swimming pools.
- 396-cc*2. Senior citizen discounts.
- 396-d. Advertisement and description of real property.
- 396-dd. Renting of horses; helmets and safety information.
- 396-e. Marking articles made of linen.
- 396-ee. Sale of certain weapons; locking devices therefor.
- 396-eee. Unlawful sale or delivery of body armor.
- 396-eeee. Three-dimensional printers.
- 396-f. Sale of blind made products.
- 396-g. Sale of products processed by the blind.
- 396-h. Fraudulent sale of poppies, forget-me-nots, daisies, flags and other articles sold for patriotic purposes.
- 396-hh. Sale of poppies, forget-me-nots, daisies, flags and other articles for patriotic purposes.

396-i. Acceptance of unexpired gift certificates.

396-ii. Cashless policies prohibited.

396-j. Sale or possession of master or manipulative keys for motor vehicles.

396-k. Hazardous toys and other articles intended primarily for use by children; prohibition and enforcement.

396-k*2. Sale of certain motor vehicles damaged by the ravages of natural disaster.

396-kk. Sale of video game consoles.

396-l. Shopping carts; child protective devices.

396-m. Mail-order or telephone-order merchandise.

396-mm. Unlawful trial offers.

396-n. Sales with "money back guarantee" and with "limited guarantee".

396-o. Sales by persons offering credits or refunds in certain cases.

396-p. Rates to be posted in taxicabs; certain charges prohibited.

396-p*2. Contracts for the sale of new motor vehicles.

396-q. New motor vehicles; sales and leases.

396-qq. New and used motor vehicles; sales and leases.

396-r. Price gouging.

396-rr. Price gouging; milk.

396-s. Individual sewage disposal system; information to vendees of newly constructed homes.

396-ss. Access number notification.

396-t. Unlawful practices relating to layaway plans.

396-tt. Listing of business location in directory or database.

396-u. Merchandise delivery.

396-v. Operation of public automated blood pressure machines.

396-w. Loitering for the purpose of soliciting passengers for transportation.

396-x. Gasoline stations; air pumps required.

396-x*2. Unauthorized removal or destruction of newspapers.

396-y. Sale of certain personal property; incentives; disclosure of value.

396-z. Rental vehicle protections.

397. Unlawful use of name or other identification of certain non-profit organizations.

397-a. Distributing unsolicited advertising on private property prohibited; certain cities.

397-b. Digital billboards.

398. Bills of lading to be issued by vessels transporting merchandise within the state.

398-a. Shipment of motor vehicles outside the continental United States.

398-b. Discrimination in car rentals prohibited.

398-c. Children attending roller skating rinks and indoor ice skating rinks under certain conditions.

398-d. Disposal of abandoned molds.

398-e. Indemnity provision in motor carrier transportation contracts.

398-f. Children's non-regulated camp.

398-g. Kratom package labeling.

399. Cigarette package labeling.

399-a. Pay toilets; prohibition.

399-aa. Prohibition of the selling of fur, hair, skin or flesh of a dog or cat.

399-aaa. Selling and manufacturing of fur-bearing articles of clothing.

399-aaaa. Menstrual product labeling.

399-aaaaa. Selling of animal tested cosmetics.

399-aaaaaaa. Diaper labeling.

399-b. Contracts for the use of the streets for hack stands.

399-bb. Certain dry cleaning institutions; option for six months donation of articles of clothing.

399-bbb. Solicitations by container; disclosures.

399-c. Mandatory arbitration clauses in certain consumer contracts prohibited.

399-cc. Wireless telephone numbers.

399-cc*2. Transcripts and stenographic services.
399-ccc. Smoke detecting devices.
399-cccc. Wireless telephone services; domestic violence victims.
399-ccccc. Connected vehicle technology; domestic violence victims.
399-d. Children attending public bowling alleys under certain conditions.
399-dd. Sale of alcohol vaporizing devices prohibited.
399-dd*2. Construction or installation of playground or playground equipment.
399-dd*3. Consumer communications records privacy.
399-ddd. Confidentiality of social security account number.
399-ddd*2. Disclosure of social security number.
399-e. Prohibition of the importation, manufacturing, distribution, or sale of yo-yo waterball toys.
399-e*2. Actions.
399-ee. Zone pricing of gasoline prohibited.
399-eee. Disabling of services to stolen wireless phones.
399-eee*2. Car wash promotion disclosure.
399-f. Laundromat refund procedures.
399-ff. Petting zoos.
399-gg. Packaging of electronic liquid.
399-h. Disposal of records containing personal identifying information.
399-i. Prohibit the sale of unsafe cribs and restrict use of such cribs in certain settings.
399-ii. Furniture tip restraint device.
399-ii*2. Prohibit the sale of crib bumper pads and restrict use of such pads in certain settings.
399-j. Safety standards; moveable soccer goals.
399-k. Access to toilet facilities for utility workers.
399-m. Disclosures in advertisement and sale of unassembled goods.
399-n. Approval of electrical devices.
399-nn. Sale of digital electronic equipment; diagnostic and repair information.

399-o.	Selling prices and container deposits.
399-oo.	Deceptive solicitation of vehicle warranty policies.
399-p.	Telemarketing; use of automatic dialing-announcing devices and placement of consumer telephone calls.
399-pp.	Telemarketing and consumer fraud and abuse prevention act.
399-q.	Use of carts, cases, trays, baskets, boxes and other containers.
399-qq.	Sale or promotional distribution of utility knives, box cutters, or box cart cutters.
399-r.	Sale of paint pellet guns.
399-rr.	September eleventh victim compensation fund and World Trade Center health program notification.
399-s.	Posting of notice when air rifles or guns are sold.
399-t.	Sale of certain chlorofluorocarbons and halons prohibited.
399-t*2.	Vending machine disclosure.
399-u.	Motor vehicle alarms.
399-v.	Parking facilities; towing of vehicles, posting of notices.
399-w.	Total loss notice and waiver of the gap amount for non-motor vehicle retail lease agreements.
399-w*2.	Notice requirements for renters of personal property.
399-x.	Towed motor vehicles.
399-xx.	Towing of motor vehicles; credit cards; statewide.
399-y.	Child safety devices for hot water dispensers.
399-y*2.	Automated teller machine fee disclosure.
399-y-1.	Automated teller machines transaction denial; fees prohibited.
399-yy.	Cable television company providing telephone services.
399-yyy.	Satellite television company providing television and/or telephone services.
399-yyyy.	Macrocell renewable energy reporting.

- 399-z. Telemarketing; establishment of no telemarketing sales calls statewide registry; authorization of the transfer of telephone numbers on the no telemarketing sales calls statewide registry to the national "do-not-call" registry.
- 399-z-1. Telecommunication companies blocking certain numbers.
- 399-z-1*2. STIR/SHAKEN authentication framework.
- 399-zz. Telephone bills.
- 399-zzz. Prohibition of certain fee charges.
- 399-zzzz. Prohibition of certain fee charges for termination or early cancellation.
- 399-zzzzz. Broadband service for low-income consumers.
- 399-zzzzz*2. Use of preferred name and pronouns.

§ 390. Substitution of spurious oils for internal combustion engines.

It shall be unlawful for any person, firm or corporation to fill with a spurious or substitute article any order for a lubricating oil for an internal combustion engine, if such oil ordered is designated by a trademark or distinctive trade name, unless and until it is explained to the person giving the order that the article offered is not the article that he has ordered, and the purchaser shall thereupon elect to take the substitute article that is being offered to him. Any person violating this section, and any person, firm or corporation whose servant, agent or other employee violates this section in the course of his employment, shall forfeit to the manufacturer whose product was ordered, or to the proprietor of the trademark or trade name by which the article ordered was designated by the purchaser, as the case may be, one hundred dollars, for each such offense, to be recovered by suit by the person, firm or corporation claiming the penalty, against the person, firm or corporation from whom the penalty is claimed. Nothing in this section shall lessen, impeach, or avoid any remedy at law or in equity which the party aggrieved might have had if this section had not been enacted, and nothing herein contained shall prevent or avoid or defeat any prosecution under any of the existing penal, trademark or other statutes of this state.

§ 390-a. Optical discs; requirements. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "Optical disc" is a disc capable of being read by a laser or other light source on which data is stored in digital form. An optical disc shall include, but not be limited to, discs known as compact discs (CDs), recordable compact discs (CD-R's), and digital video discs (DVDs), or related mastering source materials heretofore or hereafter developed.

(b) "Manufacturer" shall mean a person who replicates the physical optical disc or produces the master used in any optical disc replication process. A manufacturer shall not include a person who manufactures optical discs for internal use, testing, or review, or a person who manufactures blank optical discs.

(c) "Commercial purposes" shall mean the production of at least ten of the same or different optical discs in a one hundred eighty day period, by storing information on the disc, and for the purpose of resale, whether by that person or by another.

(d) "Identification mark" shall mean the actual name of the manufacturer and the state in which the optical disc was manufactured, or alternatively a unique identifier that will allow law enforcement to determine the place at which an optical disc was manufactured.

(e) "Person" shall include an individual, partnership, limited liability company, corporation, association, or any officer, employee or agent thereof.

2. Every person who manufactures an optical disc for commercial purposes shall permanently mark each manufactured optical disc with an identification mark. The identification mark shall be affixed by molding, diestamping, etching, or other permanent method in a manner which is clearly visible without the aid of magnification or special devices.

3. No person shall knowingly remove, deface, cover, alter, or destroy the identification mark required by this section.

4. (a) No person shall, for the purpose of sale or rental, buy, sell, receive, transfer, or possess an optical disc knowing the identification mark of the manufacturer has been removed, defaced, covered, altered or destroyed.

(b) No person shall, for the purpose of sale or rental, buy, sell, receive, transfer or possess an optical disc knowing it was manufactured in New York without the identification mark required by this section, or knowing that it was manufactured in New York with a false identification mark.

5. (a) Any violation of subdivision two of this section shall be punishable as a class B misdemeanor. A second or subsequent violation of such subdivision shall be punishable as a class A misdemeanor.

(b) Any violation of subdivision three or four of this section shall be punishable as a class A misdemeanor.

§ 390-b. Anti-phishing act of 2006. 1. This section shall be known as and may be cited as the "anti-phishing act of 2006".

2. For purposes of this section, the following terms shall have the following meanings:

(a) The term "electronic message" means a message sent or posted to a unique destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an internet domain (commonly referred to as the "domain part"), whether or not displayed, to which an electronic message can be sent, delivered or posted.

(b) The term "identifying information" means an individual's (1) social security number; (2) driver's license number; (3) bank account number; (4) credit or debit card number; (5) personal identification number (PIN); (6) automated or electronic signature; (7) unique biometric data; (8) account passwords; or (9) any other piece of information that can be used to access an individual's financial accounts or to obtain goods or services.

(c) The term "internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating

software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(d) The term "web page" means a location, with respect to the world wide web, that has a single uniform resource locator or other single location with respect to the internet.

3. It is unlawful for any person, by means of a web page, electronic message, or other use of the internet to solicit, request or collect identifying information by deceptively representing himself or herself, either directly or by implication, to be a business or a governmental entity and doing so without the authority or approval of such business or such governmental entity.

4. (a) The attorney general, or any person who either is engaged in the business of providing internet access service to the public or owns a web page or trademark and who is adversely affected by reason of a violation of the provisions of subdivision three of this section, may bring an action against a person who violates the provisions of subdivision three of this section:

(1) to enjoin further violation of the provisions of subdivision three of this section; and

(2) to recover the greater of:

(A) actual damages; or

(B) one thousand dollars for each instance in which identifying information is solicited, requested or collected from a person in violation of the provisions of subdivision three of this section.

(b) In an action under paragraph (a) of this subdivision, a court may:

(1) increase the damages up to three times the damages allowed by paragraph (a) of this subdivision where the defendant has been found to have engaged in a pattern and practice of violating the provisions of subdivision three of this section; and

(2) award costs and reasonable attorney's fees to a prevailing party.

5. Nothing in this section shall in any way limit rights or remedies which are otherwise available under law to the attorney general or any

other person authorized to bring an action under subdivision four of this section.

§ 390-bb. Cramming prohibited. 1. For the purposes of this section, "cramming" means the inclusion and imposition of charges on the invoice or bill for telephone service to a customer from a cable television company, as defined in section two hundred twelve of the public service law, that provides telephone service to customers in New York, at the request of a third party or billing aggregator that (a) were not authorized by the customer, or (b) if authorized, were obtained through misleading or deceptive means.

2. A customer shall not be liable for charges appearing on the invoice or bill of a cable television company for telephone service that are the result of cramming. No charges for any products or services, other than those provided by the cable television company, its affiliates, a third party video provider with whom a cable television company or its affiliate jointly market services, or otherwise permitted by law, shall be included on any bill or invoice for telephone service, unless the third party requesting the payment of such charges retains and provides upon request valid proof that:

(a) the customer was provided with clear and conspicuous disclosure of all material terms and conditions of the product or service being offered, including but not limited to all initial and recurring charges and the fact that such charges shall appear on the customer's telephone service bill;

(b) after receiving clear and conspicuous disclosure as provided in paragraph (a) of this subdivision, the customer explicitly consented to the nature and amount of such charges; and

(c) the third party offering the product or service or an agent of such third party provided the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute.

3. Any charges for third party products or services that are included on a bill or invoice for telephone service by a cable television company

without the consent of the customer having been obtained as provided in subdivision two of this section shall be void and unenforceable, and shall be removed from the bill or invoice upon notice from such customer.

*** § 390-c. Prohibit persons under eighteen years of age in certain facilities.** 1. No person under the age of eighteen years shall be admitted to any portion of a facility open to the public wherein performers appear and dance or otherwise perform unclothed, under circumstances where viewing such dancing or performance would be harmful to such person, in the manner described in subdivision six of section 235.20 of the penal law.

2. Any operator of a facility described in subdivision one of this section who knowingly violates the provisions of such subdivision shall be subject to a civil penalty of up to five hundred dollars.

* NB There are 2 § 390-c's

*** § 390-c. Posting of warnings by commercial entities offering internet access to the public.** 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Commercial entity" shall mean any entity doing business in New York state that: (i) for profit, offers goods or services for sale; (ii) stores personal information electronically; (iii) owns or operates a wireless network, or local area network; and (iv) offers public internet access whether for a fee or free of charge.

(b) "Local area network" shall mean a data communications system which interconnects computer systems at various local sites via access line or wire.

(c) "Firewall" shall mean a hardware device, software program or a combination of the two that protects a computer network from unauthorized access.

(d) "Public internet access" shall mean the ability of a person to log onto the internet at a location other than that person's home, through the use of a computer either owned by such person or provided to them by

another person or commercial entity, for the purpose of accessing the internet.

(e) "Wireless network" shall mean a data communications system which interconnects computer systems at various local sites via radio signal.

2. Any commercial entity that offers the public the ability to use their computer for internet access shall conspicuously post a warning sign in their establishment and/or on the wireless network at a point in time prior to enabling the public to log on or gain access to the network. Such warning sign shall state that "For the purposes of your own protection and privacy, you are advised to install a firewall or other computer security measures when accessing the internet". Such sign shall include the internet address of the website created under subdivision three of this section.

3. The department of state shall establish an internet security website or webpage, that includes, but is not limited to, an explanation of what a firewall is and the importance of other internet security measures.

4. Any commercial entity that violates this section shall be subject to a civil penalty of not more than one hundred dollars for the first violation, not more than two hundred fifty dollars for the second violation, and not more than five hundred dollars for each violation thereafter. The provisions of subdivision two of this section may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

* NB There are 2 § 390-c's

§ 390-d. Information concerning services for human trafficking victims in facilities at truck stops. 1. The operator of any truck stop shall make available in plain view and in a conspicuous place and manner in all sanitary facilities available for public use and in any lactation

rooms, informational cards and/or signs developed by:

- (a) the office of temporary and disability assistance in consultation with the New York state interagency task force on human trafficking; or
- (b) the United States Department of Homeland Security.

2. All informational cards and signs shall only contain information concerning services for human trafficking victims and shall prominently include the national human trafficking hotline telephone number.

3. For purposes of this section, the following terms shall have the following meanings:

(a) "Truck stop" shall mean a facility that has the capacity to provide fuel or service, or both, to any commercial motor vehicle as defined by subdivision four of section five hundred one-a of the vehicle and traffic law operating in commerce which is located within twenty-five hundred feet of a controlled-access highway as defined by section one hundred nine of the vehicle and traffic law which has been functionally classified by the department of transportation as principal arterial - interstate or principal arterial - other freeway/expressway on official functional classification maps approved by the federal highway administration pursuant to part 470.105 of title 23 of the code of federal regulations, as amended from time to time.

(b) "Lactation room" shall mean a hygienic place, other than a restroom, that is: (i) is shielded from view; (ii) is free from intrusion; (iii) contains a chair, a working surface, and, if the building is otherwise supplied with electricity, an electrical outlet; and (iv) intended to be used for the primary purpose of breastfeeding or expressing breast milk.

*** § 390-e. Unauthorized installation of certain security devices prohibited.** No person, firm, partnership, association or corporation shall install any keyless security device used to control and secure access to the common areas of any residential building without the express written consent of the owner, board of managers, board of directors, or authorized party of such property. Where a keyless security device has been authorized, any installation of such device

shall be performed by, or with the consent of, the owner, property manager, board of managers, board of directors, or authorized party in place in such building. The owner, board of managers, board of directors, or authorized party of such property consenting to the installation of a keyless security device shall provide written notice to occupants of the residential building no less than thirty days prior to installation of the keyless security device, which may be made by delivering a notice to each unit, either via physical or electronic means, or by posting the notice in a conspicuous location in each common area accessible to residents for a thirty-day period. Where notice is prescribed by the certificate of incorporation or the by-laws of a cooperative or condominium, the owner, board of managers, board of directors or other authorized party may instead comply with the certificate of incorporation or by-laws. In no event shall the installation of such a system be considered a service nor be considered a reason, for any purpose, to increase rent. In no event shall the installation of such a system obstruct or adversely impact the manner in which residents of the residential building access such building.

* NB There are 2 § 390-e's

*** § 390-e. Skimming awareness notice.** 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "electronic benefit transfer card" means any medical assistance card, payment access card pursuant to subdivision nine of section one hundred thirty-one of the social services law, or any other identification, authorization card or electronic access device issued by the state or a social services district as defined in subdivision seven of section two of the social services law by which a person may access their medical assistance, supplemental nutrition assistance program, or public assistance benefits under a local, state or federal program administered by the state, its political subdivisions or social services districts; and

(b) "skimming" shall be defined as obtaining a consumer's personal identifying information as defined in subdivision one of section 190.77 of the penal law through the use of a skimmer device as defined in subdivision two of section 190.85 of the penal law.

2. Notwithstanding any other law to the contrary, every person, firm, partnership, association or corporation who is engaged in a sales transaction and accepts electronic benefit transfer cards shall place a sign at the point of sale containing a notice regarding skimming. Such sign shall include: (a) a link to a web page maintained by the office of temporary and disability assistance with information for victims of electronic benefit transfer scams, including, but not limited to, skimming; (b) steps customers can take to protect themselves from skimming; (c) an appropriate contact number as determined by the office of temporary and disability assistance to report that an electronic benefit transfer card was compromised and to disable and request a new electronic benefit transfer card; and (d) a request to notify law enforcement if a skimmer device appears to be in use. The office of temporary and disability assistance shall make available on its website a model sign as required by subdivision six of section one hundred fifty-two-d of the social services law that such establishments may use to comply with the provisions of this section.

3. (a) Any person, firm, partnership, association or corporation who fails to comply with the requirements of this section shall be assessed a civil penalty not to exceed two hundred fifty dollars per point of sale which lacks the notice required pursuant to subdivision two of this section for the second and each separate subsequent offense.

(b) If the notice required pursuant to subdivision two of this section has been provided and such notice is subsequently removed, damaged, or altered by any person other than the person or entities required to provide such notice, such person or entities shall have no liability for a failure to comply with subdivision two of this section as long as such notice is replaced within ten business days from such person or entities becoming aware of the defect.

* NB There are 2 § 390-e's

§ 391. Marking retreaded, recapped or recut tires. No person, firm, association or corporation shall sell, offer or expose for sale, or have in his possession with intent to sell any motor vehicle tire or motor

cycle tire which has been retreaded or recapped unless the fact that such tire has been retreaded or recapped and the name and address of the person, firm, association or corporation which has done the retreading or recapping is plainly shown by a mark or label in the English language on both side walls thereof. No person, firm, association or corporation shall sell, offer or expose for sale, or have in his possession with intent to sell, any motor vehicle tire or motor cycle tire which has been recut or regrooved. Except that there shall be no prohibition against the sale of regrooved or recut commercial vehicle tires which are designed and constructed in such a manner that regrooving or recutting is an acceptable and safe practice. A violation of this section shall constitute a misdemeanor.

§ 391-a. Unlawful acts relating to liquid fuels, lubricating oils and similar products. Inasmuch as it is customary for manufacturers and distributors of liquid fuels, lubricating oils, and similar products, to market the same under designated and generally known trade names, and, by means of containers, tanks, pumps, and other distributing facilities, bearing the name, trade name, symbol, sign, or other distinguishing marks, of identification, of such manufacturer or distributor; and inasmuch as it is customary for such manufacturers and distributors to furnish or loan, on nominal lease, to the dealers and others, tanks, pumps, and other distributing equipment, for the safe and convenient storage and sale of such products, and for the identification of the products sold therefrom; and inasmuch as this method of marking liquid fuels, lubricating oils, and like products, affords protection to the purchaser against sale of adulterated or inferior products; therefore, any person who:

1. Shall store, sell, expose for sale, or offer for sale, any liquid fuels, lubricating oils, or other similar products, in any manner whatsoever, so as to deceive or tend to deceive the purchaser as to the nature, quality, and identity, of the product so sold or offered for sale; or

2. Shall store, keep, expose for sale, offer for sale, or sell, from

any tank or container, or from any pump, or other distributing device or equipment, any other liquid fuels, lubricating oils, or other similar products, than those indicated by the name, trade name, symbol, sign, or other distinguishing mark, or device, of the manufacturer or distributor, appearing upon the tank, container pump, or other distributing equipment, from which the same are sold, offered for sale, or distributed; or

3. Shall disguise or camouflage his or their own equipment, by imitating the design, symbol, trade name, of the equipment, under which recognized brands of liquid fuels, lubricating oils, and similar products, are generally marketed; or

4. Shall expose for sale, offer for sale, or sell, under any name in general use, any liquid fuels, lubricating oils, or other like products, except those manufactured or distributed by the manufacturer or distributor marketing liquid fuels, lubricating oils, or other like products, under such trade name, or shall substitute, mix, or adulterate, the liquid fuels, lubricating oils, or other similar products, sold, offered for sale, or distributed, under such trade names; or

5. Shall expose for sale, offer for sale, sell or store, in any manner so as to deceive or tend to deceive the purchaser as to the nature, origin, quality, grade or identity of the product so sold or offered for sale or shall sell, expose for sale, offer for sale, sell or store, in any manner so as to deceive or tend to deceive the purchaser of any lubricating oil, lubricants, mixtures of lubricants, any part of which had been once used for lubrication purposes and subsequently reclaimed, refined, rerefined or reconditioned without clearly indicating or setting forth such fact by means of the words "rerefined oil" on the container pump or other distributing device used, provided, however, that the provisions of this subdivision shall not apply to sales of any rerefined lubricating oils, lubricants or mixtures of lubricants which conform to performance standards as specified in the American Petroleum Institute's engine service classifications; or

6. Shall aid or assist any other person, association, or corporation, in the violation of the provisions of this section, by depositing or delivering into any tank, receptacle, or other container, any other liquid fuels, lubricating oils, or like products, than those intended to be stored therein and distributed therefrom, as indicated by the name of the manufacturer or distributor or the trade name of the product displayed on the container itself, or on the pump, or other distributing device used in connection therewith, is guilty of a misdemeanor.

The provisions of this section shall not apply to any person acting pursuant to a directive or in accordance with an order issued by the governor to avert or alleviate shortages or disruptions of supplies of liquid fuels, lubricating oils or similar products. Any such directive or order may impose disclosure requirements deemed by the governor to be in the public interest.

§ 391-b. Prohibit any sale of dangerous clothing articles. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "drawstring" shall mean a non-retractable cord, string, ribbon, bungee, or tape of any material inserted into a channel of the garment to pull together parts of an article of clothing for the purpose of controlling closure or fullness;

(b) "tie" shall mean a cord, string, ribbon, bungee, or tape of any material used for fastening or uniting or decoration and not capable of controlling fullness;

(c) "hood" shall mean a loose, pliable covering for the head, either detachable from or permanently attached to the upper garment;

(d) "neck opening" shall mean the opening defined by the seam between the body of the upper garment and the collar or hood;

(e) "toggle" shall mean the wooden, plastic, metal, or otherwise composed piece attached to the loose end of the drawstring for decorative purposes or to prevent the drawstring's being drawn through its channel;

(f) "aglet" shall mean any tube-shaped material used to bind the end of a drawstring to prevent fraying.

2. No person, firm, partnership, association or corporation shall sell any clothing from children's size two-T up to children's size sixteen, inclusive, that includes a drawstring at the bottom opening of an upper garment or a drawstring at the waist unless the end of the drawstring at the bottom opening of an upper garment or the drawstring at the waist measures no more than three inches from where the string extends out of the garment, when such garment is expanded to its fullest width and the drawstring is attached to the garment at its midpoint. Drawstrings shall not have toggles, knots, or any attachments at the free ends. For the purposes of this subdivision, a tie shall not be construed as a drawstring, nor shall an aglet be construed as a toggle.

3. No person, firm, partnership, association or corporation shall sell any clothing for children up to and including children's size twelve that includes a hood drawstring or a neck opening drawstring. For the purposes of this subdivision, a tie shall not be construed as a drawstring.

4. Nothing in this section shall be construed to supersede any provision of section three hundred ninety-six-k of this article, as added by chapter seven hundred fifty-four of the laws of nineteen hundred seventy-three.

5. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York, to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules,

and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 391-c. Sale of bicycles. 1. No bicycle manufactured or assembled on or after January first, nineteen hundred seventy-four, and designated as a new model shall be sold in this state unless such bicycle is manufactured and assembled in compliance with rules and regulations promulgated by the commissioner pursuant to subdivision d of section twelve hundred thirty-six of the vehicle and traffic law.

1-a. (a) No bicycle manufactured or assembled on or after January first, nineteen hundred eighty-nine shall be sold or offered for sale in this state unless it has an identifying serial number that distinguishes that bicycle from all other bicycles of that same make and model permanently and visibly engraved or stamped in readily legible boldfaced figures at least one-eighth inches in height on the top surface of the top crossbar or of the uppermost cross support of the bicycle frame or on the head tube or on the toeplate not obstructed by the derailleur or gear wheels or on the crank hanger; or, on a label, shield or plate permanently affixed in any of the foregoing locations in such a manner that the serial number will be readily visible and that such label, plate or shield cannot be removed without being defaced or destroyed.

(b) Any person, corporation, association or partnership who assembles, distributes or manufactures such a bicycle on or after January first, nineteen hundred eighty-nine or who is regularly engaged in the business of selling bicycles or bicycle accessories at retail and who offers such bicycle for sale in the normal course of business in this state in violation of this subdivision shall be subject to a civil penalty not to exceed two hundred fifty dollars. In addition to any other penalty as provided by law, any person who intentionally alters, conceals, defaces, destroys, or removes such serial number with the intent to deprive the rightful owner of lawful possession shall be guilty of a violation,

punishable by a fine not to exceed two hundred fifty dollars.

(c) No person regularly engaged in the business of manufacture, distribution, or retail sale of bicycles shall be deemed to have violated the provisions of this subdivision, if such person shows by a preponderance of evidence that the violation was not intentional and resulted from bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

2. No bicycle manufactured and assembled prior to January first, nineteen hundred seventy-four, shall be sold in this state on or after January first, nineteen hundred seventy-five, by a person regularly engaged in the business of selling bicycles at retail unless such bicycle is in compliance with the rules and regulations promulgated by the commissioner pursuant to the provisions of subdivision d of section twelve hundred thirty-six of the vehicle and traffic law.

3. The provisions of subdivisions one and two of this section shall not apply to the sale of a bicycle by a person not regularly engaged in the business of selling bicycles at retail.

4. No person regularly engaged in the business of selling bicycles or bicycle accessories at retail shall sell any reflective device for use on a bicycle if such device does not comply with rules and regulations promulgated by the commissioner of motor vehicles pursuant to section twelve hundred thirty-six of the vehicle and traffic law. A reflective device shall include a tire, if reflectorization of tires is required by such rules and regulations.

5. A knowing violation of this section shall be punishable by a fine not to exceed two hundred and fifty dollars.

§ 391-cc. Sale of bicycles with electric assist and micromobility devices. 1. As used in this section, "micromobility device" shall mean an electric scooter as defined in section one hundred fourteen-e of the vehicle and traffic law, an electrical personal assistive mobility device as defined in section one hundred fourteen-d of the vehicle and

traffic law, or other personal mobility device that has an electric motor. The term micromobility device shall not include bicycles with electric assist as defined by section one hundred two-c of the vehicle and traffic law, limited use motorcycles as defined in section one hundred twenty-one-b of the vehicle and traffic law, wheelchairs or other electrically driven mobility assistance devices as defined in section one hundred thirty-a of the vehicle and traffic law, or any vehicle that is capable of being registered with the department of motor vehicles.

2. No person, firm, partnership, association, or corporation shall sell or offer for sale at retail any bicycle with electric assist as defined by section one hundred two-c of the vehicle and traffic law or micromobility device to any person, firm, partnership, association, or corporation, without supplying a notice to be affixed to such bicycle with electric assist or micromobility device by the person, firm, partnership, association, or corporation. Such notice shall have an adhesive backing, be made from common materials used to affix other comparable notices or stickers to vehicles and be printed in English and the two most common non-English languages spoken in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau. Such notice shall read:

"NOTICE: Always yield to pedestrians and follow traffic laws. Riding on the sidewalk may be illegal; consult local laws."

3. The department of state, in consultation with appropriate state agencies, shall promulgate rules and regulations necessary to implement the provisions of this section.

4. Violation of this section by the retail entity pursuant to subdivision two of this section shall be punishable by a fine of not more than two hundred fifty dollars per stocking unit for the first offense and not more than one thousand dollars per stocking unit for each subsequent offense.

5. This section shall not annul, alter, affect, or exempt any person, firm, partnership, corporation, or association, subject to the

provisions of this section from complying with the laws, ordinances, rules, or regulations of any locality, relating to the affixing, labeling, or provision of identification, safety, informational, or other materials.

§ 391-d. Sale of matchbooks. All one piece matchbooks sold or distributed within the state must have the striking area on the side other than the side which the matchbook opens. Any person in the ordinary course of their business who violates the provisions of this act shall be subject to a fine of not more than two hundred and fifty dollars.

§ 391-e. Promotion of camps by certain organizations. 1. Any person, firm or corporation engaged in the business for profit of promoting overnight camps for children, as that term is defined in section thirteen hundred ninety-two of the public health law, summer day camps, as that term is defined in section thirteen hundred ninety-two of such law, or traveling summer day camps, as that term is defined in section thirteen hundred ninety-two of such law shall in any publication, circular or advertisement making such promotion disclose the fact that such person, firm or corporation has or reasonably expects to receive monetary compensation for such promotion.

2. If any promotion as specified in subdivision one hereof represents that any of such camps meet standards established therefor, then a copy of the standards of inspection and the inspection report, must be supplied by the promoter upon request.

§ 391-f. Promotion of private schools by certain organizations. 1. Any person, firm or corporation engaged in the business, for profit, of promoting either private schools, as that term is defined in subdivision one of section fifty hundred one of the education law or private business schools as that term is defined in subdivision one of section fifty hundred two of such law shall, in any publication, circular or

advertisement making such promotion disclose the fact that such person, firm or corporation has or reasonably expects to receive monetary compensation for such promotion.

2. If any promotion as specified in subdivision one hereof represents that any of such schools meet standards established therefor, then a copy of the standards of inspection and of the inspection report must be supplied by the promoter upon request.

§ 391-g. Rental of motor vehicles; discrimination on the basis of age prohibited. 1. It shall be unlawful for any person, firm, partnership, association or corporation engaged in the business of renting motor vehicles to refuse to rent such vehicle to any person eighteen years of age or older solely on the basis of age provided that insurance coverage for persons of such age is available. Any actual extra cost for insurance related to the age of the person renting such motor vehicle may be passed on to such person.

2. A knowing violation of this section shall be punishable by a fine not to exceed five hundred dollars.

§ 391-h. Lubricating oils; container; notice required. It shall be unlawful for any person, firm or corporation to sell or expose for sale at wholesale or retail any lubricating oil, as defined by subdivision four of section 23-2301 of the environmental conservation law, packaged in containers intended for sale at retail unless such container shall have imprinted thereon a notice in like or similar terms to the following:

"Notice

Used oil contains contaminants that are hazardous to the environment. In states where law prohibits the improper disposal of used lubricating oil, in order to assure proper disposal, please deposit used oil in the nearest available used oil retention facility".

A knowing violation of this section shall be punishable by a fine not

to exceed five hundred dollars.

§ 391-i. Sale of urea-formaldehyde foam insulation; notice. 1. As used in this section, the term "urea-formaldehyde foam insulation" shall mean urea-formaldehyde based, foamed-in-place insulation.

2. Any person, firm or corporation which sells or installs urea-formaldehyde foam insulation shall give written notice to the purchaser of such insulation or the owner of the building wherein such insulation is installed, stating as follows:

"This insulation is urea-formaldehyde based and may emit formaldehyde. After installation of this product, some people have experienced adverse physical effects from formaldehyde emissions, including unpleasant odor, watery eyes, and nose and throat irritations. These conditions may be alleviated by introducing fresh air into the building. Exposure to urea-formaldehyde foam insulation is not recommended for persons who have been previously sensitized to formaldehyde, or who have a history of respiratory problems. Urea-formaldehyde foam insulation is not recommended for use in attics, below grade or wall cavities deeper than six inches. Urea-formaldehyde foam is not recommended unless the outside vertical walls have an air source.

YOU MAY CANCEL THIS SALE WITHIN THREE DAYS

To cancel the sale, you must notify the company in writing anytime before midnight of the third business day after the contract date. No explanation is necessary for cancellation."

3. Such notice shall be printed or written in a size equal to at least ten point type and be placed at the beginning of any sales contract.

4. Violation of this section shall be punishable by a civil penalty of not more than two hundred fifty dollars for the first offense and not more than one thousand dollars for each subsequent offense.

§ 391-j. Sale of fire extinguishers. 1. It shall be unlawful for any person, firm or corporation to sell or offer for sale fire extinguishers

unless the fire extinguishers offered for sale:

a. Meet the current National Fire Protection Association standards for fire extinguishers of the model offered for sale and are labelled as having met such standards;

b. Have been tested and approved by the Underwriters Laboratory, Factory Mutual or other nationally accredited or accepted testing laboratory and are labelled as having been tested and approved;

c. Have labelling securely affixed containing the following information:

(1) Operating instructions.

(2) The class or rating identifying kinds of fires which the particular extinguisher is suitable to use. This information shall be presented by use of the appropriate letter rating and pictorial marking representations.

d. Are accompanied with an instructional manual that has information detailing operational use, basic fire safety information, information on how and where to have the extinguisher serviced or recharged by an authorized dealer or refer the customer to his local fire department and any information pertaining to checking the extinguisher's contents for operational use by the owner.

2. A knowing violation of this section shall be punishable by a civil penalty not to exceed five hundred dollars for a first violation and ten thousand dollars for each succeeding violation.

§ 391-jj. Sale of electric space heaters. No person, firm, partnership, association or corporation regularly engaged in the business of assembling, manufacturing, distributing or the retail sale of electric space heaters shall assemble, manufacture, distribute, sell or offer to sell any electric space heater in the normal course of business in this state unless such electric space heater:

1. includes a thermostat;
2. includes an automatic shut-off; and
3. has been certified by a testing and certification body recognized and approved by the United States department of labor, occupational safety and health administration.

§ 391-k. Automatic garage door opening systems. 1. As used in this section, unless the context requires otherwise:

(a) "Automatic garage door opening system" means a system of devices and equipment that when connected to a garage door automatically opens and closes a garage door. This term does not include the garage door, garage door springs, tracks, or other hardware associated with the garage door.

(b) "Garage" means a building or a portion of a building designed or used for the storage or repair of a motor vehicle or other items.

(c) "Residential building" means a private dwelling or a multiple dwelling as defined in section four of the multiple dwelling law and section four of the multiple residence law that includes an attached or unattached garage.

2. (a) No person shall manufacture, sell, offer for sale, at retail or wholesale, or install in this state an automatic garage door opening system for a residential building that does not have an automatic reverse safety device which complies with the applicable requirements set forth in the American National Standards Underwriters Laboratories, Inc., Standards for Safety-ANSI/UL 325-30.1 and 325-30.2, Third Edition, as revised May 4, 1988.

(b) No person shall service or repair an automatic garage door opening system in this state that does not comply with paragraph (a) of this subdivision unless such service brings such system into compliance with paragraph (a) of this subdivision after the repair or service. Notwithstanding the foregoing the person servicing or repairing the garage door, the garage door springs, tracks, or other hardware associated with the door shall determine whether or not the automatic

garage door opening system complies with the entrapment protection requirements in the American National Standards Underwriters Laboratories, Inc., Standards for Safety-ANSI/UL 325-30.1 and 325-30.2, as revised May fourth, nineteen hundred eighty-eight by conducting an on-site test of the system. If the automatic garage door opening system does not pass the required on-site test, the person conducting the test shall complete and conspicuously affix to the automatic garage door opening system, a warning label that shall contain all but may not be limited to the information set forth below. The following complies with this requirement, but the person conducting the on-site test is permitted to develop his own warning label containing the required information:

DANGER

This automatic garage door opening system was tested and does not meet the requirements for a working safety reverse feature. This is dangerous and may cause serious injury or death. You are hereby advised to disconnect the opener from the door immediately and operate the door manually until the automatic garage door opening system has been replaced or repaired with one that meets current safety standards as provided in New York state law, paragraph (a) of subdivision two of section 391-k of the general business law.

MODEL

Name of tester

Manufacturer

Firm Name

Serial Number

Firm Address/Phone Number

Date

The firm of the agent or the person who affixed the label shall provide written notification within ten days of the on-site test to the owner or person responsible for the maintenance of the residence that the automatic garage door opening system did not comply with paragraph (a) of this subdivision.

3. (a) In addition to the requirements of subdivision two of this

section, on and after January first, nineteen hundred ninety-three, no person shall manufacture, sell or offer for sale at retail or wholesale, or install in this state an automatic garage door opening system for a residential building unless such system is equipped with a tactile garage door edge sensor, an optical sensor, or a similar entrapment protection device that when activated is designed to cause a closing door to open and prevent an open door from closing. This device shall be designed and built so that a failure of the device prevents the door from closing.

(b) On and after January first, nineteen hundred ninety-three, a person servicing or repairing an automatic garage door opening system in this state that does not comply with paragraph (a) of this subdivision shall provide written notification within ten days to the owner or person responsible for the maintenance of the residence that the automatic garage door opening system does not meet the requirements for entrapment protection that New York state law provides, that this is dangerous and may cause serious injury and death, and that the automatic garage door opening system should be equipped with an additional entrapment protection device as described in paragraph (a) of this subdivision.

4. Any manufacturer selling or offering for sale at retail or wholesale an automatic garage door opening system for residential buildings shall comply with federal labeling requirements contained in section 203 of Public Law 101-608, as amended.

5. Any manufacturer selling or offering for sale automatic garage door opening systems at retail or wholesale in this state shall include with each system installation, operation, maintenance instructions and warning decals with operational testing safety device instructions. Any person installing, servicing or repairing an automatic garage door opening system shall comply with those instructions.

6. (a) Any person injured by a violation of this section may bring an action for the recovery of damages. Judgment may be entered in favor of such person in an amount not to exceed three times the actual damages or one hundred dollars, whichever is greater. The court may award

reasonable attorney's fees to a prevailing plaintiff.

(b) In addition to the other remedies provided, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuation of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules and direct restitution. Whenever the court or justice shall determine that a violation of paragraph (a) of subdivision two, paragraph (a) of subdivision three, subdivision four or subdivision five of this section has occurred, the court or justice may impose a civil fine of not more than one thousand dollars per violation. Whenever the court or justice shall determine that a violation of paragraph (b) of subdivision two or paragraph (b) of subdivision three of this section has occurred, the court or justice may impose a civil fine of not more than five hundred dollars per violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

7. Residential applications of automatic garage door opening systems manufactured for commercial purposes shall comply with this chapter, except that the entrapment protection standards shall be the American National Standards Underwriters Laboratories, Inc., Standard for Safety-ANSI/UL 325-29 in lieu of the American National Standards Underwriters Laboratories, Inc., Standard for Safety-ANSI/UL 325-30.1 and 325-30.2. Notwithstanding the foregoing, on and after January first, nineteen hundred ninety-three, all commercial or residential automatic garage door opening systems installed for use in any residence shall comply with the Underwriters Laboratories, Inc., Standard for

Safety-ANSI/UL 325-30.1 and 325-30.2 and paragraph (a) of subdivision three of this section or any other similar entrapment provisions.

*** § 391-1. Personal emergency response service agreements; required cancellation provisions.** 1. As used in this section, the term "personal emergency response service" shall mean (a) the provision and maintenance of electronic communication equipment in the home of an individual which signals a monitoring agency for help when activated by the individual, or after a period of time if a timer mechanism has not been reset; (b) the continuous monitoring of such signals by a trained operator and, in case of receipt of such signal, the immediate notification of such emergency response organizations or persons, if necessary, as the individual has previously specified.

2. (a) In addition to any right otherwise to revoke an offer, the purchaser or other person obligated for any part of the purchase price or price for service for obtaining a personal emergency response service may cancel the sale or purchase thereof with or without cause at any time until midnight of the seventh business day after the day on which the purchaser has signed an agreement or offer to purchase relating to such sale or purchase, without any penalty or obligation.

(b) In addition to the cancellation right created by paragraph (a) of this subdivision, the agreement providing for obtaining such service may be cancelled by the purchaser or other person obligated for any part of the purchase price or price for such service, upon thirty days prior written notice to the seller or supplier of such service, that the purchaser of such service has legally obligated himself or herself to commence residence in a nursing home or other health-related facility within such thirty-day period for what is expected to be a permanent stay or an extended stay of at least two months duration, or that residence therein with such expectation has already commenced.

3. (a) Cancellation under the terms of paragraph (a) of subdivision two of this section occurs when written notice of cancellation is given to the seller or provider of such service. Cancellation under the terms of such paragraph (a) shall be governed by the requirements of the

"door-to-door sales protection act" contained in article ten-A of the personal property law, whether or not such sale is a "door-to-door sale" as defined therein, except where such requirements are inconsistent with the provisions of this section, in which case the provisions of this section shall prevail, and except that the transactional exclusions from the definition of "door-to-door sale" contained in paragraphs (a) through (f) of subdivision one of section four hundred twenty-six of the personal property law shall not apply to the sale or purchase of a personal emergency response service as defined herein.

(b) Cancellation under the terms of paragraph (b) of subdivision two of this section occurs upon the thirtieth day after written notice of cancellation is given to the seller or provider of such service. Upon the occurrence of cancellation under such paragraph (b), the purchaser or other person obligated for the purchaser shall remain obligated under such agreement to pay for the use of such service only for the period of time during which the service was provided prior to the occurrence of cancellation thereunder. For this purpose, under such paragraph (b) the price agreed to for the entire term of such agreement shall be prorated by multiplying such price by a fraction, the numerator of which is the period of time during which such service was provided prior to the occurrence of cancellation, and the denominator of which is the entire term of such agreement. Any overpayment made in advance for the provision of such service, the amount of which is determined by such proration shall be refunded to the purchaser or other person obligated for the purchaser, as the case may be, within ten business days from the date of the occurrence of cancellation under such paragraph (b). Such cancellation shall be without penalty to or other obligation on the part of, the purchaser or other person obligated for the purchaser.

(c) Written notice of cancellation, if given by first-class mail, shall be deemed given when deposited in a mailbox properly addressed and adequate postage prepaid. Such written notice under the terms of paragraph (a) of subdivision two of this section shall be effective irrespective of the form of such written notice if it indicates the intention of the purchaser or other person obligated not to be bound. Written notice of cancellation under the terms of paragraph (b) of subdivision two of this section, to be effective irrespective of the form of such written notice shall, in addition to indicating an

intention not to be bound, state the date of expected commencement or commencement of residence in such nursing home or other health-related facility, the expected duration of such residence, and the name and address of such home or facility, and include with such notice a signed note from such person's physician or from the home or facility, or a copy of such person's agreement with such home or other facility, verifying that the terms of such paragraph (b) for cancellation have been satisfied.

4. In a sale or purchase of a personal emergency response service, the seller shall furnish to the purchaser:

(a) a fully completed receipt or copy of any agreement pertaining to such sale at the time of its execution, which is in the same language, e.g. Spanish, as that principally used in any oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the purchaser or on the front page of the receipt if an agreement is not used and in not less than ten-point boldface type, statements in substantially the following form:

"I. YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION WITH OR WITHOUT CAUSE AT ANY TIME PRIOR TO MIDNIGHT OF THE SEVENTH BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION."

"II. ON AND AFTER MIDNIGHT OF SUCH SEVENTH DAY, YOU, THE PURCHASER, MAY CANCEL YOUR AGREEMENT WITH THE SELLER FOR YOU TO RECEIVE PERSONAL EMERGENCY RESPONSE SERVICE MORE THAN 30 DAYS AFTER YOUR NOTIFYING THE SELLER IN WRITING OF YOUR CANCELLING SUCH AGREEMENT, PROVIDED THAT YOU HAVE LEGALLY OBLIGATED YOURSELF TO BEGIN LIVING IN A NURSING HOME OR OTHER HEALTH-RELATED FACILITY WITHIN SUCH 30-DAY PERIOD FOR WHAT IS EXPECTED TO BE A PERMANENT STAY OR AN EXTENDED STAY FOR AT LEAST 2 MONTHS, OR THAT YOU HAVE ALREADY BEGUN LIVING THEREIN EXPECTING YOUR STAY TO BE PERMANENT OR FOR AT LEAST 2 MONTHS, AND PROVIDED THAT THESE FACTS ARE VERIFIED BY YOUR DOCTOR OR BY THE NURSING HOME OR OTHER HEALTH-RELATED FACILITY."

"SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THESE RIGHTS."

(b) at the time the purchaser signs the contract to obtain the personal emergency response service or otherwise agrees to purchase such

service from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in not less than ten-point boldface type the following information and statements in the same language, e.g. Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction here)

I. YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN SEVEN (7) BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL UNDER THIS FIRST RIGHT TO CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

II. IN ADDITION TO THE ABOVE RIGHT TO CANCEL THE TRANSACTION, YOU OR ANOTHER PERSON OBLIGATED FOR ANY PART OF THE PURCHASE PRICE OR PRICE FOR SUCH SERVICE MAY ALSO CANCEL YOUR AGREEMENT WITH THE SELLER PROVIDING FOR YOUR OBTAINING OF SUCH SERVICE EFFECTIVE UPON THE 30TH DAY AFTER GIVING WRITTEN NOTICE TO SUCH SELLER OR SUPPLIER OF THE SERVICE, THAT YOU HAVE LEGALLY OBLIGATED YOURSELF TO COMMENCE RESIDENCE IN A NURSING HOME OR OTHER HEALTH-RELATED FACILITY WITHIN THE NEXT 30 DAYS FOR WHAT IS EXPECTED TO BE A PERMANENT STAY OR AN EXTENDED STAY OF AT LEAST 2 MONTHS DURATION, OR THAT YOUR RESIDENCE THEREIN WITH SUCH EXPECTATION HAS ALREADY COMMENCED.

YOU MAY DO SO PROVIDED THAT IN SUCH WRITTEN NOTICE OF CANCELLATION YOU INDICATE AN INTENTION NOT TO BE BOUND, STATE THE DATE OF EXPECTED COMMENCEMENT OR DATE OF ACTUAL COMMENCEMENT OF RESIDENCE IN SUCH NURSING HOME OR OTHER HEALTH-RELATED FACILITY, THE EXPECTED DURATION OF SUCH RESIDENCE, AND THE NAME AND ADDRESS OF SUCH HOME OR FACILITY, AND PROVIDED THAT YOU INCLUDE WITH YOUR NOTICE OF CANCELLATION A SIGNED NOTE FROM YOUR PHYSICIAN OR FROM SUCH HOME OR FACILITY, OR A COPY OF YOUR

AGREEMENT WITH SUCH HOME OR OTHER FACILITY, VERIFYING THAT YOU HAVE SATISFIED THE TERMS DESCRIBED HEREIN FOR CANCELLATION. IF YOU HAVE SATISFIED THESE CONDITIONS, CANCELLATION UNDER THIS SECOND RIGHT OF CANCELLATION WILL BE EFFECTIVE ON THE 30TH DAY AFTER SUCH WRITTEN NOTICE IS GIVEN BY FIRST-CLASS MAIL ADEQUATE POSTAGE PREPAID AND PROPERLY ADDRESSED TO THE SELLER.

TO CANCEL YOUR AGREEMENT UNDER THIS SECOND RIGHT TO CANCEL, SEND THE ABOVE-DESCRIBED WRITTEN NOTICE TOGETHER WITH ALL REQUIRED SUPPORTING INFORMATION BY FIRST-CLASS MAIL ADEQUATE POSTAGE PREPAID TO THE NAME AND ADDRESS OF SELLER STATED BELOW.

IF YOU CANCEL, WHETHER UNDER THE FIRST OR UNDER THE SECOND RIGHT TO CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY DEVICE DELIVERED TO YOU UNDER THIS CONTRACT OR SALE AND NEEDED TO RECEIVE SUCH PERSONAL EMERGENCY RESPONSE SERVICE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE DEVICE AT THE SELLER'S EXPENSE AND RISK.

IF YOU FAIL TO MAKE THE DEVICE AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE DEVICE TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION UNDER YOUR FIRST RIGHT OF CANCELLATION STATED FIRST ABOVE, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO:

_____ AT _____
(Name of Seller) (Address of Seller's Place of Business)
NOT LATER THAN MIDNIGHT OF

(Date)

I HEREBY CANCEL THIS TRANSACTION.

_____ (Date) _____ (Purchaser's Signature)

and the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the

transaction, and the date, not earlier than the seventh business day following the date of the transaction, by which the purchaser may give notice of cancellation under the first right of cancellation.

5. In a sale of a personal emergency response service, the seller shall inform each purchaser orally, at the time he or she signs the contract or purchases the service, of his or her two statutory rights to cancel. Until the seller has informed the purchaser of his two rights to cancel granted by law, the purchaser or any other person obligated for any part of the purchase price or price for service may cancel the sale by notifying the seller in any manner and by any means of his intention to cancel under the first right of cancellation. The seven-day period during which cancellation may be made under the first right of cancellation shall begin to run only from the time the seller complies with this requirement.

6. A personal emergency response service sales contract or receipt shall not include any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically his or her right to cancel the transaction or agreement in accordance with the provisions of this section.

7. A personal emergency response service sales agreement or receipt shall disclose conspicuously the seller's refund policy as to the lease, purchase or use of any device which is subject to the service sales agreement. If the seller fails to disclose conspicuously the applicable refund policy in such agreement or receipt, then the seller shall be liable to the purchaser for a cash refund of the total price or a credit of the total price, at the purchaser's option, paid by the purchaser or charged by the seller for the lease, purchase or use of such device, provided that within twenty days from the date of delivery of the device, the purchaser makes a demand therefor and provided that the device is in substantially as good condition as when received by the purchaser of the service. In no event shall this subdivision be deemed to supersede a refund policy of a seller which allows return of the device more than twenty days after the date of delivery of the device to the purchaser of the service. If the seller fails to disclose

conspicuously the applicable refund policy in such agreement or receipt, then the amount paid by the purchaser to the seller for the lease, purchase or use of the device shall be refunded or credited, as the case may be, within ten business days from the date of return of the seller's device in substantially as good condition as when received by the purchaser of the service.

8. This section does not relieve any person, firm, corporation or association subject to the provisions of this section from complying with any other applicable law, ordinance, rule or regulation relating to refund policies which affords the purchaser greater protection than do the provisions of this section.

* NB There are 2 § 391-l's

*** § 391-l. Rental of motor vehicles; discrimination on the basis of credit card ownership.** 1. Definitions. As used in this section:

a. "Motor vehicle rental agency", or "agency", shall mean a person engaged in the business of renting motor vehicles in this state;

b. "Person" shall mean any individual, firm, corporation or other legal entity;

c. "Motor vehicle" shall have the meaning ascribed thereto by section one hundred twenty-five of the vehicle and traffic law; and

d. "Credit card" shall mean any credit card, credit plate, charge plate or other identification card or device which is issued by a person to another person as the holder thereof, and may be used by such holder to obtain a cash advance or a loan or credit, or to purchase or rent property or services on the credit of the person issuing the credit card or of the holder.

2. It shall be unlawful for any person, firm, partnership, association or corporation engaged in the business of renting motor vehicles to refuse to rent such vehicle to any person solely on the requirement of

ownership of a credit card.

3. A knowing violation of this section shall be punishable by a fine not to exceed one thousand dollars.

* NB There are 2 § 391-l's

§ 391-m. Manufacture and sale of in-line skates; regulation of. 1. As used in this section, the term:

(a) "Protective gear" shall mean the following: a helmet meeting the standards established by the commissioner of motor vehicles pursuant to subdivision two-a of section twelve hundred thirty-eight of the vehicle and traffic law; and wrist guards, elbow pads, and knee pads of such standards, designs, sizes, strengths, and thicknesses as will reduce the risk to the wearer of serious physical injury caused by impact to the body part on which such protective gear is designed to be worn, such as, but not limited to, from falls and collisions.

(b) "In-line skate" shall mean a manufactured or assembled device each consisting of an upper portion that is intended to be secured to a human foot, with a frame or chassis attached along the length of the bottom of such upper portion, with such frame or chassis holding two or more wheels that are longitudinally aligned and used to skate or glide, by means of human foot and leg power while having such device attached to each such foot or leg.

(c) "Brake" shall mean a part which is secured to an in-line skate, as defined in paragraph (b) of this subdivision, and intended to enable the user to control his or her speed and/or come to a stop.

(d) "Warning instruction" shall mean a label, hangtag, shield or plate which is clearly visible to the consumer, with substantially the following notice printed in clear and conspicuous type: "WARNING !
REDUCE THE RISK OF SERIOUS INJURY AND ONLY USE THESE SKATES WHILE WEARING FULL PROTECTIVE GEAR - HELMET, WRIST GUARDS, ELBOW PADS, AND KNEE PADS."

2. (a) No person, firm, corporation, or other legal entity which manufactures or assembles in-line skates shall manufacture, assemble, sell, offer to sell, or distribute in this state such in-line skates

unless: (i) at least one such in-line skate in each pair manufactured or assembled is manufactured or assembled with a brake, as defined in this section; and (ii) at least one such in-line skate in each pair manufactured or assembled contains a warning instruction, as defined in this section, either on at least one such in-line skate in each pair or on the outside of the box in which such pair of in-line skates is sold or offered for sale at retail; and (iii) each such pair of in-line skates which contains a user's guide or buyer's instruction manual also contains a warning instruction, as defined in this section, within or on such guide or manual; and, (iv) every in-line skate is equipped with a reflective device or material meeting the standards established by rules and regulations promulgated by the commissioner of motor vehicles. Each pair of in-line skates which is manufactured or assembled by a person, firm, corporation, or other legal entity for special use by highly skilled or expert skaters or for sale or distribution through custom orders, such as in-line hockey skates and in-line speed skates, is exempt from the requirements of items (i) and (iv) of this paragraph, provided that such person, firm, corporation or other legal entity which manufactures or assembles such pair of in-line skates clearly and conspicuously labels at least one in-line skate in each such pair of in-line skates or the outside of the box in which such pair of in-line skates is sold or offered for sale at retail with the following warning in substantially the following form: "WARNING: THESE IN-LINE SKATES CONTAIN NO BRAKES OR REFLECTIVE MATERIAL AND ARE INTENDED FOR HIGHLY SKILLED OR EXPERT SKATERS ONLY".

(b) No person, firm, corporation or other legal entity which is regularly engaged in the business of selling, offering for sale, or distributing in-line skates at retail for consumer use, shall sell, offer to sell, or distribute in this state such in-line skates unless such in-line skates conform to the manufacturing requirements set forth in paragraph (a) of this subdivision.

(c) No person, firm, corporation, or other legal entity which is regularly engaged in the business of selling, offering for sale, or distributing in-line skates at retail, for consumer use, shall offer such in-line skates for sale in the normal course of business in this state unless such person, firm, corporation, or other legal entity contemporaneously offers for sale upon the same premises protective

gear, as defined in this section.

(d) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than five hundred dollars for such violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(e) No person, firm, corporation or other legal entity which is regularly engaged in the business of manufacturing, distributing, selling, or offering for sale in-line skates shall be deemed to have violated the provisions of this subdivision, if such person, firm, corporation or other legal entity shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(f) This subdivision shall not apply to the sale of in-line skates or protective gear sold or offered for sale by consumers for consumer use.

§ 391-n. Sale of reptiles; notice. 1. Any person, firm, partnership, association or corporation who or which sells reptiles at retail shall give written notice to the purchaser of a reptile that reptiles are a potential cause of salmonellosis. Such notice shall substantially

contain the following language:

(a) As with many other animals, reptiles carry salmonella bacteria which can make people sick. To reduce the chance of infection, follow these safe reptile handling steps.

(b) Always wash your hands thoroughly after you handle your pet reptile, its food or anything it has touched.

(c) Keep your pet reptile in a habitat designed for it.

(d) Keep your pet reptile and its equipment out of the kitchen or any area where food is prepared.

(e) Keep reptiles out of homes where there are children under one year of age or people with weakened immune systems. Children under five should handle reptiles only with adult/parental guidance.

2. Every proprietor who or which conducts a business of selling reptiles at retail shall conspicuously post a warning poster on premises alerting consumers that reptiles are a potential cause of salmonellosis and should be handled with care. The warning poster shall be available in two sizes, the smaller of which shall be eight and one-half inches by eleven inches and the larger of which shall be eleven inches by twenty-five and one-half inches. The larger poster shall be utilized for posting unless because of limited wall space or store layout the larger poster cannot fit in a conspicuous spot near the reptile displays, in which case the smaller poster may be used. Such poster shall have conspicuous lettering and type and shall substantially contain the following language:

(a) As with many other animals, reptiles carry salmonella bacteria which can make people sick. To reduce the chance of infection, follow these safe reptile handling steps.

(b) Always wash your hands thoroughly after you handle your pet reptile, its food or anything it has touched.

(c) Keep your pet reptile in a habitat designed for it.

(d) Keep your pet reptile and its equipment out of the kitchen or any area where food is prepared.

(e) Keep reptiles out of homes where there are children under one year of age or people with weakened immune systems. Children under five should handle reptiles only with adult/parental guidance.

3. Any person, firm, partnership, association, corporation or proprietor who or which violates the provisions of this section shall be subject to a civil penalty not to exceed fifty dollars for each day of the violation, but in no event shall the total amount of such penalties exceed five hundred dollars.

§ 391-00. Sale of over-the-counter diet pills and dietary supplements for weight loss or muscle building. 1. For purposes of this section the following terms shall have the following meanings:

(a) "Dietary supplements for weight loss or muscle building" means a class of dietary supplement as defined in section three hundred ninety-one-o of this article that is labeled, marketed, or otherwise represented for the purpose of achieving weight loss or muscle building, but shall not include protein powders, protein drinks and foods marketed as containing protein unless the protein powder, protein drink or food marketed as containing protein contains an ingredient other than protein which would, considered alone, constitute a dietary supplement for weight loss or muscle building.

(b) "Over-the-counter diet pills" means a class of drugs labeled, marketed, or otherwise represented for the purpose of achieving weight loss that are lawfully sold, transferred, or furnished over-the-counter with or without a prescription pursuant to the federal food, drug, and cosmetic act, 21 U.S.C. section 301 et seq., or regulations adopted thereunder.

(c) "Retail establishment" means any vendor that, in the regular course of business, sells dietary supplements for weight loss or muscle building or over-the-counter diet pills at retail directly to the public, including, but not limited to, pharmacies, grocery stores, other retail stores, and vendors that accept orders placed by mail, telephone, electronic mail, internet website, online catalog, or software application.

(d) "Delivery sale" means any sale of over-the-counter diet pills or dietary supplements for weight loss or muscle building to a consumer if:

(i) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, mail, or the internet or other online service, or the seller is otherwise not in the physical

presence of the buyer when the request for purchase or order is made; or

(ii) the over-the-counter diet pills or dietary supplements for weight loss or muscle building are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the over-the-counter diet pills or dietary supplements for weight loss or muscle building.

(e) "Delivery seller" means a vendor, including online retailers, who makes delivery sales of over-the-counter diet pills or dietary supplements for weight loss or muscle building. Such vendors shall include persons who accept orders placed by mail, telephone, electronic mail, internet website, online catalog, or software application.

2. No person, firm, corporation, partnership, association, limited liability company, or other entity shall sell or offer to sell or give away, as either a retail or wholesale promotion, an over-the-counter diet pill or dietary supplement for weight loss or muscle building within this state to any person under eighteen years of age. Retail establishments shall require proof of legal age for purchase of such products. For purposes of this section, proof of legal age shall mean (a) a valid driver's license or non-driver's identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States, a provincial government of the dominion of Canada, or the city of New York, or (b) a valid passport issued by the United States government or any other country, or (c) an identification card issued by the armed forces of the United States, indicating that the individual is at least eighteen years of age, or (d) a student identification card, provided such card indicates the date of birth of the individual. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of any over-the-counter diet pills and dietary supplements for weight loss or muscle building to an individual under eighteen years of age.

3. (a) Any person operating a retail establishment may perform a

transaction scan as a precondition for the purchase of over-the-counter diet pills or dietary supplements for weight loss or muscle building.

(b) In any instance where the information deciphered by the transaction scan fails to match the information printed on the driver's license or non-driver identification card, or if the transaction scan indicates that the information is false or fraudulent, the attempted transaction shall be denied.

(c) In any proceeding pursuant to subdivision five of this section, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed that transaction scan, and that over-the-counter diet pills or dietary supplements for weight loss or muscle building were sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense, the court shall take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this section. Use of a transaction scan shall not excuse any person operating a retail establishment from the exercise of reasonable diligence otherwise required by this section.

(d) A retail establishment or employee of such establishment shall only use a device capable of deciphering any electronically readable format, and shall only use the information recorded and maintained through the use of such devices, for the purposes contained in this subdivision. No retail establishment or employee of such establishment shall resell or disseminate the information recorded during such a scan to any third person. Such prohibited resale or dissemination includes but is not limited to any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this subdivision, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this subdivision shall be punishable by a civil penalty of not more than one thousand dollars.

(e) A retail establishment or employee of such establishment may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate this section. Such

information shall be limited to the following: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date.

4. Notwithstanding subdivision two of this section, a delivery seller, including an online retailer, who mails or ships over-the-counter diet pills or dietary supplements for weight loss or muscle building to consumers:

(a) shall not sell, deliver, or cause to be delivered any over-the-counter diet pills or dietary supplements for weight loss or muscle building to a person under eighteen years of age; and

(b) shall use a method of mailing or shipping:

(i) that requires the purchaser placing the delivery sale order, or an adult who is at least eighteen years of age to sign to accept delivery of the shipping container at the delivery address; and

(ii) that requires the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least eighteen years of age.

5. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York, to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. Whenever a court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars.

6. When determining whether an over-the-counter diet pill or dietary supplement is labeled, marketed, or otherwise represented for the purpose of achieving weight loss or muscle building, the court shall

consider, but is not limited to, the following factors:

(a) whether the product contains:

(i) an ingredient approved by the federal Food and Drug Administration for weight loss or muscle building;

(ii) a steroid; or

(iii) creatine, green tea extract, raspberry ketone, garcinia cambogia, green coffee bean extract;

(b) whether the product's labeling or marketing bears statements or images that express or imply that the product will help:

(i) modify, maintain, or reduce body weight, fat, appetite, overall metabolism, or the process by which nutrients are metabolized; or

(ii) maintain or increase muscle or strength;

(c) whether the product or its ingredients are otherwise represented for the purpose of achieving weight loss or building muscle; or

(d) whether the retailer has categorized the dietary supplement for weight loss or muscle building by:

(i) placing signs, categorizing, or tagging the supplement with statements described in paragraph (b) of this subdivision;

(ii) grouping the supplements with other weight loss or muscle building products in a display, advertisement, webpage, or area of the store; or

(iii) otherwise representing that the product is for weight loss or muscle building.

§ 391-p. Prohibit the rental of clothing articles previously worn. 1.

No person shall rent articles of clothing which have been previously worn unless such articles of clothing are cleaned prior to such rental.

2. A knowing violation of this section shall be punishable by a civil penalty not to exceed two hundred fifty dollars for the first violation and not to exceed one thousand dollars for each subsequent violation.

§ 391-q. Rebates. 1. For the purposes of this section, the term

"rebate" shall mean an offer to provide cash, credit, or credit towards future purchases, that is offered to consumers who acquire or purchase a

specified product or service and that is conditioned upon the customer submitting a request for redemption after satisfying the terms and conditions of the offer. The term shall not include any discount from the purchase price that is taken at the time of purchase, any discount, cash, credit, or credit towards a future purchase that is automatically provided to a consumer without the need to submit a request for redemption, or any refund that may be given to a consumer in accordance with a company's return, guarantee, adjustment, or warranty policies, or any company's frequent shopper customer reward program.

2. (a) Any individual, firm, company, partnership, limited liability company, corporation or entity offering a consumer rebate shall provide the rebate redemption form directly with the product or at the same location and at the same time that the consumer purchases the product, or at the time a contractual agreement for service is signed by the consumer.

(b) Any individual, firm, company, partnership, limited liability company, corporation or entity that does not provide rebate redemption forms directly with its product may comply with this section by supplying the retailer with either of the following: (1) a sufficient quantity of rebate redemption forms based on reasonably anticipated sales; or (2) the means to create a rebate redemption form prior to or at the time and place of sale.

(c) For purposes of internet sales, a generally accessible individual, firm, company, partnership, limited liability company, corporation or entity internet site that clearly and conspicuously displays the rebate redemption form as a printable document on the internet page on which the product is purchased or on an internet page accessible by a hyperlink from the page on which the product is purchased shall comply with this section. For purposes of telephone sales, directing consumers to a generally accessible individual, firm, company, partnership, limited liability company, corporation or entity internet site that clearly and conspicuously displays the rebate redemption form as a printable document on the internet page on which the product is purchased or on an internet page accessible by a hyperlink from the page on which the product is purchased and, upon request, sending the rebate redemption form via the consumer's choice of regular or electronic mail

or telefacsimile shall comply with this section.

3. (a) Any individual, firm, company, partnership, limited liability company, corporation or entity that offers a consumer rebate shall conspicuously disclose to the consumer (i) if the rebate will be issued to the consumer in any form other than cash or check, including but not limited to credit, credit towards a future purchase, gift certificate, gift card, general use prepaid card or any other form of compensation, and (ii) whether any additional fees related to the exercise or non-exercise of the rebate may apply.

(b) Any retailer advertising a rebate shall clearly disclose whether the rebate will be issued to the consumer in any form other than cash or check, including but not limited to credit, credit towards a future purchase, gift certificate, gift card, general use prepaid card or any other form of compensation.

(c) Any individual, firm, company, partnership, limited liability company, corporation or entity that offers a consumer rebate shall allow a minimum of fourteen days from the date the consumer purchases the product, or becomes eligible for the rebate upon satisfying the terms and conditions of the offer for the submission of a request for redemption by the consumer.

4. Upon receipt of a request for redemption meeting the terms and conditions of the rebate offer, an individual, firm, company, partnership, limited liability company, corporation or entity shall mail the rebate or transmit the rebate funds to the consumer within sixty days.

5. Any person, firm, corporation or association offering a rebate who violates this section shall be subject to a civil penalty of not less than one hundred dollars nor more than one thousand dollars for each such violation.

§ 391-s. Sale and distribution of novelty lighters prohibited. 1.
Definitions:

(a) "Audio effects" means music, animal sounds, whistles, buzzers,

beepers or other noises not typically caused by or pertinent to the flame-producing function of the lighter.

(b) "Distribute" means to:

(i) Deliver to a person other than the purchaser, for retail sale; or

(ii) Provide as part of a commercial promotion or as a prize or premium.

(c) "Importer" means a person who causes a lighter to enter this state from a manufacturing, wholesale, distribution or retail sales point outside this state, for the purpose of selling or distributing the lighter within this state or with the result that the lighter is sold or distributed within this state.

(d) "Lighter" means a mechanical or electrical device of a type typically used for igniting tobacco products by use of a flame.

(e) "Novelty lighter" means a mechanical or electrical device typically used for the purpose of producing a flame to light cigarettes, cigars or pipes and which, due to the physical or audio features of the device, excluding its capability of producing a flame, would reasonably be expected to cause the lighter to be appealing or attractive to a child including, but not limited to, lighters that resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, beverage, sporting equipment or that is capable of creating audio effects or displaying flashing lights.

(f) "Sell" means to provide or promise to provide to a wholesale, retail, mail-order or other purchaser in exchange for consideration.

2. No person, firm, partnership, association or corporation shall distribute, sell at retail or offer for retail sale in this state, or to any person located in this state, a novelty lighter.

3. This section shall not apply: (a) to a novelty lighter manufactured before January first, nineteen hundred eighty and which is considered a collectible item within the collectible trade; (b) to a disposable or refillable lighter with a logo, label, decal or artwork printed thereon or on heat shrinkable sleeves attached thereto but which does not otherwise resemble a novelty lighter; or (c) if not intended for sale or use in the state, to the interstate transportation of a novelty lighter or to the temporary storage of a novelty lighter while in interstate

commerce.

4. The division of homeland security and emergency services shall establish and publicize a toll free telephone hotline number to receive information from the public about suspected violations of this section. The division of homeland security and emergency services shall provide information on its agency website regarding this section and the dangers of novelty lighters, and provide the opportunity for persons suspecting violations of this section to transmit such information to the division through the Internet.

5. Whenever any police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four and subdivision seventy-nine pertaining to the office of fire prevention and control, of section 2.10 of such law, acting pursuant to his or her special duties, shall discover a novelty lighter in violation of this section, such officer is hereby authorized and empowered forthwith to seize and take possession of such items. Such seized items shall be turned over to the state fire administrator or his designee.

6. Any person who violates this section shall be subject to a civil penalty as follows:

(a) Not more than ten thousand dollars if the person is a manufacturer or importer of lighters.

(b) Not more than one thousand dollars if the person is a wholesaler of lighters or distributes lighters by means other than distribution directly to consumers.

(c) Not more than five hundred dollars if the person is:

(i) A retail seller of lighters; or

(ii) A person distributing lighters, if the person is other than a manufacturer, importer or wholesaler.

(d) Possession of each novelty lighter in violation of this section shall constitute a separate violation. If a person continues to violate this section after being given written notice of the violation, each day that the violation continues is a separate offense subject to a civil penalty.

7. The division of homeland security and emergency services is hereby authorized to promulgate such rules and regulations as are deemed necessary to implement the provisions of this section, including prescribing minimum standards for administration and enforcement of this section. The division of homeland security and emergency services may assess monetary penalties as established herein, such penalties commencing on the first day following the abatement date specified in an order, and continuing until the violation has been abated. Abatement of violations shall be verified by the state fire administrator.

8. In addition to the enforcement authority granted to the division of homeland security and emergency services in this section, whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York, to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty as set forth in subdivision six of this section. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 391-t. Sale of small animals; instructions on care. 1. As used in this section, a "small animal" shall mean any small mammal, excluding dogs or cats, including but not limited to, hamsters, chinchillas, guinea pigs, gerbils, rabbits, mice, rats, ferrets and any small

amphibians or reptiles, including but not limited to frogs, snakes and lizards, but shall not include any small animals that are expressly sold for the purpose of feeding other animals.

2. As used in this section, a "retailer" shall mean any person who conducts a business of selling or offering for sale small animals at retail for profit to the public.

3. Every retailer that sells small animals to the public, shall, at the time of sale, deliver or provide digital access to the purchaser of a small animal, written care recommendations for the class of small animal being purchased, which recommendations shall: (a) include generally accepted information intended for an inexperienced pet owner on housing, equipment, sanitation, environment, feeding and watering, handling, and veterinary care; and (b) have been created or published by a reliable source including but not limited to: a state or national professional veterinary association; an association established for the preservation and care of any such small animal; or an association representing pet retailers.

4. All retailers that sell small animals to the public shall maintain a copy of the written care recommendations for each class of small animal they sell, which shall be available for inspection by the department of agriculture and markets.

*** § 391-u. Pricing goods and services on the basis of gender prohibited.** 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Business" shall mean any business acting within the state of New York that sells goods to any individual or entity including, but not limited to, retailers, suppliers, manufacturers, or distributors;

(b) "Goods" shall mean any consumer product used, bought or rendered primarily for personal, family or household purposes;

(c) "Services" shall mean any consumer services used, bought or rendered primarily for personal, family or household purposes;

(d) "Substantially similar" shall mean:

(i) two goods that exhibit no substantial differences in: (A) the materials used in production; (B) the intended use of the good; (C) the functional design and features of the good; and (D) the brand of the good; or

(ii) two services that exhibit no substantial difference in: (A) the amount of time to provide the services; (B) the difficulty in providing the services; and (C) the cost of providing the services. A difference in coloring among any good shall not be construed as a substantial difference for the purposes of this paragraph.

2. No person, firm, partnership, company, corporation, or business shall charge a price for any two goods that are substantially similar, if such goods are priced differently based on the gender of the individuals for whom the goods are marketed and intended.

3. No person, firm, partnership, company, corporation or business shall charge a price for any services that are substantially similar if such services are priced differently based upon the gender of the individuals for whom the services are performed, offered, or marketed.

4. Nothing in this section prohibits price differences in goods or services based specifically upon the following:

(a) the amount of time it took to manufacture such goods or provide such services;

(b) the difficulty in manufacturing such goods or offering such services;

(c) the cost incurred in manufacturing such goods or offering such services;

(d) the labor used in manufacturing such goods or providing such services;

(e) the materials used in manufacturing such goods or providing such services; or

(f) any other gender-neutral reason for having increased the cost of such goods or services.

5. Any person, firm, partnership, company, corporation, or business that provides services, as defined by this section, shall provide the

customer with a complete written price list upon request.

6. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations. If it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining or restraining any violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in section eighty-three hundred three of the civil practice law and rules, and may make direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty not to exceed two hundred fifty dollars for a first violation, and a civil penalty not to exceed five hundred dollars for each subsequent violation. For the purposes of this section, all identical items priced on the basis of gender shall be considered a single violation.

* NB There are 2 § 391-u's

*** § 391-u. Restrictions on the sale and use of firefighting equipment containing PFAS chemicals.** 1. As used in this section, unless the context clearly requires otherwise:

(a) "Class B firefighting foam" means foams designed to prevent or extinguish ignitable liquid fires.

(b) "Ignitable liquid fire" means any fire involving a flammable or combustible liquid where blanketing and smothering for vapor suppression is needed to extinguish the fire.

(c) "Firefighting personal protective equipment" means any clothing designed, intended, or marketed to be worn by firefighting personnel in the performance of their duties, designed with the intent for the use in

firefighting and rescue activities, including jackets, pants, shoes, gloves, helmets, and respiratory equipment.

(d) "Local governments" includes any county, city, town, village, fire district, fire company as defined in section two hundred four-a of the general municipal law, regional fire protection authority, or other special purpose district that provides firefighting services.

(e) "Manufacturer" includes any person, firm, association, partnership, corporation, organization, joint venture, importer or domestic distributor of firefighting agents or firefighting equipment.

(f) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means, for the purposes of firefighting agents and firefighting equipment, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(g) "Person" means any individual, partnership, association, public or private corporation, limited liability company or any other type of legal or commercial entity, including their members, managers, partners, directors, or officers.

(h) "Intentionally added" shall have the same meaning as "intentionally added chemical" set forth in subdivision four of section 37-0121 of the environmental conservation law.

2. No person or state agency shall discharge or otherwise use for training purposes class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS chemicals).

3. (a) Commencing two years after the effective date of this section, no manufacturer of class B firefighting foam may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state class B firefighting foam to which PFAS chemicals have been intentionally added except as provided in paragraph (b) of this subdivision.

(b) The restrictions in paragraph (a) of this subdivision shall not apply to the manufacture, sale, or distribution of class B firefighting foam:

(1) For use in suppressing or preventing an ignitable liquid fire where the office of fire prevention and control, in consultation with the department of environmental conservation and the department of

health, through promulgation of a rule, exempts a use of class B firefighting foam on the basis that an alternative firefighting agent to which PFAS chemicals have not been intentionally added and that is effective in suppressing or preventing an ignitable liquid fire is not available. If the office of fire prevention and control exempts a use of class B firefighting foam from the restrictions in paragraph (a) of this subdivision, it shall re-evaluate available alternative firefighting agents at least every two years as long as the exemption remains in place, and repeal such exemption upon a finding that an alternative firefighting agent to which PFAS chemicals have not been intentionally added is available that is effective in suppressing or preventing an ignitable liquid fire.

(2) Where the inclusion of PFAS chemicals are required by federal law or regulations. In the event that applicable federal laws or regulations change after the effective date of this section to allow the use of effective alternative firefighting agents that do not contain PFAS chemicals, the office of fire prevention and control may adopt rules that restrict PFAS chemicals for the manufacture, sale, and distribution of firefighting foam for uses that are addressed by the federal law or regulation.

4. (a) A manufacturer of class B firefighting foam restricted under subdivision three of this section shall notify, in writing, persons that sell the manufacturer's products in this state about the provisions of this section no less than one year prior to the implementation date of the restrictions set forth in subdivision three of this section.

(b) A manufacturer that at any time manufactured, sold, offered for sale, or distributed for sale or use a class B firefighting foam prohibited under subdivision three of this section shall recall such product. Such recall shall include collection, transport, treatment, storage and safe disposal of PFAS chemicals, and reimbursement of the retailer or any other purchaser for such product.

5. * (a) A manufacturer or other person that sells firefighting personal protective equipment to any person, local government, or state agency must provide written notice to the purchaser at the time of sale if the firefighting personal protective equipment contains PFAS

chemicals. The written notice must include a statement that the firefighting personal protective equipment contains PFAS chemicals and the reason PFAS chemicals are added to the equipment.

* NB Effective until January 1, 2028

* (a) A manufacturer or other person that sells firefighting personal protective equipment to any person, local government, or state agency must provide written notice to the purchaser at the time of sale if the firefighting personal protective equipment contains PFAS chemicals. The written notice must include a statement that the firefighting personal protective equipment contains PFAS chemicals.

* NB Effective January 1, 2028

(b) The manufacturer or person selling firefighting personal protective equipment and the purchaser of the equipment must retain the notice on file for at least three years from the date of the transaction.

(c) Beginning January first, two thousand twenty-eight, a manufacturer shall not manufacture, knowingly sell, offer for sale, distribute for sale or distribute for use in the state any firefighting personal protective equipment to which PFAS chemicals have been intentionally added or that contains PFAS chemicals at or above a level established by the department of environmental conservation by regulation.

6. The office of fire prevention and control may issue guidance to state agencies, fire protection districts and local governments in avoiding the purchase or use of class B firefighting foams to which PFAS chemicals have been intentionally added and to give priority and preference to the purchase of firefighting personal protective equipment that does not contain PFAS chemicals.

7. Any manufacturer or person in violation of the provisions of this section shall be subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers or persons that are repeat violators of the provisions of this section shall be subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section shall be deposited in the hazardous waste remedial fund created by section ninety-seven-b of the state finance law.

* NB There are 2 § 391-u's

§ 391-v. Third-party food delivery agreements. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Agreement" means a written contractual agreement between a food service establishment and a third-party food delivery service authorizing the inclusion of the food service establishment's products on the third-party food delivery platform.

(b) "Food service establishment" means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

(c) "Third-party food delivery service" means any website, mobile application or other internet service that offers or arranges for the sale or delivery of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverage from, a food service establishment located in the state.

(d) "Third-party food delivery platform" means the online or mobile platform of the third-party food delivery service on which a consumer can view products available for sale and place an order for a food service establishment's products.

2. (a) A third-party food delivery service shall not list, advertise, promote, or sell a food service establishment's products, or arrange for the delivery of an order of such products, on a third-party food delivery platform without a valid agreement with the food service establishment authorizing the inclusion of their products on such platform.

(b) An agreement executed in accordance with this section shall not include a provision, clause, or covenant that requires a food service establishment to indemnify a third-party food delivery service, any independent contractor acting on behalf of the third-party food delivery service, or any registered agent of the third-party food delivery service, for any damages or harm by an act or omission occurring after the food service establishment's product leaves the place of business of the food service establishment. To the extent an agreement contains such

a provision, such provision shall be deemed void and unenforceable.

(c) A food service establishment included on a third-party food delivery platform in violation of this section shall have the right to bring an action in a court of competent jurisdiction for damages, penalties as set forth in this section, and injunctive relief. Such court, in its discretion, may also award reasonable court costs and attorneys' fees.

(d) Any person that violates any provision of this section shall be subject to a civil penalty of up to one thousand dollars per violation. Each day a food service establishment is included on a third-party food delivery platform and each food service establishment included on a third-party food delivery platform shall be considered a separate violation.

§ 391-w. Unauthorized restaurant reservations. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Food service establishment" shall have the same meaning as that term is defined in section three hundred ninety-one-v of this article.

(b) "Third-party restaurant reservation service" means any website, mobile application or other internet service that: (i) offers or arranges for reserving on-premises service for a customer at a food service establishment; and (ii) that is owned and operated by a person other than the person who owns such food service establishment. A third-party restaurant reservation service shall not include any reservation distribution channels that are authorized to distribute reservations by way of a contractual relationship with either the applicable food service establishment or a contractual designee of the food service establishment who obtained reservation distribution rights directly from the food service establishment.

2. A third-party restaurant reservation service shall not list, advertise, promote, or sell reservations for a food service establishment through the website, mobile application or other platform of such third-party restaurant reservation service without a written agreement between such third-party restaurant reservation service and

such food service establishment to include reservations at the food service establishment on such website, mobile application or other platform.

3. Any person who violates, or causes another person to violate, a provision of this section, shall be subject to a civil penalty that shall not exceed one thousand dollars for each violation. Violations by third-party restaurant reservation services under this section shall accrue on a daily basis for each day and for each food service establishment with respect to which a violation of this section was committed.

*** § 391-x. Hair relaxer labeling.** 1. For purposes of this section:

a. "Hair relaxer" shall mean any product topically applied to hair for the purpose of weakening the structure and curliness of the hair fiber and allowing for a straightening of the hair;

b. "Manufacturer" shall mean a person, firm, association, partnership or corporation who manufactures the final hair relaxer or whose brand name is affixed to the product. In the case of a product that was imported into the United States, "manufacturer" includes the importer or first domestic distributor of the product if the entity who currently manufactures or assembles the product or whose brand name is affixed to the product does not have a presence in the United States;

c. "Chemical" shall mean a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation or metabolism;

d. "Carcinogen" shall mean any chemical identified as:

(i) a "Group 1 carcinogen" or "Group 2A carcinogen" by the World Health Organization or International Agency for Research on Cancer;

(ii) "known to be a human carcinogen" and "reasonably anticipated to be a human carcinogen" by the Secretary of the United States Department

of Health and Human Services pursuant to the Public Health Service Act, 42 United States Code, Section 241(b)(4), as amended; and

(iii) "Group A carcinogens" or "Group B carcinogens" by the United States Environmental Protection Agency; and

e. "Reproductive toxicant" is any chemical identified as a reproductive or a developmental toxicant by the United States Department of Health and Human Services, National Toxicology Program, Center for the Evaluation of Risks to Human Reproduction.

2. Any hair relaxer being offered for sale in the state of New York that contains a carcinogen or a reproductive toxicant shall provide a clear and conspicuous warning label displayed on the packaging or product itself, which shall be printed in type no less than size twelve-point font, that notifies the consumer at the time of the sale that such hair relaxer contains such chemicals. The warning label shall state:

(i) if a product contains a carcinogen: "This product contains a chemical known to cause cancer";

(ii) if a product contains a reproductive toxicant: "This product contains a chemical known to cause birth defects or other reproductive harm"; or

(iii) if a product contains both a carcinogen and a reproductive toxicant: "This product contains chemicals known to cause cancer and birth defects or other reproductive harm".

3. Manufacturers shall be responsible for ensuring that all hair relaxers display the warning label as required by subdivision two of this section.

4. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an

injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty up to two hundred fifty dollars per unit for the first offense and up to five hundred dollars per unit for each subsequent offense. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

* NB Effective May 21, 2027

§ 392. Second-hand watches. 1. Definitions. As used in this section:

A. "Person" shall be deemed to mean a person, firm, partnership, association or corporation.

B. "Consumer" shall be deemed to mean an individual, firm, partnership, association or corporation who buys for own use, or for the use of another but not for resale.

C. A "second-hand" watch shall be deemed to mean: A watch which, as a whole, the case thereof, or the movement thereof has been sold to a consumer; provided, however, that a watch which has been so sold and is thereafter returned, either through an exchange or for credit, to the same person who sold such watch to the consumer, shall not be deemed to be a second-hand watch for the purpose of this act if such person keeps a written or printed record setting forth the name and address of the consumer, the date of the sale to the consumer, the name of the watch or its maker, and the serial numbers, if any, on the case and the movement of the watch, or other distinguishing numbers or identification marks, the aforesaid record to be kept for at least three years from the date of the sale of the watch and to be open for inspection during all business hours by the district attorney, or his representative, of the county in which such person is engaged in business; or

Any watch whose case or movement, serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered; or

Any watch, the movement of which is more than five years old and has been repaired, or any part or parts of the watch, including the movement, have been replaced, whether in the vendor's hands or while in the possession of another; and this provision shall apply whether or not the watch has been returned, either through an exchange or for credit to the same person who sold or disposed of said watch to the consumer in any manner.

2. Any person, or agent or employee thereof, who sells a second-hand watch, shall affix and keep affixed to the same a tag with the words "second-hand" legibly written or printed thereon in the English language. For the purposes of this subdivision, "sell" shall be deemed to include offer to sell or exchange, expose for sale or exchange, possess with intent to sell or exchange, and sell or exchange.

3. Any person, or agent or employee thereof, who sells a second-hand watch shall deliver to the vendee a written invoice setting forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, and the serial numbers, if any or other distinguishing numbers or identification marks on its case and movement. In the event the serial numbers, or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered, this shall be set forth in the invoice. A duplicate of the aforesaid invoice shall be kept on file by the vendor of such second-hand watch for at least three years from the date of the sale thereof and shall be open to inspection during all business hours by the district attorney or his representative of the county in which the vendor is engaged in business.

4. Any person advertising in any manner second-hand watches for sale shall state clearly in such advertising that the watches so advertised are second-hand watches.

5. Any violation of this act shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars, or not more than one hundred days in jail or both.

§ 392-a. Sale of new computers. 1. As used in this section, the following terms have the following meanings:

(a) "Computer" means an electronic machine that performs high speed mathematical or logical calculations or that assembles, stores, correlates, or otherwise processes and outputs information derived from coded data in accordance with a predetermined program;

(b) "Computer accessory" means keyboards, monitors, printers, mice, or other hardware attachments to a computer; and

(c) "Consumer" means any purchaser of a computer or computer accessory primarily for personal or home business use.

2. No person, firm, partnership, association, limited liability company, corporation, or other entity shall use remanufactured, rebuilt, or recycled parts in the manufacture for sale or distribution in this state of a new computer or any new computer accessory to a consumer at retail, unless (1) such computer or computer accessory contains a clear and conspicuous label in accordance with subdivision three of this section; or (2) the manufacturer otherwise provides to the consumer, prior to purchase, clear and conspicuous notice that the product contains rebuilt, remanufactured or recycled components.

3. The label required pursuant to subdivision two of this section shall: (a) indicate that such computer or computer accessory may contain remanufactured, rebuilt, or recycled parts; and

(b) be displayed by sticker or tag affixed to the computer or computer accessory or its protective packaging or wrapping, or if such computer or computer accessory is in a box, such label shall be printed or displayed by sticker or tag affixed to the outside of such box.

4. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special

proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. If the court in such a special proceeding determines that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 392-b. False labels and misrepresentations. A person, who with intent to defraud:

1. Puts upon an article of merchandise, or upon a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, any false description or other indication of or respecting the kind, number, quantity, weight or measure of such article, or any part thereof, or the place or country where it was manufactured or produced or the quality or grade of any such article, if the quality or grade thereof is required by law to be marked, branded or otherwise indicated on or with such article; or

2. Sells or offers for sale an article, which to his knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified; or

3. Sells or exposes for sale any goods in bulk to which no name or trademark shall be attached, and orally or otherwise represents that such goods are the manufacture or production of some other than the actual manufacturer or producer, in a case where the punishment for such offense is not specially provided for otherwise by statute, is guilty of a misdemeanor.

§ 392-c. Obliteration of marks of origin. 1. Definitions. As used in this section:

(a) "Person" shall be deemed to include a firm, partnership, association or corporation.

(b) "Sell" shall be deemed to include offer to sell, expose for sale, and possess with intent to dispose of or to sell.

(c) "Article of merchandise" shall be deemed to include a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label or other thing containing or covering an article of merchandise, or with which an article of merchandise is intended to be sold, or is sold.

(d) "Mark of origin" shall be deemed to mean and include any name, mark or indication of the place or country from which an article of merchandise was imported into the United States of America or its insular possessions, or the name, mark or indication of the place or country in which an article of merchandise was manufactured, packed, assembled, grown or produced.

(e) "Remove" shall be deemed to include deface, alter and obliterate.

(f) "Conceal" shall be deemed to include the original placing of a mark of origin upon an article of merchandise in any manner whatsoever, or the arranging or combining of two or more articles of merchandise into a single unit whereby the mark of origin is removed from open view, or is rendered illegible or inconspicuous.

(g) The terms "remove" and "conceal" are not to be deemed mutually exclusive.

2. Any person who wholly or in part removes or conceals or who shall cause to be, wholly or in part, removed or concealed from or upon an article of merchandise the mark of origin; or who sells or causes to be

sold an article of merchandise from or upon which to his or its knowledge, or to the knowledge of his or its agents, servants or employees there has been in whole or in part, removed or concealed the mark of origin, or who sells or causes to be sold an article of merchandise from the inspection of which such knowledge could have been obtained, shall be guilty of a misdemeanor, provided that it shall not be deemed a violation of this section if at the time of sale said article of merchandise and the immediate and outer container or containers thereof shall be marked, stamped, tagged, branded or labeled in legible and conspicuous English words with said mark of origin or the concealment thereof shall have completely ceased.

3. The sale of an article of merchandise from which there has been in whole or in part removed or concealed a mark of origin shall be presumptive evidence of the violation of this section.

§ 392-d. Using false marks as to manufacture. A person who, with intent to defraud or to enable another to defraud any person, manufactures or knowingly sells or causes to be manufactured or sold, any article, marked, stamped or branded or incased or inclosed in any box, bottle or wrapper, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark which article is not the manufacture, workmanship or production of the person named, indicated or denoted by such marking, stamping or branding, or by or upon such engraving, printed label, stamp, imprint, mark or trade-mark, is guilty of a misdemeanor.

§ 392-e. Using false statements or altering mileage registering devices. 1. Upon the transfer of ownership of a motor vehicle, the seller shall enter on any instrument executed by him, including any form prescribed by the commissioner of motor vehicles, and on any other bill of sale, certificate, or evidence of title or condition given by him at the time of transfer or sale, the mileage said motor vehicle purports to have been operated as the same appears upon the odometer in such motor vehicle. In the event that such odometer mileage is known to the seller

to be less than such motor vehicle has actually travelled, the seller shall enter upon any said transfer instrument or statement "True mileage unknown." In the event that it is known to the seller that the mileage indicated on such odometer is beyond its designed mechanical limits, he shall state the total cumulative mileage on the aforesaid prescribed transfer instruments. Any person, firm, partnership, or corporation who gives a false statement to a transferee under the provisions of this section, shall be guilty of a misdemeanor, provided, however, that no person, firm, partnership, or corporation shall be convicted under the section where a vehicle has been resold in reliance on the required statement of the prior owner and pursuant to the provisions of subdivision one, two, three and four of section three hundred ninety-two-e.

2. A person, firm, partnership, or corporation who shall misrepresent the mileage of a motor vehicle to a transferee by the execution and delivery of the written statement required in the preceding paragraph hereof and which in fact is false, or who shall misrepresent such mileage to a transferee by disconnection, changing, or causing to be disconnected or changed any mileage registering device on a motor vehicle so as to thereby indicate a lesser mileage than such motor vehicle has actually travelled, shall be guilty of a misdemeanor.

2-a. (a) No person, firm, partnership, or corporation shall, prior to the transfer of ownership of a motor vehicle, misrepresent by any statement, express or implied and which in fact is false, the mileage said motor vehicle purports to have been operated as the same appears on the odometer in such motor vehicle. Nothing contained herein shall be deemed to supercede the provisions of any other subdivision of this section.

(b) A violation of this subdivision shall be subject to a fine not to exceed five hundred dollars for each violation; provided, however, that a knowing or willful violation of this subdivision shall be subject to a fine not to exceed one thousand five hundred dollars for each such violation. No person, firm, partnership, or corporation shall be deemed to have violated this subdivision where the vehicle is sold, offered for sale, or advertised for sale in reliance on the required statement of

the prior owner and pursuant to the provisions of subdivisions one, two, three and four of this section.

(c) Unless the misrepresentation was made with an intent to defraud, the provisions of paragraphs (a) and (b) of this subdivision shall not apply to a statement made regarding a vehicle the most current ownership document for which is a salvage certificate or like document issued by a state or jurisdiction or regarding a vehicle sold by a salvage pool registered under section four hundred fifteen-a of the vehicle and traffic law.

3. Nothing herein contained shall prevent the service, repair or replacement of a mileage registering device, provided the mileage indicated thereon remains the same as before the service, repair or replacement; or provided the mileage registering device reads zero and a notice in writing is attached to the left front door frame of the vehicle by the owner or his agent, indicating the mileage prior to replacement and the date on which it was replaced. Any unauthorized removal of such notice so affixed shall constitute a violation of subdivision two of section three hundred ninety-two-e.

4. This section shall not apply to new motor vehicles. A new motor vehicle is one sold or transferred by a manufacturer, distributor or dealer and which has not been placed in consumer use or has not been used as a demonstrator.

§ 392-f Taximeters. 1. Definitions. As used in this section:

(a) "Person" shall include a person, firm, partnership, association or corporation.

(b) "Sell" shall include offer to sell, expose for sale, and possess with intent to dispose of or to sell.

(c) "Taximeter" shall include any device which, when affixed to a motor vehicle, is so constructed as to operate as a fare indicator and a time and distance register for the purpose of automatically determining the charge for which a passenger becomes liable.

(d) "Remove" shall include deface, alter, conceal and obliterate.

2. (a) No manufacturer shall offer for sale any taximeter which does not have etched, stamped or permanently impressed thereon a serial number which has been assigned to it by the manufacturer.

(b) Any manufacturer who sells taximeters within the state shall keep a record of the transaction. The record shall indicate (i) the serial number of the taximeter sold, (ii) the name and address of the vendee, (iii) the date of the sale and (iv) the purchase price.

3. A person being the owner or lawful custodian of a taximeter, the original identification number of which shall have been removed or which never bore a serial number, may apply to the county or municipal authority charged with the obligation of regulating the taxicab industry within its jurisdiction, if any, for permission to make or stamp, or cause to be made or stamped on such taximeter a serial number. If satisfied that the person making application for such permission is the true owner of the taximeter and that its original number was not so removed at the instigation of the person making such application, or, if done by such person, was not done for an unlawful purpose, the county or municipal authority shall issue to the applicant written permission to stamp on the taximeter a special identification number designated by it.

4. Any person who wholly or in part removes or who shall cause to be, wholly or in part, removed from or upon a taximeter the serial number; or who sells or causes to be sold a taximeter from or upon which to his or its knowledge, or to the knowledge of his or its agents, servants or employees there has been in whole or in part, removed or concealed the serial number, or who sells or causes to be sold a taximeter from the inspection of which such knowledge could have been obtained, shall be guilty of a misdemeanor.

5. The sale of a taximeter from which there has been in whole or in part removed or concealed a mark of origin shall be presumptive evidence of the violation of this section.

§ 392-g. Sale of ultraviolet radiation devices. 1. When used in this section, the following words and phrases shall have the meanings

ascribed to them in this section:

(a) "Tanning facility" shall mean any establishment where one or more ultraviolet radiation device is used, offered, or made available for use by any human being, for which a fee is charged, directly or indirectly, but shall not include any facility where any such device is used by a qualified health care professional for treatment of medical conditions.

(b) "Ultraviolet radiation device" shall mean any equipment which is designed to emit electromagnetic radiation in the wavelength interval of two hundred to four hundred nanometers in air, and which is intended to induce tanning of the human skin through irradiation, including, but not limited to, a sunlamp, tanning booth, or tanning bed.

(c) "Person" shall mean an individual, corporation, partnership, joint venture, or any business entity.

2. No person shall offer for sale any ultraviolet radiation device for use in a tanning facility, or for the personal use of a consumer, unless such device is conspicuously labeled with a warning stating the health hazards associated with the use of such device, and setting forth a safe exposure schedule, and such device is equipped with a timing device limiting exposure time to safe exposure levels.

3. Each ultraviolet radiation device offered for sale shall be accompanied without additional cost therefor by safety goggles.

4. Each ultraviolet radiation device offered for sale shall include an easily accessible on/off switch permitting an individual, while using the device, to turn off the radiation at any time the device is in use.

5. Any person who knowingly fails to comply with the requirements of this section shall be assessed a civil penalty not to exceed fifty dollars for the first violation, one hundred dollars for a second violation, and two hundred fifty dollars for any subsequent violation. Each day such offense shall continue shall constitute a separate additional violation. It shall be a defense to the imposition of any such civil penalty that the device was labeled and equipped as required by this section and such label or equipment was removed, defaced, or rendered inoperable by vandals, provided the person required to comply

with this section subsequently so complies.

§ 392-h. Trash receptacles; dumpsters. No person or entity in possession of a trash or refuse receptacle commonly referred to as a dumpster or carting unit, having a capacity of more than twenty-five cubic yards, shall allow or cause the same to be or remain unattended on a public street, highway or sidewalk unless such receptacle shall have a clearly visible fluorescent stripe or marking, at least six inches wide, which stripe or marking may be broken or segmented, located around the entire outside perimeter thereof. Failure to comply with the provisions hereof shall subject such person or entity to a civil penalty of twenty-five dollars per day, per unit, for each day such failure shall occur. The provisions of this section shall supercede any inconsistent provision of any other general, special or local law to the contrary.

§ 392-i. Prices reduced to reflect change in sales tax computation. Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article twelve-A of the tax law, shall reduce the price such person charges for motor fuel and/or diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor or paid by retail customers resulting from computing sales and compensating use taxes at a cents per gallon rate pursuant to the provisions of paragraph two of subdivision (e) and subdivision (m) of section eleven hundred eleven of the tax law.

§ 392-j. Sales of sparkling devices. 1. Sales of sparkling devices as defined in subparagraph (vi) of paragraph (a) of subdivision one of section 270.00 of the penal law shall be lawful only for business registered by the state under section one hundred fifty-six-h of the executive law between June first and July fifth or from December twenty-sixth through January second of each year.

2. Failure to comply with this section shall be deemed an offense as defined in subdivision two of section 270.00 of the penal law.

§ 392-k. Motor vehicle glass repair and replacement; calibration and recalibration of advanced driver assistance systems; consumer disclosure.

1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Advanced driver assistance system" shall mean any motor vehicle electronic safety system, including, but not limited to sensors and cameras, as outlined in the most recent publication of the SAE International's SAE J3016 levels of driving automation that are designed to support both the driver and motor vehicle in a manner intended to:

- (i) increase motor vehicle safety; and
- (ii) reduce losses associated with motor vehicle crashes.

(b) "Calibrate" or "Recalibrate" shall mean to instruct a motor vehicle's advanced driver assistance system, including internal computers, to readjust targeted cameras, sensors, or other technologies to function properly in accordance with the motor vehicle's manufacturer specifications.

(c) "Motor vehicle glass repair facility" shall mean any person, including the person's employees and agents that for consideration engages in the repair or replacement of damaged safety glass as defined in subdivision fourteen of section three hundred seventy-five of the vehicle and traffic law.

(d) "Motor vehicle glass" shall mean the glass and non-glass parts associated with the replacement of the glass used in the windshield, door or windows and the glass, plastic, or other materials used in vehicle glass manufacturing.

(e) "Repair or replacement of damaged motor vehicle glass" shall mean inspecting, repairing, restoring, or replacing damaged motor vehicle glass and calibrating or recalibrating an advanced driver assistance system when an incident requires the replacement of motor vehicle glass.

(f) "SAE J3016" shall mean the Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles published by SAE International in April two thousand twenty-one.

2. Requirements. If a motor vehicle is equipped with an advanced driver assistance system, a motor vehicle glass repair facility that

conducts safety glass or motor vehicle glass repair, replacement, or recalibration shall inform the consumer:

(a) if a recalibration of the advanced driver assistance system is required; and

(b) if a recalibration of the advanced driver assistance system is performed that such system shall meet the motor vehicle's manufacturer specifications.

3. Notification. (a) A motor vehicle glass repair facility shall provide to the consumer an itemized description of the work to be done on the motor vehicle.

(b) A motor vehicle glass repair facility shall not represent to a consumer that the cost of a repair, replacement or calibration or recalibration shall be paid for entirely by the an insurer and at no cost to the consumer unless the cost of the repair, replacement, calibration or recalibration is fully covered as provided by an applicable insurance policy.

(c) For replacements, repairs, calibrations and recalibrations being paid for through insurance coverage, a motor vehicle glass repair facility shall not contract with a person for a repair or replacement of damaged safety glass or motor vehicle glass until the motor vehicle glass repair facility has received a claim or referral number, if applicable, for insurance covered damage.

(d) Prior to finalizing a contract for repair with a consumer for a repair or replacement of damaged motor vehicle glass, a motor vehicle glass repair facility shall notify such consumer:

(i) whether such motor vehicle has an advanced driver assistance system;

(ii) whether the calibration or recalibration of the motor vehicle's advanced driver assistance system is required to:

(1) make the advanced driver assistance system operable; and

(2) ensure that the repair or replacement of damaged motor vehicle glass is performed in a manner that meets the vehicle manufacturer's specifications;

(iii) whether the motor vehicle glass repair facility can calibrate or recalibrate the advanced driver assistance system in a manner that meets the motor vehicle's manufacturers specifications; and

(iv) if the motor vehicle glass repair facility is not capable of performing a calibration or recalibration as referenced in subdivision three of this section, that the motor vehicle should be taken to the vehicle's manufacturer certified dealership or a qualified specialist capable of performing the calibration or recalibration that meets the vehicle's manufacturer specifications.

(e) An insurer shall not mandate or require motor vehicle glass repair facilities to install replacement motor vehicle glass that is not capable of being calibrated or recalibrated to the vehicle's manufacturer specifications.

4. Unsuccessful recalibration. If a recalibration was not performed or not completed successfully, the motor vehicle glass repair facility shall inform the consumer and insurer electronically or in writing that the recalibration was not successful or was not performed and that the motor vehicle should be taken to a franchised motor vehicle dealer or a motor vehicle glass repair facility capable of performing the calibration or recalibration of an advanced driver assistance system that meets the motor vehicle manufacturer's specifications. Motor vehicle glass repair facilities shall not charge the consumer or insurer for the costs associated with such unsuccessful recalibrations.

5. Recalibration requirements. A motor vehicle glass repair facility that conducts a calibration, recalibration or replacement on a motor vehicle equipped with an advanced driver assistance system shall:

(a) recalibrate the advanced driver assistance system to meet such motor vehicle's manufacturer specifications; and

(b) is not limited to safety glass or motor vehicle glass, tools, equipment, or repair procedures dictated or recommended by the motor vehicle manufacturer to meet such motor vehicle's manufacturer specifications.

6. Billing. A motor vehicle glass repair facility shall not bill or charge the consumer or the consumer's insurer for safety glass or motor vehicle glass repair, replacement, calibration or recalibration services that are not performed in accordance with the motor vehicle's manufacturer specifications.

7. Assignment of benefits. (a) No motor vehicle glass repair facility shall include an assignment of benefits provision for an insurance policy in any agreement with a consumer or require a consumer to sign an assignment of benefits agreement as a condition of repairing or replacing damaged motor vehicle glass.

(b) Any contract entered in violation of this subdivision shall be void and unenforceable.

(c) Nothing in this subdivision shall be construed to prohibit a consumer from authorizing or directing payment to, or paying, a motor vehicle glass repair facility for repair or replacement of damaged motor vehicle glass covered under an insurance policy.

8. Inducement. No motor vehicle glass repair facility or agent thereof shall offer a rebate, gift, gift card, cash, coupon, fee, prize, bonus, payment, incentive, inducement, or any other thing of value to any consumer in exchange for directing or making a claim under a motor vehicle insurance policy for a repair or replacement of damaged motor vehicle glass.

9. Violations. Violations of the provisions of this section shall result in a written warning for the first violation, a civil penalty of not more than five hundred dollars for the second violation, and a civil penalty of not more than two thousand dollars for each succeeding violation.

10. Application. Nothing in this section shall be construed to exempt any motor vehicle glass repair shop that performs safety glass or motor vehicle glass repair or replacement, or recalibration on a motor vehicle equipped with an advanced driver assistance system, from complying with all applicable provisions of article twelve-A of the vehicle and traffic law and any rules or regulations promulgated thereunder.

§ 393. Lime; standard barrels. There is hereby established a large and a small barrel of lime, the large barrel to consist of two hundred and eighty pounds and the small barrel to consist of one hundred and eighty

pounds, net weight. It shall be unlawful for any person to sell or offer for sale lime, unless there shall be stencilled or otherwise clearly marked on one or both heads of the small barrel the figures "180 lbs. net" and of the large barrel the figures "280 lbs. net," and on either barrel in addition the name of the manufacturer of the lime and where manufactured. When lime is sold in containers of less capacity than the standard small barrel, it shall be sold in fractional parts of said standard small barrel, and the net weight of lime contained in such container shall by stencil or otherwise be clearly marked thereon, together with the name of the manufacturer thereof, and the name of the brand, if any, under which it is sold. It shall be unlawful to pack, sell, or offer for sale any barrels or other containers of lime which are not marked as provided in this act, or to sell, charge for, or purport to deliver as a large or small barrel or a fractional part of said small barrel of lime, any less weight of lime than is established by the provisions of this section. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

§ 393-a. Non fire rated wood paneling. It shall be unlawful for any person, firm or corporation to sell or offer for sale non fire rated wood paneling, unless it shall be clearly marked on the back of the paneling and on the package in which the paneling is sold a conspicuous notice that the paneling is not rated for fire purposes and is highly flammable. For the purposes of this section non fire rated wood paneling shall mean such paneling having a surface flamespread rating in excess of two hundred determined by Underwriters Laboratory test No. 723 or the American Society for Testing Materials test No. E-84 or testing by any qualified laboratory or testing organization which meets the criteria of American Society for Testing Materials test E548-76 conducted in conformity with generally accepted standards. A violation of the provisions of this section shall be a class B misdemeanor.

§ 393-b. Written solicitation. 1. Any written solicitation to enter into an agreement for various credit card protection services shall disclose that the purchase of credit card protection services or the

renewal thereof is not required for a consumer to secure or retain his or her credit card; and a concise statement regarding his or her rights that already exist free of charge under the "Fair Credit Billing Act" and the regulations thereunder, as such acts and regulations may from time to time be amended. A credit card protection service means a service to protect, indemnify, or reimburse the credit card holder against the loss or misuse of the credit card. Such term shall include services provided along with credit card protection services for the same price, including, but not be limited to, access to credit reports, an explanation of credit entries on the report, the identification of those who have accessed the report, and insurance and security services. No agreement for services shall provide that services will be automatically renewed on an annual basis and the consumer billed, unless the consumer in the expiring agreement is notified not more than sixty days and not less than fifteen days prior to the termination of the existing agreement by mail of the credit protection service provider's intention to automatically renew the agreement.

2. Whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 393-c. Sale of required labor postings. Any person, corporation, association, partnership or other entity which sells or offers to sell in this state any printed materials which, or the substance of which, are required to be posted in places of employment pursuant to the provisions of any federal or state law, rule or regulation, including, but not limited to, notices or materials relating to unemployment insurance, workers' compensation insurance or benefits, minimum wage and occupational safety and health standards shall provide to the purchaser a notice in at least twelve point type, that such required notices or postings are also available free of charge from the government office having jurisdiction over the required notices or postings.

§ 393-d. Sale of certified copies of property deeds. Any person, corporation, association, partnership or other entity which sells or offers to sell in this state any certified copy of a property deed shall provide to the purchaser the following notice in at least twelve-point boldface type prior to the time of sale:

"Certified copies of property deeds are available at the county clerk's office. The county clerk's office may charge a small fee for certified copies of such deeds, usually between two and four dollars a page. Since most property deeds are between two and five pages in length, a certified copy can usually be obtained for between four and twenty dollars."

§ 393-e. Sale of abandoned property location services. 1. For the purposes of this section, "abandoned property location services" shall include any service for a fee providing assistance to consumers for the purposes of locating and/or retrieving property held by the state comptroller pursuant to the abandoned property law.

2. Any person, corporation, association, partnership or other entity which sells or offers to sell any abandoned property location services for abandoned property delivered to the state and held by the state

comptroller shall, in every solicitation and agreement for such services, provide to the purchaser the following notice in a clear and conspicuous manner, and in at least twelve-point boldface type prior to the time of sale:

"Abandoned funds held by the State can be obtained directly from the Office of the State Comptroller by the owner of such funds without paying a fee. These funds are held indefinitely by the Office of the State Comptroller. For more information, contact the Office of the State Comptroller at (insert the current telephone number established by the Office of the State Comptroller for receiving inquiries from consumers regarding unclaimed funds) or (insert the current address of the website of the Office of the State Comptroller)."

§ 393-f. Voluntary third-party notification. 1. Every telegraph or telephone corporation, cable television corporation, or municipality shall permit a residential customer to designate a third party to receive notice of the total amount due or past due on all bills, the amounts of any payments paid by or on behalf of such residential customer, and copies of all notices relating to termination of service and notices relating to collection of amounts due sent to such residential customer, provided that the designated third party indicates in writing a willingness to receive such notices, and provided further, where a residential customer opts for third-party notifications, such residential customer may opt to continue to receive such notices.

2. Every cellular phone company, upon request by a customer, shall permit such customer to designate a third party to receive notice in accordance with subdivision one of this section. Such notice shall comply with all requirements related to the protection of customer proprietary network information contained in the federal communications act of 1934 (47 U.S.C. 222) and any federal regulations adopted under that authority.

§ 394. Lost or destroyed certificate of stock. 1. The owner of shares represented by a lost or destroyed certificate of stock, if the

corporation shall refuse to issue a new certificate in place thereof, may apply to the supreme court, at any special term held in the district where he resides, or in which the office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate in place of the one lost or destroyed. The application shall be by petition, duly verified by the owner, stating that it is made pursuant to this section, the name of the corporation, the number and date of the certificate and to whom issued, if known or if it can be ascertained by the petitioner, the number of shares represented thereby, and as particular a statement of the circumstances attending such loss or destruction as the petitioner can give. Upon the presentation of the petition the court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition. A copy of the petition and order shall be served on the corporation, in the manner prescribed for the service of a summons in an action against a corporation, at least twenty days before the return of the order to show cause. Notice of the application shall be given to the stockholder of record if he is a person other than the petitioner and if he is known to the petitioner, and to such other persons as the court may direct; such notice shall be given in such manner by publication or otherwise as the court may direct.

2. Upon the return of the order, with proof of due service thereof, the court shall inquire into the truth of the allegations of the petition and hear the proofs of the parties in regard thereto. The court, if satisfied that the petitioner is the lawful owner of the shares, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued, shall make an order requiring the corporation, within a time specified, to issue and deliver to the petitioner a new certificate for the number of shares specified in the order, upon the petitioner depositing in such public office as the court may designate security or a bond to indemnify the corporation against any liability or expense which it may incur by reason of the original

certificate remaining outstanding. Such security or bond shall be in an amount which shall appear to the court sufficient in the circumstances of the case to protect the interests of any persons to whom the corporation may incur liability, and shall be in such form and with such sureties as the court shall approve. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

3. The issuance of a new certificate under an order of the court shall not relieve the corporation from liability in damages to a transferee of the original certificate in good faith and for value. The corporation shall not be liable to any such transferee in an amount in excess of the amount of the bond or the amount of the security required to be deposited.

4. In case of conflict between this section and section 8--405 or 8--406 of the uniform commercial code, this section shall control.

§ 394-a. Proof of lost negotiable paper. 1. Where, upon the trial of an action, it appears that a negotiable instrument within article three of the uniform commercial code, upon which the action or a counterclaim interposed in the action is founded, was lost while it belonged to the party claiming the amount due thereupon, he may prove the contents thereof by parol or other secondary evidence and may recover or set off the amount due thereupon as if it was produced.

2. For that purpose, he must give to the adverse party a written undertaking, in a sum fixed by the judge or the referee, not less than twice the amount of the note or bill, with at least two sureties, approved by the judge or the referee, to the effect that he will indemnify the adverse party, his heirs and personal representatives, against any claim by any other person, on account of the note or bill, and against all costs and expenses, by reason of such a claim.

3. But where an action is prosecuted or defended by the state, or by a public officer in its behalf, the state or the public officer may prove

the contents of a lost negotiable instrument within article three of the uniform commercial code, by parol or other secondary evidence, and may recover or set off the amount due thereupon, without giving any security to the adverse party notwithstanding section 3--804 of such code.

§ 394-b. Limitations on certain contracts for instruction or use of physical or social training facilities. 1. (a) "Total contract price" shall mean the total cash price paid or to be paid by the buyer for instruction or services which are the subject of the written contract.

(b) "Notice of cancellation" shall be deemed to have been provided by a buyer by mailing or delivering written notification to cancel the contract to the seller or by failing to attend instructional facilities for a period of five consecutive appointment days on which classes or the provisions of services which are the subject of the contract were prearranged with the buyer.

(c) "Reasonable and fair service fee" shall mean no more than ten percent of the total contract price for contracts of one thousand dollars and under. For contracts over one thousand dollars, reasonable and fair service fee shall mean no more than one hundred dollars plus an amount equal to five percent of the total contract price over one thousand dollars, not to exceed two hundred fifty dollars.

(d) "Initial contract" shall mean the buyers first contract for services. Subsequent contracts shall be referred to as renewals. Contracts for services which are entered into, after a lapse of contractual service for a period of twelve consecutive months, shall be deemed to be initial contracts.

2. Any contract for instruction in physical or social skills, or for the use by an individual patron of a dance hall studio, ballroom, or other physical or other social training facility, which is measured by the life of the person receiving such instruction or the use of such physical or social training facility as an individual patron, shall be deemed void and unenforceable as contrary to public policy.

3. Any initial contract for instruction in physical or social skills, or for the use by an individual patron of a dance hall studio, ballroom,

or other physical or social training facility which requires payment by the person receiving such instruction, or the use of such physical or social training facilities, of a total amount in excess of five hundred dollars, or granting to the person furnishing such instruction or providing the use of such facilities, an automatic renewal option where the payments to be made during the original contract period and the option period combined are in excess of five hundred dollars, shall be valid and enforceable only if: (a) The term of the contract shall be for a precisely measured period of years, or any definite part thereof; and (b) the payments to be made thereunder shall be in instalments so computed that the total amounts so paid shall not exceed by more than five percent the prorated cost of the units of instruction or use actually received thereunder at the time the latest payment is made; or, if no definite number of units of instruction or use is specified in the contract, the total amount so paid shall not exceed by more than five percent the proportion of the total contract price that the expired portion of the entire term bears to the whole term of the contract.

4. No contract for services shall be assigned without written consent of the person receiving such instruction or for the use of such physical or social training facility.

5. (a) Every contract for services shall provide that such contract may be canceled at any time. Notice of cancellation shall be delivered or mailed by certified or registered United States mail at the address specified in the contract. Such contract shall contain the following written information in at least ten point type: "CONSUMERS RIGHT TO CANCELLATION. YOU MAY CANCEL THIS CONTRACT AT ANY TIME BY DELIVERING OR MAILING BY CERTIFIED OR REGISTERED UNITED STATES MAIL TO THE ADDRESS SPECIFIED IN THE CONTRACT. IF YOU CANCEL THE CONTRACT WITHIN THREE (3) DAYS FROM THE DATE OF RECEIPT, YOU WILL BE ENTITLED TO A FULL REFUND. TO CANCEL A CONTRACT WITHIN THREE (3) DAYS FROM THE DATE OF RECEIPT BY REGISTERED OR CERTIFIED MAIL, SUCH MAIL MUST BE POSTMARKED WITHIN THE THREE (3) DAY PERIOD. AFTER THE THREE (3) DAY PERIOD, YOU MAY BE ASSESSED A REASONABLE AND FAIR SERVICE FEE. IF YOU UTILIZED SERVICES AND SUBSEQUENTLY CANCEL THE CONTRACT, YOU WILL BE CHARGED ONLY FOR INSTRUCTION SERVICES ACTUALLY FURNISHED AND A REASONABLE AND FAIR

SERVICE FEE, AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION 1 OF SECTION 394-B OF THE GENERAL BUSINESS LAW. A BREACH OF THIS PROVISION SHALL SUBJECT THE SELLER TO PAY DAMAGES UP TO TWICE THE AMOUNT OF THE ACTUAL DAMAGES PLUS REASONABLE ATTORNEYS FEES." The provisions of this paragraph shall be specifically set forth in every contract for services; or in the event that such provisions are omitted therefrom, they shall be deemed a part of such contract by operation of law and shall be enforceable as though fully set forth therein.

(b) All moneys paid pursuant to such contract shall be refunded within thirty business days of receipt of such notice of cancellation. If the buyer has executed any credit or loan agreement to pay for all or part of the service, any such negotiable instrument executed by the buyer shall also be returned within thirty days. Any buyer who cancels such contract within three days of execution shall be entitled to a full refund. After the three day time frame, a seller may assess a reasonable and fair service fee. In addition, the prorated cost of any instruction provided may be deducted out of the refund amount.

(c) If a buyer fails to attend instructional facilities for a period of five consecutive appointment days on which classes for the provision of services which are the subject of the contract were prearranged with the buyer, the contract shall be deemed to be canceled, unless the buyer otherwise provides written consent to maintain the contract. All monies shall be refunded pursuant to paragraph (b) of this subdivision, however, the instructional facility may withhold monies to cover the prorated cost of the prearranged instructional services in which the buyer failed to attend.

6. Nothing herein shall be construed to apply to contracts for instruction at schools operating pursuant to the provisions of the education law.

7. This section shall apply to all contracts to be executed or renewed after May first, nineteen hundred sixty-four.

8. Any contract for services which is inconsistent with the applicable provisions of this section and any waiver by the buyer of the provisions of this section shall be void and unenforceable as contrary to public

policy.

9. Nothing in this section shall be construed so as to nullify or impair any right or rights which a buyer may have against a seller at common law, by statute, or otherwise.

10. In addition to the remedies hereinbefore provided, the attorney general may bring an action on behalf of the people of the state to restrain further violations of this section, to enforce the provisions of this section and for such other relief as may be appropriate.

11. No provision of this section shall be deemed to restrict the authority of any county, city, town or village to enact and enforce additional laws, ordinances or codes, or portions thereof, provided the provisions thereof are not inconsistent with the provisions of this section.

§ 394-c. Limitations on certain contracts involving social referral services. 1. As used in this section, the following terms shall have the following meanings:

(a) "social referral service" shall include any service for a fee providing matching of members, by use of computer or any other means, for the purpose of dating or general social contact.

(b) "ancillary services" shall refer to goods or services directly or indirectly related to or to be provided in connection with the social referral service process, including but not limited to photography, grooming, cosmetology, dating etiquette, dating counseling, or other services.

(c) "online dating service" shall mean any social referral service where the services are offered primarily online, such as by means of an internet website or a mobile application.

(d) "banned member" shall mean the member whose account or profile is the subject of a fraud ban.

(e) "fraud ban" shall mean when a member's account or profile is barred from an online dating service because, in the judgment of the service, the member was found to use or is substantially likely to be

using a false identity, or poses a significant risk of attempting to obtain money from other members through fraudulent means.

(f) "New York member" shall mean a person who provides a New York residential or billing address or zip code or is in New York when registering with the online dating service.

(g) "personally identifying information" shall mean any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means which shall include, but shall not be limited to, a person's full name, home address, telephone number, geographic location, email address, social security number, or a combination of non-personally identifying information which, when put together, can permit the identification of the person. The first name, last name, and image of an individual, where voluntarily provided to an online dating service with the knowledge that it will be communicated to individuals on the service's platform other than the individual providing it, shall not be considered personally identifying information when disclosed in connection with a fraud ban.

2. No contract for social referral service shall require payment by the purchaser of such service of a cash price in excess of one thousand dollars. Services to be rendered to the purchaser under the contract may extend over a period not to exceed two years from the date the contract is entered into. This subdivision shall not apply to an online dating service contract where the initial term is one year or less and any subsequent terms are one year or less where payment in excess of the amount provided under this subdivision is reasonable in light of the service's offerings.

2-a. No social referral service provider shall require the purchase of an ancillary service by a purchaser of a social referral service as a condition of entering into a social referral service contract with such provider.

3. Every contract for social referral service which requires payment by the purchaser of such service of a total amount in excess of twenty-five dollars shall provide that the seller of such service must

furnish to the purchaser a specified certain number of social referrals per month. This subdivision shall not apply to an online dating service where the user can use a search functionality or is presented with possible matches.

4. Every contract for social referral service which requires payment by the purchaser of such service of a total amount in excess of twenty-five dollars shall provide that in the event that the seller of such service does not furnish to the purchaser the specified certain number of social referrals, or in case of an online dating service with search functionality or algorithm or location based matching, any social referral, for two or more successive months the purchaser shall have the option to cancel the contract and to receive a refund of all monies paid pursuant to the cancelled contract with the exception that the seller shall be entitled to retain as a cancellation fee fifteen per cent of the cash price or a pro rata amount for the number of referrals furnished to the purchaser, whichever is greater. Every such contract shall set forth in the contract and in the bill of rights the manner in which such services provider determines its cancellation fee pursuant to this subdivision.

5. Every contract for social referral service shall provide that the seller will not without the prior written consent of the purchaser sell, assign or otherwise transfer for business or for any other purpose to any person any information and material of a personal or private nature acquired from a purchaser directly or indirectly including but not limited to answers to tests and questionnaires, photographs or background information.

5-a. Every contract for a social referral service shall provide each purchaser with the unilateral right to place such purchaser's membership on hold for a period of up to one year; provided, however, that the purchaser and social referral service may mutually agree to a longer period not to exceed two years. To exercise the unilateral right provided in this subdivision, a purchaser must notify the social referral service provider in writing of such purchaser's intent to do so.

6. Every contract for social referral service shall provide that at the expiration of the contract or at the expiration of services rendered by the seller, for any reason, all information and material of a personal or private nature acquired from a purchaser directly or indirectly including but not limited to answers to tests and questionnaires, photographs or background information shall be promptly returned by the seller to the purchaser by certified mail or destroyed and deleted from any electronic storage devices, with certification of destruction or deletion promptly provided to the purchaser, unless the retention of such information and material is required (a) by federal, state, or local laws, rules or regulations or (b) to comply with a judicial court order.

7. (a) Every contract for social referral service shall provide that such contract may be cancelled without a cancellation fee within three business days after the date of physical or electronic receipt by the buyer of a copy of the written contract.

(b) In every social referral service sale, the seller shall furnish to the buyer a fully completed copy of the contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in the immediate proximity to the space reserved in the contract for the signature of the buyer and in not less than ten-point bold face type, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS CONTRACT WITHOUT ANY CANCELLATION FEE WITHIN THREE (3) BUSINESS DAYS AFTER THE DATE OF THIS CONTRACT. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

(c) Notice of cancellation shall be delivered by certified or registered United States mail at the address, or electronically at the email address, specified in the contract.

(d) At the time the buyer signs the social referral service contract, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract and easily detachable, and which shall contain in not less than ten-point bold face type the following

information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE (3) BUSINESS DAYS AFTER THE DATE OF THIS CONTRACT BY MAILING THIS SIGNED AND DATED NOTICE OF CANCELLATION BY CERTIFIED OR REGISTERED UNITED STATES MAIL OR EMAIL TO THE SELLER AT THE ADDRESS OR EMAIL ADDRESS SPECIFIED HEREIN. IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE. TO CANCEL THIS TRANSACTION, MAIL BY CERTIFIED OR REGISTERED UNITED STATES MAIL OR EMAIL A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE TO:

(Name of Seller)

NOT LATER THAN _____

(Address or email address of Seller)

(Date)

In case of an online dating service, the contract, including the statement required by this subdivision, may be furnished and signed electronically, provided such contract is provided to the buyer in a clear and conspicuous manner.

(e) In every social referral service sale or renewal, the seller shall provide each purchaser with a clear and conspicuous, separate written notice, which may be a conspicuous and appropriately labeled hyperlink for an online dating service, to be known as the "Dating Service Consumer Bill of Rights", which shall contain at least the following information:

Dating Service Consumer Bill of Rights

1. No social referral service contract shall require the payment by you, the purchaser, of an amount greater than one thousand dollars. In addition, no such contract may extend over a period of time greater than two years.

2. No social referral service contract shall require you, the

purchaser, to purchase a good or service which is directly or indirectly related to the social referral service. These extra services are known as ancillary services and, while these ancillary service may be offered to you, the law prohibits the seller from requiring that you purchase this service as a condition of your social referral service contract.

3. If your social referral service contract costs more than twenty-five dollars, the seller must furnish a minimum number of referrals per month to you, unless your social referral service provides the user with a search functionality or is presented with possible matches. If this minimum amount is not furnished to you for two successive months, or in the case of an online dating service with search functionality or algorithm or location based matching, any social referral, you have the option of cancelling the contract and receiving a full refund of all the money you paid, less a cancellation fee which cannot exceed either fifteen percent of the cash price or a pro rata amount for the number of referrals furnished to you.

4. Unless your social referral service contract is for online dating services that are generally available to users on a regional, national or global basis, your social referral service contract must specify the distance which you, the purchaser, are willing to travel to meet any social referral. No social referrals shall be furnished where you and the referral live at a distance greater than the distance specified in the contract.

5. The provider must have an established policy to address the situation of your moving outside the area it services. This policy must be explained in your contract.

6. If any provision of the social referral service contract is violated, you have the right to bring a court action against the provider which has violated the contract.

8. Every contract for social referral service shall specify the distance which the buyer is willing to travel to meet any social referral. No social referral shall be furnished by the seller to the

buyer if either the buyer or the social referral reside at a distance further than the distance specified in either the buyer's or social referral's contracts. This subdivision shall not apply to online dating services that are generally available to users on a regional, national, or global basis.

8-a. Every social referral service provider must establish and administer a fair and reasonable policy for the situation in which a purchaser moves to permanently reside at a location outside the service area of such provider. This policy must be set forth in every contract for social referral service.

9. (a) Whenever there shall be a violation of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules, and direct restitution.

(b) Any person who has been injured by reason of a violation of this section may bring an action in such person's own name to enjoin such violation, an action to recover such person's actual damages or fifty dollars whichever is greater, or both such actions.

(c) In cities having a population over one million, the provisions of

this section may be enforced concurrently with the attorney general by the director of a local or municipal consumer affairs office. In cities having a population over one million, such local entities may also require social referral services to be licensed. Such licensing requirements may be promulgated as are reasonably necessary to effectuate licensure, provided, however, that such localities may not impose substantive requirements that are inconsistent with or more restrictive than those set forth in this section. Any fee for such license may not exceed three hundred forty dollars for a two year period.

10. (a) An online dating service shall disclose to all of its New York members known to have previously received and responded to an on-site message from a banned member:

(1) the user name, identification number, or other profile identifier of the banned member;

(2) the fact that the banned member was banned because, in the judgment of the online dating service, the banned member may have been using a false identity or may pose a significant risk of attempting to obtain money from other members through fraudulent means;

(3) that a member should never send money or personal financial information to another member; and

(4) a hyperlink to online information that clearly and conspicuously addresses the subject of how to avoid being defrauded by another member of an online dating service.

(b) The notification required by paragraph (a) of this subdivision shall be:

(1) clear and conspicuous;

(2) by e-mail, text message, or other appropriate means of communication; and

(3) sent within twenty-four hours after the fraud ban, or at a later time if the service has determined, based on an analysis of effective messaging, that a different time is more effective, but in no event later than three days after the fraud ban.

(c) An online dating service shall not be liable to any member who has an account or profile that is the subject of a fraud ban, for disclosing to any member that it has banned the member, the user name or account

identifier of the banned member, or the reasons for the online dating service's decision to ban such member in accordance with this subdivision where such disclosure does not contain their personally identifying information.

(d) This section does not diminish or adversely affect the protections for online dating services that are afforded in 47 USC 230, or any rights or protections otherwise provided to a consumer in law.

§ 394-cc. Internet dating safety. 1. As used in this section, the following terms shall have the following meanings:

(a) "internet dating service" means a person or entity directly or indirectly in the business, for profit, of offering, promoting or providing access to dating, relationship, compatibility, matrimonial or social referral services principally on or through the internet.

(b) "internet service provider" means any person, business or organization qualified to do business in this state that provides individuals, corporations, or other entities with the ability to connect to the internet through equipment that is located in this state.

(c) "member" means a customer, client or participant who submits to an internet dating service information required to access the service for the purpose of engaging in dating, relationship, compatibility, matrimonial or social referral.

(d) "New York member" means a member who provides an in-state billing address or zip code when registering with the service.

2. An internet dating service offering services to New York members shall provide safety awareness notification that includes, at minimum, a list and description of safety measures reasonably designed to increase awareness of safer dating practices in a clear and conspicuous manner. Such notification shall include, but not be limited to, the following statements or substantially similar statements:

(a) "There is no substitute for acting with caution when communicating with any stranger who wants to meet you."

(b) "Never include your last name, e-mail address, home address, phone number, place of work, or any other identifying information in your internet profile or initial e-mail messages. Stop communicating with

anyone who pressures you for personal or financial information or attempts in any way to trick you into revealing it."

(c) "If you choose to have a face-to-face meeting with another member, always tell someone in your family or a friend where you are going and when you will return. Never agree to be picked up at your home. Always provide your own transportation to and from your date and meet in a public place with many people around."

Such notification shall be given at the time a New York member registers with the service and by way of a link on the main website, or the first entry point, of the service.

3. (a) The attorney general may bring an action against an internet dating service that violates the provisions of this section:

(i) to enjoin further violation of the provisions of this section; and

(ii) to recover up to two hundred fifty dollars for each New York member registered with the internet dating service during the time period that the internet dating service was in violation of this section.

(b) In an action under subparagraph (ii) of paragraph (a) of this subdivision, a court may increase the damages up to three times the damages allowed by such paragraph where the defendant has been found to have engaged in a pattern and practice of violating the provisions of this section.

(c) No internet dating service shall be deemed to have violated the provisions of this section if such internet dating service shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

(d) Nothing in this section shall be construed to restrict any right which any person may have under any other statute or common law.

4. An internet service provider does not violate this section solely as a result of serving as an intermediary for the transmission of electronic messages between members of an internet dating service.

§ 394-ccc. Social media networks; hateful conduct prohibited. 1. As used in this section, the following terms shall have the following meanings:

(a) "Hateful conduct" means the use of a social media network to vilify, humiliate, or incite violence against a group or a class of persons on the basis of race, color, religion, ethnicity, national origin, disability, sex, sexual orientation, gender identity or gender expression.

(b) "Social media network" means service providers, which, for profit-making purposes, operate internet platforms that are designed to enable users to share any content with other users or to make such content available to the public.

2. A social media network that conducts business in the state, shall provide and maintain a clear and easily accessible mechanism for individual users to report incidents of hateful conduct. Such mechanism shall be clearly accessible to users of such network and easily accessed from both a social media networks' application and website, and shall allow the social media network to provide a direct response to any individual reporting hateful conduct informing them of how the matter is being handled.

3. Each social media network shall have a clear and concise policy readily available and accessible on their website and application which includes how such social media network will respond and address the reports of incidents of hateful conduct on their platform.

4. Nothing in this section shall be construed (a) as an obligation imposed on a social media network that adversely affects the rights or freedoms of any persons, such as exercising the right of free speech pursuant to the first amendment to the United States Constitution, or (b) to add to or increase liability of a social media network for anything other than the failure to provide a mechanism for a user to report to the social media network any incidents of hateful conduct on their platform and to receive a response on such report.

5. Any social media platform that knowingly fails to comply with the

requirements of this section shall be assessed a civil penalty for such violation by the attorney general not to exceed one thousand dollars. Each day such offense shall continue shall constitute a separate additional violation. In determination of any such violation, the attorney general shall be authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 394-d. Privity of contract between franchise seller and customer or patron of dealer. a. Any contract for instruction in physical and social skills, or for the use by an individual patron of a dance hall studio, ballroom, gymnasium, or other physical or social training facility which requires payment by the person receiving such instruction, or the use of such physical or social training facilities, between such patron and a franchised dealer shall be enforceable by the patron against the franchise seller either in requiring specific performance of the contract or in holding said franchise seller responsible for damages for a breach thereof.

b. For the purposes of this section, a "franchise seller" is an individual, partnership or corporation which sells to a dealer the right to use a certain name, reputation, process or course of instruction owned by it and which the dealer will make available to individual buyer or patron for a consideration or fee.

c. For the purposes of this section a "dealer" is an individual, partnership or corporation which contracts with a franchise seller to obtain and use the product of the franchise seller for the purpose of using, selling or making it available to an individual buyer or patron for a consideration or fee.

d. For the purposes of this section a "customer", "individual" or "patron" is a person who agrees to and contracts for a course of instruction in physical and social skills, or for the use of a dance hall studio, ballroom, gymnasium or other physical or social training facility.

§ 394-e. Report on request for abortional services. 1. It shall be unlawful for any person, firm or corporation doing business in this state to furnish a report of a referral for abortional services or a report of an inquiry or request therefor, to any person or government agency unless such person, firm or corporation has reasonable grounds to believe that the person or government agency requesting the report is (a) a law enforcement agency, or (b) the state department of health or the department of health of the city of New York, or (c) authorized in writing by the subject of such report, or (d) unless such person, firm or corporation shall have been ordered to furnish such report by a duly constituted court having jurisdiction to issue such an order. Every request for such a report shall be in writing and identify the name and address of the requestor. A request by a law enforcement agency shall include a sworn statement that the agency is requesting the report solely for law enforcement purposes.

2. A person may bring a civil action for damages or to restrain a person, firm or corporation from violating this act or both and, in such case, if it is found that such person, firm or corporation has wilfully violated this act the violator shall, in addition to any liability for actual damages as may be shown, be liable for exemplary damages of not less than one hundred dollars and not more than ten thousand dollars for each violation together with costs and reasonable attorney's fees and disbursements incurred by the person bringing the action.

3. Except as provided in this section, no person, firm or corporation shall be entitled to claim any privilege, absolute or qualified as a defense in any civil action brought by a person aggrieved by the publication or dissemination of information relating to referral for abortional services or an inquiry or request therefor.

4. Any person who requests or obtains a report of a referral for abortional services or an inquiry or request therefor from any person, firm or corporation under false pretenses or furnishes a report to any person except in accordance with this section shall be guilty of a class

A misdemeanor.

§ 394-f. Warrants for electronic data related to legally protected health activities. 1. For the purposes of this section, the following terms shall have the following meanings:

a. "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system; provided, however, such term shall not include:

i. any telephonic or telegraphic communication.

ii. any communication made through a tone only paging device.

iii. any communication made through a tracking device consisting of an electronic or mechanical device which permits the tracking of the movement of a person or object.

iv. any communication that is disseminated by the sender through a method of transmission that is configured so that such communication is readily accessible to the public.

b. "Electronic communication services" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

c. "Gender-affirming care" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

d. "Legally protected health activity" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

e. "Prohibited violation" means any investigation or proceeding that seeks to impose civil or criminal liability, professional sanctions, or any other legal consequences upon a person for any legally protected

health activity, unless such proceeding i. sounds in tort or contract; ii. is actionable, in an equivalent or similar manner, under the laws of this state; and iii. was brought by the person who received reproductive health care or gender-affirming care, or the person's legal representative, provided the person has given express consent unless express consent is not feasible due to their injury or death.

f. "Reproductive health care" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

2. Any person or entity that is headquartered or incorporated in New York that provides electronic communications services to the general public, when, in New York, served with a warrant issued by another state to produce records in New York that would reveal the identity of the customers using those services, data stored by or on behalf of the customers, the customers' usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall not produce those records when the corporation knows that the warrant relates to an investigation into, or enforcement of, a prohibited violation.

3. Any person or entity that is headquartered or incorporated in New York may comply with a warrant as described in subdivision two of this section if the warrant is accompanied by an attestation made by the entity seeking the records that the evidence sought is not related to an investigation into, or enforcement of, a prohibited violation.

4. The attorney general may commence a civil action or special proceeding to enforce the provisions of this section.

§ 394-g. Geofencing of health care facilities. 1. For the purposes of this section, the following terms shall have the following meanings:

a. "Digital advertisement" means any communication delivered by electronic means that is intended to be used for the purposes of marketing, solicitation, or dissemination of information related,

directly or indirectly, to goods or services provided by the digital advertiser or a third party.

b. "Geofencing" means a technology that uses global positioning system coordinates, cell tower connectivity, cellular data, radio frequency identification, Wi-Fi data and/or any other form of location detection, to establish a virtual boundary of one thousand eight hundred fifty feet radius or less or "geofence" around a particular location that allows a digital advertiser to track the location of an individual user and electronically deliver targeted digital advertisements directly to such user's mobile device upon such user's entry into the geofenced area. This shall also include the process of identifying whether a device enters, exits, or is present within a geographic area through the use of any information stored, transmitted, or received by the device, including but not limited to latitude, longitude, internet protocol address, wireless internet access information, cell tower connectivity, device identification information and/or other forms of location data.

c. "Health care facility" means any governmental or private entity that provides medical care or related services, including but not limited to, those who provide such care pursuant to article twenty-eight of the public health law or licensed under article thirty-one, thirty-two or sixteen of the mental hygiene law, including the building or structure in which the facility is located.

d. "User" means a natural person who owns or uses a mobile device or any other connected electronic device capable of receiving digital advertisements.

2. It shall be unlawful for any person, corporation, partnership, or association to establish a geofence or similar virtual boundary around any health care facility, other than their own health care facility, as defined pursuant to paragraph c of subdivision one of this section, for the purpose of delivering by electronic means a digital advertisement to a user, for the purpose of building consumer profiles, or to infer health status, medical condition, or medical treatment of any person at or within such health care facility, and it shall be unlawful for any

person, corporation, partnership, or association to deliver by electronic means any digital advertisement to a user at or within any such health care facility, other than their own health care facility, through the use of geofencing or similar virtual boundary.

§ 394-h. Electronic health information protections. 1. For the purposes of this section, the following terms shall have the following meanings:

a. Electronic health information. The term "electronic health information" means any information in any electronic format or media that relates to an individual or a device that is reasonably linkable to an individual or individuals in connection with any past, present, or future disability, physical health condition, or mental health condition; the search for or attempt to obtain health care services; any past, present, or future treatment or other health care services for a disability, physical health condition, or mental health condition; location information associated with a health care facility; or the past, present, or future payment for health care services. For the avoidance of doubt, any inference drawn or data derived about an individual or a device that is reasonably linkable to an individual or individuals that relates to any of these topics in any electronic format or media is considered electronic health information. Electronic health information does not include deidentified information.

b. Law enforcement agency. The term "law enforcement agency" shall have the same meaning as in subdivision four of section 705.00 of the criminal procedure law.

c. Law enforcement officer. The term "law enforcement officer" means a police officer or peace officer as defined in section 1.20 of the criminal procedure law.

2. Prohibition on access to electronic health information. Notwithstanding any other law, law enforcement agencies and law enforcement officers shall be prohibited from purchasing or obtaining

electronic health information without a warrant.

3. Exemptions. Nothing in this article shall apply to:

a. Information processed by local, state, and federal governments, and municipal corporations;

b. Protected health information that is collected by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5);

c. Any covered entity governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), to the extent the covered entity maintains patient information in the same manner as protected health information as described in paragraph b of this subdivision;

d. Information collected as part of a clinical trial subject to the Federal Policy for the Protection of Human Subjects, also known as the Common Rule, pursuant to good clinical practice guidelines issued by the International Council for Harmonisation or pursuant to human subject protection requirements of the United States Food and Drug Administration;

e. Information processed pursuant to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations;

f. Information processed pursuant to section two-d of the education

law; and

g. Information processed pursuant to the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq).

§ 394-i. Legally protected health activities. 1. For the purposes of this section, the term "legally protected health activity" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

2. No person or entity that is located, headquartered, or incorporated in New York state and receives, is served with, or is subject to a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons for information regarding legally protected health activity shall comply with or provide information in response to such inquiry, investigation, subpoena, or summons unless:

(a) such inquiry, investigation, subpoena, or summons contains or is accompanied by an affirmation under penalty of perjury attesting that either:

(i) it is not related to, and that any information obtained shall not be used in, any investigation or proceeding that seeks to impose civil or criminal liability, professional sanctions, or any other legal consequences upon a person or entity for any legally protected health activity; or

(ii) it is related to such an investigation or proceeding, but falls within an exception provided in paragraph one of subdivision (g) of section three thousand one hundred nineteen of the civil practice law and rules, and identifies which exception applies to the information request;

(b) the person or entity receiving or subject to such inquiry, investigation, subpoena, or summons regarding legally protected health activity has:

(i) (1) notified the attorney general within (A) five business days of receiving such inquiry, investigation, subpoena, or summons; or (B) five business days prior to any compliance with such inquiry, investigation, subpoena, or summons, whichever comes first; and

(2) provided a copy of such inquiry, investigation, subpoena, or summons and any related materials to the attorney general, unless the person or entity seeking such information regarding legally protected health activity obtains an order providing otherwise that is enforceable in New York issued by a court of competent jurisdiction; and

(ii) made reasonable attempts to notify the individual or individuals who provided, sought, received, facilitated, or otherwise engaged in such legally protected health activity to which such inquiry, investigation, subpoena, or summons pertains at least thirty days prior to providing any responsive information, unless the person or entity seeking such information regarding legally protected health activity obtains an order providing otherwise that is enforceable in New York issued by a court of competent jurisdiction; and

(c) a minimum of thirty days has passed since such person or entity notified the attorney general of such inquiry, investigation, subpoena, or summons pursuant to paragraph (b) of this subdivision; unless the person or entity seeking such information regarding legally protected health activity obtains an order providing otherwise that is enforceable in New York issued by a court of competent jurisdiction.

3. A person or entity who submits a false affirmation in violation of subdivision two of this section shall be subject to the jurisdiction of the courts of this state for any suit, penalties, or damages arising out of such false affirmation.

(a) The attorney general may commence an action or special proceeding for damages and/or penalties against any person or entity that submits a false affirmation in violation of subdivision two of this section.

(i) The courts of this state shall assess a statutory penalty of fifteen thousand dollars per violation against any person or entity found to have intentionally, knowingly, willingly, or recklessly submitted a false affirmation. This shall be in addition to any other legal or equitable remedy lawfully available.

(ii) Any action or special proceeding brought by the attorney general pursuant to this section shall be commenced within six years of the date on which the attorney general received notice of the inquiry, investigation, subpoena, or summons that such false affirmation accompanied.

4. The attorney general of this state may commence a civil action or special proceeding to enforce the provisions of this section, including but not limited to an application or motion for an order enjoining ongoing or future violations of this section.

(a) Any action or special proceeding brought by the attorney general pursuant to this section shall be commenced within six years of the date on which the attorney general received notice of the inquiry, investigation, subpoena, or summons at issue.

(b) Notwithstanding any contrary provision of law, the attorney general may seek all available legal and equitable remedies.

(c) The courts of this state shall assess a statutory penalty of ten thousand dollars per violation against any person or entity found to have intentionally, knowingly, willingly, or recklessly complied with an inquiry, investigation, subpoena, or summons regarding legally protected health activity in violation of this section. This shall be in addition to any other legal or equitable remedy lawfully available.

5. Any person or entity that is located, headquartered, or incorporated in New York state and receives, is served with, or is subject to a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons for information regarding legally protected health activity may institute a civil action to obtain declaratory relief, or such other relief deemed necessary and proper by the court, stating that this section prohibits their compliance with the inquiry, investigation, subpoena, or summons.

(a) At or before the commencement of any action under this section, notice thereof and a copy of the commencing document and all supporting documents shall be served upon the attorney general.

(b) The attorney general is authorized to intervene in any such action brought pursuant to this section.

(c) If the person or entity initiating an action brought under this section prevails in such action, the court shall award reasonable costs and attorney's fees.

(d) Any action brought pursuant to this section shall be commenced within one year of the date on which the inquiry, investigation, subpoena, or summons at issue was received or served, whichever is

later.

6. Any person or entity that issues or causes to be issued a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons to a person or entity located, headquartered, or incorporated in New York state shall be subject to the jurisdiction of the courts of this state for any action, suit, penalties, or damages arising out of this section.

7. Where compliance with this section delays or prohibits a person's or entity's response to a subpoena, such person or entity shall not be held in contempt or otherwise subject to legal consequences under section two thousand three hundred eight of the civil practice law and rules or any other law of this state for their delay in responding or failure to respond.

8. Nothing in this section shall be construed to prohibit compliance with the investigation of any activity which would violate the laws of this state. Nothing in this section shall be construed to prohibit sharing information regarding legally protected health activity in response to the written request of a person who received the reproductive health care or gender-affirming care or their legal representative as provided in paragraph one of subdivision (g) of section three thousand one hundred nineteen of the civil practice law and rules, or in response to the written request of a person or entity who is the subject of an investigation or proceeding that seeks to impose civil or criminal liability, professional sanctions, or any other legal consequences upon them for legally protected health activity. In each case, information shall only be shared to the extent necessary to fulfill such request.

9. Nothing in this section shall prohibit disclosure of deidentified information in compliance with federal grant reporting requirements or other reporting requirements under federal law, or identified information when strictly necessary to comply with a federal audit of specific services for which payment has been made by the federal government. Nothing in this section shall prohibit compliance with an order enforceable in New York entered by a court of competent

jurisdiction.

10. This section shall not be construed to allow for the provision of any information to any individual or any agency or department outside New York state which would not otherwise be available under state law.

§ 395. Required disclosure of prior use. 1. Whenever any person, firm, corporation or association engaged in the business of retailing merchandise to the public, or agent, employee or sales representative thereof shall offer used, rebuilt, reconditioned or repossessed television or radio receiving sets, phonographs, or major household appliances, for sale to the public, the seller shall affix to such merchandise offered for sale a tag or sticker which shall state as appropriate that such merchandise has been used, rebuilt, reconditioned, repossessed, or rebranded and used. If such merchandise is offered for sale to the public by any means of advertisement, announcement, card, sign, label, tag or other means of communication, the said advertisement, announcement, card, sign, label, tag or other means of communication must also contain in the description of such merchandise the appropriate word or words of the following: used, rebuilt, reconditioned, repossessed, or rebranded and used. Nothing in this section shall be construed to apply to merchandise sold as antique goods and so advertised or described, jewelry, imported oriental rugs, floor samples, nor to any merchandise returned by a retail customer the cash sales price for which is canceled or refunded or fully credited.

2. A violation of this section with the intent to deceive a prospective or potential purchaser of such merchandise shall constitute a misdemeanor.

3. Proof that any person, firm, corporation or association engaged in the business of retailing merchandise to the public, or agent, employee or sales representative thereof who has offered such merchandise for sale to the public has failed to comply with subdivision one of this section shall be presumptive evidence of the intent to deceive mentioned in subdivision two of this section.

4. Upon a showing by the attorney general in an application for an injunction that any person, firm, corporation or association engaged in the business of retailing merchandise to the public, or agent, employee or sales representative thereof who has offered such merchandise for sale to the public has failed to comply with subdivision one of this section, the supreme court after a hearing may issue a permanent injunction enjoining and restraining such action or violation, without requiring proof that any person has, in fact, been misled or deceived or otherwise damaged thereby.

§ 395-a. Maintenance agreements. 1. Definitions. For the purposes of this section, a "maintenance agreement" shall refer to any contract or representation whereby the seller or manufacturer of a retail sales item or the seller of a service contract shall offer the defined service and/or parts for an additional fee. Said maintenance agreement can be offered at the time of purchase or at a later date.

2. No maintenance agreement covering parts and/or service shall be terminated at the election of the party providing such parts and/or service during the term of the agreement unless prior to or upon delivery of a copy of the agreement the buyer is notified in writing that the agreement may be cancelled for:

a. non-payment; or

b. use of the item primarily for commercial purposes, unless the agreement so provides. When a maintenance agreement is terminated because of use of the item primarily for commercial purposes, the party providing the parts and/or service must reimburse the buyer on a pro rata basis for the remaining period of time or mileage for the unused portion of the maintenance agreement less the cost of any parts and/or service already provided from the date of termination; or

c. change in the buyer's residence beyond the disclosed service area, except where the buyer provides transportation or shipping to and from

the site of service. When a maintenance agreement is terminated because of a change in the buyer's residence beyond the disclosed service area, either the buyer or the party providing the parts and/or service may terminate the maintenance agreement. Reimbursement to the buyer shall be made on a pro rata basis for the remaining period of time or mileage for the unused portion of the maintenance agreement from the date of notice of change in the buyer's residence.

3. Pre-sale availability of maintenance agreement. Sellers of retail products purchased for personal, family or household purposes, which offer maintenance agreements shall provide the buyer with an opportunity to review the maintenance agreement before it is purchased and provide the buyer with a copy of the maintenance agreement at the time of purchase. The provisions of this section shall not apply to sales by mail order companies as defined in section three hundred ninety-six-m of this chapter.

4. A violation of the provisions of this section shall be punishable by a civil penalty of not more than three hundred dollars recoverable in an action by the attorney general in the name of the people of the state or by the corporation counsel for any city or by the appropriate attorney of any other political subdivision as shall be designated by the governing body of such political subdivision.

§ 395-b. Unlawfully installing or maintaining a two-way mirror or other viewing device. 1. As used in this section, the phrase "two-way mirror or other viewing device" shall mean a mirror, peep hole, mechanical viewing device, camera or any other instrument or method that can be utilized to surreptitiously observe a person.

2. A person is guilty of unlawfully installing or maintaining a two-way mirror or other viewing device when, being the owner or manager of any premises, he knowingly permits or allows such a device to be installed or maintained in or upon such premises, for the purpose of surreptitiously observing the interior of any fitting room, restroom, toilet, bathroom, washroom, shower, or any room assigned to guests or

patrons in a motel, hotel or inn.

2-a. A person is guilty of unlawfully installing or maintaining a video recording device when, being the owner or manager of any premises, he knowingly permits or allows such a device to be installed or maintained in or upon such premises, for purpose of surreptitiously recording a visual image of the interior of any fitting room, restroom, toilet, bathroom, washroom, shower, or any other room assigned to guests or patrons in a motel, hotel or inn.

3. a. The provisions of this section shall not apply with respect to premises which comprise, or are a part of any

(i) public correctional or custodial facility, or public or private medical facility which is used for the treatment of persons pursuant to medical directive, or

(ii) public or private treatment facility which is used for the treatment of persons who are committed or are voluntarily confined to such facility or are voluntarily receiving treatment thereat, or

(iii) facility operated by any federal, state or local law enforcement agency, or

(iv) private dwelling.

b. The provisions of this section shall further not apply with respect to any fitting room, otherwise subject to the provisions of this section, wherein the person who is the owner or manager of such premises has caused written notice to be conspicuously posted at the entrance to the fitting room stating that a two-way mirror or other viewing device has been installed for the purpose of observing the interior of such room. In cities with a population of one million or more, the written notice shall be in both English and Spanish.

4. Whenever there shall be a violation of this section, an application may also be made by the attorney general in the name of the people of the state of New York or by the corporation counsel for any city or by the appropriate attorney of any other political subdivision as shall be designated by the governing body of such political subdivision to a court or justice having jurisdiction to issue an injunction, and upon

notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In connection with any such proposed application, the attorney general, corporation counsel or other appropriate attorney, as the case may be, is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

5. A violation of the provisions of this section shall constitute a violation, and upon conviction thereof shall be punishable by a term of imprisonment not to exceed fifteen days, or by a fine of not more than three hundred dollars, or by both such fine and imprisonment, except that a violation of subdivision two-a of this section shall constitute a felony. In addition, a violation of the provisions of this section shall be punishable by a civil penalty of not more than three hundred dollars recoverable in an action by the attorney general in the name of the people of the state or by the corporation counsel for any city or by the appropriate attorney of any other political subdivision as shall be designated by the governing body of such political subdivision. Each unlawfully installed or maintained mirror or viewing or recording device shall constitute a separate and distinct violation.

§ 396. Unlawful selling practices. 1. No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means of advertisement, or other means of communication, offer for sale any merchandise, commodity, or service, as part of a plan or scheme with the intent, design, or purpose not to sell the merchandise, commodity, or service so advertised at the price stated therein, or with the intent, design or purpose not to sell the merchandise, commodity, or service so advertised. Nothing in this section shall apply to any television or sound radio broadcasting station or to any publisher or printer of a newspaper, magazine, or

other form of printed advertising, who broadcasts, publishes, or prints such advertisement.

2. a. No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale goods, wares or merchandise, where the offer includes the voluntary and unsolicited sending of goods, wares or merchandise not actually ordered or requested by the recipient, either orally or in writing; any such goods, wares or merchandise so sent shall be prominently marked upon the container thereof in bold letters as follows: "THIS IS A GIFT. PAYMENT NOT REQUIRED FOR THIS ITEM". The receipt of any goods, wares or merchandise pursuant to an existing membership or club arrangement in which the recipient receives such goods, wares or merchandise at specified intervals or a plan where the recipient agrees to receive such goods, wares or merchandise without further obligation shall not be construed as the receipt of unsolicited goods, wares or merchandise for the purposes of this section. The receipt of any such unsolicited goods, wares or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner he sees fit without any obligation on his part to the sender.

If after any such receipt deemed to be an unconditional gift under this paragraph a, the sender continues to send bill statements or requests for payment with respect thereto, an action may be brought by the recipient to enjoin such conduct, in which action there may also be awarded reasonable attorneys' fees and costs to the prevailing party.

b. If a person is a member of an organization which makes retail sales of any goods, wares, or merchandise to its members, and the person notifies the organization of his termination of membership by certified mail, return receipt requested, any unordered goods, wares, or merchandise which are sent to the person after thirty days following execution of the return receipt for the certified letter by the organization, shall for all purposes be deemed unconditional gifts to the person, who may use or dispose of the goods, wares, or merchandise in any manner he sees fit without any obligation on his part to the

organization.

If the termination of a person's membership in such organization breaches any agreement with the organization, nothing in this subdivision shall relieve the person from liability for damages to which he might be otherwise subjected to pursuant to law.

The provisions of this paragraph shall not apply to a member of an organization the sole purpose of which is the sale of a specific type of goods, wares or merchandise to its members until the member has fulfilled his initial purchase obligation.

3. a. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant is, in fact, violating this section, an injunction may be issued by such court or justice, enjoining and restraining such action or violation, without requiring proof that any person has, in fact, been misled or deceived or otherwise damaged thereby.

b. In addition to the authority granted to the attorney general pursuant to paragraph a of this subdivision and the authority granted to a recipient pursuant to paragraph a of subdivision two of this section, the attorney general, or any person adversely affected by reason of a violation of the provisions of subdivision two of this section, may bring an action against a person who violates the provisions of subdivision two of this section to recover the greater of:

(1) actual damages; or

(2) up to five hundred dollars for each instance in which goods, wares or merchandise were sent in violation of the provisions of subdivision two of this section.

c. In an action under paragraph b of this subdivision the court may

award the costs of the action together with reasonable attorney's fees to a prevailing plaintiff.

d. Nothing in this section shall in any way limit rights or remedies which are otherwise available under law to the attorney general or any other person authorized to bring an action under this section.

§ 396-a. Representation by savings and loan association of insurance on accounts. 1. No savings and loan association, building and loan association, cooperative bank or homestead association organized in this or any other state, other than one whose accounts are insured by an agency of the United States and which is specifically named in the representation, shall in or from this state, or to any person in this state, make any representation, oral or written, that any of its shares, certificates or accounts are insured or guaranteed unless such representation also includes: (a) the name and address of the insurer or guarantor, (b) the name of the state or country where the insurer or guarantor is incorporated or organized, (c) the phrase "an agency of (name of state)", if such be the case, or the phrase "a commercial company", if such be the case, and (d) the maximum amount of the insurance or guaranty applicable to each of its accounts. If the representation of insurance is made in writing, the statements specified in (a), (b), (c) and (d) above shall be set forth in not less than ten-point type.

2. Whenever the superintendent of financial services shall report a violation of this section to the attorney-general or the attorney-general shall believe from evidence satisfactory to him that a violation of this section has occurred, the attorney-general may bring an action in the name of the superintendent or in behalf of the people of the state, as the case may be, to enjoin further violation. In the action preliminary relief may be granted as under article sixty-three of the civil practice law and rules.

3. Before seeking to enjoin a violation of this section, the attorney-general shall give to the person, association, corporation or

other organization against whom a proceeding is contemplated appropriate notice and an opportunity to show orally and in writing why proceedings should not be instituted against him or it.

4. Nothing herein contained shall be construed to limit or restrict the application of article twenty-three-A of the general business law to savings and loan associations, building and loan associations, cooperative banks or homestead associations.

5. A violation of subdivision one shall constitute a misdemeanor.

*** § 396-aa. Simulated check.** 1. As used in this section, "simulated check" means any document which is not currency or a check, draft, note, bond, or other negotiable instrument but which, because of its appearance, has the tendency to mislead or deceive any person viewing such document into believing that it, in fact, represents currency or a negotiable instrument which can be deposited in a bank or used for third-party payments. "Simulated check" does not include a non-negotiable check, draft, note or other instrument which is used for soliciting orders for the purchase of checks, drafts, notes, bonds or other instruments and which is clearly marked as a sample, specimen or non-negotiable.

2. No person, firm or corporation shall produce, advertise, offer for sale, sell, distribute or otherwise transfer for use in this state any simulated check unless such document bears the phrase "THIS IS NOT A CHECK" diagonally printed in clear and conspicuous type on the front of such document.

3. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the respondent of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the respondent has, in fact, violated this section, an

injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one hundred dollars for each violation. In connection with any such application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

* NB There are 2 § 396-aa's

*** § 396-aa. Unsolicited telefacsimile advertising.** 1. It shall be unlawful for a person, corporation, partnership or association to initiate the unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient of such messages. For purposes of this section, "telefacsimile" shall mean every process in which electronic signals are transmitted by telephone lines for conversion into written text. This section shall not apply to telefacsimile messages sent to a recipient with whom the initiator has had a prior contractual or business relationship. Notwithstanding the above, it shall be unlawful to initiate any telefacsimile message to a recipient who has previously clearly indicated to the initiator by any verbal, written or electronic means that the recipient does not want to receive telefacsimile messages from the initiator.

2. Every unsolicited telefacsimile message sent to a recipient shall contain a notice that informs the recipient of the ability, granted by subdivision one of this section, to prevent the transmission of future unsolicited telefacsimile messages. Such notice shall be clear and conspicuous and on the first page of the telefacsimile message and include a domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the initiator.

If neither the required telephone number or facsimile machine number is a toll-free number, a separate cost-free mechanism including a website address or email address, for a recipient to transmit a request

pursuant to such notice to the sender of the message shall also be provided. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number. The telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make a request to prevent the transmission of future unsolicited advertisements twenty-four hours a day, seven days a week.

3. Any person who has received a telefacsimile transmission in violation of this section may bring an action in his own name to recover his actual damages or one hundred dollars, whichever is greater.

* NB There are 2 § 396-aa's

§ 396-aaa. Public display of tobacco and electronic cigarette advertisements and smoking paraphernalia prohibited. 1. For purposes of this section:

(a) "Advertisement" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, which bear a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine, a trademark of a tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine or a trade name associated exclusively with a tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine, or to promote the use or sale of a tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine.

(b) "Smoking paraphernalia" means any pipe, water pipe, hookah, rolling papers, electronic cigarette, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco or nicotine.

(c) "Vapor product" means any vapor product, as defined by section thirteen hundred ninety-nine-aa of the public health law, intended or

reasonably expected to be used with or for the consumption of nicotine.

(d) "Tobacco products" shall have the same meaning as in subdivision five of section thirteen hundred ninety-nine-aa of the public health law.

(e) "Electronic cigarette" shall have the same meaning as in subdivision thirteen of section thirteen hundred ninety-nine-aa of the public health law.

2. (a) No person, corporation, partnership, sole proprietor, limited partnership, association or any other business entity may place, cause to be placed, maintain or to cause to be maintained, smoking paraphernalia or tobacco product, electronic cigarette, or vapor product intended or reasonably expected to be used with or for the consumption of nicotine, advertisements in a store front or any exterior window or any door which is used for entry or egress by the public to the building or structure containing a place of business within one thousand five hundred feet of a school, provided that within New York city such prohibitions shall only apply within five hundred feet of a school.

(b) Any person, corporation, partnership, sole proprietor, limited partnership, association or any other business entity in violation of this section shall be subject to a civil penalty of not more than five hundred dollars for a first violation and not more than one thousand dollars for a second or subsequent violation.

§ 396-b. Advertisements. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Artificial intelligence", "artificial intelligence technology", or "AI" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments, and that uses machine- and human-based inputs to perceive real and virtual environments, abstract such perceptions into models through analysis in an automated manner, and use model inference to formulate options for information or action. This definition includes but is not limited to systems that use machine learning, large language model, natural language processing, and computer vision technologies, including

generative artificial intelligence.

(b) "Generative artificial intelligence" means a class of artificial intelligence models that are self-supervised and emulate the structure and characteristics of input data to generate derived synthetic content, including, but not limited to, images, videos, audio, text, and other digital content.

(c) "Synthetic performer" means a digitally created asset created, reproduced, or modified by computer, using generative artificial intelligence or a software algorithm, that is intended to create the impression that the asset is engaging in an audiovisual and/or visual performance of a human performer who is not recognizable as any identifiable natural performer.

2. Any person, firm, corporation or association, or agent or employee thereof, hereinafter called person, who, being engaged in the business of dealing in any property, makes, publishes, disseminates, circulates or places before the public or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this state, any advertisement respecting any such property, in any newspaper, magazine, or other publication, or over any radio station or television station, unless it is stated in any such advertisement that the advertiser is a dealer in such property or from the context of any such advertisement, it plainly appears that such person is a dealer in such property so offered for sale in any such advertisement; or when placing or causing any such advertisement to appear in any newspaper, magazine or other publication or radio or television station as described in this section, if requested by the publisher of any such newspaper, magazine or other publication or owner or operator of such radio or television station or any agent or representative thereof to file with such owner or operator, publisher, agent or representative thereof such person's true name, or where such person is transacting business under a name other than the true name pursuant to law, then the name under which such business is transacted, and each business address wherein any business is transacted by such person, in the class of property advertised or to be advertised for sale in such advertisement, shall make any false statement in relation to any of such items; or if requested by the publisher of any such newspaper, magazine or other

publication or owner or operator of such radio or television station or any agent or representative thereof to file with such owner, operator, publisher, agent or representative thereof a statement showing whether such person is causing such advertisement to appear or is offering to make such sale or disposition or transaction, as herein set forth, as principal or agent, and if as agent, to set forth such information as is specified in this section, in relation to such person's principal as well as in relation to such person, shall make any false statement in relation to any of such items; is guilty of a misdemeanor.

3. Any person engaged in the business of dealing in any property or service who for any commercial purpose produces or creates an advertisement respecting any such property or service, in any medium or media in which such advertisement appears, shall conspicuously disclose in such advertisement that a synthetic performer is in such advertisement, where such person has actual knowledge. A violation of this subdivision shall result in a civil penalty of one thousand dollars for a first violation, and five thousand dollars for any subsequent violation.

4. This section shall not apply to advertisements and promotional materials for expressive works, including but not limited to, motion pictures, television programs, streaming content, documentaries, video games, or other similar audiovisual works, provided that the use of a synthetic performer in the advertisement or promotional material is consistent with its use in the expressive work.

5. Nothing in this section shall limit, reduce, or enlarge any rights any person may have under section fifty, fifty-f, or fifty-one of the civil rights law or under any other law.

6. Nothing in this section shall be construed to limit, or to enlarge, the protections that 47 U.S.C. section 230 confers on an interactive computer service for content provided by another information content provider, as such terms are defined in 47 U.S.C. section 230.

7. This section shall not apply to advertisements and promotional

materials in any of the following circumstances:

- (a) Audio advertisements; or
- (b) Where the use of artificial intelligence solely involves the language translation of a human performer.

8. Nothing in this section shall apply to any medium used for advertising, including, but not limited to, newspapers, magazines, and television networks and stations, streaming services, cable television systems, billboards, and transit advertisements, by whom any advertisement or solicitation in violation of this section is published or disseminated.

§ 396-bb. Sale of motor fuels to disabled persons. 1. Any person, firm or corporation owning or operating a premises or facility for the retail sale of motor fuels for use in motor vehicles and offering self service and full service at the same time, shall, between the hours of seven o'clock in the morning and seven o'clock in the evening, provide full service of such motor fuels to disabled persons with a valid New York state disabled person license plate or a valid parking permit for handicapped persons issued pursuant to section twelve hundred three-a of the vehicle and traffic law at the same price charged for such motor fuels at the self service islands and shall post a notice in a manner and in at least one location which is conspicuous to a person seeking refueling service, including a depiction of the international symbol of access and stating as follows:

Full service at self service prices
7 a.m. to 7 p.m.

Such notice may also further state,

For persons with a valid New York state disabled license plate or a valid parking permit for handicapped persons.

2. For purposes of this section "disabled person" shall mean a registered owner or authorized operator of a motor vehicle who has been issued special license tags by the state or a valid parking permit for handicapped persons issued pursuant to section twelve hundred three-a of the vehicle and traffic law.

3. Any violation of this section shall result in a civil fine of not more than one hundred dollars to be collected by the corporation counsel for any city or by the appropriate attorney of any political subdivision as shall be designated by the governing body of such political subdivision.

§ 396-c. Advertisements by persons engaged in dental business relating to dentures and bridges. Any person engaged in the business of supplying, constructing, reproducing, relining, repairing, adding or directing the application of any substance of a permanent nature to dentures, bridges, appliances or other structures to be worn as substitutes for natural teeth:

(a) who shall advertise his services, technique or materials to the general public by means of advertisements in public newspapers, magazines or by radio or television display advertisements, excepting advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and in the public telephone directories other than displaying advertising in the latter, or

(b) who shall in any way directly solicit the patronage of the general public for any dental services, dental materials or dental appliances; shall be guilty of a misdemeanor.

*** § 396-cc. Notification of enclosure requirements for swimming pools.**
1. a. No person, firm, association or corporation engaged in the business of selling and/or installing swimming pools of a dimension subject to New York state regulation or local law shall sell or install any swimming pool unless such person, firm, association or corporation provides notice to consumers that the New York state uniform fire prevention and building code and, if such notice is given in a city with a population of one million or more or a county that a portion of which is within fifty miles of a city with a population of one million or more, the building code of the city of New York, require barriers around swimming pools that contain certain levels of water and that additional

costs may be incurred when installing a pool in order to comply with state or local laws regarding fencing, pool alarms and other safety requirements and instructing consumers to contact the local building code enforcement office for further details and to consult municipal codes and regulations for any further requirements. Such notice shall be given by prominently posting a sign where pools are displayed and/or sold or where swimming pools are offered for sale through a printed swimming pool display or swimming pool catalogue available to customers in retail stores. Such sign shall be no less than nine inches by fourteen inches using letters no less than one-half inch in height. Such sign shall include the address of the website at which the document required to be made available by the department of state pursuant to subdivision six of section three hundred seventy-six of the executive law is posted and, if such notice is given in a city with a population of one million or more or a county a portion of which is within fifty miles of a city with a population of one million or more, the address of the website of the New York city department of buildings. Any person, firm, association or corporation engaged in the business of selling and/or installing swimming pools of a dimension subject to New York state regulation or local law shall, upon request of a consumer, provide a written notice that shall clearly indicate the address of the website at which the document required to be made available by the department of state pursuant to subdivision six of section three hundred seventy-six of the executive law is posted and, if such notice is given in a city with a population of one million or more or a county that a portion of which is within fifty miles of a city with a population of one million or more, the address of the website of the New York city department of buildings. Such notice shall be no less than five inches by eight inches using letters no smaller than fourteen point type.

b. For the purposes of this section:

(i) "New York state uniform fire prevention and building code" means the uniform fire prevention and building code promulgated under section three hundred seventy-seven of the executive law.

(ii) "building code of the city of New York" shall mean the building code of the city of New York as defined in titles twenty-seven and twenty-eight of the administrative code of the city of New York.

2. Any person, firm, association or corporation who or which violates the provisions of subdivision one of this section shall be subject to a civil penalty of not more than one thousand dollars for each such violation.

3. a. Upon any violation of the provisions of subdivision one of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated subdivision one of this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eight thousand three hundred three of the civil practice law and rules, and direct restitution.

b. In connection with an application made under paragraph a of this subdivision, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

4. The provisions of subdivision one of this section may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

5. Nothing in this section shall be construed to expand, limit, or otherwise affect the authority of municipalities to adopt more restrictive standards for the construction or installation of swimming pools pursuant to section three hundred seventy-nine of the executive law.

* NB There are 2 § 396-cc's

*** § 396-cc. Senior citizen discounts.** 1. Except as provided pursuant to subdivision two of this section, any person, firm, partnership, corporation, or association, or agent or employee thereof, which offers, in the regular course of business, an established senior citizen price discount on any merchandise, commodity, or service, may not discontinue or disallow such established senior citizen discount on any merchandise, commodity, or service that has been separately discounted for the general populace; but rather, any separately discounted merchandise, commodity, or service must be offered in addition to, and not in lieu of, the established senior citizen discount.

2. Any person, firm, partnership, corporation, or association, or agent or employee thereof, may discontinue or disallow a senior citizen discount on any merchandise, commodity, or service that has been separately discounted for the general populace, provided that: (a) any advertisements which promote the discounted price of such merchandise, commodity, or service disclose that "no other discounts shall apply" or "this discount may not be combined with any other offer" or words of like import; or (b) such person, firm, partnership, corporation, or association offering an established senior citizen discount program notifies holders at the time of application for such program of limitations or restrictions on the usage of such established discount program; or (c) such person, firm, partnership, corporation, or association notifies the general public of the disallowance or discontinuance of such senior citizen discount by conspicuously posting: (i) a sign in close proximity to the item or items themselves; or (ii) a sign affixed to the cash register or point of sale; or (iii) a sign so situated as to be clearly visible to the buyer from the cash register or point of sale.

3. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of

not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one hundred dollars. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

* NB There are 2 § 396-cc's

§ 396-d. Advertisement and description of real property. Whenever any person or persons, firm or corporation, shall use in connection with the designation, description, advertisement, lease or sale of any real property, any name which shall include the name of any political or territorial subdivision situated in the county or in any county immediately adjoining the county in which such property is situated, other than the name of the political and territorial subdivision in which the particular property referred to is located, such person or persons, firm or corporation shall, as part of every such designation, description, advertisement, lease or sale, and with the same prominence given to any such name or part of such name, state and display the name of the town, village, city or other political subdivision in which such property is actually located.

§ 396-dd. Renting of horses; helmets and safety information. 1. For the purposes of this section, the following terms shall have the following meanings:

a. "Horse" includes a horse, pony, mule or hinny.

b. "Horse provider" includes any person, firm, corporation or other legal entity hiring or renting out horses for riding or providing training in the riding of horses for consideration.

2. Every horse provider shall provide protective helmets to beginning riders and to riders less than eighteen years of age at no cost beyond the rental fee; offer all riders the use of such protective helmets regardless of their age or experience; and provide appropriate helmet safety information to all riders.

3. Such helmets shall comply with the requirements of section twelve hundred sixty-five of the vehicle and traffic law.

4. A knowing violation of this section shall be subject to a civil penalty not to exceed two hundred fifty dollars for each such violation.

§ 396-e. Marking articles made of linen. Any person, firm, corporation or association who makes or sells or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any collars or cuffs marked, stamped or branded with the words, "linen," "pure linen" or "all linen" or incased or inclosed in any box, package, cover or wrapper or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark, or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing, that such article is "linen," "pure linen," or "all linen," unless the material of which the said collars or cuffs are manufactured contains at least one fold or ply which has a flax thread in both its warp and filling, is guilty of a misdemeanor.

§ 396-ee. Sale of certain weapons; locking devices therefor. (1) No person, firm or corporation engaged in the retail business of selling rifles, shotguns or firearms, as such terms are defined in section

265.00 of the penal law, shall sell, deliver or transfer any such rifle, shotgun or firearm to another person unless the transferee is provided at the time of sale, delivery or transfer with a gun locking device and a label containing the quoted language specified in subdivision two of this section is either affixed to such rifle, shotgun or firearm or placed in the container in which such rifle, shotgun or firearm is sold, delivered or transferred. For the purposes of this section, the term "gun locking device" shall mean an integrated design feature or an attachable accessory that is resistant to tampering and is effective in preventing the discharge of such rifle, shotgun or firearm by a person who does not have access to the key, combination or other mechanism used to disengage the device. The division of state police shall develop and promulgate rules and regulations setting forth the specific devices or the minimum standards and criteria therefor which constitute an effective gun locking device.

(2) Every person, firm or corporation engaged in the retail business of selling rifles, shotguns or firearms, as such terms are defined in section 265.00 of the penal law, shall, in the place where such rifles, shotguns or firearms are displayed or transferred to the purchaser, post a notice conspicuously stating in bold print that: "RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. RIFLES, SHOTGUNS AND FIREARMS MUST EITHER BE STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSITORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER OR OTHER LAWFUL POSSESSOR IF A CHILD RESIDES IN THE HOME OR IS PRESENT, OR IF THE OWNER OR POSSESSOR RESIDES WITH A PERSON PROHIBITED FROM POSSESSING A RIFLE, SHOTGUN OR FIREARM UNDER STATE OR FEDERAL LAW. RIFLES, SHOTGUNS AND FIREARMS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING RIFLES, SHOTGUNS OR FIREARMS ACCESSIBLE TO A CHILD OR OTHER PROHIBITED PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH." Nothing in this subdivision shall be deemed to affect, impair or supersede any special or local law relating to the posting of notice regarding the safe storage of rifles, shotguns or firearms.

(3) Any person, firm or corporation who fails to comply with the provisions of this section shall be guilty of a violation punishable as provided in the penal law. Any person, firm, or corporation who fails to comply with the provisions of this section after having been previously

convicted of a violation of this section shall be guilty of a class A misdemeanor, punishable as provided in the penal law.

§ 396-eee. Unlawful sale or delivery of body armor. 1. No person, firm or corporation shall sell or deliver body armor to any individual or entity not engaged or employed in an eligible profession, and except as provided in subdivision two of this section, no such sale or delivery shall be permitted unless the transferee meets in person with the transferor to accomplish such sale or delivery.

2. The provisions of subdivision one of this section regarding in person sale or delivery shall not apply to purchases made by federal, state, or local government agencies for the purpose of furnishing such body armor to employees in eligible professions.

3. For the purposes of this section, "body armor" shall have the same meaning as defined in subdivision two of section 270.20 of the penal law.

4. Any person, firm or corporation that violate the provisions of this section shall be guilty of a violation punishable by a fine in an amount not to exceed five thousand dollars for the first offense and in an amount not to exceed ten thousand dollars for any subsequent offense.

*** § 396-eeee. Three-dimensional printers.** 1. No person, firm, partnership, association, or corporation shall sell or deliver any three-dimensional printer in the state of New York unless such printer is equipped with blocking technology. As used in this section, the terms "three-dimensional printer" and "blocking technology" shall have the same meaning as such terms are defined in subdivision one of section eight hundred thirty-seven-aa of the executive law.

2. Whenever the attorney general shall believe from evidence satisfactory to them that any person, firm, partnership, corporation or association or agent or employee thereof has engaged in or is about to

engage in conduct prohibited by this section they may bring an action in the name and on behalf of the people of the state of New York to enjoin such unlawful acts or practices and to obtain restitution of any moneys or property obtained directly or indirectly by any such unlawful acts or practices. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules.

3. Any gun industry member, as such term is defined in section eight hundred ninety-eight-a of this chapter, determined by a court to have violated this section shall be liable to the people of the state of New York for a civil penalty of five thousand dollars for each qualified product that is unlawfully sold, transferred, imported, distributed, manufactured, marketed, or offered for wholesale or retail sale in New York state.

4. Any person, firm, partnership, corporation or association that has been damaged as a result of any person, firm, partnership, association, or corporation whose acts or omissions that violate the provisions of this section shall be entitled to bring an action for recovery of damages or to enforce this section.

5. The provisions of subdivision one of this section shall not apply to the sale or delivery of a three-dimensional printer to any person, firm, partnership, association, or corporation in this state that has both: (a) a valid gunsmith license issued pursuant to section 400.00 of the penal law; and (b) a valid federal firearms license, issued pursuant to section 922 of title 18 of the United States Code; provided, however, that prior to purchasing or accepting delivery of a three-dimensional printer that is not equipped with blocking technology, such person, firm, partnership, association, or corporation shall make a written request to the attorney general to authorize such purchase. Upon receipt of such a written request, the attorney general shall verify the validity of the state and federal firearms licenses issued to the person, firm, partnership, association, or corporation to whom the three-dimensional printer would be sold and delivered. Upon verifying the validity of the licenses required by this subdivision, the attorney general shall issue a written notice authorizing the sale and delivery

of a three-dimensional printer that is not equipped with blocking technology to the person, firm, partnership, association, or corporation to whom the licenses were issued. The attorney general may promulgate rules and regulations, as necessary, to ensure compliance with this subdivision, including, but not limited to, developing and publishing rules and guidance for the submission of requests for authorization and the form of written authorization of sales and delivery of three-dimensional printers that are not equipped with blocking technology.

* NB Effective one year after the promulgation of rules as specified in subdivision 3 of section 837-aa of the general business law (see Ch. 55 of 2026, Part C, Subpart B, § 6)

§ 396-f. Sale of blind made products. (1) Declaration of policy and statement of purpose. The protection of blind persons and organizations established to aid blind persons in the sale of blind made products and the prevention of misrepresentations in connection with the sale of blind made products are declared to be a matter of state concern.

(2) Definitions. The following words or phrases, as used in this section shall have the following meanings, unless the context otherwise requires:

(a) "Blind" shall mean a person having central visual acuity not to exceed 20/200 in the better eye, with correcting lenses, or visual acuity greater than 20/200, but with a limitation in the field of vision, such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(b) "Blind made products" shall mean the goods, wares and merchandise in the manufacture of which not less than seventy-five per cent of the total hours of direct labor is performed by a blind person or persons.

(c) "Manufacture" shall mean the preparation, processing and assembling of goods, wares or merchandise intended for resale and shall include the manufacture of component materials.

(d) "Direct labor" shall mean all work required for the manufacture of blind made products, but shall not include time spent in the supervision, administration, inspection and shipping of such product, nor shall it include work by blind persons consisting solely of the

packaging of goods, wares and merchandise not manufactured by blind persons. However, nothing in this section shall preclude preferred bid status for the value added portion of any product that has been in part or solely packaged or assembled by blind or other severely handicapped persons.

(e) "Commission" shall mean the New York State commission for the visually handicapped.

(3) Registration requirement. Any person engaged in the manufacture or distribution of blind made products shall apply to the commission on forms provided by it for a registration and authorization to use an official imprint, stamp, symbol or label, designed or approved by the commission, to identify goods and articles as being blind made products. The commission shall investigate each application, to assure that such person is actually engaged in the manufacture or distribution of blind made products. The commission may register, without investigation, nonresident persons upon proof that they are recognized and approved by the state of their residence or organization pursuant to a law of such state imposing requirements substantially similar to those prescribed pursuant to this section.

(4) Identification of blind made products. No goods or articles made in this or any other state shall be displayed, advertised, offered for sale or sold in this state upon a representation that the same are blind made products unless the same are identified as such by label, imprint, stamp or symbol designed or approved by the commission.

(5) Violations. Any person who shall willfully either:

(a) use or employ an imprint, stamp, symbol or label designed or approved by the commission or an imitation thereof without having registered with the commission or

(b) who shall directly or indirectly by any means represent that the goods, wares or merchandise are blind made products when in fact such is not the case, shall be guilty of a misdemeanor.

§ 396-g. Sale of products processed by the blind. (1) Declaration of policy and statement of purpose. To broaden the protection of blind persons and organizations established to aid blind persons so as to include products processed by the blind, as well as blind made products,

and to prevent misrepresentation in connection with the sale of such products, and such broadened protection is declared to be a matter of state concern.

(2) Definitions. The following words or phrases, as used in this section, shall have the following meaning, unless the context otherwise requires.

(a) "Blind" shall mean a person having central visual acuity not to exceed 20/200 in the better eye, with correcting lenses, or visual acuity greater than 20/200, but with a limitation in the field of vision, such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(b) "Processed" shall mean any singly identifiable process, capable of being certified by the commission as having been performed by the blind, occurring after the manufacture of a product and before its ultimate purchase by the consumer, including but not limited to packaging and inspection of a product.

(c) "Commission" shall mean the New York State Commission for the visually handicapped.

(d) "Person" shall mean any person, firm, partnership, association or corporation.

(3) Registration requirement.

(a) Any person engaged in the processing of products processed by the blind shall apply to the commission on forms provided by it for a registration and authorization to use a statement approved by the commission, to identify goods and articles as being processed in a particular manner by the blind. The commission shall investigate each application, to assure that such person is actually engaged in the processing by the blind in the particular manner as represented by said person. The commission may register, without investigation, non-resident persons upon proof that they are recognized and approved by the state of their residence or organization pursuant to a law of such state imposing requirements substantially similar to those prescribed pursuant to this section.

(b) To be eligible to register with the commission pursuant to paragraph (a) of this subdivision, a person who represents that blind persons are involved in a particular manner of processing must show that the percentage of blind employees engaged in such processing satisfies

the percentage requirements established by the commission. However the percentage requirements by the commission shall not exceed the schedule of maximums as follows:

- until December 31, 1973 not to exceed 15%;
- until December 31, 1974 not to exceed 30%;
- until December 31, 1975 not to exceed 45%;
- until December 31, 1976 not to exceed 60%;
- and thereafter not to exceed 75%.

The commission may establish a percentage less than the allowable maximum, if it finds after study that such lower percentage will have the effect of increasing the overall employment opportunities of blind persons.

(4) Identification of products processed by the blind. No products processed in this or any other state shall be displayed, advertised, or offered for sale or sold in this state upon a representation that the same are processed in a particular manner by the blind unless the same are identified by a written statement, the text of which is approved by the commission.

(5) Violations. Any person who shall willfully either:

(a) use or employ a written statement, the text of which has been approved by the commission or an imitation thereof without having registered with the commission or

(b) affix to, or accompany with, the goods, wares or merchandise, any written statement representing that such items are processed by the blind when in fact such is not the case, shall be guilty of a misdemeanor.

(6) In addition to any other action authorized by law, the attorney general may bring an action in the supreme court, in the name and in behalf of the people of the state of New York to enjoin and restrain the continuance of any violation of this section or to cancel any registration previously filed with the commission, whenever the attorney general shall have reason to believe that a person, firm, partnership, association or corporation:

(a) is operating in violation of the provisions of this section;

(b) has refused or failed, after notice from the commission, to produce any of its records;

(c) is employing or about to employ in the sales promotion of its goods or articles, any device, scheme or artifice to defraud based on false pretense, representation or promise;

(d) has made a material false statement to the commission in an application, registration or statement required to be filed.

In connection with such proposed action, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules.

§ 396-h. Fraudulent sale of poppies, forget-me-nots, daisies, flags and other articles sold for patriotic purposes. Any person, whether a veteran soldier, sailor, marine or army nurse, or otherwise, who in the promotion of his own interests, or to derive personal pecuniary benefit, gain or profit, for himself or for any person, firm or corporation other than an organization expressly designated and authorized to administer veteran relief by the provisions of section one hundred sixty-eight of the social welfare law, sells or offers to sell poppies, forget-me-nots, daisies, flags or other articles sold for patriotic purposes, while claiming that such sale or offer to sell is made as agent of, or for the benefit of such organization authorized to administrate veteran relief, is guilty of a misdemeanor, punishable by a fine of not more than fifty dollars or by imprisonment for not more than six months, or by both such fine and imprisonment.

§ 396-hh. Sale of poppies, forget-me-nots, daisies, flags and other articles for patriotic purposes. Notwithstanding the provisions of any general, special or local law, charter or ordinance to the contrary, no municipality shall require any member of an organization expressly designated and authorized to administer veteran relief by the provisions of section one hundred sixty-eight of the social services law to apply for solicitation licenses or permits or to impose a fee for the sale of poppies, forget-me-nots, daisies, flags and other articles sold for patriotic purposes. No such municipality may restrict such persons from wearing a uniform or part thereof in connection with the sale of such

articles for patriotic purposes.

§ 396-i. Acceptance of unexpired gift certificates. 1. (a) For the purposes of this section, the following terms shall have the following meanings:

(1) "gift certificate" shall mean a certificate, electronic card, or other pre-funded record that: (i) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers; and (ii) is issued in a specified amount; and (iii) may or may not be increased in value or reloaded; and (iv) is purchased and/or loaded on a prepaid basis for the future purchase or delivery of any goods or services; and (v) is honored upon presentation;

(2) "open loop gift certificate" shall mean a gift certificate redeemable at multiple, unaffiliated merchants or service providers; and

(3) "promotional gift certificate" shall mean a gift certificate issued for no consideration which includes on the front of the gift certificate (i) a statement indicating that the card is issued for promotional purposes and (ii) the expiration date for the underlying funds.

(b) Gift certificate shall not include (i) an electronic payment device linked to a deposit account or which is covered by the exclusion set forth in 15 U.S.C. § 1693 L-1(a)(2)(D)(ii), (ii) a fare payment card or electronic payment device used to pay for travel on a public transportation authority system, or (iii) prepaid telephone calling cards regulated under section ninety-two-f of the public service law. Gift certificate also shall not include flexible spending arrangements as defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C. § 106(c)(2); flexible spending accounts subject to Section 125 of the Internal Revenue Code, 26 U.S.C. § 125; Archer MSAs as defined in Section 220(d) of the Internal Revenue Code, 26 U.S.C. § 220(d); dependent care reimbursement accounts subject to Section 129 of the Internal Revenue Code, 26 U.S.C. § 129; health savings accounts subject to Section 223(d) of the Internal Revenue Code, 26 U.S.C. § 223(d), as amended by Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts

from which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis. Gift certificate also shall not include a prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price; provided that any expiration date of the prepaid discount card or program is clearly and conspicuously disclosed. Gift certificate also shall not include payroll cards or other electronic payment devices which are linked to a deposit account and which are given in exchange for goods or services rendered.

1-a. No person, firm, partnership, association or corporation who or which issues gift certificates or store credits, or who or which conducts a "closing out sale" or "defunct business sale" as such terms are defined in section five hundred eighty-one of this chapter, of the merchandise of any such person, firm, partnership, association or corporation, shall refuse to accept such gift certificate or store credit in payment for goods or services used or bought for use primarily for personal, family or household purposes, including, but not limited to, goods or services advertised on sale or pursuant to a liquidation or close-out, provided that if the certificates or the terms of the store credits limit the period of time during which they may be used, they are presented for redemption before the expiration of such period of time.

2. No person, firm, partnership, association or corporation who or which issues gift certificates or store credits, or who or which conducts a "closing out sale" or "defunct business sale" as such terms are defined in section five hundred eighty-one of this chapter, shall in any manner restrict the holder of a gift certificate or store credit from electing use of such gift certificate or store credit in a manner not inconsistent with stated terms of such gift certificate or store credit, nor shall any person, firm, partnership, association or corporation who or which issues gift certificates or store credits, or who or which conducts a "closing out sale" or "defunct business sale" as such terms are defined in section five hundred eighty-one of this chapter, alter the term of a gift certificate or store credit after it has been issued.

2-a. (a) The terms and conditions of a gift certificate shall be disclosed to the purchaser:

(i) on a sign conspicuously posted stating "TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS"; or (ii) conspicuously stated in an offer made by mail thus: "TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS".

(b) For purchases via electronic, computer, or telephonic means, the statement "TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS" shall be stated prior to the customer's purchase of the gift certificate or conspicuously written within the electronic message offering a gift certificate for purchase.

(c) All advertisements or promotions for gift certificates shall include a notice in like or similar term to the following: "TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS".

2-b. (a) No person, firm, partnership, association or corporation shall sell a gift certificate to a purchaser unless the seller displays a conspicuous notice at or near where the gift certificate is displayed or at or near the physical location where the sale occurs, that (i) cautions the purchaser about prepaid card scams, and (ii) instructs the purchaser on what to do if they suspect they might be a potential victim of such a scam.

(b) The consumer protection division, as established in section ninety-four-a of the executive law, shall create a model notice which sellers may use to comply with the requirements of this section and shall make such notice accessible to sellers including, but not limited to, posting such notice on the consumer protection division's website in a format available for sellers to print and display.

3. The terms and conditions of a gift certificate store credit shall be clearly and conspicuously stated thereon. Terms and conditions including, but not limited to, policies related to refunds, warranties, changes in terms and conditions, the expiration date, if any, the activation fee, if any, the procedure for the replacement of a gift certificate, if any, assignment and waiver shall be conspicuously printed: (a) on the gift certificate; or (b) on an envelope or packaging

containing the gift certificate, provided that a toll free telephone number to access the additional terms and conditions is printed on the gift certificate; or (c) on an accompanying document, provided that a toll free telephone number to access the additional terms and conditions is printed on the gift certificate.

3-a. The requirements of subdivisions two-a and three of this section shall not apply to a gift certificate that has no terms and conditions.

3-b. Subparagraph (i) of paragraph (a) of subdivision two-a and subdivision five-a of this section shall not apply to gift certificates:

(a) sold below face value or at a volume discount to employees, to nonprofit and charitable organizations, or educational institutions for fundraising purposes; or

(b) distributed to a consumer or employee pursuant to an awards, rewards, loyalty, or promotional program without any consideration being given in exchange for the gift certificate by the consumer or employee.

3-c. Nothing in this section shall be construed to prevent unclaimed funds related to gift certificates from becoming abandoned under section thirteen hundred fifteen of the abandoned property law.

4. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more

than one thousand dollars for such violation. In connection with any such application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

5. (a) No person, firm, partnership, association or corporation shall charge or assess, or sell or issue any gift certificate subject to, any activation fee, retroactive fee, redemption fee, service fee, dormancy fee, latency fee, administrative fee, handling fee, access fee, periodic fee, renewal fee, re-loading fee, or any other fee of any kind, other than an open loop gift certificate subject to an initial one-time activation or issuance fee reasonably related to the cost of the issuer issuing the open loop gift certificate and which shall in no event be in excess of nine dollars.

(b) No person, firm, partnership, association or corporation shall sell a gift certificate that has a face value or balance that declines as a result of the passage of time or the dormancy of the gift certificate.

(c) For the purposes of this subdivision, "dormancy" shall mean non-use of a gift certificate. Use of a gift certificate shall include, but not be limited to, adding value, or purchases.

5-a. It shall be unlawful for any person to sell or issue a gift certificate other than a promotional gift certificate where the underlying funds are subject to an expiration date, provided that a gift certificate may be subject to an expiration date which is not earlier than the later of nine years after the date on which the gift certificate was issued, or the date on which funds were last loaded. The terms of expiration of a gift certificate, if any, shall be clearly and conspicuously stated on such gift certificate.

5-b. A gift certificate, other than an open loop gift certificate or a promotional gift certificate, with a remaining value of less than five dollars may be redeemed upon request for its cash value.

6. The provisions of this section shall be exclusive and shall preempt any provisions of local law, ordinance or code, and no locality shall

impose requirements that are inconsistent with or more restrictive than those set forth in this section.

§ 396-ii. Cashless policies prohibited. a. As used in this section, the following terms shall have the following meanings:

(i) "Cash" means United States coins and currency, including federal reserve notes. Cash does not include foreign currency; any paper instrument other than a federal reserve note, including, but not limited to, any check, bond, or promissory note; or any foreign metal coin.

(ii) "Consumer commodity" means any article, good, merchandise, product or commodity of any kind or class produced, distributed or offered for retail sale for consumption by individuals, or for personal, household or family purposes.

(iii) "Food store" means an establishment which gives or offers for sale food or beverages to the public for consumption or use on or off the premises, or on or off a pushcart, stand or vehicle.

(iv) "Retail establishment" means an establishment wherein consumer commodities are sold, displayed or offered for sale, or where services are provided to consumers at retail. This definition does not include banks or trust companies as such terms are defined in section two of the banking law.

b. It shall be unlawful for a food store or a retail establishment to refuse to accept payment in cash from consumers, provided that such food store or retail establishment may refuse to accept payment:

(i) In cash bills denominated above twenty dollars; or

(ii) In cash for any telephone, mail, or internet-based transaction, unless the payment for such transaction takes place on the premises of such food store or retail establishment.

c. No food store or retail establishment shall charge a higher price for the same consumer commodity to a consumer who pays in cash than to a consumer who pays for such commodity through a cash-less transaction.

d. A food store or retail establishment that violates this section is liable for a civil penalty of not more than one thousand dollars for the

first violation and a civil penalty of not more than one thousand five hundred dollars for each succeeding violation.

e. (i) This section shall not apply to a food store or retail establishment that provides a device on premises that converts cash, without charging a fee or requiring a minimum deposit amount greater than one dollar, into a prepaid card that allows a consumer to complete a transaction at such food store or retail establishment.

(ii) Upon request, such device shall provide each consumer with a receipt indicating the amount of cash such consumer deposited onto the prepaid card.

(iii) Cash deposits onto such a prepaid card shall not be subject to an expiration date and there shall be no limit on the number of transactions that may be completed on such prepaid card.

(iv) In the event that such device malfunctions, the food store or retail establishment where such device is located shall accept payment in cash from consumers throughout the time period in which such device does not function in accordance with the standards set forth in this section. Such food store or retail establishment shall place a conspicuous sign on or immediately adjacent to such device indicating that such food store or retail establishment is required by law to accept cash if such device malfunctions, and that consumers may report any violation to the department of state division of consumer protection. The department of state may establish by rule additional requirements relating to such signs and the display of such signs.

§ 396-j. Sale or possession of master or manipulative keys for motor vehicles. 1. Any person, firm, copartnership, corporation or association, or any agent or employee thereof who (a) sells, offers for sale or advertises for sale or knowingly possesses any master or manipulative key or device designed to open or capable of opening the door or trunk of any motor vehicle, or of starting the engine thereof, or (b) knowingly possesses any key cutter, manufacturing device or tool which is capable of producing, duplicating or altering any key designed to open or capable of opening the door or trunk of any motor vehicle, or of starting the engine thereof, under circumstances evincing an intent

to use or knowledge that some person intends to use the same to make a key to unlawfully enter or operate any motor vehicle, or (c) knowingly possesses any duplicate key or key blank or device designed to open or capable of opening or capable of being readily adapted to open the door or trunk of any motor vehicle, or of starting the engine thereof, under circumstances evincing an intent to use or knowledge that some person intends to use the same to unlawfully enter or operate any motor vehicle, is guilty of a class A misdemeanor.

2. This section shall not apply to a dealer of new or used motor vehicles, a car rental agent, or a locksmith or their agents while acting within the scope of their employment; or a private investigator, or his employees, who is licensed and bonded by the state of New York and who in the usual course of business repossesses motor vehicles; or a state or municipal law enforcement officer acting within the scope of his official duties.

3. Notwithstanding the provisions of subdivision one of this section, it shall be lawful for an automobile club duly organized under the Membership Corporations Law, for the purpose of providing services to its members, its duly authorized employees or agents, to possess and use a device other than a master or manipulative key for the purpose of opening a door of a locked motor vehicle when requested to do so by a member of said automobile club who is the owner or the operator in lawful possession of said motor vehicle.

*** § 396-k. Hazardous toys and other articles intended primarily for use by children; prohibition and enforcement.** 1. No person, firm, corporation, association or agent or employee thereof shall import, manufacture, sell, hold for sale or distribute a toy or other article intended for use by a child which presents an electrical, mechanical or thermal hazard. The following definitions are applicable to this section:

(a) "Child" means any person less than fourteen years of age;

(b) A toy or other article presents an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its

design or manufacture may cause personal injury or illness by electrical shock or electrocution;

(c) A toy or other article presents a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

- (1) from fracture, fragmentation or disassembly of the article;
- (2) from propulsion of the article or any part or accessory thereof;
- (3) from points or other protrusions, surfaces, edges, openings or closures;
- (4) from moving parts;
- (5) from lack or insufficiency of controls to reduce or stop motion;
- (6) as a result of self-adhering characteristics of the article;
- (7) because the article or any part or accessory thereof may be aspirated or ingested;
- (8) because of instability;
- (9) from stuffing material which is not free of dangerous or harmful substances; or
- (10) because of any other aspect of the article's design or manufacture.

(d) A toy or other article presents a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk to personal injury or illness because of heat as from heated parts, substances or surfaces.

2. Whenever the attorney general shall believe from evidence satisfactory to him that any person, firm, corporation or association or agent or employee thereof has violated any provision of this section, he may bring an action in the supreme court of the state of New York for a judgment enjoining the continuance of such violation and for a civil penalty of not more than one thousand dollars for each violation, except that the court may impose a civil penalty of not more than four thousand dollars if the violation is knowing and willful. If it shall appear to the satisfaction of the court or justice that the defendant has violated any provision of this section, no proof shall be required that any person has been injured thereby nor that the defendant knowingly or intentionally violated such provision. In such action preliminary relief

may be granted under article sixty-three of the civil practice law and rules.

3. Before any violation of this section is sought to be enjoined, the attorney general shall be required to give the person against whom such proceeding is contemplated notice by certified mail and an opportunity to show in writing within five business days after receipt of notice why proceedings should not be instituted against him, unless the attorney general shall find, in any case in which he seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

4. In any such action it shall be a complete defense that the toy or other article sought to be enjoined either complies with, or is exempt under, the federal "Child Protection and Toy Safety Act of 1969", as amended, or the federal "Consumer Product Safety Act", as amended, or any regulation or exemption promulgated under either act or any other applicable federal law. In the case of children's sleepware, it shall be a complete defense that the article sought to be enjoined complies with any enforcement policy formally issued by a federal agency having enforcement authority with respect thereto.

5. In connection with any such proposed application, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules.

6. If any provisions of this chapter or the application thereof to any person or circumstances is held unconstitutional, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

* NB There are 2 § 396-k's

*** § 396-k. Sale of certain motor vehicles damaged by the ravages of natural disaster.** No person, firm or corporation shall knowingly sell in this state any motor vehicle the mechanical or electrical system of which has been previously damaged by the ravages of a natural disaster

such as fire, flood, hurricane, landslide, earthquake, windstorm or other storm, to an extent which rendered the vehicle inoperable for any period of time, unless notice, in writing, of the fact of such damage, the nature and extent thereof and the date and location in which it occurred is first given to each buyer of such motor vehicle. For the purposes of this section, a vehicle shall be deemed to have been rendered inoperable if, as a result of the damage caused by the natural disaster, it would be necessary for such vehicle to undergo repair in order to pass inspection in the manner provided in article five of the vehicle and traffic law.

A violation of this section shall constitute a class B misdemeanor.

* NB There are 2 § 396-k's

§ 396-kk. Sale of video game consoles. 1. For purposes of this section:

(a) "Video game" means an interactive electronic amusement device, disk, cartridge or other object that utilizes a computer, microprocessor or similar electronic circuitry and its own monitor, a television set or a computer monitor, and such device or object is designed to allow a person to manipulate the images presented by such device or object.

(b) "Video game console" means an interactive electronic amusement device that uses a dedicated computer, microprocessor or similar electronic circuitry and its own monitor, a television set or a computer monitor to enable a person to interact with a video game. Such terms shall not include a personal computer, nor shall they include a handheld device in which such entire device, including the viewing screen, is designed to be held in one's hand.

2. Every new video game console sold at retail in this state shall include a mechanism, device or control system that allows an owner, through the use of a personal identification number, password or similar technology, to prevent the display on such video game console of video games, or portions thereof, containing certain content or having certain ratings, as such term is defined in subdivision two of section six hundred eleven of this chapter.

3. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for a single violation and not more than fifty thousand dollars for multiple violations resulting from a single act or incident. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 396-1. Shopping carts; child protective devices. 1. For the purposes of this section, "child protective device" shall mean a strap, device, or piece of equipment designed, utilizing reasonable engineering standards, to prevent a child from falling out of a shopping cart. Any child protective device designed to secure a child of average size within the ages of six months to four years shall qualify for the twenty-five percent threshold set forth in subdivision two of this section.

2. Every commercial business which provides its customers with shopping carts with seats for children shall equip and maintain not less than twenty-five percent of the total number of such shopping carts with a child protective device.

3. Whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. The defendant shall have twenty-one days from the date of receipt of notice of the violation within which to remedy the violation. In the event that such violation is not remedied, the court may impose a civil penalty of not more than one thousand dollars per violation. For the purpose of this section, failure to meet the twenty-five percent threshold set forth in subdivision two of this section shall constitute a single violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 396-m. Mail-order or telephone-order merchandise. 1. This section shall apply to any mail-order business or any telephone order business which is located in this state or advertises a New York state mailing address or telephone number.

2. Definitions, as used in this section:

a. "mail-order business" shall mean a business which is engaged in the solicitation of orders by advertisement or otherwise for merchandise or services connected with merchandise to be shipped to the customer through the mail or by other carrier, upon receipt of an order with

payment or with charge account authorization remitted through the mail, electronic mail or the Internet or by telephone and the merchandise by its nature is ready for use or consumption when advertised or offered for sale and can be held in stock.

b. "merchandise" shall mean tangible chattels bought for personal, family or household purposes.

c. "shipment" shall mean the act whereby the seller physically places the merchandise into the possession of the United States postal service or other carrier.

d. "telephone order business" shall mean a mail order business which accepts orders by telephone, or a business which is primarily engaged in the solicitation of orders by advertisement or otherwise for merchandise or services connected with merchandise to be shipped to the customer through the mail or by other carrier, upon receipt of an order with charge account authorization remitted by telephone and the merchandise by its nature is ready for use or consumption when advertised or offered for sale and can be held in stock.

e. "accepts orders" shall mean, in the case of a mail order, receipt of an order with payment or with charge account authorization remitted through the mail, electronic mail or the Internet, and, in the case of a telephone order, receipt of an order with charge account authorization and debiting the buyer's account.

3. No person, partnership, firm, association or corporation or agent or employee thereof who conducts a mail-order business or a telephone order business shall:

a. advertise for sale merchandise which is not reasonably anticipated to be available for shipment within thirty days from date of publication or broadcast of advertisement or from date catalog or circular is mailed, unless a longer period of time is clearly and conspicuously stated in such advertisement. Whenever the term "thirty days" appears in this section, such term shall include a longer period of time if clearly

and conspicuously stated in such advertisement.

b. accept orders for merchandise which is not reasonably anticipated to be available for shipment within thirty days from the date of receipt of the order together with payment or with charge account authorization in the case of an order remitted through the mail, electronic mail or the Internet or within thirty days from the date the seller debits the buyer's account in the case of an order placed by telephone.

c. unless the seller qualifies and elects to be governed by paragraph i, fail to either ship ordered merchandise or issue a refund (if payment has been remitted) for ordered merchandise which is not available within thirty days of receipt of order and payment therefor.

d. unless the seller qualifies and elects to be governed by paragraph i, fail to either ship ordered merchandise or issue a credit (if charge-account authorization has been given and exercised by seller) for ordered merchandise which is not available within thirty days of receipt of order and charge-account authorization therefor.

e. fail to issue a refund or credit the customer's account if promised, upon demand of the customer within thirty days from the date of receipt of request for such refund provided the merchandise has been returned, if required.

f. fail to maintain a record of each complaint alleging failure to ship merchandise or furnish services connected with merchandise solicited and ordered on a pre-paid basis and the disposition of each such complaint. Such record shall be kept for a period of at least eighteen months following the disposition of such complaint.

g. fail to maintain records showing the employment of systems and procedures designed to comply with requirements of this subdivision.

h. fail to prominently feature in all advertising or other promotional materials containing a post office box address including order blanks and forms, the legal name of the company soliciting the order, the

complete street address of such company and under what conditions a refund will be issued including but not limited to whether a refund will be issued:

(i) at any time, or not beyond a point in time specified; or

(ii) in cash, or as credit or in-house credit only. This paragraph shall not apply to a mail-order business that has a policy of accepting returns, for a period of not less than twenty days after the date of delivery of merchandise to the customer and providing a cash refund for a cash purchase or providing a cash refund or issuing a credit for a credit purchase, which credit is applied to the account on which the purchase was debited, in connection with the return of its unused and undamaged merchandise. Provided, however, that nothing contained herein shall prohibit a mail-order business from applying a cash payment for returned merchandise towards a prior outstanding balance. Provided, further, that nothing contained herein shall be deemed to require a cash refund of less than one dollar where the mail-order business provides in-house credit for such sum.

i. where the seller, due to circumstances beyond his control, is unable to make shipment within the time required by this section, the provisions of paragraphs c and d of this subdivision shall not apply if the seller elects to be governed by this paragraph and does either of the following:

(i) sends to the buyer a notice of delayed shipment, stating the duration of the expected delay, providing the buyer with the opportunity to express his choice whether to cancel his order and receive a refund, be shipped the merchandise or be furnished the services by a specified later date, or to accept substitute merchandise of equivalent or superior quality. If the seller proposes to substitute merchandise, he shall describe it in detail, indicating how it differs from the goods ordered. The notice shall be sent by first class mail and accompanied by a self-addressed, postage paid device upon which the buyer may indicate his choice, and mailed in advance of the expiration of the thirty day period, or that time stated in the solicitation. The notice shall expressly advise the buyer that the order will be immediately cancelled and a refund forwarded where the buyer does not choose otherwise by response within thirty-five days of the date of mailing by the seller of

the above notice. If, prior to shipment, the seller receives a response from the buyer requesting refund, such refund shall be promptly made. If no response is received prior to the expiration of the thirty-five day period after the date of the mailing by the seller of the above notice, the seller shall make a prompt refund.

(ii) send the customer substitute merchandise of equivalent or superior quality, if the customer is extended the opportunity to return the substituted merchandise and the seller promises to refund to the customer the postage cost of returning such merchandise together with any portion of the purchase price previously paid by the customer. Prior to or at the time of shipment of the substitute merchandise, a notice shall be provided to the customer stating the right to obtain a refund and reimbursement for the postage cost incurred in returning the substituted merchandise.

For purposes of subparagraphs (i) and (ii) of this paragraph, merchandise may not be considered of "equivalent or superior" quality if it is not substantially similar to the merchandise ordered, or not fit for the usual purposes for which such merchandise is used, or if the seller normally offers the substituted merchandise at a price lower than the price of the merchandise ordered.

j. (i) in the case of an order for merchandise placed by telephone or by electronic means, accept an additional fee for expedited mailing or shipping, which is in excess of the lowest charge the seller would accept, in the regular course of business, for mailing or shipping of the merchandise ordered, when the seller does not reasonably expect such merchandise to be mailed or shipped within the next three business days after the order was placed, unless:

(A) the seller notifies the buyer, at the time the order is placed but before payment is accepted, that the seller anticipates that the merchandise will not actually be mailed or shipped within the next three business days after the order is placed; or

(B) the seller contacts the buyer, by telephone or by electronic means, within the next three business days after the order was placed to inform the buyer:

(a) that the mailing or shipping of the merchandise ordered is not

reasonably anticipated to occur within the next three business days after the order was placed;

(b) of the date the seller reasonably anticipates the merchandise ordered to be mailed or shipped;

(c) that, at the buyer's option, the buyer may:

(1) accept the reasonably anticipated delay in mailing or shipping; or

(2) cancel the order and refund payment to the buyer within thirty days; or

(3) elect to have the merchandise ordered mailed or shipped in the regular course of business and refund the additional fee for expedited mailing or shipping to the buyer within thirty days; and

(d) that, if the seller does not receive a response on the next business day, the seller will mail or ship the merchandise ordered, in the manner originally requested by the buyer. Provided, however, that should the buyer contact the seller before the merchandise ordered has been mailed or shipped, nothing in this section shall be construed to preclude the seller from agreeing to any modifications to the buyer's order which are agreed to by both the buyer and seller.

(ii) (A) For the purposes of this subdivision, a seller shall be considered to have mailed or shipped a buyer's merchandise when the seller causes such merchandise, and applicable postage or shipping fee, to be physically placed in the possession of the United States Postal Service or other carrier. Nothing in this section shall impose any liability on the seller for delays solely attributable to the postal service or carrier.

(B) A statement or notice contained in the advertising material for the merchandise, in a description of the merchandise, or in a description of the mailing and shipping options available to the buyer, which advises the buyer of the approximate time the seller reasonably anticipates the merchandise to be mailed or shipped, shall satisfy the notification requirements of this section.

4. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it

shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in section eighty-three hundred three, subdivision six of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 396-mm. Unlawful trial offers. 1. a. It shall be unlawful for a person, partnership, firm, association, corporation or agent or employee thereof to provide a free trial offer unless the material terms of the offer are clearly and conspicuously disclosed. No additional products or services or enrollment in any membership, for a fee, shall be provided until the express consent of the consumer has been obtained.

b. At least fifteen, but not more than thirty days before a consumer is required to cancel a free trial, the person, partnership, firm, association, corporation or agent or employee thereof shall send to the consumer the terms of the offer and the deadline to cancel; provided, however, that where a free trial offer ends in less than thirty days, the terms of the offer and the deadline to cancel shall be sent at least seven days before a consumer is required to cancel the free trial. Such notice is not required when the free trial is a magazine or newspaper subscription and at any time cancellation occurs the consumer shall receive a refund for issues not mailed; provided, however, that such refund option is disclosed with the free trial subscription offer.

2. This section shall not apply to a negative option plan regulated by the federal trade commission pursuant to Code of Federal Regulations, title 16, part 425; and does not apply to other contractual plans or arrangements such as continuity plans, subscription arrangements, standing order arrangements, supplements and series arrangements, under

which the seller provides similar special interest goods or services to a consumer who has consented in advance to receive the goods or services on a periodic basis with no binding commitment period and no minimum purchase amount.

3. This section shall not apply to any purchase when the person, partnership, firm, association, corporation or agent or employee thereof does not debit or charge any consumer account and sends the consumer an invoice requesting payment which includes information about how to cancel a free trial.

4. a. Every violation of this section shall be deemed a deceptive act and practice subject to enforcement under article twenty-two-A of this chapter. In every case where the court shall determine that a violation of this section has occurred, it may impose a civil penalty of up to one thousand five hundred dollars for each violation.

b. Nothing in this section shall be construed to restrict any right which any person may have under any other statute or the common law.

§ 396-n. Sales with "money back guarantee" and with "limited guarantee". 1. Definitions. As used in this section:

(a) "Seller" shall include any person, firm, partnership or corporation.

(b) "Goods" shall mean merchandise that is bought for use primarily for personal, family or household purposes.

(c) "Money back guarantee" shall mean a promise made by a seller to a purchaser to repay, within the time period specified by the seller and upon the return of the merchandise, the full purchase price thereof.

(d) "Limited guarantee" shall mean a promise made by a seller to a purchaser to repay, within the time period specified by the seller and upon the return of the merchandise, a portion of the purchase price, the computation of which shall be described in the terms of the guarantee.

2. Whenever a seller offers or advertises for sale goods with a guarantee that promises the return of the purchase price, upon the

return of the merchandise, such guarantee shall be deemed to be a money back guarantee unless the term "limited guarantee" is used and the terms of limitation of such guarantee are specified.

§ 396-o. Sales by persons offering credits or refunds in certain cases. Whenever a person purchases goods or services from a seller, where a representation or guarantee is made that a full or partial credit or refund of the purchase price will be made if the purchaser is not fully satisfied with the goods or services purchased, unless otherwise specifically specified to the contrary, the purchaser alone shall determine whether such guarantee or representation shall be fulfilled by refund or by credit.

*** § 396-p. Rates to be posted in taxicabs; certain charges prohibited.**
1. Every taxicab available for hire in this state shall have posted, in the interior thereof, in a manner legible and conspicuous to passengers, a statement of the rates, fares or other charges whether imposed upon the basis of mileage, or fraction thereof, zones or other equivalent measurement and any additional charges for luggage or additional passengers, and if such charges are subject to variation, a statement of the conditions relating to such variation. No charges greater than those posted shall be made. For the purposes of this section, "taxicab" is a motor vehicle which carries passengers for hire with a seating capacity of not more than eight passengers exclusive of the driver; and "luggage" shall not include a wheelchair or other manual or electrically driven mobility assistance device, scooter, tricycle or similar device used by a person with a disability as a substitute for walking.

1-a. No taxicab available for hire in this state shall impose on additional charge for a wheelchair or other manual or electrically driven mobility assistance device, scooter, tricycle or similar device used by a person with a disability as a substitute for walking.

2. This section shall not annul, alter, affect or exempt any person subject to the provisions of this section from complying with the laws,

ordinances, rules or regulations of any locality, relating to the posting of rates in the interior of a taxicab, except to the extent that such local laws, ordinances, rules or regulations are inconsistent with any provision of this section, but no such local law, ordinance, rule or regulation shall be considered inconsistent, if it requires greater disclosure of information to the consumer.

3. The provisions of this section shall not apply to cities having a population of one million or more.

4. Any violation of this section shall be punishable by a fine not to exceed fifty dollars, and for any subsequent violation, a fine of not more than one hundred dollars.

* NB There are 2 396-p's

*** § 396-p. Contracts for the sale of new motor vehicles.** 1. Any covenant or agreement in connection with or collateral to any contract entered into between

(a) a manufacturer or distributor of new motor vehicles and a retail dealer thereof, or

(b) a retail dealer of new motor vehicles and a consumer, pursuant to which the price of such motor vehicle to the dealer or to the consumer may be increased after such contract has been entered into shall be deemed to be void as against public policy and wholly unenforceable.

2. Every contract provided for in subdivision one of this section shall contain a conspicuous provision in bold face type stating that the price contained in such contract is the final contract price to which the parties have agreed, and that no additional fee or charge may be imposed or collected. The provisions of this section shall be limited to the sale of those new motor vehicles for which the dealer has a bona fide customer order as evidenced by a written sales agreement with a retail customer.

3. If a retail dealer of new motor vehicles accepts a deposit from a

consumer but does not have a bona fide customer order as evidenced by a written sales agreement, that dealer shall give the consumer a written form indicating what, if any, options or equipment are desired by the consumer. This form shall be signed by the consumer and state conspicuously on its face:

"This Is Not An Order Form. There Is No Guarantee That The Motor Vehicle Offered To You Will Match The Description Indicated On This Form Or Will Contain These And No Other Options. Should You Decide Not To Purchase The Motor Vehicle, You Have The Right To Obtain A Full Refund Of Your Deposit."

4. If a retail dealer of new motor vehicles accepts a deposit from a consumer pursuant to a written contract for the purchase of a new motor vehicle, such contract shall contain a provision setting forth the estimated delivery date of the automobile and the place of delivery and a statement in immediate proximity to the estimated delivery date that, if the automobile has not been delivered in accordance with the contract within thirty days following such estimated delivery date, the consumer has the right to cancel the contract and to receive a full refund, unless the delay in delivery is attributable to the consumer.

5. (a) Prior to the sale and delivery of a new motor vehicle, a retail dealer or employee of a retail dealer shall provide written notification to the consumer of any repairs undertaken to repair physical damage with a retail value in excess of five percent of the lesser of the manufacturer's or distributor's suggested retail price performed after shipment from the manufacturer to the dealer, including damage to the vehicle while in transit. This notice requirement shall not apply to identical replacement of stolen or damaged accessories or their components. This dollar amount shall include the cost of the retail charge for parts and labor, at the dealer's stated labor rate.

(b) If a retail dealer has provided notice to a consumer pursuant to paragraph (a) of this subdivision, the consumer shall be entitled to cancel the purchase order or other documentation of intent to purchase such vehicle and receive a full refund for any deposit made pursuant to this transaction.

(c) If a retail dealer has failed to provide notice to a consumer

pursuant to paragraph (a) of this subdivision, the consumer shall be entitled to a full refund of the purchase price of the vehicle, any trade-in allowance plus fees and charges within four months after the date of purchase. Such fees and charges shall include but not be limited to all license fees, registration fees and any similar governmental charges, less an allowance for the consumer's use of the vehicle in excess of one thousand miles for each month or part thereof which has expired since sale and delivery of the vehicle and the date the consumer surrenders the vehicle to the retail dealer to receive a refund pursuant to this subdivision, and a reasonable allowance for any damage not attributable to normal wear or usage. The amount of the deduction for mileage in excess of the appropriate allowed amount shall be determined by dividing the mileage in excess of the allowed amount by one hundred thousand miles and multiplying the result times the purchase price. Adjustment shall also be made for any modifications made by the purchaser after delivery of the vehicle which either increase or decrease the market value of the vehicle. A dealer which accepts return of the motor vehicle because notice of repairs was not provided in accordance with this subdivision shall notify the commissioner of the department of motor vehicles of such return. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership kept by the department of motor vehicles. Refunds shall be accompanied by the proper application for credit or refund of state and local sales taxes as published by the department of taxation and finance and by a notice that the sales tax paid on the purchase price or portion thereof being refunded is refundable by the commissioner of taxation and finance in accordance with the provisions of subdivision (f) of section eleven hundred thirty-nine of the tax law.

(d) Any manufacturer, distributor or retail dealer selling or transferring a new motor vehicle which has been subjected to repairs of a value described in this subdivision, shall notify any retail dealer to whom such new motor vehicle so repaired is sold or transferred. Such notice shall be in writing, advise of such repairs, and be provided prior to the receipt of any payment for such motor vehicle. If the manufacturer, distributor, or retail dealer shall fail to provide such notice, any retail dealer suffering a loss by reason of such failure shall be entitled to reimbursement from the manufacturer, distributor,

or retail dealer who has failed to provide such notice.

6. Any dealer or employee of a dealer who violates any of the provisions of this section shall be subject to a civil penalty not to exceed fifty dollars for the first offense and two hundred fifty dollars for the second and each subsequent offense.

* NB There are 2 396-p's

§ 396-q. New motor vehicles; sales and leases. 1. Whenever a consumer agrees to purchase or lease a new motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law and excluding class A, B and C limited use motorcycles as defined in section one hundred twenty-one-b of the vehicle and traffic law, from a dealer and signs a contract supplied by such dealer, the dealer or an employee of the dealer shall also sign the contract. For purposes of contract formation, such signature shall be presumed to be an authorized signature.

2. If a trade-in allowance is agreed upon between a consumer and a dealer, such allowance must be contained in writing within the contract. If a consumer signs a contract supplied by a dealer for the purchase or lease of a motor vehicle and the contract contains a trade-in allowance, such allowance shall not be reduced upon delivery of the trade-in vehicle; provided that the value of the trade-in vehicle is not materially diminished as a result of physical damage, alteration or deterioration in mechanical condition other than normal wear and tear.

3. If an interest rate on the financing of the sale of a car is offered to the consumer by the dealer, at the time a deposit is made or a bona fide customer order is executed, that interest rate shall be guaranteed by the dealer as of the date of the deposit or order, if the financing of the sale is to be provided by the dealer. If an interest rate on the financing of the sale of a car is offered to the consumer by a manufacturer, through a dealer, at the time a deposit is made or a bona fide customer order is executed, that interest rate shall be guaranteed by the manufacturer as of the date of the deposit or order,

if the financing of the sale is to be provided by the manufacturer. If an interest rate on the financing of the sale of a car is offered to the consumer by a financing agency as defined by subdivision nine of section three hundred one of the personal property law, through a dealer, at the time a deposit is made or a bona fide customer order is executed, that interest rate shall be guaranteed by such financing agency as of the date of the deposit or order, if the financing of the sale is to be provided by such financing agency.

4. If at the time a new motor vehicle is delivered by a dealer to the consumer, such motor vehicle is not equipped with the specific options or equipment ordered by the consumer as stipulated in the purchase contract, the dealer shall offer to reduce the price stated in the contract by the dollar amount of the equipment that has not been provided. No dealer shall be entitled to receive or collect payment for any ordered merchandise, accessories or equipment which in fact was not provided at the time of delivery of the vehicle unless the consumer indicates a willingness in writing to wait for a stated period of time for the option or equipment to become available or be installed. Nothing in this subdivision shall in any way limit the rights or remedies which are otherwise available to a consumer under any other provision of law, including, but not limited to, the right to refuse to accept delivery of a vehicle not equipped as stipulated in the purchase contract.

5. Any dealer or employee of a dealer who violates any of the provisions of this section shall be guilty of an offense and subject to a fine not to exceed fifty dollars.

In addition, any individual injured by reason of a violation of subdivision three of this section, may bring an action to recover actual damages and reasonable attorney's fees and costs.

§ 396-qq. New and used motor vehicles; sales and leases. 1.

Definitions. The following terms when used in this section, shall be deemed to mean and include:

a. "Dealer" as defined in section four hundred fifteen of the vehicle and traffic law.

b. "Motor vehicle" as defined in section one hundred twenty-five of the vehicle and traffic law and excluding class A, B and C limited use motorcycles as defined in section one hundred twenty-one-b of the vehicle and traffic law.

2. Whenever a dealer provides to a purchaser or lessee of a motor vehicle the service of securing a registration and/or certificate of title for such vehicle from the commissioner of motor vehicles or his issuing agent, the dealer shall either calculate the actual registration and/or certificate of title charges due, or make a good faith estimate in each transaction of the amount of such charges on the sales contract or lease agreement. If such charges are estimated, the dealer shall set forth on such sales contract or lease agreement or on a separate document to be initialled by the purchaser or lessee in conspicuous boldface type, the following disclosure: "THE AMOUNT INDICATED ON THIS SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION AND TITLE FEES IS AN ESTIMATE. IN SOME INSTANCES, IT MAY EXCEED THE ACTUAL FEES DUE THE COMMISSIONER OF MOTOR VEHICLES. THE DEALER WILL AUTOMATICALLY, AND WITHIN SIXTY DAYS OF SECURING SUCH REGISTRATION AND TITLE, REFUND ANY AMOUNT OVERPAID FOR SUCH FEES." If such charges are estimated, the dealer shall, within sixty days of securing such registration and title, refund to the purchaser or lessee the difference between the estimated amount collected from such purchaser or lessee by the dealer and the actual fees paid to the commissioner of motor vehicles by the dealer.

3. Where a violation of this section is alleged to have occurred, the attorney general may apply in the name of the people of the state of New York to the supreme court of the state of New York within the judicial district in which such violation is alleged to have occurred, on notice of five days, for an order enjoining or restraining the continuance of such violation. In any such proceeding the court may impose a civil penalty in an amount not to exceed five hundred dollars and order restitution to aggrieved consumers.

§ 396-r. Price gouging. 1. Legislative findings and declaration. The legislature hereby finds that during periods of abnormal disruption of the market caused by strikes, power failures, severe shortages or other extraordinary adverse circumstances, some parties within the chain of distribution of goods have taken unfair advantage of the public by charging grossly excessive prices for essential goods and services.

In order to prevent any party within the chain of distribution of any goods from taking unfair advantage of the public during abnormal disruptions of the market, the legislature declares that the public interest requires that such conduct be prohibited and made subject to civil penalties.

2. (a) During any abnormal disruption of the market for goods and services vital and necessary for the health, safety and welfare of consumers or the general public, no party within the chain of distribution of such goods or services or both shall sell or offer to sell any such goods or services or both for an amount which represents an unconscionably excessive price.

(b) For purposes of this section, the phrase "abnormal disruption of the market" shall mean any change in the market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, drug shortage, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor.

(c) For purposes of this section, the term "drug shortage" shall mean, with respect to any drug or medical product intended for human use, that such drug or medical product is publicly reported as being subject to a shortage by the U.S. Food and Drug Administration.

(d) For the purposes of this section, the term "goods and services" shall include (i) consumer goods and services used, bought or rendered primarily for personal, family or household purposes, (ii) essential medical supplies and services used for the care, cure, mitigation, treatment or prevention of any illness or disease, and (iii) any other

essential goods and services used to promote the health or welfare of the public.

(e) This prohibition shall apply to all parties within the chain of distribution, including any manufacturer, supplier, wholesaler, distributor or retail seller of goods or services or both sold by one party to another when the product sold was located in the state prior to the sale. For the purposes of this subdivision, the term "goods and services" shall also include any repairs made by any party within the chain of distribution of goods on an emergency basis as a result of such abnormal disruption of the market.

3. Whether a price is unconscionably excessive is a question of law for the court.

(a) The court's determination that a violation of this section has occurred shall be based on any of the following factors: (i) that the amount of the excess in price is unconscionably extreme; or (ii) that there was an exercise of unfair leverage or unconscionable means; or (iii) a combination of both factors in subparagraphs (i) and (ii) of this paragraph.

(b) In any proceeding commenced pursuant to subdivision four of this section, prima facie proof that a violation of this section has occurred shall include evidence that:

(i) the amount charged represents a gross disparity between the price of the goods or services which were the subject of the transaction and their value measured by the price at which such goods or services were sold or offered for sale by the defendant in the usual course of business immediately prior to the onset of the abnormal disruption of the market; or

(ii) the amount charged grossly exceeded the price at which the same or similar goods or services were readily obtainable in the trade area.

(c) A defendant may rebut a prima facie case with evidence that (1) the increase in the amount charged preserves the margin of profit that the defendant received for the same goods or services prior to the abnormal disruption of the market or (2) additional costs not within the control of the defendant were imposed on the defendant for the goods or services.

4. Where a violation of this section is alleged to have occurred, the attorney general may apply in the name of the People of the State of New York to the supreme court of the State of New York within the judicial district in which such violations are alleged to have occurred, on notice of five days, for an order enjoining or restraining commission or continuance of the alleged unlawful acts. In any such proceeding, the court shall impose a civil penalty in an amount not to exceed twenty-five thousand dollars per violation or three times the gross receipts for the relevant goods or services, whichever is greater and, where appropriate, order restitution to aggrieved parties.

5. The attorney general may promulgate such rules and regulations as are necessary to effectuate and enforce the provisions of this section.

§ 396-rr. Price gouging; milk. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Person" shall mean the owner or owners, including any individual, partnership, association, firm, or corporation, of an establishment engaged in the retail sale of milk;

(b) "Commissioner" shall mean the commissioner of agriculture and markets; and

(c) "Fluid milk" shall mean milk, skim milk or lowfat milk in consumer sized packages sold or offered for sale for off premise consumption.

2. Whenever the commissioner has established a minimum price for milk paid to producers pursuant to section two hundred fifty-eight-m of the agriculture and markets law and such state ordered minimum price is higher than the price set for milk within the state pursuant to the New York-New Jersey milk marketing order, or at any time when the retail price of fluid milk exceeds two hundred percent of the price for class I fluid milk, it shall be the responsibility of the commissioner in consultation with state and local agencies as the commissioner deems appropriate, to examine the price of fluid milk at retail to determine if the prices of fluid milk sold or offered for sale in the state or in any area thereof appear to the commissioner unconscionably excessive. Upon a determination by the commissioner that the price of fluid milk

being sold or offered for sale appears unconscionably excessive in a particular area of the state, the commissioner shall, by written notice, provide any person found to be selling or offering for sale fluid milk at such price, an opportunity to discontinue such price levels or to demonstrate that it is not unconscionably excessive. Any person, so notified, who does not submit a written reply within three business days of the receipt of such notice, and who does not within such time satisfy the commissioner that the price level which resulted in the issuance of the notice is justifiable or has been terminated shall be identified in the commissioner's determination as a person apparently in violation of subdivision three of this section. Following such notice to and opportunity for such person to respond, the commissioner shall forward his or her determination, in writing, together with all supporting evidence, to the attorney general.

3. No person shall sell or offer for sale fluid milk for an amount which represents an unconscionably excessive price.

4. Whether a price is unconscionably excessive is a question of law for the court. Evidence that:

(a) the price charged at retail for fluid milk represents a gross disparity between the raw milk price paid to producers plus a reasonable handler's processing and distribution charge and the price at retail; or

(b) the price charged at retail for fluid milk increased a greater amount than the price increased for an equivalent volume paid to producers under an order or interim price of the commissioner pursuant to section two hundred fifty-eight-m of the agriculture and markets law; and

(c) in addition to paragraphs (a) and (b) of this subdivision, the increased price charged by the person was not attributable to additional charges imposed by its suppliers, or other charges beyond the control of the person, including the cost of labor, shall constitute prima facie proof of a violation of this section in any proceeding commenced by the attorney general pursuant to subdivision five of this section.

5. Where a determination and all supporting evidence have been forwarded from the commissioner, the attorney general may apply in the

name of the people of the state of New York to the supreme court of the state of New York within the judicial district in which such violations are alleged to have occurred, on notice of five days, for an order enjoining or restraining commission or continuance of the alleged unlawful acts. In any such proceeding, the court shall determine the total excessive charge for fluid milk sold. In such proceeding, the court shall assess a civil penalty in the sum of the total excessive charge for fluid milk sold plus an amount not to exceed:

(a) one thousand dollars, where the aggregate amount of fluid milk sold is one thousand gallons or less per week; or

(b) five thousand dollars, where the aggregate amount of fluid milk sold exceeds one thousand gallons per week; and

(c) in addition to paragraphs (a) and (b) of this subdivision where appropriate, order restitution to aggrieved consumers.

6. The commissioner shall promulgate all rules and regulations to effectuate the purposes of this section.

§ 396-s. Individual sewage disposal system; information to vendees of newly constructed homes. 1. When used in this section, the following terms, unless the context requires otherwise, shall have the following meanings:

(a) "Vendee" means any individual or individuals who have contracted with a vendor for construction of a home on land not owned at the time of such agreement by such individual or individuals.

(b) "Vendor" means any person, firm, corporation, or association engaged in the business of constructing new homes. A banking organization, as that term is defined in the banking law, shall be a vendor within the meaning of this section if such organization sells a newly constructed home to a vendee.

(c) "Department" means the state department of health.

(d) "Individual sewage disposal system" means a facility serving one or more parcels of land and disposing of sewage or other liquid wastes into the soil of such parcels, except where a permit for such a facility is required under the applicable provisions of article seventeen of the environmental conservation law.

(e) "Health pamphlet" means the pamphlet known as the New York state health department waste treatment pamphlet entitled, "Septic System Operation and Maintenance".

2. On and after July first, nineteen hundred eighty-one every vendor shall, either in person or by certified mail, deliver to a vendee at the time of the transfer of title of the home serviced by an individual sewage disposal system a copy of the health pamphlet. If the political subdivision within which the home is located has published a waste treatment handbook or pamphlet on individual sewage disposal systems, the vendor shall supply a copy of such informational material to the vendee in the same manner as the health pamphlet.

3. The commissioner of the department of health is hereby directed to modify the contents of the health pamphlet in such a manner that such pamphlet shall contain information relating to the proper method of operating and maintaining individual sewage disposal systems. Such information shall be in clear and concise language readily comprehensible by venders and shall identify potential problems that venders may encounter with individual sewage disposal systems. The modification to the health pamphlet required by this subdivision shall be made on or before the effective date of this section and shall be included within any health pamphlet to be distributed by the department on and after July first, nineteen hundred eighty-one.

4. The department may establish a method of distributing the pamphlets so that there is no fiscal impact upon the department.

5. Any vendor violating this section shall be assessed a civil penalty not to exceed two hundred fifty dollars.

§ 396-ss. Access number notification. 1. Definitions. For the purpose of this section, the following words shall have the following meanings:

a. "Dial-up Internet service" means a service that, by employing telephone lines, offers the transmission, routing, or providing of

connections for online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

b. "Dial-up Internet service provider" means an entity that provides dial-up Internet service.

c. "Dial-up Internet service subscriber" means a person or entity who, by current or continuing contract or other continuing arrangement with a dial-up Internet service provider, receives or uses a dial-up Internet service provided by such dial-up Internet service provider.

2. Every dial-up Internet service provider that provides such service through one or more telephone numbers in telephone area codes located in New York state shall prominently post in bold capital letters, on every screen page on which Internet access service telephone numbers are set forth, whether contained on an Internet web site or elsewhere, the following notice:

WARNING: THE USE OF SOME OF THE FOLLOWING TELEPHONE NUMBERS MAY RESULT IN LONG DISTANCE CHARGES. IN SELECTING YOUR ACCESS NUMBER(S), PLEASE NOTE THAT ALTHOUGH AN ACCESS NUMBER MAY BE IN YOUR AREA CODE OR LOCATED IN YOUR GENERAL GEOGRAPHIC REGION, IT MAY NOT NECESSARILY BE A LOCAL NUMBER FOR YOU. YOU MAY INCUR SUBSTANTIAL TELEPHONE CHARGES IF YOU CHOOSE ACCESS NUMBERS THAT ARE NOT COVERED BY YOUR LOCAL CALLING PLAN.

WE URGE YOU TO CHECK WITH YOUR TELEPHONE COMPANY TO FIND OUT WHICH NUMBERS ARE LOCAL FOR YOU BEFORE USING A NUMBER FROM THIS LIST.

3. Notwithstanding the provisions of subdivision two of this section, a dial-up Internet service provider who provides such service through one or more telephone numbers in telephone area codes located in New York state who has sold or otherwise provided software to a dial-up Internet service subscriber prior to October twenty-fourth, two thousand five, when such software cannot be updated by such Internet service provider without action on the part of such dial-up Internet service subscriber to include the notice required under subdivision two of this

section, and the contents of the screen page on which Internet access service telephone numbers are displayed is not contained on an Internet web site, may comply with the provisions of this section, for the purposes of such software and for such dial-up Internet service subscribers, by sending such dial-up Internet service subscribers known or reasonably believed to be using such software the notice set forth in subdivision two of this section, in either written or electronic form.

4. Every failure to comply with this section is a violation of article twenty-two-A of this chapter.

§ 396-t. Unlawful practices relating to layaway plans. (a) Definition of layaway plan. For purposes of this section, the term "layaway plan" shall mean a purchase over the amount of fifty dollars whereby the consumer agrees to pay in four or more installments for the purchase of specific merchandise, delivery of which is to be made upon the payment of the full purchase price at a definite future date or at a date to be selected by the consumer.

(b) It is an unlawful practice for a merchant to accept payment from a consumer to be applied to the purchase of merchandise on a layaway plan without first disclosing to the consumer in writing the following information:

(1) a description of the merchandise to be purchased on the layaway plan including, as appropriate, the type of item, the name of the manufacturer, brand name, color, size, style, or model number; and

(2) the total cost of the item, including tax, installation, delivery or freight charges; and

(3) the amount of any charge for the use of the layaway method of payment such as a service or carrying charge or cancellation fee. Failure to make this disclosure shall preclude the imposition of such charge or fee; and

(4) the duration of the layaway plan; and

(5) the required payment schedule, if any, and the consequences of missing payments; and

(6) the merchant's refund policy with respect to payments made by consumers; and

(7) the location, if other than the place of purchase, where the merchandise is being stored or if the merchandise selected by the consumer will not be removed from inventory upon receipt of the first layaway payment by the merchant, there must be prominently disclosed on the face of the writing given to the consumer, the time at which the merchandise will be isolated from inventory or ordered by the merchant, e.g., NOTICE: NO MERCHANDISE WILL BE REMOVED FROM INVENTORY UNTIL _____ PERCENT OF THE PURCHASE PRICE HAS BEEN PAID, or ATTENTION: YOUR SELECTION OF MERCHANDISE WILL NOT BE ORDERED UNTIL YOU HAVE MADE YOUR NEXT TO FINAL PAYMENT; and

(8) all other disclosures required by state or federal law.

(c) The merchant must tender the specified merchandise in good condition to the consumer on demand upon receipt of the final layaway payment unless otherwise provided in the layaway plan.

(d) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(e) This section shall not annul, alter, affect or exempt any person subject to the provisions of this section from complying with the laws, ordinances, rules or regulations of any locality, relating to the disclosure of layaway plans, except to the extent that these local laws, ordinances, rules or regulations are inconsistent with any provision of this section, but no such local law, ordinance, rule or regulation shall

be considered inconsistent, if it affords greater protection to the consumer.

(f) The provisions of this section are intended, and are hereby declared to supersede any contrary provision of this article.

§ 396-tt. Listing of business location in directory or database. 1.

(a) No person, firm, corporation, association or agent or employee thereof shall misrepresent the geographical location of a business that derives any portion of its gross income from the sale or arranging for sale of flowers or floral arrangements in the listing of the business in a telephone directory or the directory assistance database.

(b) For purposes of this section, a misrepresentation of the geographical location of a business occurs when the name of the business indicates that the business is located in a geographical area and:

(i) the business is not located within the geographical area indicated and the listing fails to identify the municipality and state of the business' geographical location; and

(ii) telephone calls to the local telephone number listed in the directory are forwarded or transferred to a location that is outside the calling area covered by the directory or database in which the number is listed.

2. A person, firm, corporation, association or agent or employee may place a directory listing for a business, the name of which indicates that it is located in a geographical area that is different from the geographical area in which the business is located if a conspicuous notice in the listing states the municipality and state of the business.

3. This section shall not apply to the publishers of a telephone directory or providers of a directory assistance service providing information about another business.

4. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days,

to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in subdivision six of section eighty-three hundred three of the civil practice law and rules, and direct restitution.

§ 396-u. Merchandise delivery. 1. Definitions. As used in this section:

a. "Consumer" means a person who enters into a contract with a dealer for the purchase or lease of furniture or a major household appliance.

b. "Person" means any individual, firm, partnership, corporation, association or other legal entity.

c. "Furniture" means any article used to furnish a house, apartment or place of business or accommodation, as distinguished from permanent fixtures or adjuncts, including but not limited to chairs, tables, cabinets, sofas, carpets, rugs, curtains, bedsteads and chests; provided, that such term shall not mean any article which is in substantial part custom-made or custom finished.

d. "Major household appliance" means air conditioners, audio or stereo equipment, washing machines for clothes, clothes dryers, dishwashers, food freezers, refrigerators, stoves, ranges, ovens, sewing machines, television sets, tape and video recorders or any other consumer durable goods generally intended for household use having a purchase price in excess of two hundred dollars.

e. "Furniture dealer", "major household appliance dealer" or "dealer" means any person who engages in the business of selling or leasing furniture or major household appliances or both.

2. It shall be an unlawful practice for a furniture or major household appliance dealer to:

a. Fail to disclose an estimated delivery date, or an estimated range of delivery dates, conspicuously and in writing on the consumer's copy of the contract entered into for the sale or lease of furniture or major household appliance, at the time an order for such merchandise is taken;

b. Fail to deliver the furniture or major household appliance by the latest date stated for delivery, unless the affected consumer is notified:

(1) of the delay and the revised anticipated delivery date or range of delivery dates; and

(2) of the fact that, upon the expiration of the latest date stated for delivery in the original contract, such consumer shall have the option of:

(a) canceling the contract and receiving full refund; or

(b) canceling the contract and receiving a credit from the dealer in an amount equal to any deposit made by the consumer; or

(c) negotiating a new delivery date or range of delivery dates with the dealer which date or range of dates shall thereafter be the latest date stated for delivery in the contract for purposes of this subdivision; or

(d) modifying the contract by making a new selection of furniture or major household appliance;

c. In the event that the furniture or major household appliance has not been delivered by the latest date stated for delivery in the original contract, to fail to honor a consumer's election from among the options described in subparagraph two of paragraph b of this subdivision;

d. In the event that a consumer elects to cancel the contract and receive a refund, to fail to make a refund within two weeks of receiving a demand for such refund.

3. Notwithstanding any other provisions of this section, where a delay in delivery as determined from the original contract is caused by a strike or by an act of God, the applicable delivery date shall be extended by an amount of time equal to the duration of the strike or condition giving rise to the delay or thirty days, whichever is less.

4. Where a failure to deliver, or delay in delivery beyond the latest day promised or stated for delivery, is caused solely by a consumer, such failure or delay shall not constitute an unlawful practice under this section.

5. Nothing herein contained shall be construed to be a waiver or limitation of any right of a consumer elsewhere provided by law, and nothing herein shall preempt any local statute or regulation or supersede any contract which is consistent with this section or which provides greater protection to the consumer.

6. This section shall not apply to mail order merchandise.

7. A consumer injured by a violation of this section may bring an action to recover damages. Judgment may be entered for three times the actual damages suffered by a consumer or one hundred dollars, whichever is greater provided, however, that treble damages may not be assessed against a dealer who shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such error. A court also may award reasonable attorney's fees to a prevailing plaintiff consumer.

8. Upon any violation of this section, an application may be made by the attorney general in the name of the people of the state to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any

person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with an application made under this subdivision, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 396-v. Operation of public automated blood pressure machines. 1.

Any person, firm, partnership, company or corporation which distributes, installs, leases or sells automated blood pressure machines in public places or places of employment for the unsupervised, self-administered testing by the general public or employee populations, whether these services are offered gratuitously or sold, shall post in a conspicuous place, permanently affixed to the machine, a sign upon which there shall be imprinted in ten-point type or larger the following statements:

(a) These instruments serve merely as screening devices.

(b) They should not be used as a substitute for professional medical consultation.

(c) Blood pressure is subject to variation for many reasons. A single high or low reading cannot be interpreted as an indication of a health problem.

(d) Blood pressure readings can only be interpreted by a qualified medical professional. Self diagnosis may be hazardous.

2. A violation of any of the provisions of subdivision one of this section shall be punishable by a civil penalty of not more than two hundred fifty dollars.

§ 396-w. Loitering for the purpose of soliciting passengers for transportation. 1. Any person who loiters or remains in or about any airport located within a county wholly contained within a city, without the prior written authorization of the New York city taxi and limousine commission or the state department of transportation to do so, and

beckons to, or stops, or attempts to stop, or interferes with the free passage of other persons, for the purpose of soliciting passengers for transportation by motor vehicle, from one location to another, for money; is guilty of a violation punishable by a fine of not more than one hundred dollars, or imprisonment for not more than fifteen days, or both. A second or subsequent violation of this section shall be a class B misdemeanor.

2. Nothing contained in this section shall be construed to deny any person the right to discharge passengers from a motor vehicle at such an airport.

*** § 396-x. Gasoline stations; air pumps required.** 1. Definition. As used in this section: "dealer" shall mean any person owning or operating a premise or facility with four or more gas dispensing nozzles for the retail sale of motor fuels for use in motor vehicles.

2. Any dealer must provide on the premises where motor fuel is sold at retail for use in motor vehicles a functioning motor driven air compressor capable of inflating automobile tires for use by customers during hours in which such station is open for business. Jurisdiction in all matters pertaining to this subdivision shall be vested exclusively in the state. Any provision of any local law or ordinance or any rule or regulation promulgated thereto governing tire inflation operation or equipment shall upon the effective date of the chapter of the laws of two thousand twenty that amended this subdivision be preempted. Nothing in this section shall be construed to restrict a municipality from enforcing the provisions of this subdivision as it relates to providing functioning tire inflation equipment as required by the commissioner of agriculture and markets.

3. Wilful failure to comply with the provisions of this section shall subject a dealer to a civil penalty of up to twenty-five dollars for each day such failure occurs. If the failure to comply results from the breakdown of the air compressor, the failure to repair within a reasonable time shall constitute wilful conduct.

* NB There are 2 § 396-x's

*** § 396-x. Unauthorized removal or destruction of newspapers.** 1. It shall be unlawful for any unauthorized person to maliciously remove or destroy a newspaper left or delivered on another person's property. For purposes of this section: (a) "unauthorized removal or destruction" shall mean malicious removal or destruction by a person other than the owner or lessee of property or the agent of the owner or lessee of such property from which the newspaper is removed; (b) "newspaper" shall mean a paper of general circulation which is printed and distributed ordinarily not less frequently than once a week and which contains news, articles of opinion, advertising, or other matters regarded as current interest; and (c) "another person's property" shall mean property owned by or leased to another person.

2. The publisher of a newspaper may bring an action under article sixty-three of the civil practice law and rules to enjoin the unauthorized removal or destruction of the publisher's newspaper.

3. A knowing violation of this section shall be punishable by a civil fine of not to exceed one thousand dollars.

4. Nothing contained in this section shall be deemed to limit or modify the applicability of the penal law to the conduct described in this section.

* NB There are 2 § 396-x's

§ 396-y. Sale of certain personal property; incentives; disclosure of value. 1. Definitions. a. The term "consumer" shall mean a natural person residing in this state.

b. The term "consumer goods" shall mean any item of personal property, merchandise or services, having a value of five hundred dollars or more, sold or offered for sale to a consumer, the intended use of which is personal, family or general household, not intended for immediate

resale.

c. The term "incentive" shall mean the free offering of any gift, bonus or other inducement to purchase such consumer goods which gift, bonus or inducement shall be in the nature of intangible personal property.

2. Prohibition. No person, firm, corporation, association or agent or employee thereof shall provide an incentive in the sale or offering for sale of consumer goods, both such terms as defined herein, without a complete, detailed and accurate written disclosure of the actual present liquidated retail value of such incentive at the time or date of sale of the subject consumer goods and whether any tax obligations may be incurred by the consumer as a result of owning the incentive.

3. Enforcement. a. A consumer who has suffered a loss due to a violation of this section by a merchant is entitled to recover from the merchant actual damages. In addition, the court may award the consumer reasonable attorneys fees and court costs.

b. A violation of this section is a deceptive trade practice under section three hundred forty-nine of this chapter.

c. Whenever there shall be a violation of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this

section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

d. Nothing in this section shall be construed so as to nullify or impair any right or rights which a consumer may have against a merchant at common law, by statute, or otherwise, nor to impair the ability of the attorney general to institute investigations and proceedings, where appropriate, as provided in article twenty-three-A of this chapter, nor to eliminate the requirements that may be imposed upon a merchant under such article.

e. An action shall not be brought under this section more than six years after the occurrence of the act, method or practice which is the subject of the action or more than one year after the last payment in a transaction involving the method, act or practice which is the subject of the action, whichever is later.

f. Any covenant, promise, agreement or understanding in, or in connection with or collateral to a sale or offering for sale of consumer goods, subject to the provisions of this section, purporting to acknowledge that a gift, bonus or other inducement received by a consumer in connection with a sale or offering for sale of consumer goods was not an incentive as defined herein, or otherwise purporting to directly or indirectly waive the provisions of this section, is against public policy and is void and unenforceable.

*** § 396-z. Rental vehicle protections.** 1. For the purposes of this section: (a) "Authorized driver" means: (i) the person to whom the vehicle is rented if a licensed driver; (ii) such person's spouse if licensed and at least eighteen years of age; (iii) any person who operates the vehicle during an emergency situation to a medical facility; or (iv) any licensed driver expressly listed on the rental agreement as an authorized driver.

(b) "Rental agreement" means any written agreement setting forth terms and conditions governing the renter's or any authorized driver's use of a rental vehicle for a period not to exceed thirty continuous days.

(c) "Rental vehicle company" means any person or organization, or any subsidiary or affiliate, including a franchisee, in the business of providing rental vehicles to the public from locations in this state.

(d) "Optional vehicle protection" means a rental vehicle company's agreement not to hold an authorized driver liable for all or part of any damage or loss to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing or administrative charges for which an authorized driver may be liable. The term "optional vehicle protection" shall encompass within its meaning other similar terms that may be used by rental vehicle companies, such as but not limited to "Collision Damage Waiver", "CDW", "Damage Waiver", "Loss Damage Waiver", "LDW", and "Physical Damage Waiver".

(e) "Renter" means a person or entity that obtains the use of a rental vehicle from a rental vehicle company under terms of a rental agreement.

(f) "Consolidated facilities charge" means the allowable recovery by a rental vehicle company from its renters of those fees, including any taxes or fees paid on such fees, for the finance, design, construction and operation of consolidated airport facilities and or the finance, design, construction and operation of common use transportation systems that move passengers between airport terminals and consolidated airport car rental facilities. The aggregate amount to be collected shall not exceed the reasonable costs, as determined annually by an independent audit paid for by the airport operator or its governing entity, to finance, design, construct and operate those facilities and common use transportation systems. The consolidated facilities charge shall apply only to vehicle rentals occurring at vehicle rental locations subject to the imposition of such charge by an airport operator or its governing entity. The term "consolidated facilities charge" shall encompass within its meaning other similar terms that may be used by airport authorities or rental vehicle companies, such as, but not limited to "customer facility charge" and "transportation facility charge".

(g) "Concession recovery fee" means the allowable recovery by a rental vehicle company from its renters of those fees, including any taxes or fees paid on such fees, which an airport operator or its governing

entity imposes on a rental vehicle company's applicable revenues or rental transactions, as defined and stated in a concession agreement that authorizes a rental vehicle company to operate at an airport located in this state. The concession recovery fee shall apply only to vehicle rentals occurring at vehicle rental locations subject to the imposition of such fee by an airport operator or its governing entity. The term "concession recovery fee" shall encompass within its meaning other similar terms that may be used by airport authorities or rental vehicle companies, such as, but not limited to, "concession fee", "concession recovery fee surcharge", "privilege fee" and "airport access fee".

(h) "Airport fees" means consolidated facilities charges and/or concession recovery fees.

(i) "Concession agreement" means an agreement, permit or license entered into between an airport operator or its governing entity and rental vehicle company setting forth the terms and conditions under which the rental vehicle company may transact its rental business at such airport.

(j) "Consolidated airport facilities" means those buildings or physical structures, including, but not limited to, parking garages, parking areas and fueling systems, constructed by or on behalf of the airport operator or its governing entity to be jointly used by all rental vehicle companies operating at such airport pursuant to a concession agreement.

(k) "Rental vehicle" means a rental vehicle as defined in section one hundred thirty-seven-a of the vehicle and traffic law, but excluding motor vehicles designed primarily for the transportation of property.

(l) "Manufacturer's suggested retail price" means the retail price of the motor vehicle suggested by the manufacturer in accordance with the requirements of federal law.

2. (a) A rental vehicle company shall not charge more than the following amounts per full or partial twenty-four hour rental day for optional vehicle protection:

(i) nine dollars if the manufacturer's suggested retail price of the rental vehicle is not greater than twenty thousand dollars;

(ii) twelve dollars if the manufacturer's suggested retail price of

the rental vehicle is greater than twenty thousand dollars but not greater than thirty-five thousand dollars;

(iii) fifteen dollars if the manufacturer's suggested retail price of the rental vehicle is greater than thirty-five thousand dollars but not greater than fifty thousand dollars; and

(iv) the amount that may be charged for a vehicle with a manufacturer's suggested value of greater than fifty thousand dollars shall not be subject to a maximum dollar amount but shall be subject to the fair market value as determined by the rental vehicle company.

(b) A rental vehicle company shall not sell optional vehicle protection unless the renter agrees to the purchase of such protection in writing at or prior to the time the rental agreement is executed.

(c) A rental vehicle company shall not void optional vehicle protection except for one or more of the following reasons:

(i) The damage or loss is caused intentionally or as a result of willful, wanton, or reckless conduct of the driver;

(ii) The damage or loss arises out of the driver's operation of the vehicle while intoxicated or unlawfully impaired by the use of alcohol or drugs;

(iii) The rental vehicle company entered into the rental transaction based on fraudulent or materially false information supplied by the renter or authorized driver;

(iv) The damage or loss arises out of the use of the vehicle while engaged in the commission of a crime other than a traffic infraction;

(v) The damage or loss arises out of the use of the vehicle to carry persons or property for hire, to push or tow anything, while engaged in a speed contest, operating off road, or for driver's training;

(vi) The damage or loss arises out of the use of the vehicle by a person other than: (1) an authorized driver; (2) the renter's child over the age of eighteen or a parent or parent-in-law of the renter, provided such child, parent or parent-in-law is properly licensed to operate a motor vehicle and resides in the same household as the renter; or (3) a parking valet or parking garage attendant for compensation and in the normal course of employment;

(vii) The damage or loss arises out of the use of the vehicle outside of the continental United States when that use is not specifically authorized by the rental agreement; or

(viii) The renter, or authorized driver, if different, or the renter's child over the age of eighteen or a parent or parent-in-law of the renter, if applicable, have failed to comply with the requirements for reporting damage or loss as set forth in subdivision five of this section.

(d) A customer may void optional vehicle protection at no charge within twenty-four hours of purchase provided that the customer: (i) has entered into a rental agreement with a term of two or more days, (ii) appears in person at any branch of the vehicle rental company together with the vehicle that shall be subject to inspection, and (iii) signs a cancellation form provided by the rental vehicle company. After twenty-four hours of purchase, a customer may prospectively terminate optional vehicle protection at any time, provided the customer: (i) appears in person at any branch of the vehicle rental company together with the vehicle that shall be subject to inspection; (ii) voids the optional vehicle protection in writing; and (iii) pays the optional vehicle protection charge for any full or partial rental day or portion of a day during which the optional vehicle protection was in effect.

3. Subject to the provisions of subdivisions six, seven, and nine of this section, a rental vehicle company may hold an authorized driver liable for actual damage to, or loss of, a rental vehicle, provided that: (a) any claim for such damage shall be based on a physical survey and shall be made upon the return of the rental vehicle, unless such survey is precluded because the vehicle is returned by automation, returned after-hours, or recovered by the rental company, in which event, any claim must be made within ten days after return or recovery; and (b) any charge for repair of such damage shall be limited to actual and reasonable costs and shall be assessed and billed separately and apart from the rental agreement. For purposes of this subdivision, "returned by automation" means a return where there is no interaction with rental vehicle company personnel; and "after-hours" return means a return after normal business hours and in which the keys are returned to the rental vehicle company via a drop box or other process offered by the rental vehicle company.

4. (a) Any rental vehicle company which states or permits to be stated

the rental costs of a rental vehicle in any advertisement shall state conspicuously, in plain language and in conjunction with the advertised rental cost of the vehicle, the daily rate of the applicable optional vehicle protection, that the rate constitutes an additional daily charge to the renter, that the purchase of such protection is optional, and that prospective renters should examine their credit card protections and automobile insurance policies for rental vehicle coverage.

(b) Where a written advertisement, including all print media, contains the statement of the rental cost of the vehicle, the disclosure required by this section shall be printed in type no less than ten point type.

(c) When the website of a rental vehicle company or the video presentation of a television or internet advertisement by the rental vehicle company contains the written statement of the rental cost of a vehicle, the depiction of the cost of the optional vehicle protection shall be clear and conspicuous.

(d) When a radio advertisement or the audio presentation of a television advertisement contains the statement of the rental cost of the motor vehicle, the oral statement of the rental cost shall immediately be accompanied by an oral statement of the cost of the optional vehicle protection.

(e) When a telephone, internet or other inquiry for the rental cost of a vehicle is made to a rental vehicle company which involves an interaction with a representative of a rental vehicle company, the representative of the rental vehicle company shall, in response to the inquiry, advise that additional optional products that may be offered by the rental vehicle company are not included in the daily rental rate. If an inquiry is made regarding optional vehicle protection, the representative shall provide the cost of the optional vehicle protection and state that the purchase of such protection is optional and that the renter's personal automobile insurance or credit card may provide coverage.

(f) Any rental vehicle company that offers optional vehicle protection to a renter shall disclose to the renter the following information on posted signs or pamphlets prominently and conspicuously displayed where they may be easily seen or reached by customers:

"NOTICES

THE FOLLOWING IS A GENERAL SUMMARY OF RENTER'S RIGHTS AND OBLIGATIONS. FOR COMPLETE DETAILS, REFER TO THE RENTAL AGREEMENT.

OPTIONAL VEHICLE PROTECTION (OVP): This contract offers, for an additional charge, OVP to cover your financial responsibility for damage or loss to the rental vehicle. OVP is also commonly referred to as a "collision damage waiver". The purchase of OVP is optional and may be declined. Before deciding whether to purchase OVP, you may wish to determine whether your credit card, or the vehicle insurance maintained by yourself or someone in your household, affords you any coverage for damage to the rental vehicle, and the amount of deductible under any such coverage.

OVP - WHEN VOID: OVP is void and shall not apply to the following situations:

1. If the damage or loss is caused as a result of the driver's intentional acts; willful, wanton, or reckless conduct of the driver; or operation of the vehicle while intoxicated or unlawfully impaired by the use of alcohol or drugs;

2. The rental vehicle company entered into the rental transaction based on fraudulent or materially false information supplied by the renter or authorized driver;

3. The damage or loss arises out of the use of the rental vehicle:
 - (a) while engaged in the commission of a crime, other than a traffic infraction;

- (b) to carry persons or property for hire, to push or tow anything, while engaged in a speed contest, operating off road, or for driver's training;

- (c) by a person other than: (1) an authorized driver; (2) the renter's child over the age of eighteen or a parent or parent-in-law of the renter, provided such child, parent or parent-in-law is properly licensed to operate a motor vehicle and resides in the same household as the renter; or (3) a parking valet or parking garage attendant for compensation and in the normal course of employment;

(d) outside of the continental United States when not specifically authorized by the rental agreement;

(e) where the renter or authorized driver, if different, or the renter's child over the age of eighteen or a parent or parent-in-law of the renter, if applicable, failed to comply with the requirements for reporting damage or loss as set forth in law.

OVP - DAMAGE REPORTING REQUIREMENTS: If the rental vehicle sustains damage or loss, the renter and other authorized driver, as applicable, are required to complete and return an incident report notice to the rental vehicle company. An authorized driver other than the renter is only required to complete and return an incident report notice to the rental vehicle company if such authorized driver was operating the vehicle when the incident occurred.

OVP - RIGHT TO INSPECT VEHICLE DAMAGES: The renter and his/her insurer have the right to request an inspection of the vehicle damages within seventy-two hours of the return of the vehicle. Failure of the renter or his/her insurer to request an inspection within seventy-two hours of return shall be deemed a waiver of such person or entity's right to inspect the damaged vehicle.

THEFT OF THE RENTAL VEHICLE: If the rental vehicle is stolen during the term of a rental agreement, an authorized driver must report the theft of the rental vehicle to the rental vehicle company and a law enforcement agency within twelve hours of learning of such theft."

(g) The following disclosure notice shall be made on the face of the rental agreement either by stamp, label or as part of the written contract or on any other written document provided to the renter upon execution of such contract, and shall be set apart in boldface type and in no smaller print than ten point type until six months after the effective date of the chapter of the laws of two thousand eighteen that amended this section, when upon such date such notice shall be in no smaller print than twelve point type:

"NOTICE: This contract offers, for an additional charge, optional vehicle protection to cover your financial responsibility for damage or loss to the rental vehicle. The purchase of optional vehicle protection

is optional and may be declined. You are advised to carefully consider whether to purchase this protection if you have rental vehicle collision coverage provided by your credit card or automobile insurance policy. Before deciding whether to purchase optional vehicle protection, you may wish to determine whether your credit card or your vehicle insurance affords you coverage for damage to the rental vehicle and the amount of deductible under such coverage."

(h) The contract shall also include in boldface type and in no smaller print than ten point type until six months after the effective date of the chapter of the laws of two thousand eighteen that amended this section, when upon such date such notice shall be in no smaller print than twelve point type and, in plain language, the conditions and exclusions set forth in paragraph (c) of subdivision two of this section. Upon identification by the rental vehicle company of damage to the rental vehicle, such rental vehicle company shall inform the renter of his or her right to inspect the vehicle, and the procedures and time frames for doing so, pursuant to paragraphs (b) and (c) of subdivision five of this section.

5. (a) Upon identification of damage by the rental vehicle company at the return of the vehicle, termination of the rental contract, or within ten days if a survey for damage is precluded because the vehicle is returned by automation, returned after-hours, or recovered by the rental vehicle company, the rental vehicle company shall furnish an incident report form and a notice, pursuant to this paragraph, of the obligation of the renter and other authorized driver, if applicable, to execute and return to the rental vehicle company a complete and accurate incident report describing any physical and/or mechanical damage. An authorized driver other than the renter shall be required to execute and return such incident report form only if such authorized driver was operating the vehicle when the incident occurred. If the vehicle is returned by automation, returned after-hours, or recovered by the rental vehicle company, such incident report form and notice shall be mailed by overnight delivery service or certified mail, return receipt requested, and another copy of such notification shall be sent by regular mail. The rental vehicle company shall retain for six years a copy of such notice and the certified mail return receipt.

(b) Within seventy-two hours of receipt of the incident report form and notice, either the renter or his or her insurer must notify or send notice to the rental vehicle company that either he, she, or the insurer wishes to inspect the damaged vehicle. If the renter or his or her insurer does not notify or send a request for this inspection within the seventy-two hour period, he, she, or the insurer will be deemed to have waived this right.

(c) If the renter or other authorized driver declines or fails to complete and return the incident report required pursuant to paragraph (a) of this subdivision, the rental vehicle company shall, no sooner than ten days after the mailing of notification pursuant to such paragraph (a), mail another copy of the incident report together with a letter stating that the renter or other authorized driver has declined or otherwise failed to complete and return the incident report. Such mailing shall be by overnight delivery service or certified mail, return receipt requested, and another copy of such notification by regular mail, with proof of mailing by production of a certificate of mailing from the post office. When a request to inspect the vehicle has been timely made by the renter or his or her insurer, the inspection must be completed within seven days of such request. If the rental vehicle company determines the damaged vehicle to be a total loss and subject to salvage, such seventy-two hour period for notification or waiver of the wish to inspect the damaged vehicle shall not apply, and the renter or his or her insurer shall have ten business days from the renter's receipt of notification from the rental vehicle company pursuant to paragraph (a) of this subdivision to inspect the damaged vehicle, unless the rental vehicle company agrees to provide access to such damaged vehicle beyond the ten business days provided herein. Within the limits provided in this paragraph, the rental vehicle company shall identify the repairer of, and provide access to, the damaged vehicle, in order to verify the nature and extent of damages, repairs and repair costs, and/or repair estimates.

(d) All notices shall be mailed to the address of the renter and other authorized driver, if applicable, as stated on his or her license, or other address as designated by him or her on the rental agreement.

(e) The renter and other authorized driver, if applicable, shall complete and return the incident report within ten days of the receipt

of the notice.

(f) The notice required by this subdivision shall be in at least twelve point bold face type and shall contain the statement: "Failure to completely and accurately fill out and return an incident report within ten days of receipt of this notice may make the renter or other authorized driver liable for damages sustained to the rental vehicle. Except where the damaged vehicle is determined to be a total loss and subject to salvage, the renter or his or her insurer has seventy-two hours from the return or recovery of the vehicle to notify the rental vehicle company that he or she wishes to inspect the damaged vehicle. The inspection must be completed within seven business days of the request to inspect the vehicle. If the rental vehicle company does not receive notification from the renter or his or her insurer requesting such inspection within the seventy-two hour period, the renter and his or her insurer will be deemed to have waived this right. If the rental vehicle company determines the damaged vehicle to be a total loss and subject to salvage, such seventy-two hour period for notification or waiver of the wish to inspect the damaged vehicle shall not apply, and such right to inspect the damaged vehicle shall expire ten business days from the renter's receipt of this notice from the rental vehicle company. Upon request of the renter or his or her insurer, we will provide a copy of the professional estimate of the costs of repairing the damaged motor vehicle." Information that is provided in response to a request by a rental vehicle company, but that is not provided on an incident report form, shall satisfy any reporting obligation of a renter or authorized driver if such response substantially complies with the applicable requirements of this section. If additional information is reasonably required by the rental vehicle company in order to adjust any claim of loss, same shall be requested of the renter or authorized driver as soon as reasonably practicable, who shall respond to same as soon as reasonably practicable.

(g) (i) For purposes of this subdivision, each of the following shall constitute an "incident report form": (A) a motor vehicle accident report pursuant to section six hundred five of the vehicle and traffic law; or (B) any similar appropriate form furnished by the rental vehicle company.

(ii) An incident report form described in clause (B) of subparagraph

(i) of this paragraph:

(A) may be sent or given to a renter and/or authorized driver, as applicable, with a request that the renter and/or authorized driver provide information pursuant to this section concerning damage to a vehicle rented to the renter or operated by an authorized driver, as the case may be; and

(B) such a form may also be made available as a fill-in form on the rental vehicle company's website, and the renter or authorized driver, as the case may be, shall be advised of the availability of such web-based fill-in form when a request for incident information is made under this subdivision.

(h) Provided, however, if the renter or other authorized driver is physically incapable of completing the report, the requirements of this subdivision shall lapse until after he or she is able to complete the report and is notified that he or she must complete and return the report as required by paragraph (b) of this subdivision.

(i) Provided, further, the rental vehicle company must, at least twenty days prior to commencing an action against the renter or other authorized driver, if applicable, provide the renter or other authorized driver, if applicable, an additional opportunity to complete and submit the incident report by providing a second notice, along with another incident report form, by certified mail, return receipt requested, and another copy of such notice and report form by regular mail, with proof of mailing by production of a certificate of mailing. If the renter or other authorized driver, as applicable, sends the rental vehicle company a completed incident report within fifteen days of the receipt of the notice, the provisions of this subdivision shall be deemed satisfied.

6. (a) A rental vehicle company may hold an authorized driver liable to the extent permitted under this chapter for physical or mechanical damage to the rental vehicle that occurs during the time the rental vehicle is under the rental agreement; provided, however, that an authorized driver shall not be liable for any normal wear and tear or mechanical damage that could reasonably be expected from normal use of the vehicle. For the purposes of this subdivision, the term "normal wear and tear" shall mean the deterioration of the condition of the vehicle or its component parts due to repetitive use and does not include damage

that materially diminishes the value of the vehicle and arises from a specific occurrence or accident during the time the rental vehicle is subject to the rental agreement; and the term "actual and reasonable costs" shall mean the cost to repair the vehicle including all discounts and price adjustments available to the rental vehicle company and shall include costs for towing, storage, and impound fees where applicable.

(b) The total liability of an authorized driver under paragraph (a) of this subdivision for damage to a motor vehicle shall not exceed the lesser of:

(i) the actual and reasonable costs that the rental vehicle company incurred to repair the motor vehicle or that the rental vehicle company would have incurred if the motor vehicle had been repaired, which shall reflect any discounts, price reductions, or adjustments available to the rental vehicle company; or

(ii) the fair market value of the motor vehicle immediately before the damage occurred, as determined in the applicable market for the retail sale of the motor vehicle, less any net disposal proceeds.

(c) The total liability of an authorized driver under paragraph (a) of this subdivision for loss of a motor vehicle shall not exceed reasonable costs incurred by the rental vehicle company for the loss due to theft of the rental vehicle up to its fair market value, as determined by the applicable market for the retail sale of that vehicle if it is established that an authorized driver failed to exercise reasonable care or that an authorized driver committed, or aided or abetted in the commission of, the theft of the rental motor vehicle.

(d) Damages incurred by rental vehicle companies for the loss of use of a rental vehicle and related administrative fees shall not be recovered from any authorized driver or his or her insurer.

(e) A rental vehicle company shall not hold an authorized driver liable for any amounts that the rental vehicle company recovers from any other party.

(f) A rental vehicle company shall not collect or attempt to collect the amount described in paragraph (b) of this subdivision unless the rental vehicle company:

(i) obtains an estimate from a repair company or an appraiser in the business of providing such appraisals on the cost of repairing the motor vehicle;

(ii) provides a copy of the estimate and photographic evidence upon request to the renter or authorized driver, as applicable who may be liable under paragraph (a) of this subdivision, and the insurer of such renter or authorized driver, as applicable; and

(iii) submits a copy of the estimate with any claim to collect the amount described in paragraph (b) of this subdivision.

(g) A claim against an authorized driver resulting from damage or loss to a rental vehicle shall be reasonable and reflect the value of the actual loss incurred. A rental vehicle company shall mitigate damages where possible and shall not assert or collect any claim for physical damage which exceeds the amount authorized under paragraph (b) of this subdivision.

(h) If insurance coverage exists under an authorized driver's applicable insurance policy, such authorized driver may require that the rental vehicle company submit any claims to such authorized driver's insurance carrier. Upon the request of an authorized driver, the rental vehicle company shall submit any claims to such authorized driver's insurance carrier and shall not make any written or oral representations to the contrary, nor shall it make any written or oral representations that it will not negotiate with such authorized driver's insurance carrier.

7. (a) No rental vehicle company shall collect or charge any security, deposit, or payment for damage in any form, by credit card, debit card or otherwise, or report the debt to any consumer reporting agency, as defined in subdivision (e) of section three hundred eighty-a of this chapter, during the term of the rental agreement, pending resolution of any dispute, or prior to obtaining judgment in a court of competent jurisdiction.

(b) No rental vehicle company shall require a deposit or an advance charge against the credit card or debit card of an authorized driver, in any form, for damages to a rental vehicle which is in the authorized driver's possession or control.

(c) No rental vehicle company shall collect or charge any payment from an authorized driver for damage to the rental vehicle upon return or recovery of the vehicle in a damaged condition, until after the cost of the damage to the vehicle and liability therefor is agreed to between

the rental vehicle company and an authorized driver or his or her insurer, or is determined pursuant to law or rental agreement provisions consistent with law and the rights and obligations set forth in this section; provided, however, that a rental vehicle company is not precluded from presenting a claim to an authorized driver and his or her insurer pursuant to other provisions of this section.

(d) Causes of action concerning the existence of, liability for, and extent and cost of damage to the vehicle shall, where appropriate, be commenced by a rental vehicle company in a court of competent jurisdiction, in accordance with the limitations and jurisdiction of the appropriate court act provided the claimant has first mailed a demand letter. A demand letter sent by the rental vehicle company pursuant to this paragraph shall contain: (i) the name and post office address of the rental vehicle company, and of its attorney, if any; (ii) the nature of the claim; (iii) the time when, the place where and the manner in which the claim arose, if known, or if not known, the time when and place where the damage was discovered by the rental vehicle company; and (iv) the items of damage or injuries claimed to have been sustained, accompanied by supporting documentation, such as repair bills, invoices and estimates in the possession of or available to the rental vehicle company. Such demand letter shall be served upon the renter and the renter's insurer in a manner reasonably designed to give actual notice, via regular and certified mail, return receipt requested. Nothing contained herein shall prohibit a rental vehicle company and an authorized driver or his or her insurer from entering into an agreement after a claim of loss to submit the matter to arbitration or mediation.

8. No rental vehicle company shall advertise or quote a rental rate that does not include all charges, except taxes or optional items and/or services or any mileage charge, which the renter must pay to obtain a rental vehicle. Provided, however, a rental vehicle company shall be permitted to separately quote and charge airport fees as defined herein, which shall be in addition to the rental rate; and provided further that advertised rental rates that include locations at which airport fees apply shall clearly indicate that additional fees apply.

8-a. It shall be unlawful for any rental vehicle company to engage in

any of the following practices solely on the basis of the geographical location of the residence of a New York state resident attempting to enter into a rental agreement:

(a) refusing to rent a vehicle;

(b) imposing any additional charge for the rental of a motor vehicle;
or

(c) imposing any additional terms, conditions or privileges upon the rental of a vehicle.

9. No rental vehicle company shall hold any authorized driver liable for any damage to, or loss of, a rental vehicle, as provided by this section, unless the rental vehicle company prominently discloses, on the rental agreement, in at least ten point bold face display, the nature and extent of such liability and such driver's rights and responsibilities pursuant to paragraph (c) of subdivision two of this section and paragraph (g) of subdivision four of this section.

10. (a) A rental vehicle company shall not charge in addition to the rental rate, taxes, and mileage charge, if any, any fee which must be paid as a condition of renting the vehicle, such as, but not limited to, required fuel surcharges, each of which shall be separately stated on the rental agreement. In addition, a rental vehicle company may also state separately and charge, where applicable, airport fees as such term is defined herein.

(b) In addition to the rental rate, taxes, applicable airport fees, and mileage charge, if any, a rental vehicle company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by not choosing to obtain or utilize the optional item or service, such as, but not limited to, optional accessories or services requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was rented, and charges for refueling the vehicle with as much fuel as was in the fuel tank at the beginning of the rental.

(c) A rental vehicle company shall make available detachable or removable seats which meet the requirements of subdivision one of section twelve hundred twenty-nine-c of the vehicle and traffic law.

(d) Fees for additional authorized drivers shall not exceed five dollars per additional driver per rental day.

(e) A rental vehicle company shall furnish with each rental vehicle pursuant to an agreement either an owner's manual or a diagram which shall indicate the location and plain language description of the functions necessary for the safe and efficient operation of the vehicle which shall at a minimum include:

- (i) Headlights;
- (ii) Brakes and emergency brake;
- (iii) Turn signal indicators;
- (iv) Hazard lights;
- (v) Windshield wipers and washers;
- (vi) Horn;
- (vii) Cruise control;
- (viii) Heat control system including defrost systems;
- (ix) Car locking systems; and

(x) Spare tire and car jack, tire wrench, and jacking locations, if and to the extent that such items were either included with the initial sale of the vehicle when new, or such items were generally included in new vehicles of such year, make, model and style when initially sold at retail. In the event the rental vehicle company elects to include the owner's manual pursuant to this section, if the owner's manual is not returned with the vehicle, the renter shall be liable to the rental vehicle company for the actual replacement cost of the owner's manual plus an administrative fee.

11. Any clause or provision of a rental agreement inconsistent with the provisions of this section shall be deemed void as against public policy.

12. Any rental vehicle company found by a court of competent jurisdiction to have violated a provision of this section shall be subject to a penalty of not less than five hundred dollars nor more than one thousand dollars for each violation.

13. (a) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the

people of the state of New York to a court of competent jurisdiction by a special proceeding for the imposition of a fine or the issuance of an injunction against any violation of this section, upon notice to the rental vehicle company of not less than five days, to enjoin and restrain the continuance of such violations.

(b) If the court finds that the defendant has, in fact, violated this section, an injunction may be issued by such court, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby.

(c) In any proceeding pursuant to this subdivision, the court may direct restitution and make allowances to the attorney general as provided in section sixty-three of the executive law.

(d) In support of any application pursuant to this subdivision, the attorney general is authorized to take proof, determine relevant facts and issue subpoenae in accordance with the civil practice law and rules.

13-a. A rental vehicle company shall not use information from any global positioning system technology to determine or impose any costs, fees, charges, or penalties on an authorized driver for such driver's use of a rental vehicle. The use of global positioning technology shall not limit the right of a rental vehicle company to impose costs, fees, charges, or penalties to recover a vehicle that is lost, misplaced, or stolen. The provisions of this subdivision shall not be construed to modify or supersede any other provision of law.

14. An authorized driver shall provide notice to the rental vehicle company and law enforcement agency within twelve hours of learning of the theft of the rental vehicle.

15. In accordance with any applicable federal law or rule, every rental vehicle company shall display the following in a conspicuous location, with lettering that is legible and that shall be at least three-quarters of an inch boldface type:

"NOTICE: New York State Law prohibits the following practices by rental vehicle companies based upon race, color, ethnic origin, religion, disability, sex, marital status, or age: (1) refusal to rent; (2) the imposition of any additional charge (except in certain instances

where the renter is under the age of 25). In addition, it is unlawful for any rental vehicle company to refuse to rent a vehicle to any person solely on the requirement of ownership of a credit card."

16. (a) Notwithstanding any other provision of this section, any notice or disclosure of general applicability required to be provided, delivered, posted, or otherwise made available by a rental vehicle company pursuant to this section shall also be deemed timely and effectively made where such notice or disclosure is (i) provided or delivered electronically to the renter at or before the time required provided that such renter has given his or her expressed consent to receive such notice or disclosure in such a manner, or (ii) included in a member or master agreement in effect at the time of rental.

(b) For the purposes of this subdivision, "member or master agreement" shall mean an agreement between a rental vehicle company and a renter, or an agreement between a rental vehicle company and another company, which by its express terms: (i) permits such renter or specified employees of such other company to bypass a retail service location and obtain a product or service directly; (ii) does not require the renter to execute a rental agreement at the time of rental; or (iii) does not require the rental vehicle company to provide the renter with the rental terms and conditions at the time of rental due to the prior execution of the agreement. Electronic or written acceptance shall hereby be deemed a valid form of acceptance of any such notice or disclosure, and acceptance shall remain effective until such time as acceptance is affirmatively withdrawn by the renter. Notices and disclosures made electronically pursuant to this subdivision shall be exempt from any placement or stylistic display requirements, including but not limited to location, font size, typeset, or other specifically stated description; provided such disclosure is made in a clear and conspicuous manner.

* NB Effective until June 30, 2028

* § 396-z. Rental vehicle protections. 1. For the purposes of this section: (a) "Authorized driver" shall mean: (i) the person to whom the vehicle is rented if a licensed driver; (ii) such person's spouse if licensed and at least eighteen years of age; (iii) any person who operates the vehicle during an emergency situation to a medical

facility; or (iv) any licensed driver expressly listed on the rental agreement as an authorized driver.

(b) "Rental agreement" means any written agreement setting forth terms and conditions governing the authorized driver's use of a rental vehicle, as defined in section one hundred thirty-seven-a of the vehicle and traffic law, for a period not to exceed thirty continuous days.

(c) "Rental vehicle company" means any person or organization, or any subsidiary or affiliate, including a franchisee, in the business of providing rental vehicles to the public from locations in this state.

(d) "Optional vehicle protection" means a rental vehicle company's agreement not to hold an authorized driver liable for all or part of any damage or loss to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing or administrative charges for which the authorized driver may be liable. The term "optional vehicle protection" shall encompass within its meaning other similar terms that may be used by rental vehicle companies, such as but not limited to "Collision Damage Waiver", "CDW", "Damage Waiver", "Loss Damage Waiver", "LDW", and "Physical Damage Waiver".

(e) "Renter" means a person or entity that obtains the use of a private passenger vehicle from a rental vehicle company under terms of a rental agreement.

(f) "Consolidated facilities charge" means the allowable recovery by a rental vehicle company from its renters of those fees, including any taxes or fees paid on such fees, for the finance, design, construction and operation of consolidated airport facilities and or the finance, design, construction and operation of common use transportation systems that move passengers between airport terminals and those consolidated airport car rental facilities. The aggregate amount to be collected shall not exceed the reasonable costs, as determined annually by an independent audit paid for by the airport operator or its governing entity, to finance, design, construct and operate those facilities and common use transportation systems. The consolidated facility charge shall apply only to vehicle rentals occurring at vehicle rental locations subject to the imposition of such charge by an airport operator or its governing entity.

(g) "Concession recovery fee" means the allowable recovery by a rental vehicle company from its renters of those fees, including any taxes or

fees paid on such fees, which an airport operator or its governing entity imposes on a rental vehicle company's applicable revenues, as defined and stated in a concession agreement that authorizes a rental vehicle company to operate at an airport located in this state. The concession recovery fee shall apply only to vehicle rentals occurring at vehicle rental locations subject to the imposition of such fee by an airport operator or its governing entity.

(h) "Airport fees" means the consolidated facility charge and/or the concession recovery fee as those terms are defined herein.

(i) "Concession agreement" means an agreement, permit or license entered into between an airport operator or its governing entity and rental vehicle company setting forth the terms and conditions under which the rental vehicle company may transact its rental business at such airport.

(j) "Consolidated airport facilities" means those buildings or physical structures, including, but not limited to, parking garages, parking areas and fueling systems, constructed by or on behalf of the airport operator or its governing entity to be jointly used by all rental vehicle companies operating at such airport pursuant to a concession agreement.

2. (a) A rental vehicle company shall not charge more than nine dollars per full or partial twenty-four hour rental day for optional vehicle protection if the manufacturer's suggested retail price of the rental vehicle is not greater than thirty thousand dollars. A rental vehicle company shall not charge more than twelve dollars per full or partial twenty-four hour rental day for optional vehicle protection if the manufacturer's suggested retail price of the rental vehicle is greater than thirty thousand dollars.

(b) A rental vehicle company shall not sell optional vehicle protection unless the authorized driver agrees to the purchase of such protection in writing at or prior to the time the rental agreement is executed.

(c) A rental vehicle company shall not void optional vehicle protection except for one or more of the following reasons:

(i) The damage or loss is caused intentionally or as a result of willful, wanton, or reckless conduct of the driver.

(ii) The damage or loss arises out of the driver's operation of the vehicle while intoxicated or impaired by the use of alcohol or drugs.

(iii) The rental vehicle company entered into the rental transaction based on fraudulent or materially false information supplied by the renter or authorized driver.

(iv) The damage or loss arises out of the use of the vehicle while engaged in the commission of a crime other than a traffic infraction.

(v) The damage or loss arises out of the use of the vehicle to carry persons or property for hire, to push or tow anything, while engaged in a speed contest, operating off road, or for driver's training.

(vi) The damage or loss arises out of the use of the vehicle by a person other than: an authorized driver; a duly licensed parent or child over the age of eighteen thereof who permanently resides in the same household; or a parking valet or parking garage attendant for compensation and in the normal course of employment.

(vii) The damage or loss arises out of the use of the vehicle outside of the continental United States when that use is not specifically authorized by the rental agreement.

(viii) The authorized driver has failed to comply with the requirements for reporting damage or loss as set forth in subdivision five of this section.

(d) A customer may void optional vehicle protection at no charge within twenty-four hours of purchase provided that the customer: (i) has rented the vehicle for two or more days, (ii) appears in person at any branch of the vehicle rental company together with the vehicle that shall be subject to inspection, and (iii) signs a cancellation form provided by the rental vehicle company.

3. Subject to the provisions of subdivisions six, seven, and nine of this section, a rental vehicle company may hold an authorized driver liable for actual damage to, or loss of, a rental vehicle, provided that: (a) any claim for such damage shall be based on a physical survey and shall be made upon the return of the rental vehicle, unless returned by automation or after-hours which precludes such survey, in which event any claim must be made within ten days after return; and (b) any charge for repair of such damage shall be limited to actual and reasonable costs and shall be assessed and billed separately and apart from the

rental agreement. For purposes of this subdivision, "returned by automation" means a return acknowledged by machine receipt and where there is no interaction with rental vehicle company personnel and "after-hours" return means a return after normal business hours and in which the keys and rental agreement are deposited in the rental vehicle company office.

4. (a) Any rental vehicle company which states or permits to be stated the rental costs of a rental vehicle in any advertisement shall state conspicuously, in plain language and in conjunction with the advertised rental cost of the vehicle, the daily rate of the applicable optional vehicle protection, that the rate constitutes an additional daily charge to the renter, that the purchase of such protection is optional, and that prospective renters should examine their credit card protections and automobile insurance policies for rental vehicle coverage.

(b) Where a written advertisement, including all print media, contains the statement of the rental cost of the vehicle, the disclosure required by this section shall be printed in type no less than ten point type.

(c) When the video presentation of a television or internet advertisement by the rental vehicle company contains the written statement of the rental cost of a vehicle, the depiction of the cost of the optional vehicle protection shall be clear and conspicuous.

(d) When a radio advertisement or the audio presentation of a television advertisement contains the statement of the rental cost of the motor vehicle, the oral statement of the rental cost shall immediately be accompanied by an oral statement of the cost of the optional vehicle protection.

(e) When a telephone inquiry for the rental cost of a vehicle is made to a rental vehicle company, the representative of the rental vehicle company shall, in response to an inquiry by the caller, provide the cost of the optional vehicle protection and state that the purchase of such protection is optional and that the renter's personal automobile insurance or credit card may provide coverage.

(f) Any rental vehicle company that offers optional vehicle protection to an authorized driver shall inform the authorized driver in posted signs or in pamphlets, written in plain language, of all of the information required to be disclosed by this section. The requirements

of this paragraph shall be deemed to be satisfied if the rental vehicle company places the posted signs or pamphlets prominently and conspicuously where they may be easily seen or reached by customers.

(g) The following disclosure notice shall be made on the face of the rental agreement either by stamp, label or as part of the written contract or on any other written document provided to the authorized driver at the time such driver takes possession of the vehicle, shall be set apart in boldface type and in no smaller print than ten point type:

NOTICE: This contract offers, for an additional charge, optional vehicle protection to cover your financial responsibility for damage or loss to the rental vehicle. The purchase of optional vehicle protection is optional and may be declined. You are advised to carefully consider whether to purchase this protection if you have rental vehicle collision coverage provided by your credit card or automobile insurance policy. Before deciding whether to purchase optional vehicle protection, you may wish to determine whether your credit card or your vehicle insurance affords you coverage for damage to the rental vehicle and the amount of deductible under such coverage.

(h) The contract shall also include in boldface type and in no smaller print than ten point type, in plain language, any other conditions or exclusions applicable to the optional vehicle protection. The rental vehicle company shall also inform the authorized driver of his or her right to inspect the vehicle pursuant to paragraph (c) of subdivision five of this section.

5. (a) Upon return of the vehicle, termination of the rental contract, or within ten days if returned by automation or after-hours, the rental vehicle company shall furnish an incident report form and a notice, pursuant to this paragraph, of the authorized driver's obligation to execute and return to the rental vehicle company a complete and accurate incident report describing any physical and/or mechanical damage. If the vehicle is returned by automation or after-hours, such incident report form and notice shall be mailed by overnight delivery service or certified mail, return receipt requested, and another copy of such notification shall be sent by regular mail. The rental vehicle company shall retain for six years a copy of such notice and the certified mail

return receipt.

(b) Upon return of the vehicle, or within seventy-two hours if the return is by automation or after-hours, the authorized driver or his or her insurer must notify the rental vehicle company that they wish to inspect the damaged vehicle. The inspection must be completed within seven days of the return date of the vehicle. If the authorized driver or his or her insurer does not request this inspection within the seventy-two hour period, the authorized driver or his or her insurer will be deemed to have waived this right.

(c) If the authorized driver declines or fails to complete and return the incident report required pursuant to paragraph (a) of this subdivision, the rental vehicle company shall, no sooner than twenty days after the mailing of notification pursuant to such paragraph (a), mail another copy of the incident report together with a letter stating that the authorized driver has declined or otherwise failed to complete and return the incident report. Such mailing shall be by overnight delivery service or certified mail, return receipt requested, and another copy of such notification by regular mail, with proof of mailing by production of a certificate of mailing from the post office. Within seventy-two hours of return of the vehicle, the authorized driver or his or her insurer must notify the rental vehicle company that he or she wishes to inspect the damaged vehicle. The inspection must be completed within seven days of the return date of the vehicle. If the authorized driver or his or her insurer does not request this inspection within the seventy-two hour period, the authorized driver or his or her insurer will be deemed to have waived this right. If the rental vehicle company determines the damaged vehicle to be a total loss and subject to salvage, such seventy-two hour period for notification or waiver of the wish to inspect the damaged vehicle shall not apply, and the authorized driver or his or her insurer shall have ten business days from the authorized driver's receipt of notification from the rental vehicle company pursuant to paragraph (a) of this subdivision to inspect the damaged vehicle, unless the rental vehicle company agrees to provide access to such damaged vehicle beyond the ten business days provided herein. Within the limits provided in this paragraph, the rental vehicle company shall identify the repairer of, and provide access to, the damaged vehicle, in order to verify the nature and extent of damages,

repairs and repair costs, and/or repair estimates.

(d) All notices shall be mailed to the authorized driver's address as stated on his or her license, or other address as designated by him or her.

(e) The authorized driver shall complete and return the incident report within ten days of the receipt of the notice.

(f) The notice required by this subdivision shall be in at least twelve point bold face type and shall contain the statement: "Failure to completely and accurately fill out and return an incident report within ten days of receipt of this notice may make the authorized driver liable for damages sustained to the rental vehicle. Except where the damaged vehicle is determined to be a total loss and subject to salvage, the authorized driver or his or her insurer has seventy-two hours from the return of the vehicle to notify the rental vehicle company that he or she wishes to inspect the damaged vehicle. The inspection must be completed within seven business days of the return date of the vehicle. If the authorized driver or his or her insurer does not request this inspection within the seventy-two hour period, the authorized driver or his or her insurer will be deemed to have waived this right. If the rental vehicle company determines the damaged vehicle to be a total loss and subject to salvage, such seventy-two hour period for notification or waiver of the wish to inspect the damaged vehicle shall not apply, and such right to inspect the damaged vehicle shall expire ten business days from the authorized driver's receipt of this notice from the rental vehicle company at the return of the vehicle or receipt of the first mailing of this notice in the event of return of the vehicle by automation or after hours. Upon request of the authorized driver or his or her insurer, we will provide a copy of our estimate of the costs of repairing the damaged motor vehicle."

(g) For purposes of this subdivision, an "incident report" shall be defined as a motor vehicle accident report pursuant to section six hundred five of the vehicle and traffic law or any similar appropriate form furnished by the rental vehicle company.

(h) Provided, however, if the authorized driver is physically incapable of completing the report, the requirements of this subdivision shall lapse until after he or she is able to complete the report and is notified that he or she must complete and return the report as required

by paragraph (b) of this subdivision.

(i) Provided, further, twenty days prior to commencing an action against the authorized driver, the rental vehicle company must prove the authorized driver had an additional opportunity to provide the incident report by providing a second notice along with another incident report by certified mail, return receipt requested, and another copy of such notice and report by regular mail, with proof of mailing by production of a certificate of mailing; and if the authorized driver provides the rental vehicle company with a completed incident report within fifteen days of the receipt of the notice, the provisions of this subdivision shall be deemed satisfied.

6. (a) A rental vehicle company may hold an authorized driver liable to the extent permitted under this chapter for physical or mechanical damage to the rental vehicle that occurs during the time the rental vehicle is under the rental agreement; provided, however, that a renter shall not be liable for mechanical damage unrelated to an accident, nor for any normal wear and tear or other mechanical damage that could reasonably be expected from normal use of the vehicle, except in instances where abuse or neglect by the driver is shown. For the purposes of this subdivision, "actual and reasonable costs" shall mean the repair price reduced by all discounts paid by the rental vehicle company to the repairer of the vehicle, including costs for towing, storage, and impound fees.

(b) The total liability of an authorized driver under paragraph (a) of this subdivision for damage to a motor vehicle shall not exceed the lesser of:

(i) the actual and reasonable costs that the rental vehicle company incurred to repair the motor vehicle or that the rental vehicle company would have incurred if the motor vehicle had been repaired, which shall reflect any discounts, price reductions, or adjustments available to the rental vehicle company; or

(ii) the fair market value of the motor vehicle immediately before the damage occurred, as determined in the applicable market for the retail sale of the motor vehicle, less any net disposal proceeds.

(c) The total liability of an authorized driver under paragraph (a) of this subdivision for loss of a motor vehicle shall not exceed reasonable

costs incurred by the rental vehicle company for the loss due to theft of the rental vehicle up to its fair market value, as determined by the applicable market for the retail sale of that vehicle if it is established that an authorized driver failed to exercise reasonable care or that an authorized driver committed, or aided or abetted in the commission of, the theft of the rental motor vehicle.

(d) Damages incurred by rental vehicle companies for the loss of use of a rental vehicle and related administrative fees shall not be recovered from authorized drivers.

(e) A rental vehicle company shall not hold an authorized driver liable for any amounts that the rental vehicle company recovers from any other party.

(f) A rental vehicle company shall not collect or attempt to collect the amount described in paragraph (b) of this subdivision unless the rental vehicle company:

(i) obtains an estimate from a repair company or an appraiser in the business of providing such appraisals on the cost of repairing the motor vehicle;

(ii) provides a copy of the estimate and photographic evidence upon request to the authorized driver who may be liable under paragraph (a) of this subdivision, or the insurer of the authorized driver; and

(iii) submits a copy of the estimate with any claim to collect the amount described in paragraph (b) of this subdivision.

(g) A claim against an authorized driver resulting from damage or loss to a rental vehicle shall be reasonable and rationally related to the actual loss incurred. A rental vehicle company shall mitigate damages where possible and shall not assert or collect any claim for physical damage which exceeds the amount authorized under paragraph (b) of this subdivision.

(h) If insurance coverage exists under the authorized driver's applicable insurance policy, the authorized driver may require that the rental vehicle company submit any claims to the authorized driver's insurance carrier. Upon the request of an authorized driver, the rental vehicle company shall submit any claims to the authorized driver's insurance carrier and shall not make any written or oral representations to the contrary, nor shall it make any written or oral representations that it will not negotiate with the authorized driver's insurance

carrier.

7. (a) No rental vehicle company shall require any security, deposit, or charge for damage in any form, by credit card or otherwise, during the term of the rental agreement or pending resolution of any dispute.

(b) No rental vehicle company shall require a deposit or an advance charge against the credit card of an authorized driver, in any form, for damages to a rental vehicle which is in the authorized driver's possession or control.

(c) No rental vehicle company shall require any payment to the rental vehicle company, upon the authorized driver's return of the vehicle in a damaged condition, until after the cost of the damage to the vehicle and liability therefor is agreed to between the rental vehicle company and the authorized driver or is determined pursuant to law; provided, however, that a rental vehicle company is not precluded from presenting a claim to the authorized driver pursuant to other provisions of this section.

(d) Causes of action concerning the existence of, liability for, and extent and cost of damage to the vehicle shall, where appropriate, be commenced by a rental vehicle company in a commercial claims part in accordance with the limitations and jurisdiction of the appropriate court act.

8. No rental vehicle company shall advertise or quote a rental rate that does not include all charges, except taxes or optional items and/or services or any mileage charge, which an authorized driver must pay to obtain a rental vehicle. Provided, however, a rental vehicle company shall be permitted to separately quote and charge airport fees as defined herein, which shall be in addition to the rental rate; and provided further that advertised rental rates that include locations at which airport fees apply shall clearly indicate that additional fees apply.

9. No rental vehicle company shall hold any authorized driver liable for any damage to, or loss of, a rental vehicle, as provided by this section, unless the rental vehicle company prominently discloses, on the rental agreement, in at least ten point bold face display, the nature

and extent of such liability and such driver's rights and responsibilities under this section.

10. (a) A rental vehicle company shall not charge in addition to the rental rate, taxes, and mileage charge, if any, any fee which must be paid as a condition of renting the vehicle, such as, but not limited to, required fuel surcharges, each of which shall be separately stated on the rental agreement. In addition, a rental vehicle company may also state separately and charge, where applicable, airport fees as such term is defined herein.

(b) In addition to the rental rate, taxes, applicable airport fees, and mileage charge, if any, a rental vehicle company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by not choosing to obtain or utilize the optional item or service, such as, but not limited to, optional accessories or services requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was rented, and charges for refueling the vehicle with as much fuel as was in the fuel tank at the beginning of the rental.

(c) A rental vehicle company shall make available detachable or removable seats which meet the requirements of subdivision one of section twelve hundred twenty-nine-c of the vehicle and traffic law.

(d) Fees for additional authorized drivers shall not exceed three dollars per additional driver per rental day.

(e) A rental vehicle company shall furnish with each rental vehicle pursuant to an agreement either an owner's manual or a diagram which shall indicate the location and plain language description of the functions necessary for the safe and efficient operation of the vehicle which shall at a minimum include:

- (i) Headlights;
- (ii) Brakes and emergency brake;
- (iii) Turn signal indicators;
- (iv) Hazard lights;
- (v) Windshield wipers and washers;
- (vi) Horn;
- (vii) Cruise control;

(viii) Heat control system including defrost systems;

(ix) Car locking systems; and

(x) Spare tire and car jack, tire wrench, and jacking locations. In the event the rental vehicle company elects to include the owner's manual pursuant to this section, if the owner's manual is not returned with the vehicle, the renter shall be liable to the rental vehicle company for the actual replacement cost of the owner's manual plus an administrative fee.

11. Any clause or provision of a rental agreement inconsistent with the provisions of this section shall be deemed void as against public policy.

12. Any rental vehicle company found by a court of competent jurisdiction to have violated a provision of this section shall be subject to a penalty of not less than five hundred dollars nor more than one thousand dollars for each violation.

13. (a) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court of competent jurisdiction by a special proceeding for the imposition of a fine or the issuance of an injunction against any violation of this section, upon notice to the rental vehicle company of not less than five days, to enjoin and restrain the continuance of such violations.

(b) If the court finds that the defendant has, in fact, violated this section, an injunction may be issued by such court, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby.

(c) In any proceeding pursuant to this subdivision, the court may direct restitution and make allowances to the attorney general as provided in section sixty-three of the executive law.

(d) In support of any application pursuant to this subdivision, the attorney general is authorized to take proof, determine relevant facts and issue subpoenae in accordance with the civil practice law and rules.

13-a. A rental vehicle company shall not use information from any

global positioning system technology to determine or impose any costs, fees, charges, or penalties on an authorized driver for such driver's use of a rental vehicle. The use of global positioning technology shall not limit the right of a rental vehicle company to impose costs, fees, charges, or penalties to recover a vehicle that is lost, misplaced, or stolen. The provisions of this subdivision shall not be construed to modify or supersede any other provision of law.

14. An authorized driver shall provide notice to the rental vehicle company or law enforcement agency within twelve hours of learning of the theft of the rental vehicle.

15. In accordance with any applicable federal law or rule, every rental vehicle company shall display the following in a conspicuous location, with lettering that is legible and that shall be at least three-quarters of an inch boldface type:

NOTICE: New York State Law prohibits the following practices by rental vehicle companies based upon race, color, ethnic origin, religion, disability, sex, marital status, or age: (1) refusal to rent; (2) the imposition of any additional charge (except in certain instances where the renter is under the age of 25). In addition, it is unlawful for any rental vehicle company to refuse to rent a vehicle to any person solely on the requirement of ownership of a credit card.

* NB Effective June 30, 2028

§ 397. Unlawful use of name or other identification of certain non-profit organizations. 1. No person, firm, association or corporation shall use, for advertising purposes or for purposes of trade, the name, symbol, device or other identification of any non-profit corporation, association, society or organization organized exclusively for religious, benevolent, humane, charitable, educational, hospital, patriotic, fraternal or veterans purposes or to promote the study or the advancement of the arts or sciences or to sustain, encourage or promote the musical or performing arts or to inform or educate the consumer by publishing and disseminating the results of

tests and evaluations of goods and services, without having first obtained the written consent of such non-profit corporation, association, society or organization. Any violation of this section shall be a misdemeanor.

2. Subdivision one of this act shall not apply to the use by any person, firm, association or corporation of any trade mark, trade name or other trade identification which was adopted and regularly used by such person, firm, association or corporation, prior to the enactment of this act if the use of such trade mark, trade name or other trade identification was and is otherwise lawful but for the provisions of subdivision one of this act. Nothing contained in this act shall be construed so as to prohibit the use of any name, symbol, device or other identification when used solely for purposes of historical reference or description of geographical location only and not as a trade mark or trade name or for purposes of trade identification.

3. Whenever there shall be an actual or threatened violation of subdivision one of this section, the corporation, association, society or organization affected thereby may maintain an equitable action in the supreme court of this state to prevent and restrain said actual or threatened violation; and may also sue and recover damages for any injuries sustained by reason of any such violation, and if the defendant shall have knowingly violated subdivision one of this section, the jury, in its discretion may award exemplary damages.

4. Nothing contained in this act shall deprive any corporation, association, society or organization entitled to invoke the remedies provided by this act of any rights or remedies existing at common law or under the penal law or any other law of this state.

§ 397-a. Distributing unsolicited advertising on private property prohibited; certain cities. 1. In any city with a population of one million or more, no person shall place, or cause or permit to be placed on private property any unsolicited papers, fliers, pamphlets, handbills, circulars, or other materials advertising a business or

soliciting business where the owner has posted, in a conspicuous location, a sign stating that the placement of such materials shall be prohibited. In a single family dwelling or a multiple family dwelling that is owner-occupied and is designed for and occupied exclusively by no more than three families, any owner of such property shall have the authority to post such a sign. In all other multiple dwellings as defined in section four of the multiple dwelling law, the property owner shall only post such a sign if the owner or lessee of each separate dwelling unit within the building or on such property agrees to prohibit such solicitations, and any sign posted without the consent of at least one unit owner or lessee of each such unit shall be invalid. In the event that there are one or more units in which the unit owner or lessee consents to the prohibition of such unsolicited advertising, the property owner may instead post a sign designating a particular location or an appropriate receptacle for the placement of such unsolicited advertising, and limiting the number of such materials that may be delivered to the property to an amount equal to the number of units in which a unit owner or lessee has not consented to the prohibition. Any such delivery location or receptacle shall be reasonably accessible to such unit owners or lessees and to the distributors of such unsolicited materials. When such a sign is posted, a person may only leave an amount of unsolicited advertising materials that is equal to the number of unit owners or lessees indicated on the sign, and such materials shall be left in the location designated on the sign. Nothing contained in this subdivision shall be deemed to prohibit or otherwise regulate the delivery of any such matter by the United States postal service, or prohibit the distribution of sample copies of newspapers regularly sold by the copy or by annual subscription or sale or coupon newspapers and magazines containing more than a de minimus amount of news that are published at least weekly.

2. To be valid and enforceable, any sign prohibiting the delivery of such unsolicited materials shall be at least five inches tall and seven inches wide in size and shall state, in legible letters at least one inch in size, as follows: "Do Not Place Unsolicited Advertising Materials On This Property." In a multiple dwelling in which some unit owners or lessees have consented to the prohibition of such unsolicited

materials, the property owner may post, in a conspicuous location, a sign that is at least five inches tall and seven inches wide in size and written in legible letters at least one inch in size, identifying the number of unit owners or lessees who wish to receive unsolicited materials and the location where such materials shall be placed.

3. There shall be a rebuttable presumption that the person whose name, telephone number, or other identifying information appears on any unsolicited advertising materials described in subdivision one of this section and placed at two or more premises shall be liable for any violations of this section.

4. The provisions of this section may be enforced by an agency or agencies, as designated by the mayor of such city. A civil penalty of not less than two hundred fifty dollars nor more than one thousand dollars shall be imposed for each violation of this section, but in no event shall the total amount of such penalty exceed the sum of five thousand dollars for the placement of materials on a single day. Each unauthorized placement of materials at a single location where a sign is posted as described in subdivision one of this section shall be considered a separate violation of this section. Notwithstanding any other provision of law, any notice of violation issued by an agency or agencies, as designated by the mayor of such city, charging a violation of this section shall be returnable to the environmental control board of such city, which shall have the power to impose the civil penalties herein provided; provided, however, that service of a notice of violation charging a violation of this section may be made by (a) a means prescribed for service of process by article three of the civil practice law and rules or article three of the business corporation law, or (b) by certified mail, return receipt requested, to the respondent's last known residence or business address, provided that delivery of such notice shall be restricted to the respondent. Service by certified mail shall be deemed complete upon mailing of the notice of violation unless the notice of violation is returned to the sender by the United States postal service for any reasons other than refusal of delivery. All civil penalties collected for any violations of subdivision one of this section that have been imposed by the environmental control board of

such city shall be paid into the general fund of such city.

5. The agency or agencies of such city as designated by subdivision four of this section shall be authorized to promulgate rules implementing the provisions of this section.

§ 397-b. Digital billboards. 1. All residential and commercial property within one thousand feet of a building used as Mitchell-Lama housing with no fewer than ten thousand units within a city with a population of one million or more shall be prohibited from erecting or installing, after the effective date of this section, a digital billboard or other type of billboard or sign that uses flashing, intermittent or moving lights, and from operating such billboard. In cities with a population of one million or more, the provisions of this section may be enforced concurrently by the corporation counsel or other lawful designee of such city.

2. As used in this section, the term "digital billboard" shall mean a one or multi-sided outdoor advertising sign that displays digital images using light-emitting diode technology or any such similar technology.

§ 398. Bills of lading to be issued by vessels transporting merchandise within the state. It shall be the duty of the owner, master or agent of any vessel transporting merchandise or property between ports of this state to issue to shippers of any lawful merchandise a bill of lading, or shipping document, or to sign a bill of lading or shipping document when presented by the shipper or his agent, stating, among other things, the marks necessary for identification, number of packages or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

§ 398-a. Shipment of motor vehicles outside the continental United States. 1. No person whose business involves the preparation of the shipping order or dock receipt or bill of lading or other export papers for the transportation by water of a motor vehicle outside the continental United States shall prepare such export papers unless he receives from the person sending such motor vehicle outside the continental United States a photocopy or other facsimile of a transfer of registration or other proof of ownership for such motor vehicle indicating thereon the identification number of such vehicle. Upon receipt of such document, said person shall determine that the motor vehicle to be transported outside the continental United States is the same vehicle described in such proof of ownership and shall certify such fact upon the copy of the shipping order, dock receipt, bill of lading or other export paper for such vehicle which he retains for his records. The person who prepares such export papers for the transportation of a motor vehicle outside the continental United States shall maintain on file for a period of three years the photocopy or other facsimile of such transfer of registration or other proof of ownership together with the appropriate shipping order, dock receipt, bill of lading or other export paper. This section shall not apply to a motor vehicle which the manufacturer thereof or a duly authorized dealer has never sold to a purchaser for the purpose of use rather than of resale.

2. If a motor vehicle delivered for export does not correspond with the proof of ownership presented for such vehicle, such facts shall be immediately made known to the appropriate police department or other law enforcement agency.

3. The person who prepares such export papers for the transportation of a motor vehicle outside the continental United States shall, at least forty-eight hours prior to the time the motor vehicle is shipped, furnish to the police department in whose jurisdiction the point of shipment lies and if there is no police department at that place to the superintendent of state police at Albany, a description and identification of the motor vehicle listing its make, year manufactured, model, color and vehicle identification number or special vehicle identification number designated by the commissioner of motor vehicles.

4. A police officer may at all reasonable times examine and inspect all files and records relating to the shipment of such vehicle which are in the custody of the shipper or of the person who prepares the export papers.

5. Any person who shall violate, aid and abet the violation of, or conspire or attempt to violate this section shall be guilty of a Class A misdemeanor.

§ 398-b. Discrimination in car rentals prohibited. 1. No car or vehicle rental agency shall refuse to rent a car or vehicle to any person otherwise qualified because of race, color, ethnic origin, religion, disability, or sex.

2. Any rental vehicle company found by a court of competent jurisdiction to have violated a provision of this section shall be subject to a penalty of not less than one thousand dollars nor more than twenty-five hundred dollars for each violation.

3. (a) Whenever a rental vehicle company engages in a persistent or repeated business activity or conduct which discriminates against any individual based upon the individual's race, color, ethnic origin, religion, disability, or sex or membership in an otherwise protected class pursuant to federal law, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on five days notice, for an order enjoining the continuance of such business activity and directing restitution and damages. In any such proceeding, the attorney general may seek a civil penalty not to exceed five thousand dollars per violation and may recover costs pursuant to paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules.

(b) The term "persistent" as used in this subdivision shall include continuance or carrying on of any such business activity or conduct. The term "repeated" as used in this subdivision shall include repetition of any separate and distinct business activity or conduct which affect more

than one person. The term "business activity" as used in this subdivision shall include policies and/or standard practices of the rental vehicle company.

(c) In connection with any such application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Such authorization shall not abate or terminate by reason of any action or proceeding brought by the attorney general under this section.

§ 398-c. Children attending roller skating rinks and indoor ice skating rinks under certain conditions. Notwithstanding any other provision of law, the owner, lessee, proprietor, operator, attendant or employee of any roller skating rink or indoor ice skating rink loe may admit or allow to remain in any such roller skating rink or indoor ice skating rink any child under the age of twelve years, unaccompanied by the parent, guardian or other adult person authorized by the parent or guardian of such child, at any time other than while school classes of such child are in session, but not after six o'clock in the afternoon on any day preceding a day on which school classes will be in session, provided that on the premises of such skating rink a qualified adult supervisor shall be in attendance at all times. This section shall not apply to any roller skating rink or indoor ice skating rink within which, or connected with any premises within which, the sale of any wine, spirituous or malt beverages or liquor is allowed, pool or billiard tables are used or bowling alleys are maintained. Children of the age of twelve years and less than sixteen years of age, however, may remain in such roller skating rink or indoor ice skating rink until eleven o'clock in the evening, in pursuance of the provisions of this section, of any day preceding a day on which school classes will be in session. No time restriction is imposed on children of the age of sixteen or less, in pursuance of the provisions of this section, on any day preceding a day on which school classes will not be in session.

§ 398-d. Disposal of abandoned molds. 1. For the purpose of this section, the term:

(a) "Customer" means any individual or entity (1) who causes or caused a molder to fabricate, cast, or otherwise make a die, mold, or form or (2) who causes or caused a molder to use a die, mold, or form to manufacture, assemble, or otherwise make a product or products.

(b) "Molder" means any individual or entity, including but not limited to, a tool or die maker (1) who fabricates, casts, or otherwise makes a die, mold, or form to produce plastic products or (2) who uses a die, mold, or form to manufacture, assemble, or otherwise make a plastic product or products.

2. This section shall not apply where a molder retains title to and possession of a die, mold, or form. Nothing in this section shall be construed to grant a customer any rights, title, or interest to a die, mold or form.

3. Unless otherwise agreed in writing, if a customer does not take possession from a molder of a die, mold, or form as described in this section within three years following the last prior use thereof, all of the customer's rights, title, and interest to such die, mold, or form may be transferred by operation of law to the molder for the sole purpose of destroying such die, mold, or form consistent with this section.

4. If a molder chooses to have all rights, title, and interest to any die, mold, or form transferred to the molder by operation of law, the molder shall send written notice by registered mail, return receipt requested, to its customer at the address, if any, indicated in the agreement pursuant to which the molder obtained possession of the die, mold, or form, or to the customer's last known address indicating that the molder intends to terminate all of the customer's rights, title, and interest by having all such rights, title and interest transferred to the molder by operation of law pursuant to this section.

5. If a customer does not take possession of the particular die, mold, or form within one hundred and twenty days following the date the molder receives acknowledgement or non-acknowledgement of the return receipt of such notice or does not make other contractual arrangements with the

molder for taking possession or for the storage thereof, all rights, title, and interest of the customer shall transfer by law to the molder. Thereafter, the molder must destroy the particular mold, die, or form as the molder's own property without any risk of liability to the customer, except that this section shall not be construed in any manner to affect the right of the customer under federal patent or copyright law, or any state or federal law, pertaining to unfair competition.

6. For purposes of this section, the term "within three years following the last prior use" shall be construed to include any period following the last prior use of a die, mold, or form regardless of whether or not such period precedes the effective date thereof.

§ 398-e. Indemnity provision in motor carrier transportation contracts. 1. For the purposes of this section:

(a) "motor carrier transportation contract" means a contract, agreement or understanding covering:

(i) the transportation of property for compensation or hire by the motor carrier;

(ii) entrance on property by the motor carrier for the purpose of loading, unloading or transporting property for compensation or hire; or

(iii) a service incidental to activity described in subparagraph (i) or (ii) of this paragraph, including, but not limited to, storage of property.

(b) "promisee" means the promisee and any agents, employees, servants or independent contractors who are directly responsible to the promisee except for motor carriers party to a motor carrier transportation contract with the promisee and such motor carrier's agents, employees, servants or independent contractors directly responsible to such motor carrier.

2. Notwithstanding any provision of law to the contrary, a provision, clause or agreement contained in, collateral to or affecting a motor carrier transportation contract that purports to indemnify, defend or hold harmless, or has the effect of indemnifying, defending or holding harmless, the promisee from or against any liability for loss or damage

resulting from the negligence or intentional acts or omissions of the promisee is against the public policy of this state and is void and unenforceable.

3. "Motor carrier transportation contract," as defined in this section, shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use or possession of intermodal chassis, containers or other intermodal equipment.

§ 398-f. Children's non-regulated camp. 1. (a) As used in this section, a "children's non-regulated camp" shall mean property consisting of a tract of land and any tents, vehicles, buildings or other structures that may be pertinent to its use, any part of which may be occupied on a scheduled basis any time between June first and September fifteenth in any year by ten or more persons under sixteen years of age under general supervision for the purpose of indoor or outdoor organized group activities, involving passive and nonpassive recreational activities, which is not subject to the provisions of article thirteen-B of the public health law and is:

(i) a day program operating three hours or more at least five or more days in any two-week period; or

(ii) an overnight program operated within New York state for less than seventy-two consecutive hours on more than one occasion.

(b) This section shall not include activities operated by (i) a public school district and clubs which also occur during the traditional school year; (ii) school districts, boards of cooperative educational services or nonpublic schools providing instruction to satisfy, enrich, accelerate, or improve skills in accordance with education law requirements; (iii) child care programs and family shelter-based drop-off child supervision programs permitted pursuant to article forty-seven of the New York city health code; (iv) activities subject to licensure or registration by the office of children and family services; and (v) properties where children are under the supervision of family and/or family friends.

2. (a) No person, firm, corporation or association shall enroll or allow participation of a child in a children's non-regulated camp unless such non-regulated camp has registered with the department of health, in a form and manner prescribed by the department of health, on an annual basis and the parent or guardian of the child has been provided with the following written notice on the application or enrollment form:

"This camp is registered with but not regulated or inspected by the New York State Department of Health and is not required to obtain a Department of Health permit. This camp is not required to follow Department of Health regulations, including, maintaining minimum staff-to-child ratios; hiring medical personnel; or reporting injuries or illnesses to the Department of Health."

(b) If a children's non-regulated camp maintains a website, this notice must be placed on the website.

(c) Any notice required in this subdivision shall be prominently and conspicuously posted at the camp facilities in minimum size twelve font.

3. The operator of a children's non-regulated camp shall retain a copy of each notice required to be provided by subdivision two of this section for a period of three years.

*** § 398-g. Kratom package labeling.** 1. For the purposes of this section, "Kratom" means any part of the plant *Mitragyna speciosa*, whether growing or not, and any compound, manufacture, salt, derivative, mixture, or preparation of such plant or synthesized or semi-synthesized preparations of mitragynine or 7-hydroxymitragynine, their derivatives, salts, esters, and isomers.

2. No person, firm, partnership, association, or corporation shall manufacture, distribute, sell or offer for sale at retail within the state any product containing kratom unless there is printed thereon such packaging or attached thereto a label disclosing the following:

(a) the name and address for the place of business of the manufacturer or distributor of the kratom product;

(b) the full list of ingredients in the kratom product;

(c) the following disclosures:

(i) that sale or distribution by individuals who are under twenty-one years of age is prohibited under the public health law;

(ii) that use by individuals who are pregnant or breastfeeding is not advised;

(iii) to consult a healthcare professional prior to use;

(iv) that kratom may be addictive;

(v) that kratom may interact with certain medications, drugs, and controlled substances;

(vi) whether the product includes a semi-synthesized chemical or compound or synthesized chemical or compound of kratom. For the purposes of this subparagraph the term "semi-synthesized chemical or compound" shall mean a chemical or compound contained in a kratom extract that has been exposed to chemicals or processes that would confer a structural change in the chemical or compound, such as oxidation, reduction, and ring opening and closing, resulting in material that has been chemically altered. For the purposes of this subparagraph the term "synthesized chemical or compound" shall mean a chemical or compound of kratom that has been created by chemical synthesis or biosynthetic means, including fermentation, recombinant techniques, and enzymatic techniques, rather than by traditional food preparation techniques such as heating or extracting; and

(vii) quantitative declarations of the amount of mitragynine and the amount of 7-hydroxymitragynine by part, weight or volume of the kratom product; and

(d) the following statements, clearly and conspicuously:

(i) "These statements have not been evaluated by the food and drug administration. This product is not intended to diagnose, treat, cure, or prevent any disease."; and

(ii) "Keep out of reach of children."

3. Any person, firm, partnership, association, or corporation in violation of this section shall be subject to a civil penalty of not more than five hundred dollars for a first violation and not more than one thousand dollars for a second or subsequent violation.

* NB Effective December 19, 2026

§ 399. Cigarette package labeling. 1. On each package of cigarettes sold or delivered by a manufacturer or distributor within this state after June first, nineteen hundred sixty-six, there shall be printed thereon or attached thereto a warning of the consequences of excessive smoking. Such warning shall be in letters not less than eight point type and in a color in contrast with the package containing the cigarettes, and shall contain the following statement:

WARNING

"Excessive use is dangerous to health"

2. Any person, firm, corporation or association or its officers or agents who or which violate any of the provisions of this section shall be guilty of a misdemeanor.

§ 399-a. Pay toilets; prohibition. 1. On and after September first, nineteen hundred seventy-five, no owner, lessee or other occupant of any real property or any other person, copartnership or corporation shall operate or permit to be operated pay toilet facilities upon such real property.

2. A violation of the provisions of this section shall constitute a violation.

§ 399-aa. Prohibition of the selling of fur, hair, skin or flesh of a dog or cat. 1. It shall be unlawful for any person, firm, partnership or corporation to knowingly import, sell, offer for sale, manufacture, distribute, transport or otherwise market or trade in the fur, hair, skin or flesh of a domesticated dog (*canis familiaris*) or domesticated cat (*felis catus* or *domesticus*), whether domestically raised or imported from another country, or any product or item containing or comprised of the fur, hair, skin or flesh of a dog or cat. As used in this section the term "domesticated dog or cat" shall not mean or include coyote (*canis latrans*), fox (*vulpes vulpes*, *vulpes cinereoargenteus*), lynx (*felis lynx*) or bobcat (*felis rufus*).

2. Manufacturers or suppliers shall provide certification to each retailer that any fur, hair, skin or flesh contained in such items is not derived from domesticated dog or domesticated cat.

3. The state commissioner of agriculture and markets shall establish a standard for the certification required by the provisions of subdivision two of this section on the effective date of this section.

4. A violation of this section shall be punishable by a civil penalty of up to one thousand dollars for an individual and up to five thousand dollars for a corporation for the first violation. Any subsequent violation shall be punishable by a civil penalty of up to twenty-five thousand dollars.

5. Any civil penalties collected pursuant to this section of law are payable to the animal population control fund established pursuant to section ninety-seven-xx of the state finance law.

6. (a) No provision of this section shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations involving the use of dog or cat fur or flesh, performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health in accordance with section three hundred fifty-three of the agriculture and markets law.

(b) No provision of this section shall be construed to prohibit any person, firm, partnership or corporation from importing, selling, offering for sale, manufacturing, distributing, transporting, or otherwise marketing or trading in the fur, hair, skin, or flesh of a domesticated dog or cat for the purposes of conducting scientific tests, experiments or investigations that are to be performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health in accordance with section three hundred fifty-three of the agriculture and markets law.

§ 399-aaa. Selling and manufacturing of fur-bearing articles of

clothing. 1. For the purposes of this section the following terms shall have the following meanings:

(a) "faux fur" shall mean artificially manufactured fur which is made to resemble real fur but which is not derived from animals.

(b) "real fur" shall mean animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state.

2. It shall be unlawful for any person, firm, partnership or corporation to knowingly import for profit, sell at retail, offer for sale at retail, or manufacture articles of clothing which include, or have attached in any quantity and of any value, fur that is not labeled as being "faux fur" or "real fur", or is incorrectly labeled.

3. Labeling of articles of clothing pursuant to this section may be accomplished by adding "faux fur" or "real fur" to the permanent tag attached to the clothing, to the temporary tag used by the merchant to identify the merchandise, or by affixing, in a conspicuous place, a sticker stating "faux fur" or "real fur" to the article of clothing itself.

Articles of clothing containing or having attached any quantity or value of "real fur" shall have certain disclosures on the label required in this section so as not to be considered misbranded under 15 U.S.C. 69b.

4. A violation of this section shall be punishable by a fine of not more than one thousand dollars for the first violation and not more than two thousand dollars for each subsequent violation.

§ 399-aaaa. Menstrual product labeling. 1. For purposes of this section:

(a) "ingredient" shall mean an intentionally added substance present in the menstrual product;

* (b) "menstrual product" shall mean products used for the purpose of catching menstruation and vaginal discharge, including but not limited

to tampons, pads, and menstrual cups. These products may be either disposable or reusable.

* NB Effective until December 19, 2026

* (b) "menstrual product" shall mean products used for the purpose of catching menstruation and vaginal discharge, including but not limited to tampons, pads, and menstrual cups. These products may be either disposable or reusable;

* NB Effective December 19, 2026

* (c) "restricted substance" shall mean lead, mercury and related compounds, formaldehyde, triclosan, toluene, talc, dibutyl phthalate, di(2-ethylhexyl) phthalate, 2-(4-Tertbutylbenzyl) propionaldehyde (also known as butylphenyl methylpropional), isobutylparaben, isopropylparaben, butylparaben, propylparaben, and perfluoroalkyl and polyfluoroalkyl substances;

* NB Effective December 19, 2026

* (d) "perfluoroalkyl and polyfluoroalkyl substances" shall mean a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom;

* NB Effective December 19, 2026

* (e) "intentionally added ingredient" shall mean any element or compound that a manufacturer has intentionally added to a menstrual product, and which has a functional or technical effect in the finished product, including, but not limited to, the components of intentionally added fragrance, flavoring and colorants, and the intentional breakdown products of an added element or compound that also has a functional or technical effect on the finished product.

* NB Effective December 19, 2026

2. No later than eighteen months after this section shall have become a law, each package or box containing menstrual products sold in this state shall contain a plain and conspicuous printed list of all ingredients which shall be listed in order of predominance. Such list shall either be printed on the package or affixed thereto.

3. The requirements of this section shall apply in addition to any other labeling requirements established pursuant to any other provision of law.

* 4. Whenever a violation of this section has occurred, a civil penalty of one percent of the manufacturer's total annual in-state sales not to exceed one thousand dollars per package or box shall be imposed on the manufacturer.

* NB Effective until December 19, 2026

* 4. No menstrual products distributed, sold or offered for sale in this state, whether at retail or wholesale, for personal, professional or commercial use, or distributed for promotional purposes, shall contain a restricted substance present as an intentionally added ingredient at any level.

* NB Effective December 19, 2026

* 5. Whenever a violation of this section has occurred, a civil penalty of one percent of the manufacturer's total annual in-state sales not to exceed one thousand dollars per package or box shall be imposed on the manufacturer.

* NB Effective December 19, 2026

§ 399-aaaaa. Selling of animal tested cosmetics. 1. For the purposes of this section the following terms shall have the following meanings:

(a) "Cosmetic" shall mean articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, including but not limited to personal hygiene products such as deodorant, shampoo or conditioner.

(b) "Animal testing" shall mean the internal or external application of a cosmetic, either in its final form or any ingredient thereof, to the skin, eyes, or other body part of a live non-human vertebrate.

(c) "Ingredient" shall have the same meaning as defined in 21 CFR 700.3(e).

(d) "Manufacturer" shall mean any person whose name appears on the label of a cosmetic pursuant to the requirements of 21 CFR 701.12.

(e) "Supplier" shall mean any entity that supplies, directly or through a third party, any ingredient used by a manufacturer in the formulation of a cosmetic.

2. Except as otherwise provided in this section, it shall be unlawful

for a manufacturer to import for profit, sell or offer for sale in the state, any cosmetic which the manufacturer knew or reasonably should have known that animal testing was conducted or contracted by or on behalf of the manufacturer or any supplier of the manufacturer if the animal testing was conducted after the effective date of this section.

3. This section does not apply to animal testing that is conducted:

(a) As a requirement of any federal or state regulatory agency if:

(i) the cosmetic or an ingredient in the cosmetic which is being tested is in wide use and cannot be replaced by another ingredient which is capable of performing a similar function; and

(ii) a specific human health problem relating to the cosmetic or ingredient is substantiated and the need to conduct animal testing is justified and supported by a detailed protocol for research that is proposed as the basis for the evaluation of the cosmetic or ingredient; and

(iii) there does not exist a method of testing other than animal testing that is accepted for the relevant purpose by a federal or state regulatory agency.

(b) As a requirement of any regulatory agency of a foreign jurisdiction, if no evidence derived from such testing was relied upon to substantiate the safety of a cosmetic sold within the state by the manufacturer.

(c) For any product or ingredient in a cosmetic which is subject to the requirements under 21 USC subchapter V.

(d) For purposes not related to cosmetics as required by any federal, state or foreign regulatory agency, provided that no evidence derived from such testing was relied upon to substantiate the safety of a cosmetic sold within the state by the manufacturer, unless:

(i) documentary evidence exists that the intent of the animal testing was unrelated to cosmetics; and

(ii) there is a history of the use of the ingredient unrelated to cosmetics for a minimum of twelve months.

4. This section does not apply to a cosmetic:

(a) If in its final form, such cosmetic was tested on animals before the effective date of this section, even if the cosmetic is manufactured

on or after such date.

(b) If an ingredient contained in such cosmetic was tested on animals and sold in New York state before the effective date of this section, even if such ingredient is manufactured on or after such date.

5. This section may not be construed to prevent a manufacturer from reviewing, assessing or retaining data resulting from animal testing.

6. The attorney general may upon a determination that there is a reasonable likelihood of a violation of this section, review any testing data on which a manufacturer has relied in determining the safety of a cosmetic or an ingredient in a cosmetic sold in the state. Any information disclosed under this section shall be protected as a trade secret and the attorney general shall enter into a protective order with the manufacturer before receipt of such information from the manufacturer. The attorney general shall take other appropriate measures as necessary to preserve the confidentiality of the information produced pursuant to this section. The attorney general may bring an action or special proceeding in the supreme court for a judgment enjoining the continuance of such violation and for a civil penalty of not more than five thousand dollars for the first violation and not more than one thousand dollars per day if the violation continues.

7. No county or other political subdivision of the state may establish or continue any prohibition on or relating to animal testing, as defined in this section that is not identical to the prohibitions established in this section.

§ 399-aaaaaa. Diaper labeling. 1. For purposes of this section:

(a) "ingredient" shall mean an intentionally added substance present in a diaper;

(b) "diaper" shall mean a type of garment or product inserted into a garment for the purpose of absorbing waste products to prevent soiling of outer clothing or the external environment without the use of a toilet. These products may be either disposable or reusable.

2. No later than twelve months after the effective date of this section, each package or box containing diapers sold in this state shall contain a plain and conspicuous printed list of all ingredients which shall be listed in order of predominance. Such list shall either be printed on the package or affixed thereto.

3. The requirements of this section shall apply in addition to any other labeling requirements established pursuant to any other provision of law.

4. Whenever a violation of this section has occurred, a civil penalty of one percent of the manufacturer's total annual in-state sales not to exceed one thousand dollars per package or box shall be imposed on the manufacturer.

§ 399-b. Contracts for the use of the streets for hack stands. The owner, lessee or other occupant of any real property, or any other person, copartnership or corporation, who shall make or enter into any agreement, contract or arrangement whatsoever whereby the right is attempted to be granted or is granted to any person, copartnership, association or corporation to use any portion of any public highway, street, avenue, boulevard, park or other public property owned by the state of New York or any municipality therein for the purpose of permitting any vehicle to stand while awaiting passengers for hire or as a private hack stand, and any owner, lessee or other person, copartnership or corporation who shall make or enter into any contract or arrangement for the payment of or receives thereby any sum of money, percentage or profits or other thing of value under any such contract, agreement, consent or arrangement for such use of such public property as such private hack stand, shall be guilty of a misdemeanor.

§ 399-bb. Certain dry cleaning institutions; option for six months donation of articles of clothing. 1. A retail dry cleaning institution may post the following notice:

IN ACCORDANCE WITH NEW YORK STATE LAW

GARMENTS NOT PICKED UP
WITHIN SIX MONTHS
WILL BE DONATED TO CHARITY

Such notice shall be at a minimum eleven inches in height by seventeen inches in length and the printed characters shall be 1.25 inches in height and at least .5 inches in width. Such notice shall be printed in a legible manner and shall be posted in a prominent and conspicuous location in the consumer area of the dry cleaning institution. Such notice shall also be stamped or printed in at least twelve point bold print on the receipt given to each consumer.

2. Notwithstanding any inconsistent provision of the abandoned property law, a retail dry cleaning institution that has posted such a notice and provided such a receipt may donate a garment or household item that has not been retrieved within six months to a bona fide charitable organization, church, or other not-for-profit organization. The dry cleaning institution shall obtain a detailed written receipt specifically describing each item donated to the bona fide charitable organization, church, or not-for-profit organization. The dry cleaning institution shall attach such receipt to each such consumer receipt and shall keep such receipts for a period of at least three years following the donation for purposes of demonstrating compliance with the requirements of this section.

3. The six month period shall commence from the date indicated upon the receipt that the consumer is due to retrieve his or her items. In the event that such date is not indicated upon the receipt, the six month period shall commence two weeks from the date the consumer brought his or her items to the retail dry cleaning institution.

4. Nothing in this section shall be construed to prohibit a retail dry cleaning institution from adopting a written policy which provides for a longer period of time before such a donation may be made.

5. The provisions of this section shall not apply to those items brought to a retail dry cleaning institution for the purposes of storing

such items.

§ 399-bbb. Solicitations by container; disclosures. 1. As used in this section the term "publicly accessible collection bin" shall mean an unattended canister, box, receptacle, or similar device, used for the solicitation and collection of personal property, not including money or evidences of debt. Such term shall not include an unattended canister, box, receptacle, or similar device, used exclusively for the collection of used paper, cardboard, motor oil, bottles, cans or other receptacles or materials, not including textiles, for recycling or waste diversion purposes.

2. A publicly accessible collection bin shall not be placed on public property; if placed on public property, the local municipality may immediately remove and dispose of such bin.

3. Any person, business, not-for-profit organization or other entity or entities, or an agent or agents, whether paid or not paid, of such person, business, not-for-profit organization or other entity, who places a publicly accessible collection bin in a public place on private property shall affix to the publicly accessible collection bin a label that is designed to be incapable of being destroyed or removed and that clearly and conspicuously displays in at least twenty-four point type unless otherwise specified in this section and on the front of the publicly accessible collection bin in a manner that is readily visible to an individual placing property in the publicly accessible collection bin the following:

(a) the name of the person, business, not-for-profit organization or other entity which owns the publicly accessible collection bin and any agent thereof; the legal address, telephone number, e-mail address and website, if applicable, of such person, business, not-for-profit organization or other entity and any agent thereof where the owner of the publicly accessible collection bin or its agent can be reached during ordinary business hours; any permit or license required by local law of such person, business, not-for-profit organization or other entity and any agent thereof; a statement that nothing shall be left

outside of such bin; and a statement that shall take the following form: For more information, contact the department of law at (insert the current telephone number established by the department of law for receiving inquiries from consumers) or (insert the current address of the website of the department of law). If more than one person, business, not-for-profit organization or other entity own the publicly accessible collection bin, all of the owners' names, legal addresses, telephone numbers and any permits or licenses required by local law of such owners shall be included in the disclosure label. If more than one agent represents an owner of the publicly accessible collection bin, including a for-profit entity, on behalf of, or in conjunction with a not-for-profit organization, all of the agents' names, legal addresses, telephone numbers and any permits or licenses required by local law of such owners shall be included in the disclosure label; and

(b) a statement about the purpose or purposes for the property collected in the bin using letters no less than two inches in height as follows:

(i) if all of the property placed in the publicly accessible collection bin is directed to a non-business purpose or purposes as described in paragraph (b) of section two hundred one of the not-for-profit corporation law or, if the property is sold and all proceeds of such sale are directed to a non-business purpose or purposes described in paragraph (b) of section two hundred one of the not-for-profit corporation law, the label affixed to the publicly accessible collection bin pursuant to this section shall state:

DONATED ITEMS WILL BE USED FOR CHARITABLE PURPOSES

The value of items placed in this bin is tax-deductible.

or

(ii) if any of the property placed in the publicly accessible collection bin is not directed to a non-business purpose or purposes as described in paragraph (b) of section two hundred one of the not-for-profit corporation law, or if the property is sold, and any proceeds of such sale are not directed to a non-business purpose or purposes described in paragraph (b) of section two hundred one of the

not-for-profit corporation law, the label affixed to the publicly accessible collection bin pursuant to this section shall state:

DONATED ITEMS WILL BE USED FOR PROFIT

The value of items placed in this bin is NOT tax-deductible.

(c) for collection bins owned by a not-for-profit organization, a statement describing the charitable causes that will benefit from donations; and

(d) collection bins operated by corporate fundraisers or any entity placing and operating collection bins for the benefit of another for-profit entity or not-for-profit entity shall abide by the requirements of the above and any additional guidelines and labeling requirements under state or local law as applicable.

4. The owner of a publicly accessible collection bin shall obtain written consent from the owner or lessee of the property where the publicly accessible collection bin is located, or the owner or lessee's authorized agent, stating that the owner of the publicly accessible collection bin has received permission to place the bin on the property. Upon request of any local jurisdiction, documentation evidencing the written consent shall be made available by the owner of the publicly accessible collection bin. The owner or lessee of the property where the publicly accessible collection bin is located, or the owner or lessee's authorized agent may rescind such consent at any time, provided, written notice of such rescission is provided to the bin owner at least ten days prior to the bin's removal. Written notice of rescission of consent, if given by first-class mail, shall be deemed given when deposited in a mailbox properly addressed and adequate postage prepaid. Such written notice shall be effective irrespective of the form of such written notice if it indicates the intention of the owner or lessee of the property to rescind the consent previously given by the property owner or lessee's authorized agent. Ten days after giving notice, the property owner or lessee may remove and dispose of such bin, and any reasonable costs associated with such removal or disposal shall be recoverable from the owner of the publicly accessible collection bin.

5. The owner of a publicly accessible collection bin shall adhere to the following maintenance requirements:

(a) bins shall be serviced and emptied as needed or within seven days of a request by the property owner or owner's agent, including requests for removal of debris and bulk items;

(b) remove graffiti on the outside of bins within seven days of requests or otherwise becoming aware of such damage or vandalism;

(c) repair damaged bins within seven days of requests or otherwise becoming aware of such damage or vandalism;

(d) secure each collection bin with a tamper-resistant lock; and

(e) maintain the aesthetic presentation of such bin, including fresh paint and readable signage.

6. Whenever a bin is removed by a property owner in accordance with the provisions of this section, the property owner shall inform the bin owner of the location to which the bin was removed, or any other disposition of the bin, and any reasonable costs associated with such removal or disposal shall be recoverable from the owner of the publicly accessible collection bin.

7. (a) Any violation of the provisions of this section shall be deemed a deceptive practice within the meaning of section three hundred forty-nine of this chapter and any remedy provided therein shall be available for the enforcement of this section. In addition, the district attorney, county attorney, and the corporation counsel shall have concurrent authority to seek the relief in paragraph (b) of this subdivision, and all civil penalties obtained in any such action shall be retained by the municipality or county in which such bin is placed.

(b) In every case where the court shall determine that a violation of this section has occurred, it may impose a civil penalty of not more than five thousand dollars for each violation.

(i) Any bin not in compliance with the provisions related to the display of information or unpermitted placement shall subject the owner of such bin to a civil penalty of up to two hundred fifty dollars for the first offense, and a civil penalty of up to five hundred dollars for each subsequent offense within an eighteen month period.

(ii) Any bin not in compliance with the maintenance provisions shall

subject the owner of such bin to a civil penalty of up to fifty dollars for the first offense, and a civil penalty of up to one hundred dollars for each subsequent offense within an eighteen month period.

(c) It shall be a defense to the imposition of any civil penalty or any other remedy in an action brought to enforce the provisions of this section if the person or entity affixed a label as required by this section and such label was removed or defaced by vandals, provided that such person or entity subsequently complies with the requirements of this section.

(d) Nothing in this section shall be construed to restrict any right which any person may have under any other statute or the common law.

§ 399-c. Mandatory arbitration clauses in certain consumer contracts prohibited. 1. Definitions.

a. The term "consumer" shall mean a natural person residing in this state.

b. The term "consumer goods" shall mean goods, wares, paid merchandise or services purchased or paid for by a consumer, the intended use or benefit of which is intended for the personal, family or household purposes of such consumer.

c. The term "mandatory arbitration clause" shall mean a term or provision contained in a written contract for the sale or purchase of consumer goods which requires the parties to such contract to submit any controversy thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the decision of the arbitrator or panel of arbitrators in its application to the consumer party shall be final and not subject to court review.

d. The term "arbitration" shall mean the use of a decision making forum conducted by an arbitrator or panel of arbitrators within the meaning and subject to the provisions of article seventy-five of the

civil practice law and rules.

2. a. Prohibition. No written contract for the sale or purchase of consumer goods, entered into on or after the effective date of this section, to which a consumer is a party, shall contain a mandatory arbitration clause. Nothing contained herein shall be construed to prohibit a non-consumer party from incorporating a provision within such contract that such non-consumer party agrees that the decision of the arbitrator or panel of arbitrators shall be final in its application to such non-consumer party and not subject to court review.

b. Mandatory arbitration clause null and void. The provisions of a mandatory arbitration clause shall be null and void. The inclusion of such clause in a written contract for the sale or purchase of consumer goods shall not serve to impair the enforceability of any other provision of such contract.

* **§ 399-cc. Wireless telephone numbers.** 1. No person, firm, partnership, association, limited liability company, corporation, or other business entity shall obtain from any provider of wireless telephone service, as such term is defined in paragraph (b) of subdivision one of section twelve hundred twenty-five-c of the vehicle and traffic law, any wireless telephone numbers for the purpose of creating a directory of wireless telephone numbers, without first obtaining the prior authorization from each individual wireless telephone service customer. Such customer's authorization shall be affirmatively obtained via verifiable means.

2. A violation of the provisions of this section shall be punishable by a civil penalty not to exceed one thousand dollars for each violation.

* NB There are 2 § 399-cc's

* **§ 399-cc. Transcripts and stenographic services.** Notwithstanding any other provision of law to the contrary, when an attorney of record

orders or requests either orally or in writing that a stenographic record be made of any judicial proceeding, deposition, statement or interview of a party in a proceeding or of a witness related to such proceeding, it shall be the responsibility of such attorney to pay for the services and the costs of such record except where:

1. payment is otherwise provided by law or where the attorney is providing representation through a not-for-profit provider of criminal or civil legal services; or

2. the attorney expressly disclaims responsibility for payment of the stenographic service or record in writing at the time the attorney orders or requests that the record be made.

* NB There are 2 § 399-cc's

§ 399-ccc. Smoke detecting devices. 1. It shall be unlawful for any person or entity to distribute, sell, offer for sale, or import any solely battery operated smoke detecting alarm device powered by a replaceable, removable battery. All solely battery operated smoke detecting alarm devices that are distributed, sold, offered for sale, or imported, shall employ a non-removable, non-replaceable battery that powers the device for a minimum of ten years.

2. All product packaging containing a solely battery operated smoke detecting alarm device shall include the following information:

- (a) the manufacturer's name or registered trademark and the model number of the smoke detecting alarm device; and

- (b) that such alarm device is designed to have a minimum battery life of ten years.

3. The provisions of this section shall not apply to solely battery operated smoke detecting alarm devices powered by a replaceable, removable battery that have been ordered by, or are in the inventory of, owners, managing agents, contractors, wholesalers or retailers on or before the effective date of this section. The provisions of this section shall not apply to smoke detecting alarm devices that receive

their power from the electrical system of the building, fire alarm systems with smoke detectors, fire alarm devices that connect to a panel, devices that use a low-power radio frequency wireless communication signal, or such other devices as the state fire administrator shall designate through its regulatory process.

§ 399-cccc. Wireless telephone services; domestic violence victims. 1.

Every provider of wireless telephone service, as defined in paragraph (b) of subdivision one of section twelve hundred twenty-five-c of the vehicle and traffic law, shall allow a person who is under a shared phone plan contract with such provider to opt-out of such contract without fee, penalty or charge when such person is a victim of domestic violence and provides an attestation in writing that they no longer wish to be a party to such contract due to their status as a victim of domestic violence. Such provider of wireless telephone service may not require such person to disclose confidential information or details relating to such person's status as a victim of domestic violence, as a condition of permitting such person to opt-out of such contract. Further, such provider of wireless telephone service may not make release from such contract contingent on: (a) maintaining contractual or billing responsibility of a separated account with the provider; (b) approval of separation by the primary account holder, if the primary account holder is not the person making such request; (c) a prohibition or limitation on number portability or a request to change phone numbers; or (d) a prohibition or limitation on the separation as a result of arrears accrued by the account. Such provider of wireless telephone service shall release such person from such contract no later than seven days after receiving such opt-out request. Such provider of wireless telephone service shall dispose of information submitted by such person no later than thirty days after receiving such information in a manner as to maintain confidentiality of such information.

2. Every provider of wireless telephone service shall make information about the options and process described in subdivision one of this section readily available to consumers on the website and any mobile application of the provider, in physical stores, and in other forms of

public-facing consumer communication.

3. A covered provider and any officer, director, employee, vendor or agent thereof shall not be subject to liability for any claims arising from an action taken or omission made with respect to compliance with this section.

§ 399-cccc. Connected vehicle service; domestic violence victims. 1. For the purposes of this section, the terms: (a) "connected vehicle service" shall mean any technology that enables a person, other than the driver or a covered provider, to track the location of, control any operation of, or obtain or share data from the vehicle including, but not limited to, a global positioning system (GPS) that tracks the location of the vehicle or an app-based technology that controls any operation of the vehicle; and
(b) "covered provider" shall mean a vehicle manufacturer or an entity acting on behalf of the vehicle manufacturer that provides any connected vehicle service.

2. (a) A covered provider operating in this state shall, within two business days after receiving a request by a driver who meets the requirements of subdivision three of this section, terminate an individual's access to any connected vehicle service.

(b) Upon a showing that termination of an individual's access to connected vehicle service is technologically infeasible, such covered provider shall promptly notify a driver seeking relief of such technical infeasibility and provide potential alternatives including, but not limited to, informing the driver on how to disable or modify the settings for a connected vehicle service manually.

3. (a) A request by a driver that a covered provider terminate an individual's access to connected vehicle service shall include the following information:

- (i) vehicle identification number (VIN);
- (ii) proof of such driver's legal possession of a vehicle which may be established by providing the vehicle title, the vehicle title paired

with a lease agreement in the driver's name, a court order awarding sole possession or ownership of a vehicle to such driver, proof of marriage of the driver and the owner of the car at the time the car was bought or leased, or such other proof as determined by the commissioner of motor vehicles in conjunction with the office for the prevention of domestic violence; and

(iii) a written attestation that the person making such request is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law.

(b) A covered provider shall not require a driver to provide any information other than what is required by paragraph (a) of this subdivision.

(c) Any information provided by a driver under paragraph (a) of this subdivision shall be treated as confidential and securely disposed of no later than ninety days after processing the request. Nothing in this paragraph shall prohibit a covered provider from maintaining a record that verifies an application to terminate a connected vehicle service was completed.

(d) Nothing in this section shall prohibit a driver from seeking relief under the family court act, and the domestic relations law.

4. A covered provider shall notify a driver seeking relief under subdivision two of this section, in clear and accessible language, that such covered provider may contact the driver, or the designated representative of the driver, to confirm an individual's access to the connected vehicle services has been terminated.

** 5. A covered provider shall, absent a showing of technological infeasibility, provide a notification inside of a vehicle that is installed with any connected vehicle service that shows when such service is enabled and inform the driver on how to disable or modify the settings for a connected vehicle service.

** NB Effective July 1, 2026 for vehicles manufactured prior to January 1, 2028 and Effective January 1, 2028 for vehicles manufactured on or after January 1, 2028 that have connected vehicle service

6. A covered provider shall provide information on its internet website and vehicle internet applications, in clear and accessible

language, on the process of terminating a person's access to connected vehicle service, including, but not limited to, the information required pursuant to paragraph (a) of subdivision three of this section.

7. The office for the prevention of domestic violence shall develop educational materials and resources on accessing this service and make such information available on their website.

8. A covered provider shall not charge a driver a fee for completing a request to terminate connected vehicle services pursuant to this section.

9. A covered provider who fails to comply with the requirements of this section shall be assessed a civil penalty not to exceed five hundred dollars per violation.

10. A covered provider and any officer, director, employee, vendor or agent thereof shall not be subject to liability for any claims arising from an action taken necessary for compliance with this section, except as provided in this section.

§ 399-d. Children attending public bowling alleys under certain conditions. Notwithstanding any other provision of law, the owner, lessee, proprietor, operator, attendant or employee of any public bowling alley shall admit or allow to remain in any such public bowling alley, and to bowl therein, any child between the ages of twelve and eighteen at all times, and any child under twelve (a) when such child is accompanied or directly supervised at such bowling alley by a parent or by a responsible adult, or (b) when such child is a member of an organized group under the supervision of a responsible adult, or (c) when such child is participating in an organized bowling league under the supervision of a responsible adult, provided, that no alcoholic beverages of any kind are dispensed on such premises during the time that such child is on the premises as a member or participant of such organized group or league, as shall be permitted by a local law or ordinance heretofore or hereafter adopted by the common council or other

legislative body of a city, town or village permitting any such child to be admitted, or allowed to remain or to bowl in any such public bowling alley as herein provided.

*** § 399-dd. Sale of alcohol vaporizing devices prohibited.** 1. For purposes of this section, "alcohol vaporizing device" means any device, machine or process which mixes spirits, liquor or other alcohol product with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

2. No person, corporation, partnership or limited liability company shall knowingly sell or offer for sale an alcohol vaporizing device.

3. A violation of the provisions of this section shall be an offense punishable by a fine of not more than five thousand dollars. A violation of the provisions of this section after having been previously convicted of such an offense within the previous five years shall be a class B misdemeanor punishable by a fine of not more than ten thousand dollars.

* NB There are 3 § 399-dd's

*** § 399-dd. Construction or installation of playground or playground equipment.** 1. Definitions relative to playground safety. For the purposes of this section, the term "playground" means an improved area designed, equipped, and set aside for play of six or more children which is not intended for use as an athletic playing field or athletic court, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

2. The department of state, in consultation with the office of parks, recreation and historic preservation, shall promulgate rules and regulations for the design, installation, inspection and maintenance of playgrounds and playground equipment. Those regulations shall substantially comply with the guidelines and criteria which are contained in the handbook for public playground safety produced by the

United States consumer products safety commission or any successor. The rules and regulations shall include special provisions for playgrounds appropriate for children within the range of ages in day care settings.

3. (a) No person, firm, corporation, or other legal entity which constructs, assembles or installs a playground or playground equipment shall construct, assemble, or install in this state such playground or playground equipment unless such playground or playground equipment shall conform to the requirements of those rules and regulations promulgated pursuant to this section.

(b) Playgrounds or playground equipment constructed upon one, two and three-family residential real property are exempt from the requirements of this section.

4. Whenever the attorney general shall believe from evidence satisfactory to him that any person, firm, corporation or association or agent or employee thereof has violated any provision of this section, he may bring an action in the supreme court of the state of New York for a judgment enjoining the continuance of such violation and for a civil penalty of not more than one thousand dollars for each violation, except that the court may impose a civil penalty of not more than ten thousand dollars if the violation is knowing and willful. If it shall appear to the satisfaction of the court or justice that the defendant has violated any provision of this section, no proof shall be required that any person has been injured thereby nor that the defendant knowingly or intentionally violated such provision. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. Before any violation of this section is sought to be enjoined, the attorney general shall be required to give the person against whom such proceeding is contemplated notice by certified mail and an opportunity to show in writing within five business days after receipt of notice why proceedings should not be instituted against him, unless the attorney general shall find, in any case in which he seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

* NB There are 3 § 399-dd's

*** § 399-dd. Consumer communications records privacy.** 1. For purposes of this section, the following terms shall have the following meanings:

(a) "telephone record" means information retained by a telephone company that relates to the telephone number dialed from the telephone of a customer or the incoming number of a call directed to the telephone of a customer, the content of alphanumerical messages sent to or from a telephone or other data related to such calls typically contained on a telephone bill of a customer including but not limited to the time the call started and ended, the duration of the call, the time of day the call was made and any charges applied, provided, however, that information commonly known as caller identification or caller ID information transmitted to or retained by the recipient of a call shall not constitute a telephone record;

(b) "telephone company" means any person, firm, partnership, association, limited liability company, corporation, trust, business or other entity that provides commercial or residential telephone services to a customer, irrespective of the communications technology used to provide such service, including, but not limited to, traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over Internet telephone service;

(c) "telephone" means any device used by a person for voice communications, in connection with the services of a telephone company, whether such voice communications are transmitted in analog, data, or any other form;

(d) "customer" means the person who subscribes to telephone service from a telephone company or in whose name such telephone service is listed; and

(e) "procure" in regard to such a telephone record means to obtain by any means, whether electronically, in writing or in oral form, with or without consideration.

2. No person, firm, partnership, association, limited liability company, corporation, trust, business or other entity shall knowingly and intentionally procure, attempt to procure, solicit or conspire with another to procure, offer for sale, sell or fraudulently transfer or use

or attempt to sell or fraudulently transfer or use, telephone record information from a telephone company, without written authorization from the customer to whom such telephone record information relates except as otherwise provided for by applicable law. Nothing in this section shall be construed so as to prevent any action pursuant to a subpoena or by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain telephone record information from a telephone company in connection with the performance of the official duties thereof, in accordance with other applicable laws.

3. (a) Whenever the attorney general shall believe from evidence satisfactory to him or her that there is a violation of this section, he or she may bring an action in the name and on behalf of the people of the state of New York, in a court of competent jurisdiction to enjoin and restrain the continuation of such violation. In such action, preliminary relief may be granted under article sixty-three of the civil practice law and rules. In such action, the court may award reasonable attorney's fees and damages for actual costs or losses incurred by a customer whose telephone records were sold or fraudulently transferred or were attempted to be sold or fraudulently transferred. Whenever the court shall determine in such action that a person or business violated this section, the court may impose a civil penalty of one thousand dollars per violation.

(b) The remedies provided by this section shall be in addition to any other lawful remedy available.

(c) No action may be brought under the provisions of this section unless such action is commenced within two years immediately after the date of the act complained of or the date of discovery of such act.

* NB There are 3 § 399-dd's

*** § 399-ddd. Confidentiality of social security account number.**

Beginning on and after January first, two thousand eight:

1. (a) As used in this section "social security account number" shall include the number issued by the federal social security administration and any number derived from such number. Such term shall not include any

number that has been encrypted.

(b) For purposes of this section, the term "incarcerated individual" means a person confined in any local correctional facility as defined in subdivision sixteen of section two of the correction law or in any correctional facility as defined in paragraph (a) of subdivision four of section two of the correction law pursuant to such person's conviction of a criminal offense.

2. No person, firm, partnership, association or corporation, not including the state or its political subdivisions, shall do any of the following:

(a) Intentionally communicate to the general public or otherwise make available to the general public in any manner an individual's social security account number. This paragraph shall not apply to any individual intentionally communicating to the general public or otherwise making available to the general public his or her social security account number.

(b) Print an individual's social security account number on any card or tag required for the individual to access products, services or benefits provided by the person, firm, partnership, association or corporation.

(c) Require an individual to transmit his or her social security account number over the internet, unless the connection is secure or the social security account number is encrypted.

(d) Require an individual to use his or her social security account number to access an internet web site, unless a password or unique personal identification number or other authentication device is also required to access the internet website.

(e) Print an individual's social security account number on any materials that are mailed to the individual, unless state or federal law requires the social security account number to be on the document to be mailed. Notwithstanding this paragraph, social security account numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security account number. A social security account number that is permitted to be mailed under this

section may not be printed, in whole or part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(f) Encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number as required by this section.

(g) Knowingly use the labor or time of or employ any incarcerated individual in this state, or in any other jurisdiction, in any capacity that involves obtaining access to, collecting or processing social security account numbers of other individuals.

3. This section does not prevent the collection, use, or release of a social security account number as required by state or federal law, the use of a social security account number for internal verification, fraud investigation or administrative purposes or for any business function specifically authorized by 15 U.S.C. 6802.

4. Any person, firm, partnership, association or corporation having possession of the social security account number of any individual shall, to the extent that such number is maintained for the conduct of business or trade, take reasonable measures to ensure that no officer or employee has access to such number for any purpose other than for a legitimate or necessary purpose related to the conduct of such business or trade and provide safeguards necessary or appropriate to preclude unauthorized access to the social security account number and to protect the confidentiality of such number.

5. Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

6. No person may file any document available for public inspection with any state agency, political subdivision, or in any court of this state that contains a social security account number of any other person, unless such other person is a dependent child, or has consented to such filing, except as required by federal or state law or regulation, or by court rule.

7. Whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of subdivision two of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for a single violation and not more than one hundred thousand dollars for multiple violations resulting from a single act or incident. The second violation and any violation committed thereafter shall be punishable by a civil penalty of not more than five thousand dollars for a single violation and not more than two hundred fifty thousand dollars for multiple violations resulting from a single act or incident. No person, firm, partnership, association or corporation shall be deemed to have violated the provisions of this section if such person, firm, partnership, association or corporation shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

* NB There are 2 § 399-ddd's

*** § 399-ddd. Disclosure of social security number.** 1. As used in this section, "social security account number" shall include the number

issued by the federal social security administration and any number derived from such number. Such term shall not include any number that has been encrypted.

2. No person, firm, partnership, association or corporation, not including the state or its political subdivisions, shall require an individual to disclose or furnish his or her social security account number, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because such individual refuses to disclose or furnish such number, unless one of the exceptions enumerated in subdivision three of this section applies.

3. The provisions of this section shall not apply in the following instances:

(a) The individual consents to the acquisition or use of his or her social security account number.

(b) The social security account number is expressly required by federal, state, or local law or regulation.

(c) The social security account number is to be used for internal verification or fraud investigation.

(d) The social security account number is to be used for any business function permitted or allowed under the Gramm Leach Bliley Act, P.L. 106-102 (1999).

(e) The social security account number is requested in connection with a request for credit or a credit transaction initiated by the consumer or in connection with a lawful request for a consumer report or investigative consumer report, as such terms are defined in section three hundred eighty-a of this chapter.

(f) The social security account number is requested in connection with a deposit account or an investment.

(g) The social security account number is requested for purposes of employment, including in the course of the administration of a claim, benefit, or procedure related to the individual's employment by the person, including the individual's termination from employment, retirement from employment, injury suffered during the course of employment, or to check on an unemployment insurance claim of the

individual.

(h) The social security account number is requested for purposes of tax compliance.

(i) The social security account number is requested for the purpose of:

i. the collection of child or spousal support;

ii. determining whether an individual has a criminal record; or

iii. blood or organ donation.

(j) The social security account number is requested in connection with any interaction with a governmental law enforcement agency or is used in conjunction with the enforcement of a judgment of a court of competent jurisdiction by a sheriff or marshal.

(k) The social security account number is requested for the purpose of verifying an individual's identity or age in order to allow such individual to obtain access to, or enroll in, a marketing program that is restricted to individuals of a certain age.

(l) i. The social security account number is requested by an individual, firm, corporation, or other entity doing business pursuant to a franchise issued by a political subdivision of the state or a license, franchise, certificate or other authorization issued by the New York state public service commission.

ii. The social security account number is requested by an individual, firm, corporation, or other entity regulated by the New York state public service commission, the federal communications commission, or the federal energy regulatory commission.

iii. The social security account number is requested by a banking institution, as defined in section nine-f of the banking law, or one of its affiliates.

(m) The social security account number is requested by an authorized insurer, as defined in section one hundred seven of the insurance law, for the purpose of furnishing information to the Centers for Medicare and Medicaid Services within the United States Department of Health and

Human Services.

4. Whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of subdivision two of this section has occurred, the court shall impose a civil penalty of not more than five hundred dollars. The second offense and any offense committed thereafter shall be punishable by a civil penalty of not more than one thousand dollars.

5. No person, firm, partnership, association or corporation shall be deemed to have violated the provisions of this section if such person, firm, partnership, association or corporation shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

* NB There are 2 § 399-ddd's

*** § 399-e. Prohibition of the importation, manufacturing, distribution, or sale of yo-yo waterball toys.** 1. No person, firm, corporation, or association shall import, manufacture, sell, offer to sell, or distribute a yo-yo waterball toy.

2. For purposes of this section, the term "yo-yo waterball toy" means a yo-yo waterball, water yo-yo, or any similar toy made of rubber or rubber-like material consisting of a ball that is filled with a liquid and attached to an elastic cord with a finger loop at the end.

3. Whenever there shall be a violation of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. Each sale of a yo-yo waterball toy in violation of this section shall constitute a separate violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

* NB There are 2 § 399-e's

* **§ 399-e. Actions.** No person, firm, corporation, partnership or other association may deny credit, reduce the credit limit, or raise the cost of credit of a consumer, solely because such consumer is a victim of identity theft, if the person denying, reducing, or raising the cost of, the credit has prior knowledge that the consumer was a victim of identity theft. Actions taken by a creditor to assist a consumer regarding his or her credit report, credit score or credit history or to

limit credit or financial losses to the consumer, including the cancellation, monitoring or restructuring of consumer credit accounts, shall not be considered violations of this section. For purposes of this section, a person is the victim of identity theft if he or she possesses a valid police report alleging that he or she is the victim of an identity theft crime, including, but not limited to, a violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of the penal law.

* NB There are 2 § 399-e's

§ 399-ee. Zone pricing of gasoline prohibited. 1. As used in this section:

(a) "Affiliate" means any person whose stock is more than fifty percent owned by or who, regardless of stock ownership, is controlled by or is under common control with any other person.

(b) "Competition" means the vying for motor fuel sales between any two or more sellers in the same relevant geographic market.

(c) "Dealer" means any person, other than a refiner or wholesaler, who is engaged in the business of selling motor fuel at a retail outlet.

(d) "Motor fuel" means any petroleum product, including any special fuel which is used for the propulsion of any motor vehicle.

(e) "Posted terminal price" means a refiner's posted price at a terminal, by grade and quality of motor fuel, to the wholesale class of trade within a general trade area. If a refiner does not have a posted terminal price in a general trade area, such refiner's posted terminal price shall be deemed to be no lower than the lowest posted terminal price of motor fuel of like grade and quality of any other refiner selling to the wholesale class of trade in the general trade area.

(f) "Refiner" means any person who produces and stores or exchanges motor fuel at a terminal facility and who sells or transfers motor fuel through the loading rack at such terminal facility, and includes an affiliate of such refiner with respect to such affiliate's sale of motor fuel.

(g) "Relevant geographic market" means the geographic area of effective competition.

(h) "Retail outlet" means a facility, including land and improvements, where motor fuel is offered for sale at retail to the public.

(i) "Sale" or "sell" means any retail transfer, gift, barter, sale, offer for sale, or advertisement for sale in any manner or by any means whatsoever.

(j) "Supplier" means any person who conveys, transports, or otherwise causes motor fuel to be delivered to another person, except that any person who conveys, transports, or otherwise causes motor fuel to be delivered as part of a retail sale shall not be considered a supplier.

(k) "Terminal facility" means any inland, waterfront, or offshore appurtenance on land used for the purpose of receiving, storing, handling, or transferring motor fuel, but does not include bulk storage facilities owned or operated by a wholesaler.

(l) "Wholesaler" means any person, other than a refiner or dealer, who purchases motor fuel at a terminal facility and supplies motor fuel to retail outlets.

(m) "Zone pricing" means the arbitrary price differences within the relevant geographic market, based on the posted terminal price or where the effect is to injure competition.

2. No wholesaler shall engage in zone pricing with respect to any motor fuel of like grade or quality.

3. In addition to any other remedies provided by law, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and, upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining or restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceedings, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each

violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

*** § 399-eee. Disabling of services to stolen wireless phones. 1.**

Definitions. For purposes of this section, the following terms shall have the following meanings:

(a) "International mobile equipment identifier (IMEI)" shall mean:

(i) a mobile equipment identifier;

(ii) electronic serial number; or

(iii) any other number or signal that:

(A) identifies a unique mobile wireless phone; and

(B) has the same function and purposes as a number described in subparagraph (i) or (ii) of this paragraph.

(b) "GSMA block list" means an industry database that relies on information reported by at least fifty commercial mobile operators, is subject to access controls, is certified to the ISO/IEC 27001 or an equivalent standard for information security management systems, and provides publicly available information to enable sellers, consumers, and law enforcement to check an IMEI against lists of mobile device equipment identification numbers to help prevent the use or activation of mobile phones identified as stolen or fraudulently obtained.

2. Limiting wireless service to stolen phones. Any person, firm, partnership, association, limited liability company, corporation, or other business entity providing wireless telephone services, as such term is defined in paragraph (b) of subdivision one of section twelve hundred twenty-five-c of the vehicle and traffic law, shall have and maintain a program reasonably designed to prevent the activation on its network of a phone with an international mobile equipment identity number (IMEI) that appears on the GSMA block list.

3. Reporting of stolen wireless phones. Any person, firm, partnership, association, limited liability company, corporation, or other business entity providing wireless telephone services, as such term is defined in

paragraph (b) of subdivision one of section twelve hundred twenty-five-c of the vehicle and traffic law, who is informed by a retail store operator of the theft of new, non-activated wireless phones, shall take reasonable steps to report the IMEI numbers of those stolen phones to the GSMA block list.

4. Disabling of service to stolen wireless phone. Any person, firm, partnership, association, limited liability company, corporation, or other business entity providing wireless telephone services, as such term is defined in paragraph (b) of subdivision one of section twelve hundred twenty-five-c of the vehicle and traffic law, shall have and maintain a program reasonably designed to enable it to suspend service to a stolen wireless phone upon notification by a verified customer that a wireless phone has been stolen. Such program shall require the person or business entity providing wireless telephone services take reasonable steps to report the IMEI numbers of the stolen phone to the GSMA block list.

* NB There are 2 § 399-eee's

*** § 399-eee. Car wash promotion disclosure.** 1. For the purposes of this section, the term "car wash" means any individual, partnership, corporation, limited liability company, joint venture, association, or other business entity that engages in the cleaning of vehicles, including washing, detailing, drying, polishing, vacuuming or otherwise providing cosmetic care to vehicles.

2. Car washes shall clearly state when a promotion will expire as well as any costs which will be incurred upon the expiration of such promotion and how often such costs will be incurred upon someone taking part in such promotion.

3. Car washes shall conspicuously post notice of such information on a board or other visible place in view of consumers when advertising a promotion. If the car wash advertises such promotion online it shall also post such notice within such advertisement, coupon or promotion information.

4. Any car wash which fails to comply with this section shall be assessed a civil penalty not to exceed five hundred dollars for each violation.

* NB There are 2 § 399-eee's

§ 399-f. Laundromat refund procedures. 1. "Self service laundromats" or "coin operated laundries" shall mean and include all laundromats and any apartment building with two or more washing machines or clothes dryers.

2. All self service laundromats, except those staffed by a full-time attendant, shall be required to post two signs with dimensions no less than twelve inches by eighteen inches. One sign shall list the owner's name and address, and the second sign shall give the price for the use of the washer and dryer, the cycle time per unit of payment, and the method of refund if the coins are lost in the machines, including a telephone number or address to contact for refund. Information for the method of refund shall read as follows: "If coins are lost in the coin receptacle of the washer or dryer, contact (insert the name and address or telephone number of a person designated by the owner of the self service laundromat to contact for refund)."

3. All signs shall be prominently displayed in a clearly visible area of the self service laundromat.

4. Any individual, firm, partnership, corporation, association, company or organization which owns and/or operates such business and knowingly fails to comply with the requirements of this section shall be assessed a civil penalty not to exceed fifty dollars for the first violation, one hundred dollars for a second violation and two hundred fifty dollars for any subsequent violation. Each day such offense shall continue shall constitute a separate additional violation. It shall be a defense to the imposition of any such civil penalty if the owner or operator posted a sign as required by this section and such sign was removed or defaced by vandals, provided the owner or operator

subsequently complies with the requirements of this section.

5. This section shall not annul, alter, affect or exempt any person, firm, partnership, corporation, association, company or organization subject to the provisions of this section from complying with the laws, ordinances, rules or regulations of any locality, relating to the posting of laundromat refund procedures, except to the extent that these laws, ordinances, rules or regulations are inconsistent with any provision of this section, but no such local law, ordinance, rule or regulation shall be considered inconsistent, if it affords greater protection to the consumer.

§ 399-ff. Petting zoos. 1. For purposes of this section the terms:

(a) "petting zoo" shall mean a place where a collection of animals are kept for the express purpose of viewing, touching, holding and petting by patrons and visitors to the establishment; and

(b) "hand washing or hand cleansing facility" shall mean any method of cleansing the hands that kills germs and bacteria including, but not limited to, soap and running water, anti-bacterial fluids, foams or gels, and anti-bacterial or antiseptic wipes or towels.

2. All petting zoo operators shall provide and maintain at least one clearly designated hand washing facility for patrons and visitors to the establishment to wash or cleanse their hands upon exiting such petting zoo area. Such hand washing or hand cleansing facility shall be maintained at or within no more than fifty feet of the exit from such petting zoo area.

3. Every exit from a petting zoo area shall have a sign conspicuously posted that shall state, in a clear and legible typeface, the following: "Animals at petting zoos may carry germs and bacteria that cause disease. It is strongly recommended that persons wash their hands upon exiting the petting zoo area". Such sign shall also indicate the direction in which such hand washing or hand cleansing facility is located.

4. Any operator of a petting zoo who fails to maintain a hand washing or hand cleansing facility and proper signage in violation of this section shall be subject to a civil penalty in an amount of up to five hundred dollars.

§ 399-gg. Packaging of electronic liquid. 1. No person, firm or corporation shall sell or offer for sale any electronic liquid, as defined in paragraph (e) of subdivision one of section thirteen hundred ninety-nine-cc of the public health law, unless the electronic liquid is sold or offered for sale in a child resistant bottle which is designed to prevent accidental exposure of children to electronic liquids.

2. Any violation of this section shall be punishable by a civil penalty not to exceed one thousand dollars.

§ 399-h. Disposal of records containing personal identifying information. 1. Definitions. For the purposes of this section, the following words shall have the following meanings:

a. "Dispose" means to throw out or away or to get rid of and shall not include a sale of a record or the transfer of a record for value;

b. "Record" means any information kept, held, filed, produced or reproduced by, with or for a person or business entity, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, or computer tapes or discs;

c. "Personal information" shall mean any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person;

d. "Personal identifying information" shall mean personal information consisting of any information in combination with any one or more of the

following data elements, when either the personal information or the data element is not encrypted, or encrypted with an encryption key that is included in the same record as the encrypted personal information or data element:

- (i) social security number;

- (ii) driver's license number or non-driver identification card number;

or

- (iii) mother's maiden name, financial services account number or code, savings account number or code, checking account number or code, debit card number or code, automated teller machine number or code, electronic serial number or personal identification number;

e. "Personal identification number" means any number or code which may be used alone or in conjunction with any other information to assume the identity of another person or access financial resources or credit of another person.

2. Disposal of records containing personal identifying information. No person, business, firm, partnership, association, or corporation, not including the state or its political subdivisions, shall dispose of a record containing personal identifying information unless the person, business, firm, partnership, association, or corporation, or other person under contract with the business, firm, partnership, association, or corporation does any of the following:

- a. shreds the record before the disposal of the record; or

- b. destroys the personal identifying information contained in the record; or

- c. modifies the record to make the personal identifying information unreadable; or

- d. takes actions consistent with commonly accepted industry practices that it reasonably believes will ensure that no unauthorized person will have access to the personal identifying information contained in the record.

Provided, however, that an individual person shall not be required to comply with this subdivision unless he or she is conducting business for profit.

3. Penalties; disposal and use. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice, that the defendant has, in fact, violated this section an injunction may be issued by such court or justice enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. Whenever a court shall determine that a violation of subdivision two of this section has occurred, the court may impose a civil penalty of not more than five thousand dollars. Acts arising out of the same incident or occurrence shall constitute a single violation. It shall be an affirmative defense to a violation of subdivision two of this section if the business can show that it used due diligence in its attempt to properly dispose of such records.

§ 399-i. Prohibit the sale of unsafe cribs and restrict use of such cribs in certain settings. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Crib" shall mean a bed or containment designated to accommodate an infant.

(b) "Distribute" shall mean to deliver to a person other than the purchaser, for the purpose of retail sale.

(c) "Child care facility" shall mean any place subject to section three hundred ninety of the social services law or article forty-seven of the New York city health code as authorized by section five hundred fifty-eight of the New York city charter.

(d) "Place of public accommodation" shall mean any inn, hotel, motel, motor court or other establishment that provides lodging to transient

guests. Such term shall not include an establishment treated as an apartment building for purposes of any state or local law or regulation or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

(e) "Person" shall mean a natural person, firm, corporation, limited liability company, association, or an employee or agent of a natural person or an entity included in this definition.

(f) "Unsafe crib" shall mean any crib that does not conform to the standards endorsed or established by the federal Consumer Product Safety Commission including, but not limited to, Title 16 of the Code of Federal Regulations and the standards endorsed or established by ASTM International (formerly known as the American Society for Testing and Materials), as follows:

(i) Part 1219 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement such part;

(ii) Part 1220 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement such part;

(iii) Part 1303 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement such part; and

(iv) The following standards and specifications of ASTM International for corner posts of baby cribs and structural integrity of baby cribs and any standards and specifications adopted to amend or supplement such standards:

(A) ASTM F 1169 (structural integrity of full-size baby cribs), and

(B) ASTM F 406 (non-full-size cribs).

2. (a) No person shall import, manufacture, or distribute an unsafe crib.

(b) No retailer, as defined in subdivision eleven of section four hundred ninety-a of this chapter, or secondhand dealer, as defined in subdivision six of section four hundred ninety-a of this chapter, shall sell, lease or otherwise make available an unsafe crib.

3. (a) On or after December twenty-eighth, two thousand thirteen, no child care facility or place of public accommodation shall use or have on the premises an unsafe crib. This subdivision shall not apply to an

antique or collectible crib if it is not used by, or accessible to, any child in the child care facility or place of public accommodation.

(b) The office of children and family services, in consultation with the New York city department of health and mental hygiene, shall notify child care facilities of the provisions of this subdivision in plain, non-technical language that will enable each child care facility to effectively inspect and identify unsafe cribs. Such notice shall be given to every child care facility upon the effective date of this section or as soon as practicable thereafter, and such notice shall also be given to each applicant for license or registration pursuant to section three hundred ninety of the social services law.

(c) The office of children and family services shall promulgate rules and regulations to carry out the provisions of this subdivision, with respect to unsafe cribs in child care facilities.

4. Whenever there shall be a violation of subdivision two of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of subdivision two of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. Each sale of an unsafe crib in violation of this section shall constitute a separate violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

5. If any provision of this section or the application thereof to any person or circumstances is held unconstitutional, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

*** § 399-ii. Furniture tip restraint device.** 1. As used in this section:

(a) "furniture" shall mean a clothing storage unit that is freestanding and at least twenty-seven inches in height including but not limited to chests, dressers, armoires, and bureaus; and

(b) "tip restraint device" shall mean a mechanism that is designed to reduce the risk of furniture tipping over. Such mechanism may include straps, wall brackets, steel cables, or plug and screw sets.

2. No person, firm, partnership, association, limited liability company, corporation, or other entity shall sell or offer to sell new furniture to a consumer at retail unless the furniture conforms to standards endorsed or established by the federal Consumer Product Safety Commission or, if no such standard exists, a standard established by ASTM International which requires furniture to contain a tip restraint device and carry a permanent warning label, including but not limited to, ASTM F2057.

3. A person, firm, partnership, association, limited liability company, corporation, or other entity may sell or offer to sell new furniture that does not meet the requirements in subdivision two of this section if the furniture sold is outside the scope of the standards prescribed in subdivision two of this section and contains a compatible tip restraint device and carries a permanent warning label, or if the furniture is outside the scope of the standards prescribed in subdivision two of this section and the retailer: (a) maintains in stock and prominently displays within the store tip restraint devices available for sale that are compatible with such furniture; and (b) posts a notice, in a conspicuous location which may be easily seen or reached by customers, that, in legible format, states: "Certain

furniture may become unstable and tip over, leading to possible injury or death. Tip restraint devices may prevent tipping of furniture when properly installed."

4. Any person, firm, partnership, association, limited liability company, corporation, or other entity that sells or offers to sell new furniture to a consumer at retail in violation of the provisions of this section shall be liable for a civil penalty not to exceed five hundred dollars for each violation.

* NB There are 2 § 399-ii's

*** § 399-ii. Prohibit the sale of crib bumper pads and restrict use of such pads in certain settings.** 1. For the purposes of this section: (a) "Crib" shall mean a bed or containment designated to accommodate an infant.

(b) "Crib bumper pads" shall mean a pad or pads of a non-mesh material resting directly above the mattress in a crib, running the surface area of the crib or along the length of any of the interior sides of the crib. "Crib bumper pad" does not include mesh liners.

(c) "Distributor" shall mean any person who delivers to a person other than the purchaser, for the purpose of retail sale.

(d) "Manufacturer" shall mean any person who makes and places into the stream of commerce a bumper pad as defined by this section.

(e) "Retailer" shall have the same meaning as set forth in subdivision eleven of section four hundred ninety-a of this chapter.

(f) "Secondhand dealer" shall have the same meaning as set forth in subdivision six of section four hundred ninety-a of this chapter.

(g) "Child care facility" shall mean any child day care provider as defined in section three hundred ninety of the social services law or child care program as defined in article forty-seven of the New York city health code as authorized by section five hundred fifty-eight of the New York city charter.

(h) "Place of public accommodation" shall mean any inn, hotel, motel, motor court or other establishment that provides lodging to transient guests. Such term shall not include an establishment treated as an apartment building for purposes of any state or local law or regulation

or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

(i) "Person" shall mean a natural person, firm, corporation, limited liability company, association, or an employee or agent of a natural person or an entity included in this definition.

2. No manufacturer, importer, distributor, wholesaler, retailer or secondhand dealer shall sell, lease, offer for sale, or offer for lease in this state any crib bumper pad as an accessory to a crib or as a separate item.

3. (a) On or after the effective date of this section, no child care facility or place of public accommodation shall use or have on the premises any crib bumper pads unless a medical professional has determined that use of crib bumper pads is medically necessary for a particular child using a crib in such child care facility or place of public accommodation.

(b) The office of children and family services, in consultation with the city of New York department of health and mental hygiene, shall notify child care facilities of the provisions of this subdivision in plain, non-technical language. Such notice shall be given to every child care facility upon the effective date of this section or as soon as practicable thereafter, and such notice shall also be given to each applicant for license or registration pursuant to section three hundred ninety of the social services law.

(c) The office of children and family services shall promulgate rules and regulations to carry out the provisions of this subdivision, with respect to the ban on crib bumper pads in child care facilities.

4. Whenever there shall be a violation of subdivision two of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in

fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of subdivision two of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. Each sale of a crib bumper pad in violation of this section shall constitute a separate violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

5. If any provision of this section or the application thereof to any person or circumstance is held unconstitutional, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

* NB There are 2 § 399-ii's

§ 399-j. Safety standards; moveable soccer goals. 1. The department of state, in consultation with the office of parks, recreation and historic preservation, shall promulgate rules and regulations establishing safety standards for anchoring, securing and counter-weighting a moveable soccer goal. Such regulations shall substantially comply with the guidelines for moveable soccer goal safety produced by the United States consumer product safety commission or any successor commission or agency. For the purposes of this section, the term "moveable soccer goal" shall mean a freestanding structure consisting of at least two upright posts, a crossbar, and support bars that is designed:

(a) to be used by adults or children for the purposes of a soccer goal;

(b) to be used without any other form of support or restraint other than pegs, stakes, or other forms of temporary anchoring device; and

(c) to be able to be moved to different locations.

2. No person, firm, corporation, or other legal entity which erects a moveable soccer goal shall erect in this state such moveable soccer goal unless such goal shall be erected in the manner required by those rules and regulations promulgated pursuant to this section; provided however, that moveable soccer goals erected upon one, two and three-family residential real property shall be exempt from the requirements of this section.

3. Whenever the attorney general shall believe from evidence satisfactory to him or her that any person, firm, corporation or association or agent or employee thereof has violated any provision of this section, he or she may bring an action in the supreme court of the state of New York for a judgment enjoining the continuance of such violation and for a civil penalty of not more than five hundred dollars for each violation. If it shall appear to the satisfaction of the court or justice that the defendant has knowingly violated any provision of this section, no proof shall be required that any person has been injured thereby nor that the defendant knowingly or intentionally violated such provision. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. Before any violation of this section is sought to be enjoined, the attorney general shall be required to give the person against whom such proceeding is contemplated notice by certified mail and an opportunity to show in writing within five business days after receipt of notice why proceedings should not be instituted against such person, unless the attorney general shall find, in any case in which he or she seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

§ 399-k. Access to toilet facilities for utility workers. 1. A place of business open to the general public for the sale of goods or services that has a toilet facility for its employees shall allow any individual who is lawfully on the premises of such place of business to use that toilet facility during normal business hours, even if the place of

business does not normally make the employee toilet facility available to the public, provided that all of the following conditions are met:

a. the individual requesting the use of the employee toilet facility is an employee of a utility entity who is on duty providing utility-related services at the time of the request, provided that the place of business may require the individual to present reasonable evidence that the individual is an employee of a utility entity;

b. two or more employees of the place of business are working at the time the individual requests use of the employee toilet facility;

c. the employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the requesting individual or create a security risk to the people, or property within the place of business;

d. use of the toilet facility would not create an obvious health or safety risk to the requesting individual; and

e. a public restroom is not immediately accessible to the requesting individual.

2. A violation of the provisions of this section shall be punishable by a civil penalty not to exceed five hundred dollars for each violation.

3. A place of business shall not be liable for any injuries which result from toilet facility use by an employee of a utility entity, provided that this subdivision shall not be interpreted, or construed, as a limit on liability for acts of gross negligence or for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity.

4. For purposes of this section, "employee of a utility entity" means an employee of a "utility company" or "public utility company" as such terms are defined in section two of the public service law, a municipal

corporation that provides public utility services, a rural electric cooperative, or a state public authority that provides utility services, or an employee of a contractor that is providing utility-related services for any of the aforementioned entities.

§ 399-m. Disclosures in advertisement and sale of unassembled goods.

1. For the purposes of this section, unassembled merchandise shall mean goods, wares or other merchandise which is comprised of more than six separate parts or units other than nuts, bolts, screws or other similar devices used to connect or fasten, which is sold unassembled, and which is manufactured on or after January first, nineteen hundred seventy-six.

2. No person, firm, partnership, association or corporation or agent or employee thereof shall sell or offer for sale merchandise which is unassembled unless a sign placed in close proximity to the merchandise, or the box or other container in which the merchandise is offered for sale has thereon a notice in English, which sets forth (a) a statement that the merchandise must be assembled prior to use; (b) a listing of tools necessary for assembly or use; and (c) a listing of any additional parts not supplied by the seller or manufacturer, necessary for assembly or use; and the box or other container contains simple, clear and accurate instructions for assembly and use in English. For the purposes of the foregoing, a sign placed in close proximity to the merchandise should be clear and conspicuous and a notice indicated on or affixed to a box or other container in which the merchandise is offered for sale shall be printed in not less than twelve-point bold face type.

Where notice required by this section is given by a sign placed in close proximity to the merchandise, as provided herein, the retail purchaser shall have the right to return the merchandise within a reasonable period of time and not unduly worn or damaged for a full refund.

3. No person, firm, partnership, association or corporation or agent or employee thereof shall sell or offer for sale at retail, merchandise which is unassembled but is on display in an assembled condition unless

a sign indicating that the product must be assembled is prominently placed in close proximity to the display.

4. No person, firm, partnership, association or corporation or agent or employee thereof shall advertise for sale at retail any merchandise which is unassembled unless said advertisement prominently sets forth the fact that the merchandise is unassembled and must be assembled prior to use.

5. A violation of this section shall entitle the buyer to cancel or rescind the purchase and obtain a refund of the entire amount paid by him.

6. Whenever there shall be a violation of this section, an application may also be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

7. The provisions of this section shall not apply to unassembled model kits and toy and hobby products, the primary purpose of which is assembly by the consumer as a recreational activity.

8. The requirement of this section to provide notice, on the package in which merchandise is offered for sale, or by a sign in close proximity to the merchandise, that such merchandise is unassembled shall

not apply to merchandise which is purchased for the purpose of being connected to or installed in conjunction with other property, real or personal.

§ 399-n. Approval of electrical devices. Whenever electrical devices or electrical wiring or electrical apparatus are required to be approved by underwriters laboratories for fire safety by any statute, law, rule or regulation, of the state or any municipality thereof, approval by any qualified laboratory or testing organization that tests for fire safety in the state of New York will be deemed to be satisfaction of such requirement. For the purposes of this section, a qualified laboratory or testing organization is one which meets the criteria of (1) the American Society for Testing Materials test E548-76, or (2) any rules or regulations relating thereto that may be promulgated by the department of state.

§ 399-nn. Sale of digital electronic equipment; diagnostic and repair information. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Authorized repair provider" means an individual or business who has an arrangement with the original equipment manufacturer under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of digital electronic equipment under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer such services on behalf of the original equipment manufacturer.

(b) "Digital electronic equipment" or "equipment" means any hardware product manufactured for the first time, and first sold or used in New York on or after July first, two thousand twenty-three, that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product for which the original equipment manufacturer makes available tools, parts, and documentation either through authorized repair providers, its own employees, or any authorized

third-party providers. "Digital electronic equipment" or "equipment" does not include any product sold under a specific business-to-government or business-to-business contract, which is not otherwise offered for sale directly by a retail seller.

(c) "Documentation" means any manual, diagram, reporting output, service code description, schematic diagram, or similar kinds of information required for effecting the services of diagnosis, maintenance, or repair of digital electronic equipment.

(d) "Fair and reasonable terms" means making available parts, tools, or documentation as follows:

(i) With respect to documentation required for repair, that such documentation is made available by the original equipment manufacturer at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.

(ii) With respect to tools, that such tools are made available by the original equipment manufacturer at no charge and without requiring authorization for use or operation of such tool, or imposing impediments to access or use of the tool to diagnose, maintain, or repair digital electronic equipment using parts provided by the original equipment manufacturer in accordance with this section, and in a reasonably timely manner, except that, when such tool is requested in physical form, a charge may be included for the reasonable, actual costs of procuring, preparing and sending such tool.

(iii) With respect to parts, that such parts are made available by the original equipment manufacturer, either directly or indirectly through an authorized repair provider or authorized third-party provider, to independent repair providers and owners at reasonable costs and terms and which:

A. are not conditioned on or imposing a substantial obligation or restriction that is not reasonably necessary for enabling the owner or independent repair provider to engage in the diagnosis, maintenance, or repair of digital electronic equipment made by or on behalf of the original equipment manufacturer; and

B. are not conditioned on an arrangement described in paragraph (a) of

this subdivision.

(iv) Such parts, tools, and documentation shall be made available to an authorized repair provider, and shall further be made available by an authorized repair provider to any independent repair provider or owner, provided that such authorized repair provider is contractually and practically permitted by the original equipment manufacturer to sell such parts, tools, and documentation to any independent repair provider or owner, and provided further that such original equipment manufacturer shall not:

A. retaliate against or hinder the ability of any authorized repair provider to sell such parts, tools, or documentation through any means, including advertising restrictions or product allocation limitations unrelated to legitimate product shortages; or

B. condition or impose a substantial obligation or restriction that is not reasonably necessary for enabling the owner or independent repair provider to engage in the diagnosis, maintenance, or repair of digital electronic equipment made by or on behalf of the original equipment manufacturer.

(e) "Independent repair provider" means an individual or business operating in this state, that does not have an arrangement described in paragraph (a) of this subdivision with an original equipment manufacturer, and who is engaged in the services of diagnosis, maintenance, or repair of digital electronic equipment.

(f) "Manufacturer of motor vehicle equipment" means a business engaged in the business of manufacturing or supplying components that are used in the manufacture, maintenance, or repair of a motor vehicle.

(g) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including a component part, or accessory, as defined in the federal Food, Drug and Cosmetic Act, 21 USC, Section 321 (h) as amended from time to time, which is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals.

(h) "Motor vehicle" means a vehicle that is designed for transporting persons or property on a street or highway and is certified by the

manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States.

(i) "Motor vehicle dealer" means an individual or business who, in the ordinary course of business, is engaged in the business of selling or leasing motor vehicles to an individual or business pursuant to a franchise agreement, has obtained a license under the vehicle and traffic law, and is engaged in the services of diagnosis, maintenance, or repair of motor vehicles or motor vehicle engines pursuant to such franchise agreement.

(j) "Motor vehicle manufacturer" means a business engaged in the manufacturing or assembling of motor vehicles.

(k) "Original equipment manufacturer" means any individual or business that, in the normal course of business, is engaged in the business of selling or leasing digital electronic equipment manufactured by or on behalf of itself, to any individual or business.

(l) "Owner" means an individual or business that owns or leases digital electronic equipment purchased or used in this state.

(m) "Part" or "parts" means any replacement part or assembly of parts, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of maintenance or repair of digital electronic equipment manufactured or sold by the original equipment manufacturer. Part does not include printed board assemblies that may allow device cloning in violation of 18 U.S.C. Section 1029 or other applicable law.

(n) "Tool" means any software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of digital electronic equipment, including software or other mechanisms that provide, program, pair a part, calibrate functionality, or perform any other function required to repair or update the original equipment or part back to fully functional condition.

(o) "Repair" means any act needed to restore digital electronic equipment or equipment to fully working order.

(p) "Maintenance" means any act necessary to keep currently working digital electronic equipment or equipment in fully working order.

(q) "Diagnosis" means the process of identifying the issue or issues that cause digital electronic equipment or equipment to not be in fully working order.

(r) "Modifications" or "modify" means any alteration to digital electronic equipment that is not maintenance and not a repair.

2. Requirements. An original equipment manufacturer shall make available to any independent repair provider and owner of digital electronic equipment manufactured by or on behalf of or sold by such original equipment manufacturer, on fair and reasonable terms, any documentation, parts, and tools required for the diagnosis, maintenance, or repair of such digital electronic equipment and parts that are manufactured for the first time, and first sold or used in New York on or after July first, two thousand twenty-three. Such documentation, parts, and tools shall be made available either directly by an original equipment manufacturer or via an authorized repair provider. An original equipment manufacturer who, in the regular course of business, offers to an owner the services of diagnosis, maintenance or repair of its own digital electronic equipment, and who does not have an arrangement described in paragraph (a) of subdivision one of this section with an unaffiliated individual or business, shall be considered an authorized repair provider with respect to such equipment.

3. Limitations. (a) Nothing in this section shall be construed to require an original equipment manufacturer to divulge any trade secret or license any intellectual property to any owner or independent service provider.

(b) Nothing in this section shall be construed to alter the terms of any arrangement described in paragraph (a) of subdivision one of this section in force between an authorized repair provider and an original equipment manufacturer, including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such arrangement, except that any provision in such terms that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this section shall be void and unenforceable.

(c) Nothing in this section shall be construed to require an original equipment manufacturer or an authorized repair provider to provide to an owner or independent repair provider access to information, other than

documentation, that is provided by the original equipment manufacturer to an authorized repair provider pursuant to the terms of an arrangement described in paragraph (a) of subdivision one of this section.

(d) Nothing in this section shall be construed to require an original equipment manufacturer or authorized repair provider to make available any parts, tools or documentation for the purposes of modifying or making modifications to any digital electronic equipment.

(e) Nothing in this section shall be construed to require an original equipment manufacturer or authorized repair provider to make available any parts, tools, or documentation required for the diagnosis, maintenance, or repair of public safety communications equipment, the intended use of which is for emergency response or prevention purposes by an emergency service organization such as a police, fire or emergency medical services agency.

(f) Nothing in this section shall be construed to require any original equipment manufacturer or authorized repair provider to make available any parts, tools, or documentation required for the diagnosis, maintenance, or repair of digital electronic equipment in a manner that is inconsistent with or in violation of any federal law, such as gaming and entertainment consoles, related software and components.

(g) Nothing in this section shall be construed to require any original equipment manufacturer or authorized repair provider to make available any parts, tools, or documentation required for the diagnosis, maintenance, or repair of any home appliance that has a digital electronic product embedded within it, including, but not limited to, refrigerators, ovens, microwaves, air conditioning, heating units, and security devices or alarm systems including any related software and components.

(h) Nothing in this section shall prevent an original equipment manufacturer from establishing reasonable training and certification programs for independent repair providers, however, no independent repair provider shall be required to complete any such training or certification program as a condition to be covered by the rights granted under this chapter.

(i) Nothing in this section shall prevent an original equipment manufacturer from offering parts, such as integrated batteries, to independent repair providers or owners pre-assembled with other parts

rather than as individual components, where the individual components may pose a heightened safety risk if installed improperly.

(j) Nothing in this section shall require an original equipment manufacturer to make available special documentation, tools, and parts that would disable or override anti-theft security measures set by the owner of the equipment without the owner's authorization.

4. Exclusions. Nothing in this section shall apply to:

(a) a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in such capacity, or to any product or service of a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in such capacity;

(b) a medical device, as defined in this section, or a digital electronic product found in a medical setting including diagnostic, monitoring, or control equipment or any product or service that they offer; or

(c) a manufacturer, distributor, importer, or dealer of any off-road (non-road) equipment, including but not limited to, farm and utility tractors, farm implements, farm machinery, forestry equipment, industrial equipment, utility equipment, construction equipment, compact construction equipment, mining equipment, turf, yard and garden equipment, outdoor power equipment (including portable generators), marine, all-terrain sports and recreational vehicles (including racing vehicles), stand-alone or integrated stationary or mobile internal combustion engines, other power sources, (including without limitation, generator sets, electric/battery and fuel cell power), power tools, and any tools, technology, attachments, accessories, components and repair parts for any of the foregoing.

(d) commercial and industrial electrical equipment (including power distribution equipment, such as medium/low voltage switchgear and transformers, power control equipment, such as medium/low voltage motor control and drives, power quality equipment, such as uninterruptable power supplies, remote power panels, power distribution units and static/transfer switches) and any tools, technology, attachments, accessories, components and repair parts for any of the foregoing.

(e) an electronic bicycle manufacturer, distributor, importer,

retailer or dealer.

5. No original equipment manufacturer or authorized repair provider shall be liable for any damage or injury caused to any digital electronic equipment, person, or property which occurs as a result of repair, diagnosis, maintenance, or modification performed by an independent repair provider or owner, including but not limited to, any indirect, incidental, special or consequential damages; any loss of data, privacy or profits; or any inability to use, or reduced functionality of, the digital electronic equipment.

6. Before repairing digital electronic equipment, independent repair providers shall provide to any customer, and publish on their website and the place of business, a written notice that contains the following information:

(a) The independent repair provider is not an authorized repair provider for the equipment;

(b) The consumer should review the terms and conditions of any warranty for the equipment, as repairs not performed by an authorized repair provider may affect the warranty;

(c) Warranties for consumer products are governed by the federal Magnuson-Moss Warranty Act (15 U.S.C. ch. 50 § 2301), which gives consumers rights and protections that apply over conflicting provisions in the warranty;

(d) Under the Magnuson-Moss Warranty Act, a warranty cannot require that maintenance and repairs be performed only by an authorized repair provider; and

(e) Under the Magnuson-Moss Warranty Act, if damage to equipment is shown to be caused by equipment not offered or sold by the original equipment manufacturer or by faulty repair performed by a non-authorized repair provider, that damage may not be covered by the warranty, but the warranty may otherwise remain in effect.

7. Enforcement by the attorney general. (a) Whenever the attorney general shall believe from evidence satisfactory to the attorney general that any person, firm, corporation or association or agent or employee thereof has engaged in or is about to engage in any acts or practices in

violation of this section, the attorney general may bring an action in the name and on behalf of the people of the state of New York to enjoin such unlawful acts or practices and to obtain restitution of any moneys or property obtained directly or indirectly by any such acts or practices in violation of this section. In such proceeding preliminary relief may be granted under article sixty-three of the civil practice law and rules.

(b) Except as provided herein, before any violation of this section is sought to be enjoined, the attorney general shall give such person, firm, corporation, or association against whom such proceeding is contemplated notice and an opportunity to show in writing, within five business days after the delivery of such notice, why proceedings should not be instituted against such person, firm, corporation, or association. Such notice by the attorney general shall be delivered by certified mail and by first-class mail with proof of mailing. In any proceeding in which the attorney general seeks preliminary relief, such notice shall not be required upon a finding by the attorney general that such notice and opportunity is not in the public interest.

(c) In connection with any proposed proceeding under this section, the attorney general is authorized to take proof and make a determination of the relevant facts, and to issue subpoenas in accordance with the civil practice law and rules.

(d) This subdivision shall apply to all acts or practices declared to be in violation of this section, whether or not subject to any other law of this state, and shall not supersede, amend or repeal any other law of this state under which the attorney general is authorized to take any action or conduct any inquiry.

(e) Any person, firm, corporation or association or agent or employee thereof who engages in any acts or practices in violation of this section shall be liable to a civil penalty of not more than five hundred dollars for each violation, which shall accrue to the state of New York and may be recovered in a civil action brought by the attorney general.

(f) Except in the instance of a dispute arising between an original equipment manufacturer and an authorized repair provider related to either party's compliance with an existing authorized repair agreement, an authorized repair provider shall have all the rights and remedies provided in this section.

§ 399-o. Selling prices and container deposits. Every person, firm, partnership, corporation or association which sells, offers for sale, or exposes for sale at retail an item for which the seller is required by state or local law, ordinance or rule, to collect from the purchaser a refundable deposit on beverage containers, shall not include the cost of the mandated deposit when displaying the selling price of the item through item pricing tags, point-of-sale signs, advertisements, or any other means by which consumers might be informed of the cost of the item. Nothing in this section shall prevent the seller from separately indicating the amount of the deposit provided, however, that the deposit is excluded from the indicated total cost and it is appropriately identified as a deposit.

§ 399-oo. Deceptive solicitation of vehicle warranty policies. 1. It shall be unlawful for any person, firm or corporation to directly or indirectly represent in any manner, whether by written solicitation or telemarketing, a false, deceptive or misleading statement in regard to:

a. such person's, firm's or corporation's affiliation with a vehicle owner's current warranty policy provider;

b. such person's, firm's or corporation's possession of information regarding such vehicle owner's warranty policy;

c. the expiration of such vehicle owner's warranty policy; or

d. a requirement that such vehicle owner register for a new warranty policy with such person, firm or corporation in order to maintain coverage of such vehicle owner's current warranty policy.

2. Wherever there shall be a violation of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of

not less than five days, to enjoin or restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of five hundred dollars for each violation. The court may impose a civil penalty of one thousand dollars for each violation, if the court finds the defendant knowingly violated this section. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

3. Nothing in this section shall in any way limit rights or remedies which are otherwise available under law to the attorney general.

§ 399-p. Telemarketing; use of automatic dialing-announcing devices and placement of consumer telephone calls. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "automatic dialing-announcing device" means any automatic equipment which incorporates a storage capability of telephone numbers to be called and is used, working alone or in conjunction with other equipment, to disseminate a prerecorded message to the telephone number called without the use of an operator;

(b) "person" means any natural person, firm, organization, partnership, association or corporation, or other entity, whether for-profit or not-for-profit;

(c) "consumer" means a natural person who is solicited to purchase, lease or receive a good or service for personal, family or household use;

(d) "consumer telephone call" means a call made to a telephone number by a telephone solicitor, whether by device, live operator, or any combination thereof, for the purpose of soliciting a sale of any consumer goods or services for personal, family or household purposes to

the consumer called, or for the purpose of soliciting an extension of credit for consumer goods or services to the consumer called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services to the consumer called or an extension of credit for such purposes; provided, however, that "consumer telephone call" shall not include a call made by a telephone corporation, as defined by subdivision seventeen of section two of the public service law, in response to a specific inquiry initiated by a consumer regarding that consumer's existing or requested telephone service; and

(e) "telephone solicitor" means a person who makes or causes to be made a consumer telephone call.

2. No person shall operate an automatic dialing-announcing device, nor place any consumer telephone call, except in accordance with the provisions of this section. The use of such device by any person, either individually or acting as an officer, agent, or employee of a person operating automatic dialing-announcing devices, is subject to the provisions of this section.

3. Whenever telephone calls are placed through the use of an automatic dialing-announcing device, such device shall do all of the following:

(a) state at the beginning of the call the nature of the call and the name of the person or on whose behalf the message is being transmitted and at the end of such message the address, and telephone number of the person on whose behalf the message is transmitted, provided such disclosures are not otherwise prohibited or restricted by any federal, state or local law; and

(b) disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called.

4. No person shall operate an automatic dialing-announcing device which uses a random or sequential number generator to produce a number to be called.

5. No automatic dialing-announcing device shall be used to call and no

consumer telephone call shall be placed to an emergency telephone line including but not limited to any 911 or E-911 line, or any emergency line of any volunteer fire company or fire department; any emergency medical service, ambulance service, voluntary ambulance service or hospital ambulance service as defined in section three thousand one of the public health law; any hospital, nursing home, or residential health care facility as defined in section twenty-eight hundred one of the public health law; any adult care facility as defined in section two of the social services law; or any law enforcement agency or to the telephone line of any guest room or patient room of any hospital, nursing home, or residential health care facility as defined in section two thousand eight hundred one of the public health law, or any adult care facility as defined by section two of the social services law. It shall not constitute a violation of this subdivision if the person who places such a call can affirmatively establish that the call was placed inadvertently despite good faith efforts on the part of such person to comply with the provisions of this section and such person has implemented a procedure to prevent subsequent calls from being placed to a particular prohibited telephone number.

6. A telephone solicitor shall not make a consumer telephone call to a consumer unless the telephone solicitor conforms with subparagraph one of paragraph b of subdivision six of section three hundred ninety-nine-pp of this article. Nothing contained herein shall be deemed to limit, annul, alter, or affect the provisions of subdivision three of this section.

6-a. No telephone solicitor or person who places any consumer telephone call or who operates an automatic dialing-announcing device and no employer of any such telephone solicitor or person shall intentionally cause to be installed, or shall intentionally utilize, any blocking device or service to prevent the name and/or telephone number of such solicitor or person, or the name and/or telephone number of his or her employer, from being displayed on a caller identification device of the recipient of any such consumer telephone call. A violation of this subdivision shall be subject to the provisions of subdivision eight of this section.

7. (a) Federal, state or local municipalities, or any subdivision thereof, using an automatic dialing-announcing device for emergency purposes shall be exempted from the provisions of this section.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, any entity which operates a telephone warning or alert system which utilizes any such device for emergency purposes shall also be exempted from the provisions of this section.

8. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice, that the defendant has, in fact, violated this section an injunction may be issued by such court or justice enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of subdivision three, four or five of this section has occurred, the court may impose a civil penalty of not more than two thousand dollars per call, up to a total of not more than twenty thousand dollars, for calls placed in violation of such subdivisions within a continuous seventy-two hour period. Whenever the court shall determine that a violation of subdivision six of this section, or a violation of subdivision six-a of this section, has occurred, the court may impose a civil penalty of not more than two thousand dollars. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

9. In addition to the right of action granted to the attorney general pursuant to this section, any person who has received a telephone call

in violation of subdivision three, four or five of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated such subdivisions. The court may award reasonable attorney's fees to a prevailing plaintiff.

§ 399-pp. Telemarketing and consumer fraud and abuse prevention act.

1. Legislative findings and declaration. The legislature finds and declares that the prevention of deceptive and unfair practices in association with telemarketing is in the public interest and subject to the authority of appropriate political subdivisions of the state for the purpose of protecting the public against fraud, deception and other abuses. The legislature intends that the federal telemarketing and consumer fraud and abuse prevention act (P.L. 103-297) be fully enforceable by appropriate state and local enforcement officials.

The legislature further declares that additional requirements applicable to the telemarketing industry not present in the federal statute are necessary to protect residents of the state and others from telemarketing abuses. The legislature therefore intends that provisions in this section which differ from the aforementioned federal act and other New York state laws regulating telemarketing be construed whenever reasonable as providing additional protections to victims of telemarketing fraud.

2. Definitions. As used in this section, the following terms shall have the following meanings:

a. "Applicant" means a person seeking a certificate of registration or to renew a certificate of registration under this section.

b. "Customer" means any person who is or may be required to pay for or to exchange consideration for goods and services offered through

telemarketing.

c. "Goods or services" means any goods or services, and shall include any real property or any tangible or intangible personal property or services of any kind.

d. "Investment opportunity" means anything tangible or intangible, that is offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

e. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries or other business entity.

f. "Premium" means anything offered or given, independent of chance, to customers as an incentive to purchase or otherwise contract for goods or services offered through telemarketing.

g. "Principal" means any person participating in or responsible for the management of a telemarketer's business, whether or not the position is compensated, including but not limited to an owner in the case of a sole proprietorship, an officer, director or stockholder holding more than ten percent of the outstanding stock in the case of a corporation, a partner in the case of a partnership, and a manager or member in the case of a limited liability company.

h. "Prize" means anything offered or purportedly offered and given or purportedly given to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

i. "Prize promotion" means a sweepstakes or other game of chance or an oral or written, express or implied representation that a person has won, has been selected to receive or is eligible or may be eligible to receive a prize or purported prize.

j. "Telemarketer" means any person, who, for financial profit or commercial purposes in connection with telemarketing, either initiates, or initiates and receives telephone calls to or from a customer when the customer is in this state or any person who directly controls or supervises the conduct of a telemarketer. For the purposes of this section, "commercial purposes" shall mean the sale or offer for sale of goods and services.

k. "Telemarketing" means any plan, program or campaign which is conducted to induce payment or the exchange of any other consideration for any goods or services by use of one or more telephones and which involves more than one telephone call by a telemarketer in which the customer is located within the state at the time of the call. Telemarketing does not include the solicitation of sales through any media other than by telephone calls.

l. "Secretary" shall mean the secretary of state.

m. "Department" shall mean the department of state.

n. "Caller identification information" means information provided by a caller identification service regarding the telephone number and name of the person calling.

o. "Caller identification service" means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

3. Registration of telemarketers. a. No person shall act as a telemarketer without first having received a certificate of registration from the secretary as provided in this section. Employees of telemarketers shall be exempt from the requirements of this paragraph and paragraph b of this subdivision.

b. No person required to register pursuant to paragraph a of this

subdivision shall act as a telemarketer without holding a valid certificate of registration from the secretary as provided in this section.

c. Any applicant shall file with the department an application for a certificate of registration in such form and containing such information as the secretary shall prescribe, including the following:

(1) the applicant's name, address and telephone number;

(2) each business name under which the applicant engages in or intends to engage in telemarketing, if such name is different than the applicant's;

(3) the complete street address and primary telephone number of each location, designating the principal location, from which the applicant engages in or intends to engage in telemarketing, including each location at which mail will be received by or on behalf of the applicant, and identifying any such location that is a post office box or mail drop;

(4) the name, address and telephone number of each principal of the business;

(5) whether the applicant or any principal thereof has been convicted or plead guilty to or is being prosecuted by indictment or information for racketeering, violations of securities laws, or a theft offense of any state, or the United States;

(6) whether any injunction or judgment has been entered into against the applicant or any principal, or such applicant or principal has entered into a settlement agreement, assurance of discontinuance, consent decree or any similar instrument in any civil action involving theft, racketeering, embezzlement, conversion, misappropriation of property, fraud, or deceptive, unfair, illegal or unconscionable trade practices, and whether any civil action involving such practices is currently pending, to the extent not inconsistent with any existing court orders; and

(7) whether the license to engage in any business, trade or profession of the applicant or any principal thereof has been refused, suspended or revoked in any jurisdiction.

d. Upon receipt of the completed application for registration and

required fee, and unless such certificate of registration has been denied as provided in subdivision five of this section, the secretary shall issue and deliver to the applicant a certificate in such form and manner as the secretary shall prescribe, but which must set forth the applicant's name, business address, and the effective term of the registration. A registration certificate issued or renewed under the provisions of this section shall entitle a person to act as a registered telemarketer for a period of two years from the effective date of the registration.

e. Any registration granted under this section may be renewed by the secretary upon application by the holder thereof, in such form as the secretary may prescribe. The secretary shall have the authority to assign staggered expiration dates for licenses at the time of renewal. If the assigned date results in a term that exceeds two years, the applicant shall pay an additional pro-rata adjustment together with the fee prescribed in paragraph f of this subdivision.

f. Each application for a certificate of registration shall be accompanied by a fee of five hundred dollars, which shall not be refundable.

g. The fees collected pursuant to this subdivision shall be deposited to the credit of the business and licensing services account established pursuant to the provisions of section ninety-seven-y of the state finance law.

h. Any person holding a certificate of registration shall be required to provide notice of any change in the information required of applicants by this section, in such form and manner, and within such time period as the secretary shall prescribe.

i. No person required to be registered under this subdivision shall be entitled to enforce any agreement or seek any consideration or any other payment for goods and services offered through telemarketing unless such person is in compliance with this subdivision and subdivision four of this section.

j. The secretary shall prescribe rules and regulations to administer this subdivision and subdivision four of this section.

4. Bonding of telemarketers. a. Any applicant shall, at the time of any original application for a certificate of registration, file with the secretary, in the form and amount as prescribed in this subdivision and satisfactory to the secretary:

(1) A bond with a corporate surety, from a company authorized to do business in this state; or

(2) An irrevocable letter of credit or a certificate of deposit from a New York state or federally chartered bank, trust company, savings bank or savings and loan association qualified to do business in New York state and insured by the federal deposit insurance corporation.

b. Such bond, letter of credit, or certificate of deposit shall be maintained for three years from the date the telemarketer ceases telemarketing, or three years from the date the certificate of registration terminates, whichever is earlier.

c. The principal sum of the bond, letter of credit, or certificate of deposit shall be twenty-five thousand dollars, which shall be maintained until the period specified in paragraph b of this subdivision, subject to paragraph g of this subdivision.

d. The bond, letter of credit or certificate of deposit shall be payable in favor of the people of the state of New York for the benefit of any customer injured as a result of a violation of this section, pursuant to a determination of any court of competent jurisdiction pursuant to this section, or article ten-B of the personal property law.

e. The aggregate liability of the surety upon the bond or the banking organization upon the letter of credit or certificate of deposit to all persons for all breaches of the conditions of the bond shall in no event exceed the amount of the bond, letter of credit or certificate of deposit.

f. The bond, letter of credit or certificate of deposit shall not be canceled, revoked, diminished or terminated except after notice to, and with the consent of, the secretary at least forty-five days in advance of such cancellation, revocation, or termination. Unless the bond is replaced by another bond, letter of credit or certificate of deposit in conformity with this subdivision prior to the expiration of the forty-five day period, the registration of the telemarketer shall be treated as terminated as of the cancellation, revocation or termination of the bond.

g. The registration of the telemarketer shall be treated as terminated as of the date the amount of the bond, letter of credit or certificate of deposit falls below the amount required by this subdivision.

h. Any change in ownership of a telemarketer shall not release, cancel or terminate liability under this subdivision under any bond, letter of credit, or certificate of deposit filed for any telemarketer as to any customer who was injured as a result of a violation of this section or article ten-B of the personal property law while such bond, letter of credit or certificate of deposit was in effect unless such transferee, purchaser, successor or assignee of such telemarketer obtains a bond, letter of credit or certificate of deposit under this subdivision for the benefit of such customer. Nothing in this paragraph shall be construed to authorize any telemarketer to cancel any bond, letter of credit, or certificate of deposit where such cancellation is not otherwise authorized by this subdivision.

5. Refusal to issue, suspension, and revocation of registration. a. The secretary, or any person deputized or so designated by him or her may deny the application of any person for a certificate of registration, refuse to issue a renewal thereof, suspend or revoke such certificate or in lieu thereof assess a fine not to exceed one thousand dollars per violation, if he or she determines that such applicant, or any of its principals:

(1) has made a material false statement or omitted a material fact in connection with an application under this section;

(2) was the former holder of a certificate of registration issued

hereunder which the secretary revoked, suspended, or refused to renew;

(3) has failed to furnish satisfactory evidence of good character, reputation and fitness;

(4) with respect to the applicant, is not the true owner of the telemarketer, except in the case of a franchise;

(5) is in violation of or has violated any of the following statutes and the regulations thereunder, as such statutes and regulations may from time to time be amended:

(a) this section;

(b) article ten-B of the personal property law;

(c) the act of congress entitled the "telemarketing and consumer fraud and abuse prevention act" (P.L. 103-297);

(6) has been convicted or plead guilty to or is being prosecuted by indictment or information for racketeering, violations of securities laws, or a theft offense of this state, or the United States;

(7) has had any injunction or judgment entered against him or her in any civil action, or such applicant or principal has entered into a settlement agreement, assurance of discontinuance, consent decree or any similar instrument involving theft, racketeering, embezzlement, conversion, misappropriation of property, fraud or deceptive, unfair, illegal or unconscionable trade practices;

(8) has had a license or registration to engage in any business, occupation or profession suspended or revoked in any jurisdiction which may impact upon the applicant's fitness for registration under this section; or

(9) has committed, or is committing deceptive, unfair, illegal or unconscionable trade practices in violation of the laws of this or any other state or the United States.

b. Any proceeding conducted pursuant to paragraph a of this subdivision shall be subject to the state administrative procedure act.

6. Deceptive telemarketing acts and practices. a. It shall be unlawful for any telemarketer to directly or indirectly engage in the following conduct:

(1) fail to furnish a copy of the certificate of registration at the request of any interested party;

- (2) present or attempt to present, as their own, the registration certificate of another;
- (3) give false or misleading information;
- (4) misrepresent himself or herself to be registered;
- (5) use or attempt to use a registration certificate which has been revoked, suspended or is otherwise not valid;
- (6) advertise telemarketing services without having a valid certificate of registration under this section;
- (7) represent in any manner that his or her registration constitutes approval or endorsement of any governmental agency;
- (8) assist or support any person when the telemarketer or any identified employee knew or should have known that the person was engaged in an act or practice in violation of this section or article ten-B of the personal property law;
- (9) request a fee in advance to remove adverse information or modify adverse information to improve a person's credit history or credit record;
- (10) except for an attorney engaged in the practice of law, request or receive payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the customer in a prior telemarketing transaction;
- (11) obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express written authorization;
- (12) procure the services of any professional delivery, courier or other pickup service to obtain receipt or possession of a customer's payment, unless the goods or services are delivered with the reasonable opportunity to inspect before any payment is collected; or
- (13) misrepresent, directly or by implication, that a premium is a prize.

b. Telemarketers shall provide all of the following information, in a clear and coherent manner using words with common and everyday meanings, when making a telemarketing call:

- (1) at the beginning but no later than thirty seconds from the commencement of the call and prior to any request by the caller of the customer to release or disclose any of the customer's personal or

financial information, including but not limited, to the customer's name, address, credit card, checking account or other financial account number or information:

(a) that the purpose of the telephone call is to offer goods or services for which a fee will be charged or to provide an investment opportunity, whichever is the case;

(b) the telemarketer's name and the person on whose behalf the solicitation is being made if other than the telemarketer;

(c) the identity of the goods or services for which a fee will be charged; and

(d) whether the call is being recorded.

(2) the cost of the goods or services that are the subject of the call.

(3) in any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and all material costs or conditions to receive or redeem a prize that is the subject of the prize promotion.

7. Abusive telemarketing acts or practices. It shall be unlawful for any telemarketer to:

a. threaten, intimidate or use profane or obscene language;

b. engage in conduct or behavior a reasonable person would deem to be abusive or harassing;

c. initiate a telemarketing call to a person, when that person has stated previously that he or she does not wish to receive solicitation calls from that telemarketer provided, however that nothing in this section shall be construed to prohibit a telemarketer from telemarketing goods, services or investment opportunities to any customer of any affiliate, subsidiary or parent of such telemarketer;

d. engage in telemarketing to a person's residence at any time other than between 8:00 A.M. and 9:00 P.M. local time, at the called person's location; or

e. make a false, deceptive or misleading statement in regard to the requirements of subdivision six of this section to a customer, or to engage in any deceptive or unfair act or practice in association with telemarketing.

f. knowingly make an unsolicited telemarketing sales call to any person in a county, city, town or village under a declared state of emergency or disaster emergency as described in sections twenty-four or twenty-eight of the executive law.

7-a. Unlawful transmission of certain caller identification information. It shall be unlawful for any telemarketer or seller to knowingly cause any caller identification service to transmit misleading, inaccurate, or false caller identification information, provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name or telephone number of the person or seller on behalf of which a telemarketing call is placed.

8. Recordkeeping requirements. a. All telemarketers shall keep for a period of twenty-four months from the date the record is produced records of all financial transactions, written notices, disclosures and acknowledgments, including but not limited to:

(1) records of calls resulting in a promise by the customer to pay or otherwise exchange consideration for goods and services, including but not limited to the name and last known address of each customer, the goods or services selected, the date such goods were shipped or provided and the quantity provided, the amount charged by the company for the goods or services provided (including all other related fees or charges of any kind, including shipping and handling fees), and the amount actually paid by the customer for the goods and services provided;

(2) the name and last known address of each prize recipient and the

prize awarded having a value of twenty-five dollars or more; and

(3) the name, any fictitious name used, the last known home address and telephone number, and the job title for all current and former employees directly involved in telephone sales; provided, however, that if the telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee.

b. A telemarketer may keep the records required by paragraph a of this subdivision in any form, and in the manner, format, or place as they keep such records in the ordinary course of business.

c. In the event of any dissolution or termination of the telemarketer's business, a representative of the telemarketer shall maintain all records as required under this subdivision, which shall be the person required to maintain such records in the event of dissolution or termination under rules and regulations issued under the act of congress entitled the "telemarketing and consumer fraud and abuse prevention act" (P.L. 103-297), or any person designated by the telemarketer. In the event of any sale, assignment or other change of ownership of the telemarketer's business, the successor or assignee shall maintain all records required by this subdivision. In any case in which this paragraph applies, the telemarketer shall provide notice to the secretary, in the form and manner designated by the secretary of the disposition of such records within thirty days of the dissolution, termination, sale, assignment or change of ownership.

9. Waiver. Any waiver of the provisions of this section by any customer shall be unenforceable and void.

10. Exemptions. a. The following persons shall be exempt from the registration and bonding requirements set forth in subdivisions three and four of this section:

(1) the state, municipalities of the state, or any department or division of the state or such municipalities;

(2) the United States or any of its departments, agencies or divisions;

(3) colleges, universities and other institutions authorized by the

regents of the university of the state of New York or comparable body in any other state or jurisdiction, to grant degrees, including licensed private schools and any registered business schools regulated by article one hundred one of the education law;

(4) a person, which has been operating for at least three years a retail business establishment in this state under the same name as that used in connection with telemarketing, and both of the following occur on a continuing basis:

(a) Either products are displayed and offered for sale or services are offered for sale and provided at the business establishment; and

(b) A majority of the person's business involves buyers' obtaining such products or services at the person's location;

(5) any not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law and charitable organizations.

b. The following acts or practices are exempt from the requirements of this section:

(1) telephone calls made by a telemarketer, collection agency or attorney engaged in the practice of law for the exclusive purpose of collecting a legal debt owed, in accordance with the applicable provisions of the Federal Fair Debt Collection Practices Act (15 U.S.C. §1692 et. seq.);

(2) telephone calls in which the sale, lease or other agreement for goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by a telemarketer, or a meeting between a telemarketer and customer;

(3) telephone calls that are received by a telemarketer initiated by a customer that are not the result of any solicitation by such telemarketer; and

(4) telephone calls between a telemarketer and any for-profit business, except calls involving the retail sale of nondurable office or cleaning supplies.

c. The following acts or practices are exempt from the requirements of paragraph b of subdivision six of this section.

(1) telephone calls pertaining to a renewal or continuation of an existing or prior contractual relationship or the continuation of an

established business relationship between a customer and any telemarketer, provided that the telemarketer discloses any material changes in the terms and conditions of the prior contract, except for calls made by a telemarketer in which the telemarketer or any of its principals has previously engaged in any act or practice described in subparagraphs one, two, five, six, seven and eight of paragraph a of subdivision five of this section; and

(2) unsolicited telephone calls made by the telemarketer for the purpose of overall efforts to develop new business that include other methods and techniques intended to identify and communicate with potential customers provided however that for all transactions which are incidental to the call and result in the exchange of goods and services the telemarketer shall disclose the following information:

(a) the telemarketer's name and the person on whose behalf the solicitation is being made if other than the telemarketer;

(b) the identity of the goods or services for which a fee will be charged; and

(c) the cost of the goods or services that are the subject of the call.

10-a. The following persons are exempt from the fee and bonding requirements set forth in paragraph f of subdivision three and subdivision four of this section: A person engaged in a business or occupation which is licensed, registered, chartered, certified or incorporated with or by any state or federal agency. Provided, however, any person not licensed, registered, chartered, certified or incorporated with any New York state or federal agency, shall submit evidence to the secretary of state, in a form and manner to be prescribed by the secretary, of any license, registration, charter, certification or incorporation issued by an agency or governmental entity in this or any other state.

10-b. A telemarketer shall disclose the address of any company on whose behalf such telemarketer is providing telemarketing services, on any website owned or operated by the telemarketer and on any subsequent written communication to any customer.

11. Enforcement. a. Every violation of this section shall be deemed a deceptive act and practice subject to enforcement under article twenty-two-A of this chapter. In addition, the district attorney, county attorney, and the corporation counsel shall have concurrent authority to seek the relief in paragraph b of this subdivision, and all civil penalties obtained in any such action shall be retained by the municipality or county.

b. In every case where the court shall determine that a violation of this section has occurred, it may impose a civil penalty of not less than one thousand dollars nor more than two thousand dollars for each violation. Such penalty shall be in addition to the denial of registration or renewal, suspension of registration or revocation of registration or assessment of a fine authorized by subdivision five of this section.

c. Any person who contracts with a telemarketer for telemarketing services and has actual knowledge that the telemarketer is acting in violation of this section shall be deemed to be in violation of this section, unless such person takes reasonable measures to prevent and correct any conduct that violates this section.

d. Nothing in this section shall be construed to restrict any right which any person may have under any other statute or the common law.

12. Criminal penalties. Any person who is convicted of knowingly violating paragraph a or b of subdivision three of this section, or subparagraph two, three, four or five of paragraph a of subdivision six of this section shall be guilty of a class B misdemeanor. Any person who is convicted of knowingly violating subparagraph eleven or twelve of paragraph a of subdivision six of this section shall be guilty of a class A misdemeanor.

13. Separability clause; construction. If any part or provision of this section or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operations to the part, provision or

application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this section or the application thereof to other persons or circumstances.

§ 399-q. Use of carts, cases, trays, baskets, boxes and other containers. 1. As used in this section, the following terms shall have the following meanings given by this subdivision:

a. "Bakery basket". A wire or plastic container which holds bread or other baked goods and is used by a distributor or retailer, or his agent, as a means to transport, store or carry bakery products.

b. "Bakery tray". A wire or plastic container which holds bread or other baked goods and is used by a distributor or retailer, or his agent, as a means to transport, store or carry bakery products.

c. "Container". A bakery basket, bakery tray, dairy case, egg basket, poultry box, laundry cart or shopping cart.

d. "Dairy case". A wire or plastic container which holds sixteen quarts or more of beverage and is used by distributors or retailers, or their agents, as a means to transport, store or carry dairy products.

e. "Egg basket". Any permanent type of container which contains four dozen or more shell eggs and is used by distributors or retailers, or their agents, as a means to transport, store or carry eggs.

f. "Laundry cart". A basket which is mounted on wheels and used in a coin-operated laundry or dry cleaning establishment by a customer or an attendant for the purpose of transporting laundry and laundry supplies.

g. "Name or mark". Any permanently affixed or permanently stamped name or mark which is used for the purpose of identifying the owner of shopping carts, laundry carts, dairy cases, egg baskets, poultry boxes, bakery trays or bakery boxes.

h. "Parking area". A lot or other property provided by a retail establishment for the use of customers to park automobiles or other vehicles while doing business in that establishment.

i. "Poultry box". Any permanent type of container which is used by processors, distributors, retailers or food service establishments, or their agents, as a means to transport, store or carry poultry.

j. "Shopping cart". A basket which is mounted on wheels, or a similar device, generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

2. An owner of containers may adopt a name or mark to be permanently affixed to such containers. The secretary of state shall promulgate rules and regulations regulating the adoption, use and registration of a name or mark on containers.

3. It is unlawful to willingly or knowingly with the intent to deprive the owner of a container of possession:

a. remove a container from the premises or parking area of any retail establishment, or to be in possession of a container that has been removed from the premises or parking area of a retail establishment, if a container has the name or mark prominently displayed and permanently affixed to it that identifies the owner of the container, notifies the public that the unauthorized removal of the container from the premises or parking area, or the unauthorized possession of the container, is a violation of state law, and lists a telephone number or address for returning the container to the owner; or

b. alter, deface, obliterate, destroy, cover up or otherwise remove or conceal a name or mark on a container, or be in possession of any container whose name or mark has been altered, defaced, obliterated, destroyed, covered up or otherwise removed or concealed, without the consent of the owner of the container.

4. The requiring, taking or accepting of any deposit, upon delivery of a container, shall not be deemed a sale thereof, optional or otherwise.

5. This section shall not apply to the owner of a container, or to any person having the consent of the owner of the container to remove it from the premises or the parking area of the retail establishment. For purposes of this section, "consent" shall include tokens or other indicia of consent which may be established by the owner of the container.

6. A knowing violation of this section shall be punishable by a civil penalty of not more than one hundred dollars. Each violation shall constitute a separate offense.

§ 399-qq. Sale or promotional distribution of utility knives, box cutters, or box cart cutters. 1. No person, firm, or corporation shall sell or offer to sell or give away as either a retail or wholesale promotion a utility knife, box cutter, or box cart cutter to any person under eighteen years of age.

2. For purposes of this section, the term "utility knife", "box cutter", or "box cart cutter" means a knife consisting of a razor blade, retractable or non-retractable, attached to or contained within a plastic or metal housing.

3. The provisions of this section shall not preclude the temporary transfer of a utility knife, box cutter, or box cart cutter to a person under eighteen years of age by such person's employer where such device is possessed only on the employer's premises and only during the course and scope of such person's employment.

4. No provision of this section shall be deemed to restrict the authority of any county, city, town or village to enact and enforce additional local laws, ordinances or codes, or portions thereof, provided the provisions thereof are not inconsistent with the provisions of this section.

5. Any person, firm, or corporation who violates the provisions of this section shall be subject to a civil penalty of not more than five hundred dollars.

§ 399-r. Sale of paint pellet guns. (a) No person, firm, or corporation shall sell or offer to sell a paint pellet gun to any person under sixteen years of age.

(b) For purposes of this subdivision, the term "paint pellet gun" means a gun, air gun, pistol, rifle, or like device in appearance or function, capable of and designed for discharging and propelling through the air to a target a small quantity of paint enclosed within a pellet or pellet-like device or capsule or capsule-like device that breaks upon impact with the target, overspreading the target with paint.

(c) Any person, firm, or corporation who violates the provisions of this section shall be subject to a civil penalty of not more than five hundred dollars.

§ 399-rr. September eleventh victim compensation fund and World Trade Center health program notification. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) the "eligible time period" and "notice area" shall be the same as provided for in the September eleventh victim compensation fund pursuant to 49 USC 40101 and World Trade Center health program pursuant to 42 USC 300mm.

(b) the "September eleventh victim compensation fund" shall be the September eleventh victim compensation fund established under the Air Transportation Safety and System Stabilization Act (49 USC 40101).

(c) the "World Trade Center health program" shall be the World Trade Center health program established under 42 USC 300mm.

2. The department of economic development shall, in consultation with the department of labor and any other appropriate state or municipal entity, develop rules and regulations necessary to promote awareness and notification to any past or present businesses and their employees which

operated within the New York city disaster area during the eligible time period of their potential eligibility under the September eleventh victim compensation fund and the World Trade Center health program. This subdivision shall apply to both current and former employees. The department of economic development shall determine the most appropriate message and format that the state agencies may use to assist potentially eligible employers and employees with such awareness or notification.

3. The department of economic development shall be authorized to consult with the special master of the September eleventh victim compensation fund and the program administrator of the World Trade Center health program relating to matters including, but not limited to, messaging and format to be used in the promotion of the September eleventh victim compensation fund and the World Trade Center health program and if the messages should be tailored for the specific geographic areas covered by the World Trade Center health program in a different manner than those covered by both the World Trade Center health program and the September eleventh victim compensation fund.

§ 399-s. Posting of notice when air rifles or guns are sold. 1. In each mercantile establishment in this state where air rifles or air guns are sold, a notice must be posted in a conspicuous place, and in close proximity to any air rifle or air gun displayed for sale, that in legible format states: "Except under supervision at a shooting range or for hunting pursuant to license, Section 265.05 of the New York State Penal Law makes it unlawful for any person under the age of sixteen years to possess an air rifle or air gun."

2. Any violation of this section shall be punishable by a civil penalty not to exceed one hundred dollars.

*** § 399-t. Sale of certain chlorofluorocarbons and halons prohibited.** 1. On and after January first, nineteen hundred ninety-one, no containers of chlorofluorocarbon compounds commonly used as air horn propellants, for blow cleaning photographic products, or any similar

use, or containers devised as toys or for amusement which use chlorofluorocarbon compounds as a foaming agent shall be sold within the state.

2. On and after January first, nineteen hundred ninety-one, no hand held fire extinguisher containing five pounds or less of halon compounds as defined in section 38-0103 of the environmental conservation law shall be sold within the state.

3. A violation of this section shall be punishable by a civil penalty not to exceed one hundred dollars.

* NB There are 2 399-t's

*** § 399-t. Vending machine disclosure.** 1. Definitions. For purposes of this article, "vending machine" shall mean and include a coin operated machine used to sell merchandise and/or services but shall not include a coin operated telephone.

2. Notice requirements relating to vending machines. Every vending machine available for use by the public in this state shall have a notice prominently affixed thereto which indicates the name, address, and telephone number of the owner and/or operator of such machine or the name, address and telephone number of an individual designated by such owner/operator to maintain said machine. Said notice provisions of this section shall not apply in instances where a vending machine is attended by a person capable of administering a refund.

3. Any individual, firm, partnership, corporation, association, company or organization which owns or leases such vending machine and knowingly fails to comply with the requirements of this section shall be assessed a civil penalty not to exceed fifty dollars for the first violation, one hundred dollars for a second violation and two hundred fifty dollars for any subsequent violation provided, however, that multiple violations of subdivision two of this section which concurrently occur within the same public area designated for the operation of vending machines shall, for purposes of assessing a penalty

under this subdivision, constitute a single violation against such individual, firm, partnership, corporation, association, company, or organization which owns and/or leases such machines. Each day such offense shall continue shall constitute a separate additional violation. It shall be a defense to the imposition of any such civil penalty if the owner or operator posted a notice as required by this section and such notice was removed or defaced by vandals, provided the owner or operator subsequently complies with the requirements of this section.

4. This section shall not annul, alter, affect or exempt any person, firm, partnership, corporation, association, company or organization subject to the provisions of this section from complying with the laws, ordinances, rules or regulations of any locality, relating to the posting of vending machine notices, except to the extent that these laws, ordinances, rules or regulations are inconsistent with any provision of this section, but no such local law, ordinance, rule or regulation shall be considered inconsistent, if it affords greater protection to the consumer.

* NB There are 2 § 399-t's

§ 399-u. Motor vehicle alarms. 1. On and after the effective date of this section, all devices offered for sale or installed in the state as alarms for motor vehicles shall be so equipped and shall function so that the audible portion of the alarm resets and ceases to sound not more than three minutes after it is activated and commences sounding. No audible burglar alarm in a motor vehicle shall be capable of being activated except by (a) direct physical contact with that motor vehicle or (b) through the use of an individual remote activation device that is designed to be used with the motor vehicle alarm system of a particular vehicle so long as the alarm activated by such device ceases to sound within not more than three minutes.

2. A violation of the provisions of this section shall constitute an offense punishable by a fine of not more than one hundred dollars for the first offense and not more than two hundred fifty dollars for a second or subsequent offense.

§ 399-v. Parking facilities; towing of vehicles, posting of notices.

1. For purposes of this section, the following terms shall have the following meanings:

(a) "commercial tower" shall mean any person, firm, partnership, corporation or association that engages in commercial towing, as defined in section one hundred seven-b of the vehicle and traffic law, whether by contract or other agreement;

(b) "owner" shall mean the owner or lessee of a parking facility or an agent of such owner or lessee, provided that such term shall not include a commercial tower acting as an agent of such owner or lessee; and

(c) "parking facility" shall mean parking facilities having a parking capacity of five or more motor vehicles not owned or operated by the state, a municipality or public authority.

2. Every parking facility shall display prominently a conspicuous notice stating the name, address and telephone number of the operator of the parking facility together with the name, address and telephone number of any individual or entity authorized to tow from such parking facility any motor vehicle or the name, address and telephone number of any individual or entity authorized to place a device designed to immobilize any motor vehicle in such parking facility. Such notice shall also state that unauthorized vehicles will be towed at the vehicle owner's expense.

3. No owner or operator of a parking facility shall tow or authorize the towing of any motor vehicle or immobilize or authorize the immobilization of any motor vehicle in such parking facility unless such owner or operator displays a notice pursuant to subdivision two of this section.

4. No owner or operator of a parking facility shall solicit, receive, accept or agree to receive or accept any payment, commission or other consideration from a commercial tower for the towing and storing of vehicles removed from such owner's or operator's parking facility.

4-a. (a) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not less than fifty dollars and not more than one thousand dollars for each such violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(b) The provisions of this section may be enforced concurrently by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

5. The provisions of this section shall not apply to cities having a population of one million or more.

6. Any person who has been injured by reason of any violation of this section may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or one hundred fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

7. This section shall not annul, alter, affect or exempt any owner or operator subject to the provisions of this section from complying with the laws, ordinances, rules or regulations of any locality relating to the posting of parking facility notices and/or the towing of motor vehicles from parking facilities, except to the extent that these laws, ordinances, rules or regulations are inconsistent with any provision of this section, but no such local law, ordinance, rule or regulation shall be considered inconsistent if it affords greater protection to the consumer including but not limited to local laws, rules or regulations that:

(i) regulate the reasonable amount that a commercial tower may charge for the towing and storage of a vehicle removed from a parking facility;

(ii) require written contracts between an owner and a commercial tower, which contracts may also be required to be filed with the political subdivision;

(iii) require the owner to be physically present when a vehicle is towed from a parking facility; or

(iv) regulate the hours when a commercial tower must be available to release a vehicle that is towed from a parking facility.

*** § 399-w. Total loss notice and waiver of the gap amount for non-motor vehicle retail lease agreements.** 1. If a non-motor vehicle retail lease agreement provides that the lessee shall be responsible upon a total loss of the goods which are the subject of the agreement occasioned by theft, confiscation or physical damage for the gap amount, the lessor, prior to the execution of the agreement, shall by a notice on a separate document conspicuously disclose that fact and the obligations for which the lessee would remain liable in the event of a theft, confiscation or total loss of the goods. If the lessor is required under subdivision two of this section to offer to waive its contractual right to hold the lessee liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage, the notice shall also: (a) state that for a separate charge disclosed in the notice the lessor will waive its contractual right to hold the lessee liable for the gap amount in the event of a total loss

of the goods occasioned by theft or physical damage; (b) contain a provision informing the lessee that he or she may as an alternative to purchasing a waiver, be able to purchase insurance covering the gap amount from an insurance company which has been licensed by the superintendent of financial services to write non-motor vehicle lessee gap insurance in this state; and (c) contain a provision permitting the lessee to indicate whether he or she wants the lessor to waive its contractual right to hold the lessee liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage. The notice shall be signed by the lessee. The lessor or assignee shall provide a copy of the signed notice to the lessee, and shall maintain a copy in the lessor's or assignee's files for at least the term of the lease. Failure to provide the notice and to obtain the lessee's signature as required by this subdivision shall invalidate any provision of the agreement which otherwise would obligate a lessee to pay the gap amount to the lessor or lessor's assignee, after a total loss of the goods occasioned by theft, confiscation or physical damage. No retail lease agreement shall be conditioned upon the lessee's obtaining of non-motor vehicle lessee gap insurance as set forth in subparagraph (D) of paragraph twenty-six of subsection (a) of section one thousand one hundred thirteen of the insurance law.

2. If the retail lease agreement provides that the lessee shall be responsible upon a total loss of the goods occasioned by theft or physical damage for the gap amount, the lessor, prior to the execution of the agreement, shall offer to waive its contractual right to hold the lessee liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage, only if non-motor vehicle lessor gap insurance coverage is available to the lessor or the anticipated assignee and such coverage is obtained from a property/casualty insurance company, which has been licensed by the superintendent of financial services of this state to write non-motor vehicle lessor gap insurance in this state. This offer may be made contingent upon the payment by the lessee of a separate charge that shall not exceed the cost of lessor gap insurance covering the retail lease transaction plus an administrative fee not to exceed ten dollars. Nothing contained in this section shall be construed to authorize a

waiver, in connection with a transaction with respect to which lessor gap insurance has not been obtained, of a contractual right to hold the lessee liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage.

3. A lessor shall not be obligated under subdivision two of this section to offer to waive its contractual right to hold the lessee liable for the gap amount if, during the current calendar year or during the odd-numbered calendar year immediately preceding the calendar year in which the agreement is entered into, the lessor or the anticipated assignee of the lessor has received non-motor vehicle lessor gap insurance declination notices or other evidence of unavailability from every insurance company whose name appears on the department of financial services compilation of insurance companies which during that calendar year were authorized to write non-motor vehicle lessor gap insurance in this state. Evidence of these declinations shall be retained by such a lessor or the anticipated assignee of such a lessor for a period of six years after the expiration of the calendar year in which they were issued.

If the lessor is not obligated to waive its contractual right to hold the lessee liable for the gap amount, then the notice required by subdivision one of this section shall contain a statement that the lessee may be able to purchase lessee gap insurance covering the gap amount directly from an insurer authorized to do such business in this state, but that the purchase of gap insurance is not required under the retail lease agreement.

4. In order to enable lessors or their anticipated assignees to comply with the requirements imposed by subdivision two of this section, the superintendent of financial services shall compile and make available a periodically updated list of those insurance companies which are authorized to write non-motor vehicle lessor gap insurance coverage in this state.

5. Nothing in this section shall be construed to apply to the lessor, or any anticipated assignee of a lessor, under a retail lease agreement

under which the lessee is not liable upon a total loss of the goods occasioned by theft, confiscation or physical damage for the gap amount, except that the lessor shall provide to the lessee conspicuous notice that, in the event of a total loss of the goods, the lessee has no obligation for the gap amount.

6. Whenever there shall be a violation of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine in any such proceeding that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

7. For purposes of this section: (a) "Goods" means all chattels personal, other than things in action or money, leased for other than a commercial or business use or for purpose of sublease. The term includes goods which, at the time of the lease or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom, but does not include a motor vehicle as defined in article nine-A of the personal property law.

(b) "Lessee" means a natural person who leases goods from a lessor primarily for personal, family or household use and who executes a retail lease agreement in connection therewith. The term does not

include a person who leases goods primarily for agricultural, business or commercial use or for the purpose of subleasing.

(c) "Lessor" means a person regularly engaged in the business of leasing or selling goods who leases goods to a lessee under or subject to a retail lease agreement.

(d) "Lease" means a transfer from a lessor to a lessee of the right to possession and use of goods in return for consideration. The term does not include a sale, including a sale on approval or a sale or return, a retail instalment sale as defined in article ten of the personal property law or the retention or creation of a security interest in the goods.

(e) "Retail lease agreement" or "agreement" means an agreement, entered into in this state, for the lease of goods and which may include the purchase of goods or services incidental thereto by a lessee for a scheduled term exceeding four months, whether or not the lessee has the option to purchase or otherwise become the owner of the goods at the expiration of the agreement. The term includes such an agreement wherever entered into if executed by the lessee in this state and if solicited in person by a person acting on his or her own behalf or that of the lessor. The term does not include a retail instalment contract or a rental-purchase agreement as defined in articles ten and eleven of the personal property law. An agreement that substantially complies with this article does not create a security interest in the goods as the term "security interest" is defined in paragraph thirty-five of subsection (b) of section 1--201 of the uniform commercial code.

(f) "Gap amount" has the meaning ascribed to it in paragraph fifty-two of subsection (a) of section one hundred seven of the insurance law.

(g) "Gap insurance" has the meaning ascribed to it in paragraph twenty-six of subsection (a) of section one thousand one hundred thirteen of the insurance law.

(h) "Person" means an individual, partnership, corporation, association or other group, however organized.

* NB There are 2 § 399-w's

*** § 399-w. Notice requirements for renters of personal property. 1.**
For the purposes of this section, the following terms shall have the

following meanings:

(a) "Owner" shall include any person, partnership, firm, association, or corporation engaged in the business of renting personal property for profit.

(b) "Personal property" shall include but not be limited to tangible chattels used for personal, household, or business purposes but shall not include motor vehicles.

(c) "Rental agreement" shall mean the total legal obligation that results from a written rental contract between a person and the owner for the rental of personal property.

2. Any owner who rents personal property shall:

(a) conspicuously post a sign in a prominent and visible area in the place of business, measuring at least two feet by four feet in writing of at least thirty-six point print, with the following notice:

RENTAL INFORMATION

WARNING! Failure to return rented property pursuant to the terms of the rental agreement may subject the renter to criminal prosecution.

(b) include in all rental contracts, in writing in at least twelve point print, the following notice:

Failure to return rented property under the terms of this agreement may subject the undersigned party(ies) to criminal prosecution.

3. This section shall not apply to: (a) rental purchase agreements as regulated by article eleven of the personal property law and (b) motor vehicle rentals under paragraph two of subdivision (a) of section one hundred ninety-eight-a and paragraph two of subdivision a of section one hundred ninety-eight-b of this chapter.

* NB There are 2 § 399-w's

§ 399-x. Towed motor vehicles. 1. Definitions. a. For the purposes of this section, a "commercial tower" shall be defined as any person, firm, partnership, corporation or association that engages in commercial towing, as defined in section one hundred seven-b of the vehicle and traffic law, whether by contract or other agreement.

b. For the purposes of this section, a "storage lot operator" shall mean any person, firm, partnership, corporation or association that engages, whether by contract or other agreement, in the storage of motor vehicles removed by a commercial tower.

c. For the purposes of this section, a "towed motor vehicle" shall be defined as any motor vehicle removed by a commercial tower without the prior consent or authorization of such motor vehicle owner.

2. Requirements. Each and every commercial tower or storage lot operator, which requires the payment by an owner of a towed motor vehicle of all or part of the towing and/or storage charges associated with the towing and/or storage of such owner's motor vehicle as a precondition to the release of such motor vehicle to such owner or his or her authorized representative, and which accepts credit cards or debit cards, as those terms are defined in section five hundred eleven of this chapter as forms of payment in the ordinary course of business, must accept each of these forms of payment for such towing and/or storage charges.

3. Penalties. (a) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not less than fifty dollars and not more than one thousand dollars for each such

violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(b) The provisions of this section may be enforced concurrently by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

4. Applicability. The provisions of this section shall not apply to commercial towers or storage lot operators operating wholly within cities having a population of one million or more.

§ 399-xx. Towing of motor vehicles; credit cards; statewide. 1.

Definition. For the purposes of this section, a "commercial tower" is defined as any person, firm, partnership, corporation, limited liability company, association, or other entity that engages in the business of towing motor vehicles for consideration.

2. Requirements. A commercial tower who responds to a call for assistance from an owner or operator of a vehicle that is inoperable or cannot be safely operated or who offers to transport, repair, or render safely operable such a vehicle shall, in compliance with any reasonable request of an owner or operator of such vehicle, repair the vehicle or transport the vehicle and its occupants to a reasonably safe location where repairs can be made. The commercial tower shall not be required to transport all vehicle occupants if the number of occupants exceeds the number of passengers that can be safely transported. The owner or operator of the vehicle shall be liable to the commercial tower for the cost of towing and repair services provided. The commercial tower shall accept cash and all other forms of payment that such commercial tower accepts in the ordinary course of business, including credit and debit cards as those terms are defined in section five hundred eleven of this chapter as payment for all or part of the charges for towing and repair services accepted and provided. The commercial tower may require such proof of identification from persons making payments in forms other than

cash as the commercial tower requires for such payments in the ordinary course of business. If the owner or operator of a vehicle declines services of the commercial tower or cannot or will not provide payment and identification for towing or repair services, a commercial tower shall notify law enforcement about the location and identification of the vehicle and its occupants. The provisions of this section do not apply to a vehicle which is lawfully parked at the home of the vehicle's owner or operator.

3. Penalties. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

*** § 399-y. Child safety devices for hot water dispensers.** Upon the retail sale, lease, or rental of any water dispenser, water cooler, or other non-plumbed device or system which dispenses hot water instantly, written notice shall be provided to the customer informing such customer of the availability, at no extra charge to the customer, of a child resistant safety device or similar protective feature for the hot water dispenser which is designed to prevent accidental injury to children. Upon customer request, such device shall be promptly provided at no charge.

* NB There are 2 § 399-y's

*** § 399-y. Automated teller machine fee disclosure.** 1. For the purposes of this section, "automated teller machine operator" shall mean any person who: (a) operates an automated teller machine at which consumers may make financial transactions, including but not limited to deposits, withdrawals, balance inquiries, and loan payments; and (b) is not the financial institution which holds the account accessed by the consumer to make the financial transaction.

2. No automated teller machine operator shall impose a fee on a consumer using such machine, unless such operator: (a) provides notice as required by subdivision three of this section; and (b) the consumer elects to continue to effect a financial transaction after receiving such notice.

3. The automated teller machine operator shall provide notice on the screen of the automated teller machine or on a paper issued from such machine after the financial transaction is initiated, but before the consumer is irrevocably committed to completing the transaction. Such notice shall clearly state: (i) that a fee is imposed for the use of such machine; (ii) the amount of such fee; and (iii) that the consumer may cancel such transaction without being assessed a fee.

4. (a) Any automated teller machine operator who fails to comply with the requirements of this section shall be assessed a civil penalty not to exceed two hundred fifty dollars per transaction.

(b) If the notice required pursuant to subdivision three of this section has been provided by an automated teller machine operator and such notice is subsequently removed, damaged, or altered by any person other than such operator, the operator shall have no liability for a failure to comply with subdivision three of this section.

* NB There are 2 § 399-y's

§ 399-y-1. Automated teller machines transaction denial; fees

prohibited. 1. For the purposes of this section, the following terms shall have the following meanings:

a. "automated teller machine operator" shall mean any person who operates an automated teller machine at which consumers may make financial transactions, including, but not limited to, deposits, withdrawals, balance inquiries, and loan payments; and

b. "automated teller machine" shall mean a device which is linked to the accounts and records of a banking institution and which enables consumers to make financial transactions, including, but not limited to, deposits, withdrawals, balance inquiries, and loan payments.

2. No automated teller machine operator or banking institution shall impose a fee on a consumer using such machine for any transaction which is for any reason denied or terminated in a manner that prevents such consumer from completing such transaction.

3. Any automated teller machine operator or banking institution who fails to comply with the requirements of this section shall be assessed a civil penalty not to exceed two hundred fifty dollars per transaction.

§ 399-yy. Cable television company providing telephone services. 1. Every cable television company, as defined in section two hundred twelve of the public service law, that provides telephone service to customers in New York shall, at its option: a. allow a customer without fee, penalty or charge to use a modified or alternative name for a directory listing or b. waive the otherwise applicable charges for a non-published telephone listing, where the customer requests protection of its identity in connection with the customer's purchase of telephone service and the customer is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law. Any non-published listings provided in this section shall conform to all the same requirements of other non-published listings. A customer requesting such an accommodation shall provide an attestation in writing that they no longer wish to be a party to such contract due to their status as a

victim of domestic violence. Such cable television company may not require such customer to disclose confidential information or details relating to such customer's status as a victim of domestic violence, as a condition of implementing such accommodation. Any customer requesting an accommodation pursuant to this section may also request and shall be provided, at no cost to the customer, a new telephone number within fifteen days from the request for such accommodation. Such cable television company shall dispose of information submitted by such customer no later than thirty days after receiving such information in a manner as to maintain confidentiality of such information.

2. Every cable television company, as defined in section two hundred twelve of the public service law, that provides television and/or telephone service to customers in New York under contract including, but not limited to a multi-year contract or bundled contract with such cable television company, shall allow a person to opt-out of such contract without fee, penalty or charge when such person is a victim of domestic violence and provides an attestation in writing that they no longer wish to be a party to such contract due to their status as a victim of domestic violence. Such cable television company may not require such person to disclose confidential information or details relating to such person's status as a victim of domestic violence, as a condition of permitting such person to opt-out of such contract. Further, such cable television company may not make release from such contract contingent on: (a) maintaining contractual or billing responsibility of a separated account with the provider; (b) approval of separation by the primary account holder, if the primary account holder is not the person making such request; or (c) a prohibition or limitation on the separation as a result of arrears accrued by the account. Such cable television company shall release such person from such contract no later than seven days after receiving such opt-out request. Such cable television company shall dispose of information submitted by such person no later than thirty days after receiving such information in a manner as to maintain confidentiality of such information. A claim for opting-out of such contract without charge shall be made in good faith. Such cable television company shall waive the otherwise applicable fee, penalty or charge for such person requesting to opt-out of such contract. Every

cable television company shall make information about the options and process described in this section readily available to consumers on the website and any mobile application of the provider, in physical stores, and in other forms of public-facing consumer communication.

3. A covered provider and any officer, director, employee, vendor or agent thereof shall not be subject to liability for any claims arising from an action taken or omission made with respect to compliance with this section.

§ 399-yyy. Satellite television company providing television and/or telephone services. 1. Every direct broadcast satellite service provider, as defined in this section, that provides television and/or telephone services to customers in New York shall allow a person who is under contract including, but not limited to a multi-year contract or bundled contract with such satellite television company, to opt-out of such contract without fee, penalty or charge when such a person is a victim of domestic violence and provides an attestation in writing that they no longer wish to be a party to such contract due to their status as a victim of domestic violence. Such satellite television company may not require such person to disclose confidential information or details relating to such person's status as a victim of domestic violence, as a condition of permitting such person to opt-out of such contract. Further, such satellite television company may not make release from such contract contingent on: (a) maintaining contractual or billing responsibility of a separated account with the provider; (b) approval of separation by the primary account holder, if the primary account holder is not the person making such request; or (c) a prohibition or limitation on the separation as a result of arrears accrued by the account. Such satellite television company shall release such person from such contract no later than seven days after receiving such opt-out request. Such satellite television company shall dispose of information submitted by such person no later than thirty days after receiving such information in a manner as to maintain confidentiality of such information. A claim for opting-out of such contract without charge shall be made in good faith. Such satellite television company shall

waive the otherwise applicable fee, penalty or charge for such person requesting to opt-out of such contract. Every satellite television company shall make information about the options and process described in this section readily available to consumers on the website and any mobile application of the provider, in physical stores, and in other forms of public-facing consumer communication.

2. For the purposes of this section, the following terms shall have the following meanings:

(a) "Direct broadcast satellite service", means the distribution or broadcasting by satellite of video programming or services directly to receiving equipment located at an end user subscriber's or an end user customer's premises, including, but not limited to, the provision of premium channels, the provision of music or other audio services or channels, and any other service received in connection with the provision of direct broadcast satellite service.

(b) "Direct broadcast satellite service provider", means a person who transmits, broadcasts or otherwise provides direct broadcast satellite service to subscribers or customers in the state.

* 3. A covered provider and any officer, director, employee, vendor or agent thereof shall not be subject to liability for any claims arising from an action taken or omission made with respect to compliance with subdivision one of this section.

* NB Effective June 30, 2023

* **§ 399-yyy. Macrocell renewable energy reporting.** 1. Upon the twelfth month after the effective date of this section, the wireless service industry shall collaborate on and issue a white paper reporting on current and future efforts to pursue renewable energy at macrocell sites with the report delivered to the governor, the speaker of the assembly, the temporary president of the senate, and the chair of the senate energy and telecommunications committee and the assembly corporations, authorities and commissions committee. The report shall include, but need not be limited to, consideration of the following issues:

(a) the company's existing and future investments in renewable energy

sources, as corporations generally and at macrocell sites specifically;

(b) the energy demands of existing macrocell sites including any anticipated increases to demand at such sites;

(c) the benefits and challenges of relying on renewable energy to provision wireless service;

(d) potential impacts to existing backup power sources; and

(e) estimated costs relating to using renewable energy to power macrocell sites.

2. For purposes of this section, a "macrocell" is a cell in a mobile phone network that provides radio coverage served by a high-power cell site (tower, antenna or mast). The "wireless service industry" shall include wireless carriers, tower companies, and their trade associations that offer service to New York state customers.

* NB Repealed December 21, 2026

§ 399-z. Telemarketing; establishment of no telemarketing sales calls statewide registry; authorization of the transfer of telephone numbers on the no telemarketing sales calls statewide registry to the national "do-not-call" registry. 1. As used in this section, the following terms shall have the following meanings:

a. "Department" shall mean the department of state.

b. "Secretary" shall mean the secretary of state.

c. "Customer" means any natural person who is a resident of this state and who is or may be required to pay for or to exchange consideration for goods and services offered through telemarketing;

d. "Doing business in this state" means conducting telephonic sales calls: (i) from a location in this state; or (ii) from a location outside of this state to consumers residing in this state;

e. "Goods and services" means any goods and services, and shall include any real property or any tangible personal property or services

of any kind;

f. "Negative option feature" means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject such goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

g. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries or other business entity;

h. "Telemarketer" means any person who, for financial profit or commercial purposes in connection with telemarketing, makes telemarketing sales calls or electronic messaging texts to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a telemarketer. For the purposes of this section, "commercial purposes" shall mean the sale or offer for sale of goods or services;

i. "Telemarketing" means any plan, program or campaign that is conducted to induce payment or the exchange of any other consideration for any goods or services that involves more than one telephone call or electronic messaging text by a telemarketer in which the customer is located within the state at the time of the call. Telemarketing does not include the solicitation of sales through media other than by telephone calls or electronic messaging texts and does not include calls or electronic messaging texts intended to implement or complete a transaction to which the customer has previously consented;

j. "Telemarketing sales call" means a telephone call or electronic messaging text made directly or indirectly by a telemarketer or by any outbound telephone calling technology that delivers a prerecorded message to a customer or to a customer's voicemail or answering machine service, in which such telephone call or electronic messaging text is for the purpose of inducing payment or the exchange of any other consideration for any goods or services;

k. "Unsolicited telemarketing sales call" means any telemarketing sales call or electronic messaging text other than:

(i) in response to an express written or verbal request by the customer; or

(ii) in connection with an established business relationship, which has not been terminated by either party, unless such customer has stated to the telemarketer that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer;

l. "Caller identification information" means information provided by a caller identification service regarding the telephone number and name of the person calling;

m. "Caller identification service" means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone; and

n. "Electronic messaging text" means real-time or near real-time non-voice messages in text form over communications networks, and includes the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable or other like connection between the points of origin and reception of such transmission.

2. No telemarketer or seller shall engage in telemarketing at any time other than between 8:00 A.M. and 9:00 P.M. at the location of the customer unless the customer has given their express consent to the call at a different time. Telemarketers shall provide, in a clear and coherent manner using words with common and everyday meanings, at the beginning but no later than thirty seconds from the commencement of the call of each telemarketing sales call all of the following information, provided that the information set forth in paragraphs a and b of this subdivision shall be given to the customer first:

a. the telemarketer's name and the person on whose behalf the solicitation is being made, if other than the telemarketer;

b. the option to be automatically added to the seller's entity specific do-not-call list, as required by subdivisions seven, eight, and nine of this section;

c. whether the call is being recorded;

d. the purpose of the telephone call; and

e. the identity of the goods or services for which a fee will be charged.

2-a. It shall be unlawful for any telemarketer or seller to knowingly cause any caller identification service to transmit misleading, inaccurate, or false caller identification information, provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name or telephone number of the person or seller on behalf of which a telemarketing call is placed.

3. Prior to the purchase of any good or service, telemarketers shall disclose to the customer the cost of the goods or services that are the subject of the call and if the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charges, the dates the charges will be submitted for payment, and the specific steps the customer must take to avoid the charge.

4. a. The department is authorized to establish, manage, and maintain a no telemarketing sales calls statewide registry which shall contain a list of customers who do not wish to receive unsolicited telemarketing sales calls. The department may contract with a private vendor to establish, manage and maintain such registry, provided the private vendor has maintained national no telemarketing sales calls registries for more than two years, and the contract requires the vendor to provide the no telemarketing sales calls registry in a printed hard copy format and in any other format as prescribed by the department.

b. The department is authorized to have the national "do-not-call" registry established, managed and maintained by the federal trade commission pursuant to 16 C.F.R. Section 310.4 (b) (1) (iii) (B) serve as the New York state no telemarketing sales calls statewide registry provided for by this section. The department is further authorized to take whatever administrative actions may be necessary or appropriate for such transition including, but not limited to, providing the telephone numbers of New York customers registered on the no telemarketing sales calls statewide registry to the federal trade commission, for inclusion on the national "do-not-call" registry.

5. No telemarketer or seller may make or cause to be made any unsolicited telemarketing sales call to any customer when that customer's telephone number has been on the national "do-not-call" registry, established by the federal trade commission, for a period of thirty-one days prior to the date the call is made, pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B).

5-a. It shall be unlawful for any telemarketer doing business in this state to knowingly make an unsolicited telemarketing sales call to any person in a county, city, town or village under a declared state of emergency or disaster emergency as described in sections twenty-four or twenty-eight of the executive law.

6. No telemarketer or seller shall initiate any telemarketing sales call by means of a technology that delivers a pre-recorded message, unless the telemarketer or seller has obtained from the customer an express agreement, in writing that:

a. the telemarketer or seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to make telemarketing sales calls to such customer;

b. the telemarketer or seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

c. evidences the willingness of the customer to receive telemarketing sales calls by or made on behalf of a specific seller; and,

d. includes such customer's telephone number and signature.

7. In the case of any telemarketing sales call delivered by means of a technology that delivers a pre-recorded message that could be received by a customer who can use an automated interactive voice and/or keypress activated opt-out mechanism to assert a do-not-call request, such call shall include a mechanism that allows the customer to automatically add the number called to the seller's entity specific do-not-call list, and which mechanism, once invoked, immediately ends the call.

8. In the case of any telemarketing sales call delivered by means of a technology that delivers a pre-recorded message that could be answered by an answering machine or voicemail service, that the call include a toll-free number that must connect the customer directly to an automated interactive voice or keypress activated opt-out mechanism that allows the consumer to automatically add the number called to the seller's entity specific do-not-call list, and which mechanism, once invoked, immediately ends the call.

9. In the case of any telemarketing sales call made by a natural person, the telemarketer or seller shall inform the customer that he or she may request that his or her telephone number be added to the seller's entity specific do-not-call list. If the customer opts to do so, the telemarketer or seller shall immediately end the call and shall add the number called to such list or cause the number called to be added to such list.

10. No telemarketer or seller shall transmit, share, or otherwise make available any customer's contact information, including name, telephone number, or email address, which has been provided to such telemarketer or seller by such customer, to any person, corporation, or other entity without the express agreement of the consumer in writing or in electronic format, unless otherwise required by law, or pursuant to a

lawful subpoena or court order.

11. Telemarketers and sellers shall keep for a period of twenty-four months from the date the record is created records relating to its telemarketing activities.

12. a. The department shall provide notice to customers of the establishment of the national "do-not-call" registry. Any customer who wishes to be included on such registry shall notify the federal trade commission as directed by relevant federal regulations.

b. Any company that provides local telephone directories to customers in this state shall inform its customers of the provisions of this section by means of publishing a notice in such local telephone directories.

13. When the department has reason to believe a telemarketer has engaged in repeated unlawful acts in violation of this section, or when a notice of hearing has been issued pursuant to subdivision fourteen of this section, the department may request in writing the production of relevant documents and records as part of its investigation. If the person upon whom such request was made fails to produce the documents or records within thirty days after the date of the request, the department may issue and serve subpoenas to compel the production of such documents and records. If any person shall refuse to comply with a subpoena issued under this section, the department may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.

14. a. Where it is determined after hearing that any person has violated one or more provisions of this section, the secretary, or any person deputized or so designated by him or her may assess a fine not to exceed twenty thousand dollars for each violation.

b. Any proceeding conducted pursuant to paragraph a of this subdivision shall be subject to the state administrative procedure act.

c. Nothing in this subdivision shall be construed to restrict any right which any person may have under any other statute or at common law.

15. A person shall not be held liable for violating this section if:

a. the person has obtained a version of the "do-not-call" registry from the federal trade commission no more than thirty-one days prior to the date any telemarketing call is made, pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B), and the person can demonstrate that, as part of the person's routine business practice at the time of an alleged violation, it has established, implemented and updated written policies and procedures related to the requirements of this section prior to the date any telemarketing call is made;

b. the person has trained his or her personnel in the requirements of this section; and

c. the person maintains and can produce records demonstrating compliance with paragraphs a and b of this subdivision and the requirements of this section.

16. The department shall prescribe rules and regulations to administer this section.

17. Severability. If any clause, sentence, paragraph or part of this section shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

*** § 399-z-1. Telecommunication companies blocking certain numbers. 1.**
As used in this section, the following terms shall have the following meanings:

a. "caller identification information" means information provided by a caller identification service regarding the telephone number and the name of the person calling;

b. "caller identification service" means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone;

c. "pooling administrator" means the thousands-block pooling administrator as identified in 47 C.F.R. § 52.20; and

d. "provider" means a telecommunication company that provides voice communications services to customers in this state.

2. Consistent with authorization provided by federal law and rules of the federal communications commission or its successors:

a. providers shall block a voice call when the subscriber to which the originating number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only; and

b. providers shall block calls originating from the following numbers:
(i) a number that is not a valid North American numbering plan number;
(ii) a valid North American numbering plan number that is not allocated to a provider by the North American numbering plan administrator or the pooling administrator; and

(iii) a valid North American numbering plan number that is allocated to a provider by the North American number plan administrator or pooling administrator, but is unused, so long as the provider blocking the calls is the allocatee of the number and confirms that the number is unused or has obtained verification from the allocatee that the number is unused at the time of the blocking.

c. providers shall not block a voice call if the call is an emergency

call placed to 911.

d. providers shall not block a voice call to a subscriber who has requested that no inbound calls be blocked.

3. For purposes of blocking calls from certain originating numbers as authorized in this section, a provider may rely on caller identification service information to determine the originating number.

4. Notwithstanding any other provision of law, rule, or regulation, a voice service provider shall be considered to be in compliance with this section and any rule or regulation adopted thereunder if such provider has filed a certification with the federal communications commission that the provider's traffic is either signed with STIR/SHAKEN or subject to a compliant robocall mitigation program. A copy of such certification shall be made available to the attorney general or the public service commission, upon request.

* NB There are 2 § 399-z-1's

*** § 399-z-1. STIR/SHAKEN authentication framework.** 1. As used in this section, the following terms shall have the following meanings:

(a) "STIR/SHAKEN authentication framework" means the secure telephone identity revisited and signature-based handling of asserted information using tokens standards proposed by the information and communications technology industry.

(b) "Voice service" means any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan or any successor to the North American Numbering Plan adopted by the public service commission under section 251(e)(1) of the Communications Act of 1934 (47 U.S.C. 251(e)(1)); and includes:

i. transmissions from a telephone facsimile machine, computer, or other device to a telephone facsimile machine; and

ii. without limitation, any service that enables real-time, two-way

voice communications, including any service that requires internet protocol-compatible customer premises equipment (commonly known as "CPE") and permits out-bound calling, whether or not the service is one-way or two-way voice over internet protocol.

2. Not later than twelve months after the effective date of this section, the public service commission shall require a provider of voice service to implement the STIR/SHAKEN authentication framework or alternative technology that provides comparable or superior capability to verify and authenticate caller identification in the internet protocol networks of voice service providers.

3. (a) Any voice service provider that knowingly fails or neglects to comply with this section, or a rule or regulation adopted thereunder, shall forfeit to the people of the state of New York a sum not less than ten thousand dollars and no more than one hundred thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense.

(b) Notwithstanding any other provision of law, rule, or regulation, a voice service provider shall be considered to be in compliance with this section and any rule or regulation adopted thereunder if that provider has filed a certification with the Federal Communications Commission that the provider's traffic is either signed with STIR/SHAKEN or subject to a compliant robocall mitigation program. A copy of such certification shall be made available to the attorney general or the public service commission, upon request.

4. Whenever there shall be a violation of this section, an application may be made by either (a) the attorney general in the name of the people of the state of New York, or (b) in the case of a voice service provider subject to the jurisdiction of the public service commission, to a court or justice having jurisdiction, to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations, and for the enforcement of the penalties provided in this section.

5. When the department of public service has reason to believe a person or voice service provider has violated any provision of this section, the department may request in writing the production of relevant documents and records. If the person upon whom such request was made fails to produce the documents or records within fourteen days after the date of the request, the department may issue and serve subpoenas to compel the production of such documents and records. If any person shall refuse to comply with a subpoena issued under this section, the department may petition a court of competent jurisdiction to enforce the subpoena and, notwithstanding any other provision of law, to request a civil penalty not to exceed one thousand dollars per day, actual damages sustained by reason of the failure to comply, and such sanctions as the court may direct.

6. The public service commission and the department of public service may promulgate rules and regulations to implement and enforce the provisions of this section.

* NB There are 2 § 399-z-1's

§ 399-zz. Telephone bills. At the time service is initiated to a residential customer and at least once a year thereafter, every telephone corporation, as defined in subdivision seventeen of section two of the public service law, and every cable television company, as defined in subdivision one of section two hundred twelve of the public service law that provides telephone service to customers in New York shall provide its customers with a notice that billing statements are available in a large print format. Upon written request by a customer, every telephone corporation and cable television company shall provide the customer's billing statements in large print format no later than sixty days after the date upon which the request is received by the telephone corporation and cable television company. The provisions of this section shall apply only to printed statements. For the purposes of this section, "large print" means a font size of sixteen or larger to illuminate billing information.

§ 399-zzz. Prohibition of certain fee charges. 1. Subject to federal law and regulation, no person, partnership, corporation, association or other business entity shall charge a consumer an additional rate or fee or a differential in the rate or fee associated with payment on an account when the consumer chooses to pay by United States mail or receive a paper billing statement. This subdivision shall not be construed to prohibit a person, partnership, corporation, association or other business entity from offering consumers a credit or other incentive to elect a specific payment or billing option.

2. Every violation of this section shall be deemed a deceptive act and practice subject to enforcement under article twenty-two-A of this chapter.

3. Nothing in this section shall be construed to restrict any right which any person may have under any other statute or the common law.

§ 399-zzzz. Prohibition of certain fee charges for termination or early cancellation. 1. Subject to federal law and regulation:

a. no provider of telephone, cellular telephone, television, internet, energy, or water services shall impose a fee for termination or early cancellation of a service contract in the event the customer has deceased before the end of such contract; and

b. a retail lessee, as defined in section three hundred thirty-one of the personal property law, shall not be liable for charges for the early termination of a retail lease agreement of a motor vehicle if he or she has deceased before the end of such lease.

2. Every violation of this section shall be punishable by a civil penalty not to exceed one thousand dollars.

*** § 399-zzzzz. Broadband service for low-income consumers.** 1. For the purposes of this section, the term "broadband service" shall mean a

mass-market retail service that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service provided by a wireline, fixed wireless or satellite service provider, but shall not include dial-up service.

2. Every person, business, corporation, or their agents providing or seeking to provide wireline, fixed wireless or satellite broadband service in New York state shall, no later than sixty days after the effective date of this section, offer high speed broadband service to low-income consumers whose household: (a) is eligible for free or reduced-priced lunch through the National School Lunch Program; or (b) is eligible for, or receiving the supplemental nutrition assistance program benefits; or (c) is eligible for, or receiving Medicaid benefits; or (d) is eligible for, or enrolled in senior citizen rent increase exemption; or (e) is eligible for, or enrolled in disability rent increase exemption; or (f) is a recipient of an affordability benefit from a utility. Such low-income broadband service shall provide a minimum download speed equal to the greater of twenty-five megabits per second download speed or the download speed of the provider's existing low-income broadband service sold to customers in the state subject to exceptions adopted by the Public Service Commission where such download speed is not reasonably practicable.

3. Broadband service for low-income consumers, as set forth in this section, shall be provided at a cost of no more than fifteen dollars per month, inclusive of any recurring taxes and fees such as recurring rental fees for service provider equipment required to obtain broadband service and usage fees. Broadband service providers shall allow low-income broadband service subscribers to purchase standalone or bundled cable and/or phone services separately. Broadband service providers may, once every five years, and after thirty days' notice to its customers and the department of public service, increase the price of this service by the lesser of the most recent change in the consumer price index or a maximum of two percent per year of the price for such service.

4. A broadband service provider who offers a high speed broadband service to eligible low-income customers, as such term is used in subdivision two of this section, at a download speed of two hundred megabits per second or greater at a cost of no more than twenty dollars per month, inclusive of any recurring taxes and fees such as recurring rental fees for service provider equipment required to obtain broadband service and usage fees, shall be considered to be in compliance with the requirements of subdivisions two and three of this section. Such providers may, once every two years, and after thirty days' notice to its customers and the department of public service, increase the price of such service by the lesser of the most recent change in the consumer price index or a maximum of two percent per year of the price for such service.

5. The requirements of subdivisions two and three of this section shall not apply to any broadband service provider providing service to no more than twenty thousand households, if the public service commission determines that compliance with such requirements would result in unreasonable or unsustainable financial impact on the broadband service provider.

6. Any contract or agreement for broadband service targeted to low-income consumers provided by an entity described in subdivision two of this section, pursuant to this section or otherwise, shall have the same terms and conditions, other than price and speed set pursuant to this section, as for the regularly priced offerings for similar service provided by such entity.

7. Every person, business, corporation, or their agents providing or seeking to provide broadband service in New York state shall make all commercially reasonable efforts to promote and advertise the availability of broadband service for low-income consumers including, but not limited to, the prominent display of, and enrollment procedures for, such service on its website and in any written and commercial promotional materials developed to inform consumers who may be eligible for service pursuant to this section.

8. Every person, business, corporation, or their agents providing or seeking to provide broadband service in New York state shall annually submit to the department of public service, no later than November fifteenth after the effective date of this act, and annually thereafter, a compliance report setting forth: (a) a description of the service offered pursuant to this section; (b) the number of consumers enrolled in such service; (c) a description of the procedures being used to verify the eligibility of customers receiving such service; (d) a description and samples of the advertising or marketing efforts undertaken to advertise or promote such service; (e) a description of all retail rate products, including pricing, offered by such person, business, corporation, or their agents; (f) a description, including speed and price, of all broadband products offered in the state of New York; (g) a description of the number of customers in arrears for the payment for broadband service, percentage of customers in arrears that qualify for low-income broadband service, the number of households that have had their service terminated as a result of non-payment, the number of customers whose service was terminated for arrears arising from non-payment for services other than broadband service, and the number of households that have their broadband service restored after being delinquent on their payments; and such other information as the department of public service may require.

9. The department of public service shall, within two years of the effective date of this section and at least every five years thereafter, undertake a proceeding to determine if the minimum broadband download speed in this section should be increased to the federal communications commission's benchmark broadband download speed, or to another minimum broadband download speed if the federal communications commission has not increased its benchmark by such date. The department of public service shall also: (a) undertake appropriate measures to inform the public about available broadband products, including retail rate product offerings and low-income offerings; and (b) periodically, but no less than once every five years, review eligibility requirements for the low-income service required pursuant to this section, and update such requirements as may be necessary to meet the needs of consumers.

10. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars per violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

* NB There are 2 § 399-zzzzz's

*** § 399-zzzzz. Use of preferred name and pronouns.** 1. For the purposes of this section, "telephone service provider" means any company that provides voice service utilizing any technology, regardless of whether such provider is regulated pursuant to the public service law.

2. Every telephone service provider shall provide customers with a convenient option to request that the telephone service provider use their preferred name and/or preferred pronouns in all written or oral communications between the telephone service provider and the customer, as well as all statements or documentation relating to a customer's telephone service, regardless of whether such customer's preferred name differs from their current legal name.

3. If a customer's preferred name differs from their current legal name, a telephone service provider may require such customer to provide reasonable proof of identity using their legal name, provided that such information shall be used solely to verify the customer's identity or for other purposes required by law.

4. No telephone service provider shall:

(a) willfully and repeatedly fail to use a customer's preferred name and/or preferred pronouns after being clearly informed of the preferred name and/or preferred pronouns pursuant to subdivision two of this section; or

(b) require a customer to specify their sexual orientation or gender identity or expression in order to use their preferred name and/or preferred pronouns.

* NB There are 2 § 399-zzzzz's

ARTICLE 27

LICENSING OF NAIL SPECIALTY, NATURAL HAIR STYLING, ESTHETICS AND COSMETOLOGY

- Section 400. Definitions.
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§ 400. Definitions. As used in this article, unless the context requires otherwise:

1. "Secretary" means the secretary of state.
2. "Person" means an individual, firm, limited liability company, partnership or corporation.
3. "Licensee" means a person licensed pursuant to this article to engage in the practice of natural hair styling, esthetics, nail specialty or cosmetology, or to operate an appearance enhancement business in which such practice, as herein defined, is provided to the public.
4. The practice of "nail specialty" means providing services for a fee or any consideration or exchange to cut, shape or to enhance the appearance of the nails of the hands or feet. Nail specialty shall include the application and removal of sculptured or artificial nails.
5. The practice of "natural hair styling" means providing for a fee, or any consideration or exchange, whether direct or indirect, any of the following services to the hair of a human being: shampooing, arranging, dressing, twisting, wrapping, weaving, extending, locking or braiding the hair or beard by either hand or mechanical appliances. Such practice shall not include cutting, shaving or trimming hair except that such activities are permissible to the extent that such activities are incidental to the practice of natural hair styling. Such practice shall not include the application of dyes, reactive chemicals, or other

preparations to alter the color or to straighten, curl, or alter the structure of the hair. Techniques which result in tension on hair roots such as certain types of braiding, weaving, wrapping, locking and extending of the hair may only be performed by a natural hair styling or cosmetology licensee who has successfully completed an approved course of study in such techniques.

6. The practice of "esthetics" means providing for a fee, or any consideration or exchange, whether direct or indirect, services to enhance the appearance of the face, neck, arms, legs, and shoulders of a human being by the use of compounds or procedures including makeup, eyelashes, depilatories, tonics, lotions, waxes, sanding and tweezing, whether performed by manual, mechanical, chemical or electrical means and instruments but shall not include the practice of electrology.

7. The practice of "cosmetology" means providing the services described in subdivisions four, five and six of this section, providing service to the hair, head, face, neck or scalp of a human being, including but not limited to shaving, trimming, and cutting the hair or beard either by hand or mechanical appliances and the application of antiseptics, powders, oil, clays, lotions or applying tonics to the hair, head, or scalp, and in addition includes providing, for a fee or any consideration or exchange, whether direct or indirect, services for the application of dyes, reactive chemicals, or other preparations to alter the color or to straighten, curl, or alter the structure of the hair of a human being.

8. "Appearance enhancement business" means the business of providing any or all of the services licensed pursuant to this article at a fixed location.

9. "Department" means the department of state.

10. The practice of "waxing" means providing for a fee, or any consideration or exchange, whether direct or indirect, services to enhance the appearance of the face, neck, arms, legs, or shoulders of a human being by the removal of hair by the use of depilatories, waxes or

tweezing but shall not include the practice of electrology.

11. "Trainee" means a person pursuing in good faith a course of study in the practice of nail specialty under the tutelage, supervision and direction of a licensed nail practitioner. Such trainee shall be employed by a licensed appearance enhancement business.

§ 401. License required. 1. No person shall engage in the practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology, as defined in section four hundred of this article, without having received a license to engage in such practice in the manner prescribed in this article. No person shall act as a trainee or perform any service as such unless he or she has obtained a certificate of registration pursuant to this article.

2. No person shall own, control or operate, whether as a sole proprietor, partner, shareholder, officer, independent contractor or other person, an appearance enhancement business without having received a license for such business in the manner provided in this article.

3. A person licensed by any other state or country to practice nail specialty, waxing, natural hair styling, esthetics or cosmetology shall be allowed to practice in New York state for three months or less within any calendar year for the purpose of giving to, or receiving from, persons who are licensed under this article training in current styles, techniques or materials, provided however, that no such unlicensed person may provide services to the public for any fee, or other compensation, whether direct or indirect.

§ 402. Powers of the secretary of state. In addition to the powers and duties elsewhere prescribed in this article, the secretary shall have power to:

1. Appoint a sufficient number of assistants, inspectors and other employees as may be necessary to carry out the provisions of this

article, to prescribe their duties, and to fix their compensation within the amount appropriated therefor;

2. Examine the qualifications and fitness of applicants for licenses and prospective applicants taking examinations under this article;

3. Keep records of all licenses issued, suspended or revoked, or orders directing the cessation of unlicensed activities;

4. Prepare a manual of rules and regulations for the conduct of examinations and to furnish copies thereof to persons desiring the same upon payment of a reasonable fee therefor; and

5. Adopt such rules and regulations not inconsistent with the provisions of this article, as may be necessary with respect to the form and content of applications for licenses, the reception thereof, the investigation and examination of applicants and of prospective applicants taking examinations and their qualifications, and the other matters incidental or appropriate to the powers and duties of the secretary as prescribed by this article and for the proper administration and enforcement of the provisions of this article.

§ 403. Advisory committee. 1. There shall be established within the department an advisory committee which shall consist of nine members broadly representative of the appearance enhancement industry; including one person engaged in the practice of either nail specialty or waxing; two persons engaged in natural hair styling; one of whom shall be knowledgeable in the practice of styling techniques which place tension on the hair roots, and one of whom shall ensure strict adherence to quality services for all clients of all hair types, including, but not limited to, curl pattern, hair strand thickness, and volume of hair; one person engaged in esthetics; two persons engaged in cosmetology; two persons engaged in training of persons for such practices and one person licensed as a dermatologist. The secretary shall appoint such persons to serve on the advisory committee, provided, that two shall be appointed by the secretary on the recommendation of the temporary president of the

senate and two shall be appointed by the secretary on the recommendation of the speaker of the assembly. Each member of the committee shall be appointed for terms of two years. Any member may be reappointed for additional terms. The secretary shall designate from among the members of the committee a chairperson who shall serve at the pleasure of the secretary.

2. The advisory committee shall meet no less than three times each year.

3. The advisory committee shall advise the secretary on all matters relating to this article, and on such other matters as the secretary shall request. In advising the secretary on matters concerning professional education or curriculum, inclusive of the maintenance of cultural and ethnic awareness within the prescribed curriculum in regard to hair types, including, but not limited to, curl pattern, hair strand thickness, and volume of hair, the advisory committee shall, to the extent practicable, consult with the state education department. The advisory committee is directed, in consultation with the department of state, the New York state office for the prevention of domestic violence and an advocacy group recognized by the federal department of health and human services, which has the ability to coordinate statewide and with local communities on programming and educational materials related to the prevention and intervention of domestic violence in New York state, to develop, provide for and integrate awareness training on domestic violence and sexual assault for all prospective students seeking to be licensed under this article. Further, on a voluntary basis for those seeking to renew their license as provided for in this article to develop and provide access to educational material for domestic violence and sexual assault awareness.

4. The secretary shall designate an employee of the department to act as secretary of the advisory committee, and shall provide such advisory committee such stenographic or other assistance as may be necessary.

5. Members of the advisory committee shall receive no compensation but shall be entitled to actual and necessary traveling and other expenses

while engaged in the performance of such member's duties hereunder.

§ 404. Rules and regulations. The secretary shall promulgate rules and regulations which establish standards for practice and operation by licensees and trainees under this article in order to ensure the health, safety and welfare of the public including licensees and trainees when they are working within such establishments. Such rules and regulations shall include, but not be limited to, the sanitary conditions and procedures required to be maintained, a minimum standard of training appropriate to the duties of nail specialists, trainees, waxers, natural hair stylists, estheticians, and cosmetologists and the provision of service by nail specialists, trainees, waxers, natural hair stylists, estheticians or cosmetologists at remote locations other than the licensee's home provided that such practitioner holds an appearance enhancement business license to operate at a fixed location or is employed by the holder of an appearance enhancement business license. Regulations setting forth the educational requirements for nail specialists and trainees shall include education in the area of causes of infection and bacteriology. Regulations setting forth the educational requirements for cosmetologists or natural hair stylists shall include education regarding the provision of services to individuals with all hair types and textures, including, but not limited to, various curl or wave patterns, hair strand thicknesses, and volumes of hair. In promulgating such rules and regulations the secretary shall consult with the state education department, the advisory committee established pursuant to this article, any other state agencies and private industry representatives as may be appropriate in determining minimum training requirements.

§ 404-a. Monomeric methyl methacrylate. 1. No owner or operator of an appearance enhancement business shall knowingly:

- a. sell, use or apply to any person monomeric methyl methacrylate; or
- b. direct any agent or employee of such business to sell, use or apply

to any person monomeric methyl methacrylate.

2. A first violation of this section shall be punishable by a civil penalty of not more than one thousand dollars. A second or any subsequent violation of this section shall be a class B misdemeanor.

§ 404-b. Nail specialty; owner responsibilities. In addition to any rules and regulations establishing standards for practices and operations by licensees under this article, in order to ensure the health, safety and welfare within appearance enhancement businesses, all owners and operators of appearance enhancement businesses which practice nail specialty shall make available for use, gloves and facemasks for nail speciality licensees and trainees who work in such businesses.

§ 404-c. Ultraviolet nail drying devices. 1. "Ultraviolet nail drying device" shall mean any equipment which is designed to emit electromagnetic radiation in the wavelength interval of two hundred to four hundred nanometers in air, and which is intended to induce nail curing or hardening through irradiation.

2. If the commissioner of health makes a determination pursuant to section thirty-five hundred fifty-six of the public health law that ultraviolet nail drying devices pose a health hazard to users, any appearance enhancement business where the practice of nail specialty is conducted shall prominently post the notice developed by the department regarding such health hazard in an area clearly visible to patrons in the licensed appearance enhancement business where the practice of nail specialty is conducted or in the place where the practice of nail specialty licensed pursuant to this article is conducted. The department shall develop and make such sign available to each licensee.

3. If the commissioner of health makes a determination pursuant to section thirty-five hundred fifty-six of the public health law that ultraviolet nail drying devices pose a health hazard to users, any appearance enhancement business that utilizes such devices shall comply

with any and all regulations adopted by the department pursuant to this article.

§ 405. Appearance enhancement business license; requirements. 1. Any person who receives an appearance enhancement business license shall operate such business at the location named in the license and in accordance with the rules and regulations promulgated by the secretary pursuant to section four hundred four of this article. Any or all of the practices regulated by this article may be provided under one appearance enhancement business license so long as each practitioner is an appropriate licensee.

2. An appearance enhancement business licensee shall file and maintain during the term of the license evidence of a bond or liability insurance.

§ 406. License application; procedure; requirements; temporary license. 1. a. Any person intending to practice nail specialty, waxing, natural hair styling, esthetics or cosmetology as defined in this article, or to own or operate an appearance enhancement business, shall first make application to the secretary for a license therefor.

b. Such application shall be in a form and manner prescribed by the secretary and shall contain such information as, in the secretary's judgment, is reasonable and necessary to determine the qualifications and fitness for licensing of the applicant.

c. The application shall be subscribed by the applicant and affirmed under penalty of perjury.

d. Each application shall be accompanied by the appropriate fee as prescribed by this article.

e. Each application shall be accompanied by a certificate of a duly licensed physician, or nurse practitioner to the extent authorized by

law and consistent with subdivision three of section six thousand nine hundred two of the education law on a form prescribed by the secretary, showing freedom from any infectious or communicable disease which certificate shall have been issued within thirty days prior to the date of the filing of the application.

f. Notwithstanding the educational requirements of this section, a trainee may obtain a license to practice nail specialty if such trainee provides satisfactory evidence to the secretary that such trainee has been actively engaged in a traineeship for a period of one year and has completed a course of study set forth by the secretary. Such course of study may be delivered by electronic means.

2. a. Any person seventeen years of age or older may apply to the secretary for a license to practice nail specialty, waxing, natural hair styling, esthetics or cosmetology.

b. Each such application shall also be accompanied by satisfactory evidence of having taken and passed the appropriate examination or examinations offered by the secretary pursuant to this article for the license sought and evidence of the successful completion of an approved course of study in nail specialty, waxing, natural hair styling, esthetics or cosmetology in a school duly licensed pursuant to the education law.

c. Any applicant for a license to practice nail specialty, waxing, natural hair styling, esthetics or cosmetology may submit satisfactory evidence of licensure to practice an equivalent occupation issued by any other state, territory, protectorate or dependency of the United States or any other country in lieu of the evidence of schooling and examination required by this subdivision, provided that such license was granted in compliance with standards which were, in the judgment of the secretary, not lower than those of this state and provided that such state, territory, protectorate, dependency, or country extends similar reciprocity to the licensees of this state, or the applicant practiced an equivalent occupation in such state, territory, protectorate, dependency or country for a minimum of five years, or the applicant is a

member of the household of a member of the armed forces of the United States, national guard or reserves and was a member of such household before such member relocated to the state.

d. Notwithstanding the educational requirements of this section and the testing requirements of this section, an applicant who otherwise has met the licensing requirements of this article for a nail specialist, waxer, natural hair stylist, esthetician or cosmetologist who shall provide satisfactory evidence he or she has been actively and continuously engaged in the practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology for at least one year prior to the effective date of this article, may be issued a license for nail specialty, waxing, natural hair styling, esthetics or cosmetology pursuant to this article. Notwithstanding the educational and testing requirements of this section, a person licensed to practice barbering under article twenty-eight of this chapter who otherwise has met the licensing requirements of this article may be issued a license to practice natural hairstyling. Other than applicants licensed under article twenty-eight of this chapter, those persons who apply after a twelve month period from the effective date of this article will be required to provide evidence of training and to take the examination or examinations as required for other licenses pursuant to this article.

e. Upon acceptance by the secretary of a proper application for an operator's license to practice nail speciality, waxing, natural hair styling, esthetics or cosmetology, the secretary may issue a temporary operator's license which shall expire six months from issuance. Upon good cause shown, the secretary may renew a temporary operator's license for one additional six-month period upon filing the appropriate application and fee.

3. Appearance enhancement business license. a. Any person, eighteen years of age or older, or any firm, limited liability company, partnership or corporation having at least one member eighteen years of age or older may apply to the secretary for an appearance enhancement business license.

b. Each such application for an appearance enhancement business license shall be accompanied by evidence of a bond or liability insurance.

4. a. Notwithstanding any provision contained in this article to the contrary, if any person, eligible for any license pursuant to this article, should be called to active military service at or during the time application for any license is required to be filed and license fee paid, pursuant to the provisions of this article, the period within which said application may be filed and license fee may be paid, is extended on behalf of such person, until three months after the termination of said military service.

b. In the case of persons who are called to active military service and will be discharged from active military service, the period of two years specified in paragraph d of subdivision two of this section need not be continuous. The length of time such person was engaged in the practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology before entering active military service may be added to any period of time during which such person was or is engaged in the practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology after the termination of active military service.

§ 407. Examinations. 1. The examinations for the license to practice natural hair styling, esthetics, nail specialty and cosmetology shall be practical and written. The examinations for the license to practice waxing shall be limited to a written examination only. The secretary shall determine reasonable standards of performance for each license and shall evaluate the prospective applicants and applicants on the basis of such standards. The objectives of the examinations shall be to insure that prospective applicants and applicants have sufficient basic skills to safeguard the health and safety of the public and to insure that prospective applicants and applicants have attained adequate levels of skill to competently engage in the activities authorized by the license.

2. The secretary shall prepare examination questions for persons to

qualify for licensure under this article. Such examination questions shall include, where applicable, questions relating to providing services to individuals with varying hair types and textures. All such examinations shall be the same for all persons for the license sought at any given examination. Such test shall not be limited to any specific method or system.

3. Examinations shall be in the English language and, at the discretion of the secretary, may be translated or transposed into any other language if requested by the prospective applicant and upon satisfactory proof of the need therefor provided that a request for such a translated examination is made of the secretary at the time the application for license is filed. In the case of physically disabled persons, provision for the alternative administration of the examination may be made, provided a request for such procedure is made of the secretary a reasonable time in advance of the examination. Examinations shall be held at least quarterly and shall be given in at least four convenient places in the state.

§ 408. Licenses; display; renewal; duplicates. 1. All licenses shall expire four years from the date of issuance.

2. No license shall be assignable or transferrable except pursuant to the provisions of this article.

3. An appearance enhancement business license may be assigned. When the appearance enhancement business licensee is a partnership or a limited liability company, or a corporation, the license may be assigned upon the consent of all members of a partnership or a majority of the voting members of a limited liability company or the majority shareholders of a corporation, respectively. The application for such transfer or assignment must be accompanied by proof satisfactory to the department that the requirements herein provided have been complied with. No assignment or transfer shall become effective unless and until the endorsement has been made on the face of the license by the department and such license, as endorsed, has been returned to the

assignee or transferee. All such requests for endorsements shall be accompanied by a five dollar fee. A bona fide purchaser of a licensed appearance enhancement business may continue to use the license of the seller for a period of thirty days from the date of the sale, provided there is endorsed on the face thereof the name of the purchaser, the date of the sale, and the signatures of the seller and the purchaser; and provided further within five working days from the date of the sale an application, in accordance with the provisions of this article, shall be presented by the purchaser to the secretary for an appearance enhancement business license.

4. An appearance enhancement business license issued to an individual or to a partnership may be used after the death of the licensed individual or co-partner by the next of kin or duly appointed administrator or executor in the name of the estate for a period of not more than one hundred twenty days from the date of death of such individual or co-partner provided that there is endorsed upon the face of the license certificate after the name of the decedent the word "deceased", the date of death and the name of the next of kin, administrator or executor under whose authority the license is being used; the period of one hundred twenty days aforesaid may be extended upon application to the secretary of state and for good cause shown for an additional period not to exceed one hundred twenty days. Any license so continued which shall expire during such period of one hundred twenty days or the extension thereof may be renewed by the next of kin, administrator or executor for the balance of such period or the extension thereof.

5. A license certificate issued pursuant to this article shall be posted in some conspicuous place in the licensed premises or in the place where the practice of an occupation licensed pursuant to this article is conducted. At the entrance to each licensed premises or at the entrance to any place where the practice of an occupation licensed pursuant to this article is conducted, a sign shall be posted which shall include the rules and regulations governing such practice and a manner in which aggrieved persons may register a complaint with the department. The department shall prepare and furnish such sign to each

licensee.

6. Any license, which has not been suspended or revoked, may, upon the payment of the renewal fee, be renewed for additional periods of four years from its application, without further examination, upon the filing of an application for such renewal, on a form to be prescribed by the secretary. When an applicant seeks to renew their license, the department shall notify applicants of voluntary domestic violence and sexual assault awareness education courses that can be accessed through the department's website.

7. Any person failing to file for renewal of a license pursuant to the provisions of this article within one year immediately following the expiration of such person's last license shall pay an additional fee of ten dollars, and if such person fails to file application and fee for renewal within five years, such person shall be ineligible for such license until such person shall have again passed an examination.

8. A duplicate license certificate may be issued for one lost, destroyed or mutilated upon the application therefor on a form prescribed by the secretary and the payment of the fee prescribed therefor by this article. Each such duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

9. Notice in writing shall be given the secretary at the office of the secretary in Albany by the holder of an appearance enhancement business license of any change of address. The licensee shall correct the address on the license upon the filing of such notice.

10. Any licensee who fails to file any notice of change in the status of a license required by the provisions of this article shall be subject to the monetary fines set forth in section four hundred ten of this article.

11. Such license certificate shall contain a photograph of the licensee and the licensee's name. Nowhere on the license shall be the

address of the licensee.

§ 408-a. Trainee. 1. Each applicant for a certificate of registration as a trainee shall make an application which shall include the physician's certificate required by paragraph e of subdivision one of section four hundred six of this article, two recent photographs, and such other information required by such section and in such form as the secretary may prescribe.

2. A certificate of registration as a trainee shall be for a period of one year, renewable for a second year, and may be renewed for additional terms within the discretion of the secretary.

3. Each certificate of registration issued as provided in this section shall be posted in a conspicuous place in the appearance enhancement business in which the trainee is actually engaged in the practice of nail specialty as a trainee.

4. The holder of a certificate of registration as a trainee shall not be entitled to an appearance enhancement business license.

§ 408-b. Domestic violence and sexual assault awareness education. The department shall ensure that domestic violence and sexual assault awareness education courses are made available to all licensees and applicants for a license or renewal pursuant to this article and that such courses are offered through the department's website. The department, in consultation with the office for the prevention of domestic violence and advocacy groups recognized by the federal department of health and human services or the federal department of justice, which have the ability to coordinate statewide and with local communities on programming and educational materials related to the prevention and intervention of domestic violence or sexual assault in New York state, shall develop and provide access to domestic violence and sexual assault awareness education courses appropriate for those licensed under this article.

§ 409. Fees. 1. The non-refundable fee for an application for a license to engage in the practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology, shall be forty dollars initially and for each renewal thereof the fee shall be forty dollars; the fee for a temporary license and each renewal shall be ten dollars.

2. The fee for an appearance enhancement business license shall be sixty dollars initially and sixty dollars for each renewal thereof.

3. Upon a determination that it is in the best public interest to do so, the secretary may promulgate rules imposing fees not to exceed twenty dollars for the registration and renewal of the registration of a trainee.

4. The secretary shall receive a non-refundable examination fee of fifteen dollars from each person who takes a written examination pursuant to this article. Fees collected pursuant to this article shall be deposited to the credit of the business and licensing services account established pursuant to the provisions of section ninety-seven-y of the state finance law.

5. The fee for issuing a duplicate license certificate, in substitution for one lost, destroyed or mutilated shall be ten dollars.

6. The fee for changing a name on an appearance enhancement business license shall be thirty dollars.

7. The fee for changing the address on a license shall be ten dollars.

8. The fees herein set forth shall be those for licenses issued for the license period of four years.

§ 410. Administration. 1. Suspension and revocation of licenses or registrations; fines; reprimands. A license or registration issued

pursuant to this article may be suspended or revoked, or a fine not exceeding five hundred dollars payable to the department may be imposed for any one or more of the following causes:

a. Fraud or bribery in securing a license or registration or permission to take an examination therefor.

b. The making of any false statement as to a material matter in any application or other statement or certificate required by or pursuant to this article.

c. Incompetence or untrustworthiness.

d. Failure to display the license or registration as provided in this article.

e. Violation of any provision of this article, or of any rule or regulation adopted hereunder.

f. Conviction of any of the following crimes subsequent to the issuance of a license or registration pursuant to this article: fraud pursuant to sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying business records pursuant to section 175.10; grand larceny pursuant to article 155; bribery pursuant to sections 180.03, 180.08, 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50; perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article 160; homicide pursuant to sections 125.25 and 125.27; manslaughter pursuant to sections 125.15 and 125.20; kidnapping and unlawful imprisonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons possession pursuant to sections 265.02, 265.03 and 265.04; criminal use of a weapon pursuant to sections 265.08 and 265.09; criminal sale of a weapon pursuant to sections 265.11 and 265.12; compelling prostitution pursuant to section 230.33; sex trafficking pursuant to section 230.34; sex trafficking of a child pursuant to section 230.34-a; and sex offenses pursuant to article 130 of the penal law. Provided, however, that for the purposes of this

article, none of the following shall be considered criminal convictions or reported as such: (i) a conviction for which an executive pardon has been issued pursuant to the executive law; (ii) a conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or (iii) a conviction the records of which have been expunged or sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; and (iv) a conviction for which other evidence of successful rehabilitation to remove the disability has been issued.

Provided, however, a fine shall not be imposed for the causes specified in paragraph f of this subdivision.

In lieu of or in conjunction with the suspension or revocation of a license or registration, or the imposition of a fine pursuant to this section, the secretary may issue a reprimand. When a license or registration issued pursuant to this article is revoked, such license or registration shall not be reinstated or reissued until after the expiration of a period of one year from the date of such revocation. No license or registration shall be issued after a second revocation.

2. Unlicensed activities. a. The secretary may issue an order directing the cessation of any activity related to nail specialty, waxing, natural hair styling, esthetics or cosmetology for which a license is required by this article upon a determination that a person, partnership, limited liability company or business corporation, engaging in the business or occupation of, or holding himself, herself or itself out as or acted, temporarily or otherwise, as a nail specialist, natural hair stylist, esthetician or cosmetologist within this state without a valid license being in effect. The secretary shall, before making such determination and order, afford such person, partnership, limited liability company or business corporation an opportunity to be heard in person or by counsel in reference thereto in an adjudicatory proceeding held pursuant to section four hundred eleven of this article as applicable.

b. Notwithstanding any provision to the contrary, if the secretary finds that a person, partnership, limited liability company or business corporation, is holding himself, herself or itself out as or is acting as, temporarily or otherwise, an appearance enhancement business within this state without a valid license, the secretary shall provide the person, partnership, limited liability company or business corporation with a written notice of violation and complaint, and shall afford an opportunity to be heard, either in person or by counsel, before an administrative law judge no sooner than three days from delivery of such notice of violation. If documentary proof that the deficiency has been cured is not provided to the secretary at or before such hearing, following a hearing determination that unlicensed activities have occurred, the secretary may issue an immediate order directing the cessation of any activity for which an appearance enhancement license is required.

c. The secretary may issue an order directing the cessation of any activity if the secretary finds that a person, including a partnership, a limited liability company or business corporation, is holding himself, herself or itself out as or is acting as, temporarily or otherwise, an appearance enhancement business within the state without a (i) bond or (ii) liability insurance or liability coverage which is covered through a bond. The secretary shall, before making such determination and order, afford such person, partnership, limited liability company or business corporation an opportunity to be heard in person or by counsel in reference thereto in an adjudicatory proceeding held pursuant to section four hundred eleven of this article. The enforcement of this provision shall require the department of financial services to certify in writing to the secretary that any bonds or liability insurance that is required by the department is readily available to appearance enhancement businesses from the market place.

d. The attorney general, acting on behalf of the secretary, may commence an action or proceeding in a court of competent jurisdiction to obtain a judgment against such person, partnership, limited liability company or business corporation in an amount equal to that assessed as a civil penalty. Said judgment shall thereafter be enforceable by any

means authorized by the civil practice law and rules.

e. Where an appearance enhancement business operator continues to operate without a license following the issuance of an order by the secretary directing cessation, the attorney general, acting on behalf of the secretary, may commence an action or proceeding in a court of competent jurisdiction against such operator to obtain an order enjoining further operation of such business. An appearance enhancement business that has been ordered to cease operation shall not re-open without first obtaining a license as required by this article and paying any assessed fines.

§ 411. Denial of license; complaints; notice of hearing. 1. Denial of license or registration. The department shall, before making a final determination to deny an application for a license or registration, notify the applicant in writing of the reasons for such proposed denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notification shall be served personally or by certified mail or in any manner authorized by the civil practice law and rules for service of a summons. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe. If the applicant fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification of denial shall become the final determination of the department. The department, acting by such officer or person in the department as the secretary may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. If, after such hearing, the application is denied, written notice of such denial shall be served upon the applicant personally or by certified mail or in any manner authorized by the civil practice law and rules for the service of a summons.

2. Revocation, suspension, reprimands, fines; unlicensed activities.

The department shall, before revoking or suspending any license or registration or imposing any fine or reprimand on the holder thereof, or before issuing any order directing the cessation of unlicensed activities, and at least ten days prior to the date set for the hearing, notify in writing the holder of such license or registration, or the person alleged to have engaged in unlicensed or unregistered activities, of any charges made and shall afford such person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the licensee or registrant or person charged, or by mailing same by certified mail to the last known business or other address provided by such person to the secretary of state, or by any method authorized by the civil practice law and rules for the service of a summons. The hearing on such charges shall be at such time and place as the department shall prescribe.

3. The department, acting by such officer or person in the department as the secretary may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 412. Penalties. 1. The practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology without a license or while under suspension or revocation, or in violation of an order directing the cessation of unlicensed activity issued by the secretary pursuant to section four hundred ten or four hundred eleven of this article, is a violation and is subject to a civil penalty of up to five hundred dollars for the first violation; one thousand dollars for a second such violation; and two thousand five hundred dollars for a third violation and any subsequent violation.

2. The following violations shall be deemed separate offenses and be deemed a misdemeanor, and upon conviction, shall be punishable by imprisonment for not more than six months, or by a fine of up to two thousand five hundred dollars or by both such fine and imprisonment:

(a) the operation of an appearance enhancement business without a license or when such license has been suspended or revoked; or

(b) the operation of an appearance enhancement business in violation of an order directing the cessation of unlicensed activity issued by the secretary pursuant to section four hundred ten of this article.

3. The operation of an appearance enhancement business without a (a) bond or (b) liability insurance or liability coverage which is covered through a bond shall be punishable by a civil penalty of up to two thousand five hundred dollars. The enforcement of this provision shall require the department of financial services to certify in writing to the secretary that any bonds or liability insurance that is required by the department is readily available to appearance enhancement businesses from the market place.

§ 413. Judicial review. The action of the secretary in suspending, revoking or refusing to issue or renew a license, or issuing an order directing the cessation of unlicensed activity or imposing a fine or reprimand may be appealed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

§ 414. Official acts used as evidence. The official acts of the secretary and the department shall be prima facie evidence of the facts therein and shall be entitled to be received as evidence on all actions at law and other legal proceedings in any court or before any board, body or officer.

§ 415. Disposition of moneys. All moneys derived from the operation of this article shall be deposited to the credit of the business and licensing services account established pursuant to section ninety-seven-y of the state finance law.

§ 416. Application of article. 1. This article shall not apply to or

affect the practice of the profession by duly licensed physicians, osteopaths, dentists, optometrists, nurses or physiotherapists.

2. This article shall not apply to, affect or prevent home administration, without compensation or other consideration, of any practices defined in this article, nor shall the provisions of this article be construed to prevent the application of facial creams and lotions by persons working for the manufacturer of such creams and lotions in its establishment and under the direction of a licensed esthetician. Also, this article shall not apply to the retail sale, or the trial demonstration by application to the skin for purposes of retail sale, of tonics, antiseptics, powders, oils, clays, lotions, creams, cosmetics, cosmetic preparations or compounds.

§ 417. Separability clause. If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

ARTICLE 27-A

LICENSING OF COIN PROCESSORS

Section 418. Short title.

419. Definitions.

420. Doing business without license prohibited.

421. Application for licenses.

422. Conditions precedent to licensing.

423. Licensing.

424. Grounds for denial, suspension or revocation of license; procedure.

- 425. Insurance.
- 426. Violations and penalties.
- 427. Preemption.
- 428. Regulations.
- 429. Separability.

§ 418. Short title. This article shall be known and may be cited as the "coin processor licensing act".

§ 419. Definitions. When used in this article:

1. The term "applicant" means a coin processor who has filed an application with the department for a license.

2. The term "coin processor" means any individual, partnership, association or corporation engaged in the business of providing coin processing services.

3. The term "coin processing services" means the taking in, holding and counting of coins received by other businesses and exchanging such coins for an equivalent amount of money, currency, coins or negotiable instruments for a negotiated service fee. This term does not include any corporations, unincorporated associations, partnerships and individuals subject to the provisions of the banking law nor does it include any "food processing establishment" as defined in subdivision three of section two hundred fifty-one-z-two of the agriculture and markets law which owns a coin counting machine and makes this service available to its customers nor does it include any "armored car carrier". The term "armored car carrier" shall have the same meaning as such term is defined in section eighty-nine-bbb of this chapter.

4. The term "department" means the department of state.

5. The term "division" means the division of criminal justice services.

6. The term "licensee" means a coin processor that has been issued a license in accordance with the provisions of this article.

7. The term "secretary" means the secretary of state.

8. The term "principal owner" means any person controlling an interest greater than ten percent in a business providing coin processing services, or any person with a controlling interest in a company that has a controlling interest in a business providing coin processing services.

§ 420. Doing business without license prohibited. No coin processor shall operate in the state except as authorized by this article and without first being licensed by the department. All coin processors operating in the state after the effective date of this article shall become licensed within one year of such date.

§ 421. Application for licenses. 1. Application for a license required under this article shall be in writing, under oath, and in the form prescribed by the secretary, and shall contain the following:

a. The exact name and the address of the applicant and its date of incorporation;

b. The name and the business and residential address of each principal and officer of the applicant;

c. The complete address where the business of the applicant is to be conducted, showing the street and number, if any, post office and building and room number, if any, the office building and room number, if any, and the municipality and county;

d. If the applicant has one or more branches, subsidiaries or affiliates operating in the state, the complete address of each such

place of business; and

e. A complete set of two fingerprint cards for each principal and officer of the applicant on a standard fingerprint card approved by the division and a fee pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, and amendments thereto, for the cost of the division's full search and retain procedures, which fee shall be remitted by the department to the division for deposit by the comptroller into the general fund. Before approving such application the secretary, or his or her designee, shall forward one copy of such fingerprint card and the processing fee to the division upon receipt of such fingerprints. The division shall forward to the secretary a report with respect to the applicant's previous criminal history, if any, or a statement that the applicant has no previous criminal history according to its files. If additional copies of fingerprints are required the applicant shall furnish them upon request.

2. Upon original application for a license to operate as a coin processor, the applicant shall pay an application fee, in such amount as may be determined by the secretary, not to exceed three hundred dollars. Upon application for a license renewal, the licensee shall pay a renewal processing fee in such amount as shall be determined by the secretary, not to exceed three hundred dollars.

§ 422. Conditions precedent to licensing. Upon filing of an application for a license, if the secretary shall be satisfied of the good character, competency and integrity of the applicant, and of the principals and officers thereof are such as to comply with the provisions of this article, he or she shall thereupon issue a license in duplicate to operate as a coin processor in accordance with the provisions of this article. The secretary shall transmit one copy of such license to the licensee and file another in the office of the department. Such license shall remain in full force and effect for a period of two years unless it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the secretary shall not so find, the secretary shall not issue such license and the secretary shall

notify the applicant of the denial in writing. The secretary shall approve or deny every application for license hereunder within ninety days from the filing thereof.

§ 423. Licensing. 1. Each license issued under this article shall state the address or addresses at which the business is to be conducted and shall state fully the name of the licensee, and the date and place of its incorporation and the expiration date of the license. A copy of such license shall be prominently posted in each place of business of the licensee. Such license shall not be transferable or assignable.

2. In the event the location at which the business is to be conducted shall be changed, the licensee shall forthwith notify the secretary in writing, who shall thereupon without charge attach to the license a rider setting forth such changed location.

3. In the event that there shall be any change among the principals or officers of any licensee, the licensee shall forthwith notify the secretary in writing, of the name and address of each new principal or officer, and shall submit a complete set of two fingerprint cards for each such principal or officer in accordance with the provisions of paragraph e of subdivision one of section four hundred twenty-one of this article.

4. Prior to or upon the sale or transfer of all or the majority of the stock or assets of any coin processor, the new principals or officers shall apply for a new license with the department in accordance with the provisions of section four hundred twenty-one and section four hundred twenty-two of this article. Such application shall be made within sixty days of such sale or transfer.

5. A license granted under the provisions of this article may be renewed by the department upon application therefor by the licensee, in such form as the department may prescribe, accompanied by the non-refundable renewal processing fee pursuant to subdivision two of section four hundred twenty-one of this article. In no event will

renewal be granted more than six months after the date of expiration of a license. No person, firm, company, partnership or corporation shall carry on any business subject to this article during any period which may exist between the date of expiration of a license and the renewal thereof.

§ 424. Grounds for denial, suspension or revocation of license; procedure. 1. The secretary shall have the power to suspend or revoke a license or, in lieu thereof, to impose a fine not exceeding one thousand dollars payable to the department, or reprimand any licensee or deny an application for a license or renewal thereof upon proof:

a. that the applicant or licensee has violated any of the provisions of this article or the rules and regulations promulgated hereunder;

b. that the applicant or licensee has practiced fraud, deceit or misrepresentation;

c. that the applicant or licensee has made a material misstatement in the application for or renewal of his or her license; or

d. that the applicant or licensee has demonstrated incompetence or untrustworthiness in his or her actions.

2. No license shall be revoked or suspended except after written notice and a hearing as set forth in subdivisions two, three, four, five and six of section seventy-nine of this chapter.

3. Every license issued hereunder shall remain in full force and effect for a period of two years unless the same shall have been surrendered, revoked or suspended in accordance with the provisions of this article, but the secretary shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the secretary in refusing originally to issue such license under this article.

4. Whenever the secretary shall revoke or suspend a license issued pursuant to this article, the secretary shall forthwith execute in duplicate a written order to that effect. The secretary shall file one copy of such order in the office of the department and shall forthwith serve the other copy upon the licensee. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules.

§ 425. Insurance. 1. Every coin processor shall obtain a minimum of ten million dollars all risk insurance coverage and such additional amounts as are sufficient to cover the value of coins consigned to such coin processor for counting. In addition, each such coin processor shall obtain comprehensive general liability insurance coverage for death, personal injury and property damage in the minimum amount of five hundred thousand dollars per occurrence and one million dollars in the aggregate.

2. A written certificate or certificates of insurance shall be provided to the secretary by all coin processors as part of the application for licenses process set forth in section four hundred twenty-one of this article.

3. Failure by a coin processor to keep such all risk insurance or comprehensive general liability insurance coverage in full force and effect, shall be grounds for the secretary to refuse to issue or renew a license or to suspend or revoke such license, in accordance with the provisions of section four hundred twenty-four of this article.

4. All such insurance required by this section shall be issued by an insurer authorized to do business in the state or otherwise be procured by an excess line broker duly licensed pursuant to the applicable provisions of the insurance law.

§ 426. Violations and penalties. 1. Any person, partnership,

association or corporation and the several members, principals, officers, directors, agents and employees thereof, who knowingly and willfully makes material misstatements in the application for a renewal of a license in this article shall be guilty of a misdemeanor, which upon conviction shall be punishable by imprisonment for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment, upon the first conviction and by a term of imprisonment not to exceed one year, or by a fine of not less than one thousand dollars and not to exceed two thousand five hundred dollars, or by both such fine and imprisonment, upon a subsequent conviction.

2. Any licensee who shall knowingly and willfully fail to surrender his or her license within five days of receipt of notice of suspension, revocation or non-renewal thereof by the secretary, or the officer designated by the secretary to preside over the hearing, pursuant to the provisions of section four hundred twenty-four of this article, shall be guilty of a violation, punishable by a fine not to exceed two hundred fifty dollars, in addition to any other penalty prescribed by law.

3. Notwithstanding the provisions of subdivision two of this section, when it is determined after a hearing pursuant to section four hundred twenty-four of this article that the licensee has violated one or more provisions of this article, the secretary may, in lieu of revocation or suspension of such license, impose a fine not to exceed one thousand dollars for each violation payable to the department.

§ 427. Preemption. 1. The provisions of this article shall exclusively govern all coin processors notwithstanding the provisions of any other law to the contrary and further, no local law shall be enacted which shall require any fee or license for the licensure or registration of coin processors.

2. The provisions of this article shall not apply to any subsidiary of an entity organized and operating pursuant to the Bank Holding Company Act of 1956 (12 USCA 1841 et seq.).

§ 428. Regulations. The secretary is hereby authorized and empowered to make such rules and regulations necessary for the proper conduct of the business authorized under this article, and not inconsistent herewith.

§ 429. Separability. In the event it is determined by a court of competent jurisdiction that any phrase, clause, part, subdivision, paragraph or section, or any of the provisions of this article is unconstitutional or otherwise invalid or inoperative, such determination shall not affect the validity or effect of the remaining provisions of this article.

ARTICLE 28

PRACTICE OF BARBERING

- Section 430. Purpose of article.
431. Definitions.
432. Practice of barbering; license required; apprentices.
433. Powers of the secretary of state.
434. License after examination; application to take.
435. License without examination; temporary licenses.
436. Sanitary rules.
437. Apprentices.
438. Barber shop owner's license; requirements.
439. Licenses; display; renewal; duplicates.
440. Fees.
441. Suspension and revocation of licenses and certificates.
442. Hearing on charges; decision.
443. Judicial review.
444. Violations and penalties.
- 444-a. Official acts used as evidence.
445. Disposition of moneys derived from operation of article.
446. Application of article.
447. Separability clause.

§ 430. Purpose of article. The need for technical skill, training and experience, good health, good moral character and other fundamental qualities and qualifications in persons engaged in the practice of barbering, as herein defined, having been unquestionably established and demonstrated and in order to safeguard the health of the persons who patronize the barber shops of our state and because of the evils connected with itinerant barbers and barber shops and because of the inadequacy of local regulation, it is the purpose of the legislature, in enacting this article, to safeguard and protect the barbers of this state from the evils of itinerant barbers and barber shops and to safeguard and protect the lives, health and well being of those persons who patronize the barber shops of our state by making adequate provision for the examination, licensing and regulation of the barber shops and the barbers and apprentices to whom such persons submit themselves for barber work.

§ 431. Definitions. As used in this article, unless the context requires otherwise:

1. "Department" means the department of state.
2. "Person" means an individual, firm, company, partnership or corporation.
3. "Barber" means a person who engages in the practice of barbering.
4. "Practice of barbering" or "barbering" means and includes the performance of the following practices upon the head of a human being for any purpose whatsoever except for the treatment of disease or of physical or mental ailments:
 - (a) Shaving or trimming the beard or cutting the hair of humans;
 - (b) Giving facial or scalp massage with oils, creams, lotions or other preparations, either by hand or mechanical appliances;
 - (c) Singeing, shampooing, arranging, dressing or dyeing the hair or

applying hair tonic;

(d) Applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face or neck.

5. "Licensee" means a person permitted to engage in the practice of barbering pursuant to this article.

6. "Satisfactory" means satisfactory to the secretary of state.

7. "Apprentice" means a person pursuing in good faith a course of study in the practice of barbering under the tutelage, supervision and direction of a licensee and who assists such licensee in such practice.

8. "Barber shop" means any store, establishment, place or premises or part thereof where the practice of barbering is engaged in.

9. "Barber shop owner" is a person who operates or conducts a barber shop as defined by subdivision eight of this section.

10. "Fee", "examination fee", "license fee", "registration fee" and "renewal fee" mean the fees required to accompany an application for examination for or issuance of any license or for registration, including any temporary or renewal license or renewal registration, pursuant to this article. Such fees shall be non-refundable.

§ 432. Practice of barbering; license required; apprentices. No person shall engage for compensation in the practice of barbering and no person shall maintain or operate a barber shop after October first, nineteen hundred forty-seven, or hold himself out as being able so to do after such date unless he is licensed therefor pursuant to this article. After such date no person shall act as an apprentice or perform any service as such unless he is registered pursuant to this article.

§ 433. Powers of the secretary of state. In addition to the powers and duties elsewhere prescribed in this article, the secretary of state

shall have power: 1. To appoint an adequate number of assistants, inspectors and other employees as may be necessary to carry out the provisions of this article, to prescribe their duties, and to fix their compensation within the amount appropriated therefor.

2. To examine into the qualifications and fitness of applicants for licenses or certificates and of prospective applicants under this article.

3. To require all persons licensed or registered under this article to submit to physical examination by a physician or nurse practitioner selected by the secretary of state.

4. To keep records of all licenses issued, suspended or revoked.

5. To prepare a manual of rules and regulations for the conduct of examinations and to furnish copies thereof to persons desiring the same upon payment of a reasonable fee therefor.

6. To adopt such rules and regulations not inconsistent with the provisions of this article, as may be necessary with respect to the form and content of applications for licenses, the reception thereof, the investigation and examination of applicants and/or prospective applicants taking examinations and their qualifications, and the other matters incidental or appropriate to the secretary of state's powers and duties as prescribed by this article and for the proper administration and enforcement of the provisions of this article, and to amend or repeal any of such rules and regulations.

7. To grant a temporary license to engage in the practice of barbering, in his own discretion, where a situation exists which will render a hardship on a community to be without a licensed barber. Such temporary license shall be granted to a holder of a certificate of registration as an apprentice who has had some training or experience in the practice of barbering and shall be valid only as long as the secretary of state may decide, or as long as the hardship condition exists.

§ 434. License after examination; application to take. 1. Any person over the age of seventeen years, desiring a license to engage in the practice of barbering under this article, may make application to the secretary of state therefor. The application shall be subscribed and affirmed by the applicant as true under the penalties of perjury. The application shall be in such form and shall contain such information relative to the applicant and his qualifications as may be prescribed by the secretary of state. Each application shall be accompanied by:

(a) Two recent photographs of the applicant of a size prescribed by the secretary of state;

(b) Satisfactory evidence of good moral character, except that in determining an applicant's good moral character, the secretary of state shall not automatically disqualify an applicant on the basis of a criminal conviction. The secretary shall review such criminal history information in accordance with article twenty-three-A of the correction law;

(c) The certificate of a duly licensed physician or nurse practitioner, on a form prescribed by the secretary of state, showing freedom from any infectious or communicable disease which certificate shall have been issued within thirty days prior to the date of the filing of the application;

(d) Evidence of elementary education satisfactory to the secretary of state;

(e) Satisfactory evidence of the successful completion of a course of study in a school of barbering duly licensed pursuant to the education law or approved by the board of regents or, in lieu thereof, satisfactory evidence of having pursued in good faith the theoretical and practical study of barbering for a period of at least two years under the direct supervision and tutelage of one or more licensed barbers, or, that the applicant has been lawfully, actually and continually engaged in the practice of barbering in any other state, territory, protectorate or dependency of the United States, or any foreign country for a period of not less than three years prior to the filing of an application for a license to engage in the practice of barbering, or, that the applicant is the holder of a temporary license

issued under section four hundred thirty-five of this article;

(e-1) Evidence in the form of a certificate, issued by a state licensed school of barbering, of the successful completion of a course of study approved by the education department concerning the transmission of contagious diseases and the proper methods of sanitation and sterilization to be employed in barber shops, especially as they relate to tools and instruments. The required course materials requisite to issuance of such certificate of successful completion may be provided by such state licensed school of barbering either at the school's approved premises or by long distance methods of instruction and testing, as shall have been approved by the education department;

(f) The application fee prescribed by this article; and

(g) Satisfactory evidence of having taken and passed a written examination offered by the secretary of state pursuant to this article.

2. The secretary of state shall prepare question papers which shall be the same for all persons at any given examination. The questions may be partly written and partly oral. No person shall receive a license hereunder who has not actually demonstrated to the secretary of state the applicant's ability and fitness to engage in the practice of barbering in such practical tests as may be required by the secretary of state.

3. Examinations shall be in the English language and may, in the reasonable discretion of the secretary of state, be translated or transposed into any other language if requested by a person taking the examination, upon satisfactory proof of the need therefor. They shall be held at least quarterly and shall be given in at least four convenient places in the state.

4. If an applicant has successfully passed the examination therefor, and has otherwise qualified for a license, the secretary of state on payment of the fee prescribed by this article, shall issue to such applicant a license to engage in the practice of barbering.

§ 435. License without examination; temporary licenses. 1. Any person

over the age of seventeen years who shall present to the secretary of state satisfactory evidence that he has been actually engaged in the practice of barbering in this state for at least one year within the period of three years immediately prior to July first, nineteen hundred forty-seven, shall be entitled to a license under this article without examination, provided that application therefor, accompanied by the photographs, evidence and the certificate required by paragraphs (a), (b) and (c), respectively, of subdivision one of section four hundred thirty-four of this article and the required annual license fee, is filed with the secretary of state not later than December thirty-first, nineteen hundred fifty-one. Nothing in this subdivision shall entitle any person to such license without examination who, since the effective date of this article, has taken and been unsuccessful in an examination conducted pursuant thereto.

2. The secretary of state shall issue a temporary license to any person over the age of seventeen years, who, upon taking effect of this article, has been actually and continuously engaged in the practice of barbering in this state for a period of not less than six months, as substantiated by sworn affidavits or other evidence satisfactory to the secretary of state and provided application therefor, accompanied by the photographs, evidence, and the certificate required by paragraphs (a), (b) and (c), respectively, of subdivision one of section four hundred thirty-four of this article and one-quarter of the required license fee, is filed with the secretary of state.

3. A temporary license issued under this section shall expire six months after the date of issuance and such temporary licensee shall not be entitled to any further license until he has taken a regularly scheduled examination and qualified for a regular license under the provisions of this article. The secretary of state may, however, in his discretion, for good cause shown, extend the term of such a temporary license for an additional period not exceeding six months upon the payment of an additional fee equivalent to one-half of the license fee prescribed by this article.

4. Any person who has duly applied for a license pursuant to

subdivision one or subdivision two of this section may engage in the practice of barbering pending the determination of his application.

5. The secretary of state shall upon application and without examination, issue a license to any person over the age of seventeen years who has been duly licensed by any other state, territory, protectorate or dependency of the United States to engage in the practice of barbering upon compliance with standards and requirements not lower, in the judgment of the secretary of state, than those of this state, provided, however, that either such state extends similar reciprocity to licensees of this state or the applicant is a member of the household of a member of the armed forces of the United States, national guard or reserves and was a member of such household before such member relocated to the state. Such application shall be accompanied by the photographs, evidence and the certificate required by paragraphs (a), (b) and (c), respectively, of subdivision one of section four hundred thirty-four of this article and the required license fee.

6. If any person, eligible for any license, mentioned in this section, be in the military service at or during the time application for such license is required to be filed and license fee paid, according to the provisions of this section, the period within which said application may be filed and license fee may be paid, is extended in behalf of such person, until three months after the termination of said military service, any provision contained in this article to the contrary, notwithstanding.

In the case of persons who are or were in the military service and (a) have been or will be discharged under conditions other than dishonorable, or (b) have a qualifying condition, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable from such service, or (c) are discharged LGBT veterans, as defined in section one of the veterans' services law, and have received a discharge other than bad conduct or dishonorable from such service, the period of one year specified in subdivision one of this section and the period of six months specified in subdivision two of this section need not be continuous. The length of time such

person was engaged in the practice of barbering before entering the military service may be added to any period of time during which such person was or is engaged in the practice of barbering after the termination of military service.

§ 436. Sanitary rules. All barber shops shall be maintained and operated in accordance with the provisions of the state sanitary code, except in the city of New York where the city health code shall apply, and all licensees or persons employed or engaged therein or in connection therewith shall comply with the provisions of such rules.

§ 437. Apprentices. 1. Each applicant for a certificate of registration as an apprentice shall make an application which shall include the physician's certificate required by paragraph (c) and the certificate of completion required by paragraph (e-1) of subdivision one of section four hundred thirty-four, two recent photographs, and which certificate shall contain such other information required by such section and in such form as the secretary of state may prescribe.

2. A certificate of registration as an apprentice shall be for a period of four years.

3. Each certificate of registration issued as provided in this section shall be posted in some conspicuous place in the barber shop in which the apprentice is actually engaged in the practice of barbering as an apprentice.

4. A certificate of registration expiring in any year, which has not been revoked, may, upon payment of the fee prescribed by this article, be renewed for additional periods of four years upon filing an application therefor and the certificate mentioned in subdivision two on condition, however, that no certificate of registration may be issued after one renewal, unless the applicant for such certificate of registration has complied with all the provisions of this article relating to apprentices.

§ 438. Barber shop owners' license; requirements. 1. On and after October first, nineteen hundred forty-seven no person shall own or operate a barber shop unless a barber shop owners' license is first obtained from the secretary of state for each barber shop owned or operated.

2. The establishment of itinerant shops is hereby prohibited and the maintenance of a bona fide establishment with a permanent and definite location shall be a prerequisite for the issuance of a barber shop owner's license.

2-a. The holder of a certificate of registration as an apprentice shall not be entitled to a barber shop owner's license.

3. An applicant for a barber shop owner's license must establish that he or she is the real owner and possesses title to or is entitled to the possession of the shop. He or she must furnish satisfactory evidence of proper location of the shop, proper layout and adequate equipment for the shop, sanitary conditions in the shop and its surroundings. Such applicant must also furnish satisfactory evidence of good moral character, except that in determining an applicant's good moral character, the secretary of state shall not automatically disqualify an applicant on the basis of a criminal conviction. The secretary shall review such criminal history information in accordance with article twenty-three-A of the correction law.

4. A license issued under this section must at all times during the term thereof be displayed in the barber shop for which issued.

5. Notice in writing shall be given the secretary of state at his office in Albany by the holder of a barber shop owner's license of any change in address of the barber shop together with the return of license, whereupon a properly signed endorsement will be made on the face of the license as to such change and the license then returned to the licensee. A change of address by a licensee without such notice and

endorsement of license shall operate to cancel the license.

§ 439. Licenses; display; renewal; duplicates.

1. All licenses, except temporary licenses, shall be for a period of four years.

2. No license or certificate shall be assignable or transferable except as hereinafter provided.

2-a. A license to conduct a barber shop issued to an individual may be assigned or transferred for the remainder of the licensed period to a partnership or corporation if such individual is a member of such partnership or an officer of such corporation at the time of such assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one member of such partnership, provided he obtains the consent of all of the other members of such partnership, or to a new partnership of which one or more members of the licensed partnership were members. A license issued to a corporation may be assigned or transferred for the remainder of the licensed period to any one individual officer of the corporation provided he obtains the consent of all of the other officers of such corporation. The application for such transfer or assignment must be accompanied by proof satisfactory to the department that the requirements herein provided have been complied with. No assignment or transfer shall become effective unless and until the endorsement of the transfer or assignment has been made on the face of the license by the department and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made without payment of any fee. A bona fide purchaser of a barber shop from the holder of a license thereof may continue to use the license of the seller for a period of thirty days from the date of the sale, provided there is endorsed on the face thereof the name of the purchaser, the date of the sale, and the signature of the seller and the purchaser; and provided further within five days from the date of the sale an application, in accordance with the provisions of this article, shall be

presented by the purchaser to the secretary of state for a license to conduct a barber shop.

2-b. A license to conduct a barber shop issued to an individual or to a partnership may be used after the death of the licensed individual or co-partner by his next of kin or duly appointed administrator or executor in the name of the estate for a period of not more than one hundred twenty days from the date of death of such individual or co-partner, provided that there is endorsed upon the face of the license after the name of the decedent the word "deceased", the date of death and the name of the next of kin, administrator or executor under whose authority the license is being used; the period of one hundred twenty days aforesaid may be extended upon application to the secretary of state and for good cause shown for an additional period not to exceed one hundred twenty days. Any license so continued which shall expire during such period of one hundred twenty days or the extension thereof may be renewed by the next of kin, administrator or executor for the balance of such period or the extension thereof.

3. Each license or certificate issued pursuant to this article shall be posted and kept posted in some conspicuous place in the barber shop in which the licensee or registrant is engaged in the practice of barbering or as an apprentice.

4. Any license or certificate, except a temporary license, which has not been suspended or revoked, may, upon the payment of the renewal fee prescribed by this article, be renewed for additional periods of four years from its expiration, without further examination, upon the filing of any application for such renewal, on a form to be prescribed by the secretary of state, accompanied by the certificate required by paragraph (c) and the certificate of completion required by paragraph (e-1) of subdivision one of section four hundred thirty-four of this article.

5. Any person failing to file application and fee for renewal of a license as a barber within one year immediately following the expiration of his last license shall pay an additional fee of ten dollars, and if he fail to file application and fee for renewal within five years he

shall be ineligible for such license until he shall have again passed an examination but he shall not be required to pay such additional fee.

6. A duplicate license or certificate may be issued for one lost, destroyed or mutilated upon application therefor on a form prescribed by the secretary of state and the payment of the fee prescribed therefor by this article. Each such duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

§ 440. Fees. 1. The fee for a license to engage in the practice of barbering shall be forty dollars and for each renewal thereof the fee shall be forty dollars.

2. The fee for a license to conduct a barber shop shall be sixty dollars and for each renewal thereof the fee shall be sixty dollars.

3. The fee for taking a written or practical examination under this article shall be fifteen dollars.

4. The fee for the registration or the renewal of the registration of an apprentice shall be twenty dollars.

5. The fee for issuing a duplicate license in substitution for one lost, destroyed or mutilated shall be ten dollars.

6. The fee for changing a name on a license shall be thirty dollars.

7. The fee for changing the address on a license shall be ten dollars.

8. The fees hereinabove set forth shall be those for licenses issued for the license period of four years. Notwithstanding the provisions of subdivision one of section four hundred thirty-nine of this article, after April first, two thousand eleven, the secretary of state shall assign staggered expiration dates for outstanding licenses that have been previously renewed and such licenses shall thereafter expire four

years from the assigned date unless renewed. The secretary of state shall assign dates to existing licenses in a manner which shall result in a term of not less than four years.

§ 441. Suspension and revocation of licenses and certificates. (a) A license to engage in the practice of barbering or to conduct a barber shop or a certificate of an apprentice may be suspended or revoked or in lieu thereof a fine not exceeding five hundred dollars payable to the department of state or a reprimand may be imposed by the secretary of state, for any one or more of the following causes:

1. Refusal to submit to physical examination when ordered by the secretary of state, pursuant to subdivision three of section four hundred thirty-three.

2. Practice by a person having an infectious or communicable disease.

3. Habitual drunkenness or unlawful use of a habit-forming drug.

4. Fraud or bribery in securing a certificate by an apprentice or in securing a license or permission to take an examination therefor.

5. The making of any false statement as to a material matter in any application or other statement or certificate required by or pursuant to this article.

6. Incompetency.

7. Failure to display the license or certificate as provided in this article.

8. Violation of any provision of this article, or of any rule or regulation adopted hereunder, or of any applicable sanitary code.

9. Conviction of any crime or offense involving moral turpitude.

10. Conviction under subdivision one of section sixty-five of the alcoholic beverage control law where such conviction was for the sale of alcohol to a person actually under the age of twenty-one and the offense occurred at the barber's place of business.

(b) Whenever the license to practice barbering or the license to conduct a barber shop or the certificate of an apprentice is revoked, such license or certificate shall not be reinstated or reissued until after the expiration of a period of one year from the date of such revocation.

§ 442. Hearing on charges; decision. No license or certificate shall be suspended or revoked or any fine or reprimand imposed upon the holder thereof until after a hearing had before an officer or employee of the department designated for such purpose by the secretary of state, upon notice to the licensee of at least ten days. The notice shall be served either personally or by certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee. The licensee or registrant shall be heard in his defense either in person or by counsel and may produce witnesses and testify in his behalf. A stenographic record of the hearing shall be taken and preserved. The hearing may be adjourned from time to time. The person conducting the hearing shall make a written report of his findings and a recommendation to the secretary of state for decision. The secretary of state shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation and dismissing the charges, suspending or revoking the license or certificate or in lieu thereof imposing a fine or reprimand upon the licensee. For the purpose of this article, the secretary of state or any officer or employee of the department designated by him, may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

§ 443. Judicial review. The action of the secretary of state in suspending, revoking or refusing to issue or renew a license or

certificate or imposing any fine or reprimand upon the holder thereof may be reviewed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

§ 444. Violations and penalties. Any person who shall directly or indirectly engage in the practice of barbering or hold himself out to the public as being able so to do, or conduct a barber shop without a license therefor, or who shall violate any of the provisions of this article, or having had his license suspended or revoked, shall continue to engage in the practice of barbering or who directly or indirectly employs, permits or authorizes an unlicensed person to engage in the practice of barbering or who directly or indirectly employs, permits or authorizes an unregistered apprentice to act as an apprentice, shall be guilty of a misdemeanor and, upon conviction, shall be punishable by imprisonment for not more than six months, or by a fine of not more than five hundred dollars or by both such fine and imprisonment and each such violation shall be deemed a separate offense.

§ 444-a. Official acts used as evidence. The official acts of the secretary of state and department, shall be prima facie evidence of the facts therein and shall be entitled to be received in evidence in all actions at law and other legal proceedings in any court or before any board, body or officer.

§ 445. Disposition of moneys derived from operation of article. All moneys derived from the operation of this article shall be deposited to the credit of the business and licensing services account established pursuant to section ninety-seven-y of the state finance law.

§ 446. Application of article. 1. This article shall not apply to or affect the practice of their professions by duly licensed physicians, osteopaths, dentists, optometrists, nurses or physiotherapists, or to the practice of their vocations by hairdressers or cosmetologists, nor

to any hospital which operates a barber shop solely for the convenience of its patients and which is not open to the public.

2. This article shall not be construed to apply to, affect or prevent the practice of beauty culture as now conducted in the beauty shops of the state, or the operation of beauty shops and barber schools.

3. The provisions of this section shall not be construed to furnish a means of evading the provisions of this article relating to the practice of barbering and in any prosecution for a violation of any such provision, the terms "hairstylist, " "cosmetologist, " "beauty shop," and "practice of hairstyling and cosmetology" shall have their commonly accepted meanings.

§ 447. Separability clause. If any part or provision of this article or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

ARTICLE 28-A

CEMETERY PROPERTY AND FUNERAL SERVICES

- Section 450. Unlawful acts relating to sales of cemetery property.
- 450-a. Unauthorized sale of cemetery markers and flag holders.
451. Cemetery to state true location.
452. Unauthorized charges in connection with permits for burials or erection of monuments.
453. Moneys paid in connection with agreements for funeral merchandise or services in advance of need to be kept on deposit pending use or repayment.

454. Sale of monuments and memorials.

454-a. Unsolicited offers for monuments or memorials.

§ 450. Unlawful acts relating to sales of cemetery property. The sale or procuring any agreement for sale of cemetery lots or plots, or of crypts or niches in a community mausoleum, or niches in a columbarium or crematorium, upon the promise, representation or inducement of re-sale at a financial profit is hereby prohibited. Any person or individual who shall make, or attempt to make, either on his own behalf or on behalf of another a sale conveyance or agreement contrary to the provisions of this act shall be guilty of a misdemeanor.

§ 450-a. Unauthorized sale of cemetery markers and flag holders. Except for a veterans' organization, those businesses which normally carry on such trade, or are authorized by veterans' organizations to do so, it shall be unlawful for any person, firm, association or corporation to engage in the buying or selling of metal cemetery markers and flag holders bearing the insignia of any veterans' organization placed upon the graves of veterans. A violation of the provisions of this section shall constitute a violation and shall be punishable by a fine of not more than five hundred dollars or not more than fifteen days imprisonment or both.

§ 451. Cemetery to state true location. Any cemetery corporation or employee or agent thereof that shall advertise in a newspaper, magazine or other publication or in the form of a book, notice, circular, pamphlet, letter, poster, card, or over any radio station, or in any other way for the purpose of selling lots, plots or parts thereof in its cemetery shall in such advertisement state the location of the cemetery grounds, including the city, town or village, and the county and state. A violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or not more than six months imprisonment or both.

§ 452. Unauthorized charges in connection with permits for burials or erection of monuments. It shall be unlawful for a society or fraternal organization or a representative thereof to obtain, receive or exact or attempt to obtain, receive or exact, a fee or thing of value in addition to the regular dues or charges required to be paid pursuant to the by-laws, constitution, or rules of such society or fraternal organization as a condition to granting a permit for or consent to burial in or the erection of a monument or memorial upon a lot or plot in a cemetery. A violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or not more than six months imprisonment or both.

§ 453. Moneys paid in connection with agreements for funeral merchandise or services in advance of need to be kept on deposit pending use or repayment. 1. (a) Any and all moneys paid to a funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation, under or in connection with an agreement, or any option to enter into an agreement, for the sale of merchandise to be used in connection with a funeral or burial, or for the furnishing of personal services of a funeral director or undertaker, wherein the merchandise is not to be actually physically delivered or the personal services are not to be rendered until the occurrence of the death of the person for whose funeral or burial such merchandise or services are to be furnished shall continue to be the money of the person making such payment and shall be held in trust for such person by the funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made and shall, within ten business days of receipt, be deposited in an interest bearing account in a bank, national bank, federal savings bank, federal savings and loan association, savings bank, savings and loan association, credit union, or federal credit union within the state and duly authorized to receive deposits in the state of New York and which shall earn interest at a rate which shall be at not less than the prevailing rate of interest earned by other such deposits in such banks, savings banks, savings and loan associations, or credit unions under this section, or shall be placed in a trust company

in an investment backed by the government of the United States and shall not be commingled with other moneys of the funeral firm, funeral director, undertaker, cemetery, or other person, firm or corporation or become the funds of the funeral firm, funeral director, undertaker, cemetery, or other person, firm or corporation, and shall be so held on deposit, together with any interest thereon with interest earned being accrued daily and credited monthly, until said merchandise has been actually physically delivered and said personal services have been rendered, unless sooner repaid, in whole or in part. No funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation, shall discharge the obligation established under this section to deposit or place money with a bank, national bank, federal savings bank, federal savings and loan association, savings bank, savings and loan association, credit union, federal credit union or trust company within the state through a surety bond or other financial instrument unless expressly provided under this section.

(b) Such funeral firm, funeral director, undertaker, cemetery, or other person, firm or corporation which received such moneys shall, within thirty business days after the deposit or any change in the institution in which such funds are deposited, provide written notification to the person who made such payment of the institution of the deposit and, until such moneys have been repaid or the personal services and merchandise have been provided, shall annually provide the person who made such payment with a statement identifying the location and annual interest earned by the account.

(c) Upon request of the person who made such payment, or his or her representative, the funeral firm, funeral director, undertaker, cemetery or other person, firm or corporation which received such moneys shall provide a statement within thirty days of such request identifying the location of the account, amount of such account and interest earned on such account. Upon the provision of any merchandise or personal services in connection with any such agreement, the funeral firm, funeral director, undertaker, cemetery or other person, firm or corporation which received such moneys shall provide a statement itemizing the merchandise or personal services provided and the cost of such merchandise or personal services and describing the disposition of all moneys in the account. Copies of such statements and the records on

which they are based shall be made available for inspection and shall be made available during ordinary business hours for copying upon written request by any state agency regulating the funeral firm, funeral director, undertaker, cemetery or other person, firm or corporation which received such money or enforcing the requirements of this section, provided a complaint, either oral or written, has been received, or an inspector has grounds to believe that serious or repeat violations of this section have occurred.

(d) Moneys paid for such an agreement for an applicant or recipient of supplemental security income benefits under section two hundred nine of the social services law or of medical assistance under section three hundred sixty-six of such law, or moneys paid by such an applicant or recipient for such an agreement for his or her family member, shall be placed into a trust which shall be irrevocable but under which such applicant/recipient reserves the right to select any funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made and to change such selection any time to any type of funeral or any funeral firm, funeral director, cemetery or any other person, firm or corporation to whom such payment is made, located in the state of New York or any other state. Any such change must be carried out within ten business days following receipt of a request by the purchaser to the funeral firm, funeral director, cemetery or any other person, firm or corporation to whom such payment is made, with which such trust was established. This requirement is subject to any limits set forth in federal law or regulation pertaining to disregarded resources or income.

2. The amount of any and all moneys paid under or in connection with such an agreement, together with interest, if any, accrued thereon while on deposit as so required shall be repaid on demand at any time prior to the delivery of the merchandise and/or the rendering of the personal services. No administrative, consultation or other fee may be assessed against the person making such payment in connection with or planning for such agreement. Provided, however, neither the applicant, recipient or other purchaser of preneed funeral goods or services through an irrevocable trust, their legal representative nor the heirs of such person, shall be entitled to any repayment of the moneys which created

such trust.

3. Any such agreement must be in writing and must:

(a) Identify all moneys paid or to be paid; and

(b) Identify any fees paid to the person administering such trust fund by a third party, provided, however, any such fees shall not exceed seventy-five hundredths of one percent of the amount of such trust fund; and

(c) Except for an irrevocable trust established pursuant to section two hundred nine of the social services law or paragraph (d) of subdivision one of this section, notify the person making such payment of his or her right to be repaid moneys paid, together with accrued interest, as described in this section and of his or her right to receive an annual statement; and

(d) Identify the provider of each service or item of merchandise to the extent agreed upon, and fully describe the service or merchandise to the extent agreed upon; and

(e) Describe the obligations of each party:

(i) in the event the service or merchandise described in the agreement cannot, for reasons beyond the control of the parties, be provided when needed;

(ii) in the event the cost of such services or merchandise, when such services or merchandise is to be provided, exceeds the amount of the moneys paid and accrued interest; and

(iii) in the event the amount of the moneys paid and accrued interest exceeds the cost of such services or merchandise when they are to be provided. If the agreement does not provide to the contrary, the services or merchandise described in the agreement must be provided for no more than the price stated therein. Except for an irrevocable trust established pursuant to section two hundred nine of the social services law or paragraph (d) of subdivision one of this section, any moneys in excess of the amount set forth in the agreement must be repaid to the person who made the payment or to the estate of such person. The agreement must also specify the name and address of a person not living at the address of the person who made payments under or in connection with the agreement, to whom required notices may be sent if the person who made payments under or in connection with the agreement cannot be

contacted. The person making such payments may decline in writing to specify the name and address of a person not living at the address of the person making such payments to whom such notice may be sent; and

(f) With respect to an agreement for an irrevocable trust fund pursuant to section two hundred nine of the social services law or paragraph (d) of subdivision one of this section, include the following statement in the agreement in conspicuous print of at least twelve point type:

DISCLOSURE

NEW YORK LAW REQUIRES THIS AGREEMENT TO BE IRREVOCABLE FOR APPLICANTS FOR AND RECIPIENTS OF SUPPLEMENTAL SECURITY BENEFITS UNDER SECTION TWO HUNDRED NINE OF THE SOCIAL SERVICES LAW OR OF MEDICAL ASSISTANCE UNDER SECTION THREE HUNDRED SIXTY-SIX OF THE SOCIAL SERVICES LAW, AND FOR THE MONEYS PUT INTO A TRUST UNDER THIS AGREEMENT TO BE USED ONLY FOR FUNERAL AND BURIAL EXPENSES. WHETHER THE AGREEMENT IS FOR YOUR FUNERAL AND BURIAL EXPENSES OR FOR THOSE OF A FAMILY MEMBER, IF ANY MONEY IS LEFT OVER AFTER YOUR FUNERAL AND BURIAL EXPENSES HAVE BEEN PAID, IT WILL GO TO THE COUNTY. YOU MAY CHANGE YOUR CHOICE OF FUNERAL HOME AT ANY TIME. IF THIS AGREEMENT IS FOR THE FUNERAL AND BURIAL EXPENSES OF A FAMILY MEMBER, AFTER YOUR DEATH SUCH FAMILY MEMBER MAY CHANGE THE CHOICE OF FUNERAL HOME AT ANY TIME.

(g) Any promotional literature prepared after January first, nineteen hundred ninety-seven by a funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation for prearranged funeral and burial services must contain language disclosing the irrevocable nature of burial trusts established by or for an applicant or recipient of supplemental security income benefits or medical assistance.

4. Any provision of any such agreement whereby a person who pays money under or in connection therewith waives any provision of this section shall be void.

5. (a) Upon the sale or transfer of any business, firm, corporation or other entity having received moneys in connection with such agreements or the transfer of control over such money, both the new owner and

former owner or the estate of the former owner, or both the persons currently and formerly having control over such money, shall, within thirty days of such sale or transfer, notify, in writing, each such person who has paid moneys of the sale or transfer, including the name and address of the new and former owner. Copies of such notification shall be made available for inspection and shall be made available during ordinary business hours for copying upon written request by any official or agency having jurisdiction.

(b) Upon the sale or other transfer of any business, firm, corporation or other entity having received moneys in connection with such agreements or upon any transfer of control over such moneys, the transferee shall be liable for compliance with all provisions of this section including the repayment of any moneys and provision of funeral merchandise and services, and for compliance with all other requirements of this section if the transferor or a transferor's predecessor in interest was liable for such compliance with the requirements of this section. Such liability shall attach whether or not the successor in interest has, upon conveyance of such business, firm, corporation or other entity, received such moneys or has knowledge of the existence of the agreement as herein described. Such liability shall attach where there is proof of a valid agreement for providing funeral merchandise and services, and the funeral director, undertaker, cemetery or other person, firm or corporation has not refunded the moneys received from the customer.

(c) Upon the sale or other transfer of any business, firm, corporation or other entity having received such moneys, or upon a transfer of control of such moneys, the transferor shall disclose a complete accounting of all moneys transferred pursuant to such agreement to the transferee, including the names and addresses of all persons who deposited moneys with such business, firm, corporation or other entity, the amount and location of such moneys, the names and addresses of persons who have received refunds and the amount of such refund.

(d) Upon the termination, cessation of operation or discontinuance of any business, firm, corporation or other entity which has received moneys in connection with such agreements or is otherwise liable for compliance with the requirements of this section, such business, firm, corporation or other entity shall repay all such monies and accrued

interest as if a demand had been made therefor within thirty days of such termination or discontinuation. Copies of records relating to the repayment of such moneys shall be available for inspection and shall be made available during ordinary business hours for copying upon written request by the appropriate official or agency having jurisdiction.

6. Any person, firm or corporation who or which, having received any moneys under or in connection with such an agreement, shall knowingly and willfully fail to deposit or keep such moneys on deposit shall be guilty of a misdemeanor or, shall knowingly and willfully fail to provide the notification required pursuant to subdivision five of this section shall be guilty of a violation. Any person, firm or corporation who or which, having received any moneys under or in connection with such an agreement, or who or which is deemed responsible for such moneys pursuant to subdivision five of this section shall, without lawful reason, knowingly and willfully fail to repay, upon demand, any and all such moneys as provided in this section, or shall knowingly and willfully misappropriate such money for a use not authorized in this section, shall, in addition to any other penalties provided by law, be guilty of a misdemeanor.

7. Whenever there shall be a violation of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation; provided, however, the

court shall not impose a civil penalty in any case where the department of health has imposed such a penalty for an identical violation of the provisions of the public health law. In connection with any such proposed application the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules, and direct restitution.

8. Records required by this section to be maintained and true copies of agreements shall be retained for four years following the provisions of funeral merchandise and services or, if a preneed administrator, for four years after final payment is disbursed pursuant to the agreement. In the event the funds are returned to the person who deposited the money or their representative, such records, including the record of return of funds shall be retained for a period of four years after the sale, transfer, termination, cessation of operation or discontinuance of the funeral. For purposes of this section, records shall include, but not be limited to, a copy of the agreement, a death certificate and a copy of the check or other payment made pursuant to the agreement. Copies of such records shall be made available for inspection and shall be made available during ordinary business hours for copying upon written request by any state agency regulating the funeral firm, funeral director, undertaker, cemetery or other person, firm or corporation which received such money or enforcing the requirements of this section, provided a complaint, either oral or written, has been received, or an inspector has grounds to believe that serious or repeat violations of this section have occurred.

9. This section shall not apply to the sale of lots or graves by a cemetery.

10. For the purposes of this section, "preneed administrator" means any person, partnership, firm, limited liability company or corporation, which is either domiciled in or doing business in the state of New York, and which has received money under or in connection with an agreement executed pursuant to this section; and "county" shall refer only to a county located within the state of New York. For the purposes of

subdivision five of this section, "preneed administrator" shall also include any successor, assignee or transferee of funds held pursuant to this section.

11. Notwithstanding any other provision of law to the contrary, the following provisions shall be applicable to each preneed administrator of written preneed accounts, both revocable and irrevocable:

(a) The assets of such an account shall be deemed abandoned as of the later of (i) three years after the date of death of the person for whose funeral or burial such assets were to be used; or (ii) one year after the preneed administrator has determined that the person for whose funeral or burial such assets were to be used has died if such death occurred less than two years prior to such determination. The preneed administrator shall make reasonable attempts to determine if the person for whose funeral or burial such assets were to be used has died, using available information from federal and state sources. Upon the death of a person for whose funeral or burial such merchandise or services are to be furnished, the preneed administrator shall determine the name and address of the funeral director who performed the funeral services. If the preneed administrator determines that the funeral director has been paid in full for the funeral services, and if the account is irrevocable, the preneed administrator shall, on or before the tenth day of March in each year, transfer the assets of such account to the indigent care burial fund for the county in which the person for whose funeral or burial such assets were to be used resided at the date of his or her death. If the preneed administrator determines that the funeral director has been paid in full for the funeral services, and if the account is revocable, the preneed administrator shall, on or before the tenth day of March in each year, pay or deliver to the state comptroller pursuant to section one thousand three hundred fifteen of the abandoned property law, the assets of such account which was deemed to have been abandoned as of the thirty-first day of December of such calendar year.

(1) Upon the death of a person for whose funeral or burial such merchandise or services are to be furnished, if the preneed administrator determines that the funeral director has not been paid in full for the funeral services, the preneed administrator shall pay the funeral director for the funeral services upon receipt of the required

documentation for paying claims for funeral services. If the balance due is more than the cost of the funeral services, the preneed administrator shall transfer the remaining balance, if an irrevocable account, to the indigent care burial fund as provided in this paragraph, or, if a revocable account, to the state comptroller as provided in this paragraph.

(2) Upon the death of a person for whose funeral or burial such merchandise or services are to be furnished, and with reasonable efforts, the preneed administrator cannot determine the name and address of the funeral director who provided the funeral services, the preneed administrator, if the account was irrevocable, shall transfer the assets of such account to the indigent care burial fund for the county in which the person for whose funeral or burial such merchandise or services are to be furnished resided at the time the irrevocable account was established, such transfer to be made as described in this paragraph. The preneed administrator, if the account was revocable, shall pay or deliver the assets of such account to the state comptroller, such transfer to be made as described in this paragraph.

(b) If the preneed administrator is not able to determine a current proper address of an account for the person for whose funeral or burial such merchandise or services are to be furnished such that the annual statements mailed regarding the account are returned to the preneed administrator as undeliverable, and such administrator cannot, after making reasonable efforts, determine a current and proper address for the person for whose funeral or burial such merchandise or services are to be furnished, the account shall be deemed dormant if (i) the preneed administrator has not been able to determine a correct address for the person for whose funeral or burial such merchandise or services are to be furnished for a period of fifteen consecutive years, and (ii) based upon the information contained in the written agreement the preneed administrator can determine that, if the person for whose funeral or burial such merchandise or services are to be furnished were then living, the person for whose funeral or burial such merchandise or services are to be furnished would have reached the age of one hundred fifteen years.

(1) If the account is deemed dormant as defined in this paragraph, the preneed administrator shall transfer the assets of such account, if it

is an irrevocable account, to the indigent care burial fund for the county in which the person for whose funeral or burial such merchandise or services are to be furnished resided at the time the irrevocable account was established. The administrator shall transfer the assets of such account, if it is a revocable account, to the state comptroller as provided in paragraph (a) of this subdivision.

(2) Nothing contained in this subdivision shall prevent a person for whose funeral or burial such merchandise or services are to be furnished, if an irrevocable account, or a funeral home which provided funeral services to the person for whose funeral or burial such merchandise or services are to be furnished, or a person who has paid for funeral services for which an irrevocable account was established, from requesting and receiving the lesser of (i) the actual cost or amount paid for the funeral, or (ii) the amount transferred to the indigent burial fund, in the event that the person for whose funeral or burial such merchandise or services are to be furnished is living, or that the funeral services for the person for whose funeral or burial such merchandise or services are to be furnished were not paid in full, or that a person has paid for funeral services for which an irrevocable account was established. Nothing contained in this subdivision shall prevent a person otherwise authorized by law to seek reimbursement of the funds from a revocable account pursuant to the applicable provisions of the abandoned property law.

12. A preneed administrator operating under this section shall conduct an audit of all of its accounts relating to preneed agreements as of the thirty-first of December of each calendar year. The audit shall:

(a) Be performed by a certified public accountant licensed to practice in New York state;

(b) Be completed and delivered to the preneed administrator within one hundred twenty days of the end of such calendar year;

(c) Verify, by way of a representative sample, that the preneed administrator has a signed copy of the agreement for each account;

(d) Verify, by way of a representative sample, that appropriate income tax reports have been sent by the preneed administrator to the owner of each account;

(e) Verify that the investment of all funds for the agreements is in

compliance with this section;

(f) Verify, by an appropriate sampling method, that the earnings on the investments are being properly applied to each account and that the earnings are credited to each account at least monthly;

(g) Express an opinion that the financial statements of the preneed administrator fairly represent the financial condition of the funds received in all material respects, and that all financial information distributed by the preneed administrator to consumers, funeral homes or other parties is accurate; and

(h) Verify that the stated yield credited to the account for that fiscal year, as announced by the preneed administrator, is accurate.

13. (a) In no event shall the administrative fees charged under a preneed agreement in any calendar year exceed the net income credited to an account for such calendar year; that is, the account balance shall never be reduced in any calendar year because of administrative fees charged against the account.

(b) Any administrative fees otherwise payable in relation to preneed agreements which are not paid in any calendar year because of the limitations in paragraph (a) of this subdivision shall not be collected in any subsequent calendar year.

14. A preneed administrator operating under this section shall, at the end of each calendar year, have all assets valued and presented in accordance with generally accepted accounting principles.

§ 454. Sale of monuments and memorials. 1. Definitions. As used in this section, the following words shall have the following meanings:

(a) "Consumer" means any natural person who is solicited to purchase or who purchases a memorial. The term shall not include a person making a purchase for resale.

(b) "Memorial" means any monument, headstone, footstone, ledger stone, marker or plaque designed or intended to be erected or installed in or on any cemetery, grave, mausoleum or other appropriate place of burial or memorialization.

(c) "Seller" means an individual, firm, corporation, not-for-profit

corporation, religious corporation, municipal corporation, political subdivision, partnership, association, society or joint stock company, or any agent or employee thereof.

(d) "Offer for sale" means any contact by a seller with a consumer of which the subject of the sale of a memorial to a consumer is a part, whether such contact be in person, by telephone, mail, or other electronic means, and regardless of whether or not the consumer initiates such contact.

(e) "Sale" means the sale of a memorial to or for a consumer for actual delivery prior to, or subsequent to, a death.

(f) "Foundation" means a poured concrete or other permanent base intended to support the memorial and installed at the gravesite in the appropriate location.

2. Each sale of a memorial shall only be evidenced by a written contract which shall be signed by all the parties to the contract, which shall be dated, and which shall be completely separate and may not be included in any other contract, agreement, purchase order, price list, itemization of funeral services and merchandise selected or like document reflecting the purchase by a consumer of any other real or personal property or service related to the burial, cremation, or other disposition of the remains of a deceased person. For purposes of this section, the pourer of a foundation shall not be considered the seller of a foundation. Such separate contract shall be prepared, completed and maintained in accordance with this section for every memorial sale, including a foundation therefor, and shall be the only contractual document prepared in connection with such sale. Provided however in the case of the sale of a monument or memorial made at the same time as a preneed sale of funeral goods or services, a one page document summarizing the transaction shall be given to the consumer in addition to, but not in lieu of, the separate contract required by this section. A full and complete copy of such contract shall be given to the consumer by the seller at the time of purchase of such memorial, and shall be retained by the seller for a period of at least three years from the date of sale. Said contract shall contain at least the following:

(a) the name, address and telephone number of the seller of the memorial;

(b) the name, address and telephone number of the consumer;

(c) the full name of the individual to be memorialized and, if known, the date of such individual's death;

(d) a full description of the memorial, including the material to be provided, the dimensions of the finished memorial, a sketch or drawing of the proposed memorial, the wording of any inscription on such memorial including the approximate layout thereof, the method of engraving of such inscription and the country or state of origin of such monument or memorial provided by the manufacturer;

(e) the approximate date when the memorial is expected to be completed;

(f) the name of the cemetery in which the memorial is to be placed, together with the location of the plot or grave, if known; and

(g) a full disclosure of each of the following: the price of the memorial; applicable sales tax, if any; the charge made by the cemetery for the foundation; any charges for additional work, provided that such additional work is clearly described in the contract and such charges are itemized; the total price as contracted; and the schedule for payment, if any.

3. Whenever there shall be a violation of the provisions of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or the justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eight thousand three hundred three of the civil practice law and rules and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of this section has occurred,

the court may impose a civil penalty of up to five hundred dollars for the first violation and up to one thousand dollars for the second or subsequent violation within an eighteen month period.

4. The provisions of this section shall not apply to cemetery corporations as defined and regulated by article fifteen of the not-for-profit corporation law and the regulations promulgated thereunder.

§ 454-a. Unsolicited offers for monuments or memorials. 1. (a) Except as provided in paragraph (b) of this subdivision, it shall be unlawful to provide any offer for monuments or memorials by mail unless such offer has first been solicited by the individual to which it is sent.

(b) Provided, however, such an offer is permissible where, in large, bold-face type at the top of such offer, "SOLICITATION" is clearly printed.

2. Whenever there shall be a violation of the provisions of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or the justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eight thousand three hundred three of the civil practice law and rules and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of up to five hundred dollars for the first violation and up to one thousand dollars for the second or

subsequent violation within an eighteen month period.

3. The provisions of this section shall not apply to cemetery corporations as defined and regulated by article fifteen of the not-for-profit corporation law and the regulations promulgated thereunder.

ARTICLE 28-B

BUDGET PLANNING

Section 455. Definitions.

456. Budget planning prohibited.

457. Penalty.

§ 455. Definitions. 1. Budget planning, as used in this article, means the making of a contract between a person or entity engaged in the business of budget planning with a particular debtor whereby (i) the debtor agrees to pay a sum or sums of money in any manner or form and the person or entity engaged in the business of budget planning distributes, or supervises, coordinates or controls the distribution of, or has a contractual relationship with another person or entity that distributes, or supervises, coordinates or controls such distribution of, the same among certain specified creditors in accordance with a plan agreed upon and (ii) the debtor agrees to pay to such person or entity, or such other person or entity that distributes, or supervises, coordinates or controls such distribution of, a sum or sums of money, any valuable consideration for such services or for any other services rendered in connection therewith. For the purposes of this article, a person or entity shall be considered as engaged in the business of budget planning in New York, and subject to this article and the licensing and other requirements of article twelve-C of the banking law, if such person or entity solicits budget planning business within this state and, in connection with such solicitation, enters into a contract for budget planning with an individual then resident in this state.

2. Person, as used in this article, shall not include a person

admitted to practice law in this state.

3. Entity, as used in this article, shall not include a firm, partnership, professional corporation, or other organization, all of the members or principals of which are admitted to practice law in this state.

4. Person or entity as used in this article shall not include a charitable corporation as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law of this state, or an entity incorporated in another state and having a similar not-for-profit status, licensed by the superintendent, to engage in the business of budget planning as defined in this section.

5. Any attorney licensed to practice law in this state who is engaged in budget planning shall (a) negotiate directly with creditors on behalf of the client; (b) ensure that all moneys received from the client are deposited in the attorney's account maintained for client funds; (c) pay creditors from such account; and (d) offer budget planning services through the same legal entity that the attorney uses to practice law.

§ 456. Budget planning prohibited. No person or entity shall engage in the business of budget planning as defined in section four hundred fifty-five of this article, except as authorized in article twelve-C of the banking law.

§ 457. Penalty. Whoever either individually or as officer, director or employee of any person, firm, association or corporation, violates any of the provisions of the preceding section shall be guilty of a misdemeanor for each such violation.

ARTICLE 28-BB

CREDIT SERVICES BUSINESS

Section 458-a. Legislative findings and declarations; purposes.

- 458-b. Definitions.
- 458-c. Information statement; procedure.
- 458-d. Information statement; contents.
- 458-e. Advance fees prohibited.
- 458-f. Contracts; requirements and contents.
- 458-g. Contracts void and unenforceable.
- 458-h. Deceptive acts prohibited.
- 458-i. Action for recovery of damages by consumer.
- 458-j. Enforcement by attorney general.
- 458-k. Severability.

§ 458-a. Legislative findings and declarations; purposes. The legislature finds and declares:

1. The ability to obtain and use credit has become of great importance to consumers, who have a vital interest in establishing and maintaining their credit worthiness and credit standing. As a result, consumers who have experienced credit problems may seek assistance from credit services businesses which offer to improve the credit standing of such consumers.

Certain advertising and business practices of some companies engaged in the business of credit services have worked a financial hardship upon the people of this state, often those who are of limited economic means and inexperienced in credit matters.

2. The purposes of this article are to provide prospective consumers of services of credit services companies with the information necessary to make an informed decision regarding the purchase of those services and to protect the public from unfair or deceptive advertising and business practices.

§ 458-b. Definitions. As used in this article:

1. "Credit services business" means any person who sells, provides, or

performs, or represents that he can or will sell, provide or perform, a service for the express or implied purpose of improving a consumer's credit record, history, or rating or providing advice or assistance to a consumer with regard to the consumer's credit record history or rating in return for the payment of a fee.

"Credit services business" does not include any of the following:

(a) Any charitable corporation as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law licensed pursuant to article twelve-c of the banking law.

(b) Any person admitted to practice law in this state where the person renders services within the course and scope of his or her practice as an attorney at law.

2. "Consumer" means any natural person who is solicited to purchase or who purchases the services of a credit services business.

3. "Person" includes an individual, corporation, partnership, joint venture, or any business entity.

4. The terms "consumer reporting agency", "consumer report", "investigative consumer report", "file", and "adverse information" shall have the meanings ascribed to each by section three hundred eighty-a of this chapter.

§ 458-c. Information statement; procedure. Prior to the execution of a contract between a consumer and a credit services business, the credit services business shall provide the consumer an information statement in writing, on a separate sheet, containing the information required by section four hundred fifty-eight-d of this chapter. The consumer shall acknowledge receipt of such information statement by placing his signature on the face thereof. The credit services business shall maintain on file or microfilm for a period of two years from the date of such acknowledgement an exact copy of such information statement.

§ 458-d. Information statement; contents. The information statement

shall be printed in at least ten point type and shall include the following:

"RIGHT TO REVIEW YOUR FILE"

"The Federal Fair Credit Reporting Act gives you the right to know what your credit file contains, and the consumer reporting agency must provide someone to help you interpret the data. The New York Fair Credit Reporting Act gives you the right to receive an actual copy of your credit report. You will be required to identify yourself to the consumer reporting agency and you may be charged a small fee. There is no fee, however, if you have been turned down for credit, employment, or insurance because of information contained in a report within the preceding thirty days."

"INCORRECT INFORMATION"

"Consumer reporting agencies are required to follow reasonable procedures to ensure that subscribing creditors report information accurately. However, mistakes may occur.

When you notify the consumer reporting agency in writing that you dispute the accuracy of information, it must reinvestigate and modify or remove inaccurate data. The consumer reporting agency may not charge any fee for this service. Any pertinent data you have concerning an error should be given to the consumer reporting agency.

If reinvestigation does not resolve the dispute to your satisfaction, you may enter a statement of one hundred words or less in your file, explaining why you think the record is inaccurate.

The consumer reporting agency must include your statement about disputed data -- or a coded version of it -- with any reports it issues about you. New York law also provides that, at your request, the consumer reporting agency must notify any person who has received a report in the previous year that an error existed and furnish such person with the corrected information."

"TIME LIMITS ON ADVERSE DATA"

"Most kinds of information in your file may be reported for a period of seven years. If you have declared personal bankruptcy, however, that fact may be reported for ten years.

After seven years or ten years, the information can't be disclosed by a credit reporting agency unless you are being investigated for a credit application of \$50,000 or more, for an application to purchase life insurance of \$50,000 or more, or for employment at an annual salary of \$25,000 or more."

§ 458-e. Advance fees prohibited. It is hereby declared to be an unfair and deceptive trade practice and unlawful for a credit services business to receive or collect from a consumer any fee in advance of the performance of those services specified in the contract as required by section four hundred fifty-eight-f of this chapter.

§ 458-f. Contracts; requirements and contents. 1. Every contract between a consumer and a credit services business shall be in writing, shall be dated, shall contain the street address of the credit services business and the consumer, and shall be signed by the consumer and credit services business. Each contract shall contain the following:

(a) A complete and detailed statement of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including a list of the adverse information appearing on the consumer's credit report that will be modified, a description of the precise nature of each modification, and the estimated date by which each modification will occur. A copy of the consumer's current credit report issued by a consumer credit reporting agency shall be annexed to the contract with the adverse entries proposed to be modified clearly marked.

(b) A statement in at least ten point type as follows:

"Under New York law no fee may be collected in advance of performance of the services specified in this contract."

2. The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract and easily detachable, and which shall contain in at least ten point type the following:

"Notice of Cancellation"

"You may cancel this contract, without any penalty or obligation, within three days from the date the contract is signed.

"To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice,

to_____ at

(name of seller)

(address of seller)

(Place of business)

not later than midnight_____.

(date)

"I hereby cancel this transaction."

(purchaser's signature)

(date)

3. A copy of the fully completed contract and all other documents shall be given to the buyer at the time the contract is signed.

§ 458-g. Contracts void and unenforceable. 1. Any contract for services which does not comply with the applicable provisions of this article shall be void and unenforceable as contrary to public policy.

2. Any waiver by a consumer of the provisions of this article shall be deemed void and unenforceable by a credit services business as contrary to public policy.

§ 458-h. Deceptive acts prohibited. It is hereby declared to be an unfair and deceptive trade practice and unlawful for a credit services company to:

1. Misrepresent directly or indirectly in its advertising, promotional materials, sales presentation, or in any manner: the nature of the

services to be performed; the time within which services will be performed; the ability to improve a consumer's credit report or credit rating; the amount or type of credit a consumer can expect to receive as a result of the performance of the services offered; the qualifications, training or experience of its personnel.

2. Make or counsel or advise any consumer to make any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer credit reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's credit worthiness, credit standing, or credit capacity.

3. Represent directly or indirectly in its advertising, promotional materials, sales presentation, or in any manner that it can procure or obtain a credit card for a consumer unless that credit services company has authority to issue the credit card being advertised.

§ 458-i. Action for recovery of damages by consumer. Any consumer injured by a violation of this article or by the breach by the credit services business of a contract which has been entered into pursuant to section four hundred fifty-eight-f of this chapter may bring an action for recovery of damages. Judgment shall be entered in favor of a consumer in an amount not to exceed three times the actual damages, but in no case less than the amount paid by the buyer to the credit services business. The court may award reasonable attorney's fees to a prevailing plaintiff.

§ 458-j. Enforcement by attorney general. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and

restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 458-k. Severability. If any provision of this article or if any application thereof to any person or circumstance is held invalid, the remainder of this article and the application of the provision to other persons and circumstances shall not be affected thereby.

ARTICLE 28-C

IMMIGRANT ASSISTANCE SERVICES

Section 460-a. Definitions and applicability.

460-b. Immigrant assistance service contracts.

460-c. Required notices.

460-d. Prohibited acts.

460-e. Retention of documents.

460-f. Surety requirement.

460-g. Action.

460-h. Enforcement.

460-i. Violations.

460-j. Other remedies.

460-k. Additional civil penalty for consumer frauds committed against users of immigrant assistance services.

§ 460-a. Definitions and applicability. For the purpose of this article the following terms shall have the following meanings:

1. "Immigrant assistance service" means providing assistance, for a fee or other compensation, to persons who have, or plan to, come to the United States from a foreign country, or their representatives, in relation to any proceeding, filing or action affecting the non-immigrant, immigrant or citizenship status of a person which arises under the immigration and nationality law, executive order or presidential proclamation, or which arises under actions or regulations of the United States citizenship and immigration services, the United States department of homeland security, the United States department of labor, or the United States department of state.

2. "Provider" means any person, including but not limited to a corporation, partnership, limited liability company, sole proprietorship or natural person, that provides immigrant assistance services, but shall not include (a) any person duly admitted to practice law in this state and any person working directly under the supervision of the person admitted; (b) any not-for-profit tax exempt organization that provides immigrant assistance without a fee or other payment from individuals or at nominal fees as defined by the federal board of immigration appeals, and the employees of such organization when acting within the scope of such employment; (c) any organization recognized by the federal board of immigration appeals that provides services via representatives accredited by such board to appear before the United States citizenship and immigration services and/or executive office for immigration review, that does not charge a fee or charges nominal fees as defined by the board of immigration appeals; (d) any authorized agency under subdivision ten of section three hundred seventy-one of the social services law and the employees of such organization when acting within the scope of such employment; or (e) any individual providing representation in an immigration-related proceeding under federal law for which federal law or regulation establishes such individual's authority to appear.

§ 460-b. Immigrant assistance service contracts. 1. No immigrant assistance service shall be provided until the customer has executed a written contract with the immigrant assistant service provider. The contract shall be in a language understood by the customer, either alone or with the assistance of an available interpreter, and, if that language is not English, an English language version of the contract must also be provided. A copy of the contract shall be provided to the customer upon the customer's execution of the contract. The interpreter shall provide an attestation affirming the accuracy of his or her translation, to be attached to the contract.

2. (a) The customer has the right to cancel the contract within three business days after his or her execution of the contract, without fee or penalty. The right to cancel the contract within three days without payment of any fee may be waived when services must be provided immediately to avoid a forfeiture of eligibility or other loss of rights or privileges, and the customer furnishes the provider with a separate dated and signed statement, by the customer or his or her representative, describing the need for services to be provided within three days and expressly acknowledging and waiving the right to cancel the contract within three days.

(b) The contract may be cancelled at any time after execution. If the contract is cancelled more than three days after it was signed, or within three days after it was signed if the right to cancel without fee has been waived, the provider may retain fees for services rendered, and any additional amounts actually expended on behalf of the customer. All other amounts must be returned to the customer within fifteen days after cancellation.

3. The written contract shall be in plain language, in at least twelve point type and shall include the following:

(a) The name, address and telephone number of the provider.

(b) Itemization of all services to be provided to the customer, as well as the fees and costs to be charged to the customer for each service.

(c) A statement that original documents required to be submitted in connection with an application made to the United States citizenship and immigration services or for other certifications, benefits or services provided by government may not be retained by the immigrant assistance service provider for any reason, including failure of the customer to pay fees or costs or other fee dispute.

(d) A statement that the provider shall give the customer a copy of each document prepared with the provider's assistance.

(e) A statement that the customer is not required to obtain supporting documents through the immigrant assistance service provider, and may obtain such documents himself or herself, along with the statement: "The U.S. government provides information on required forms and documentation for free online and by phone".

(f) The statement: "You may cancel this contract at any time. You have three (3) business days to cancel this contract without fee or penalty and get back any fees that you have already paid. Notice of cancellation may be made by completing the cancellation form included in this contract, or otherwise notifying the provider in writing and delivering such form or notification to the provider in person or by United States mail to (specify address). If you cancel this contract you will get back any documents you submitted to the provider".

(g) Each contract shall contain a separate final page titled "Cancellation Form." The cancellation form shall contain the following statement: "I hereby cancel the contract of (date of contract) between (name of provider, address of provider, and phone number of provider) and (name of customer)." Below the statement shall be a customer signature and date line. Below the signature and date line, the form shall contain the statement required by paragraph (h) of this subdivision, printed in twelve point or larger text.

(h) A statement that the immigrant assistance service provider has financial surety in effect for the benefit of any customer in the event that the customer is owed a refund, or is damaged by the actions of the provider, together with the name, address and telephone number of the surety.

(i) The statement: "The individual providing assistance to you under this contract is not an attorney licensed to practice law or accredited by the board of immigration appeals to provide representation to you

before the United States citizenship and immigration services, the department of homeland security, the executive office for immigration review, the department of labor, the department of state or any immigration authorities and may not give legal advice or accept fees for legal advice. For a free legal referral call the office for new Americans hotline at (phone number of the office for new Americans), the New York state office of the attorney general at (phone number of the office of the attorney general), or your local district attorney or prosecutor." The service provider shall be responsible for providing the accurate and up-to-date phone numbers required in such statement.

(j) The statement: "The individual providing assistance to you under this contract is prohibited from disclosing any information about you to, or filing any forms or documents on your behalf with, immigration or other authorities without your knowledge and consent except as required by law." A provider shall promptly notify the customer in writing when such provider has disclosed any information to or filed any form or document with immigration or other authorities when such disclosure or filing was required by law and done without the knowledge and consent of the customer.

(k) The statement: "A copy of all forms completed and documents accompanying the forms shall be kept by the service provider for three years. A copy of the customer's file shall be provided to the customer on demand and without fee."

(l) On the same page as the signature line, the statement: "The individual providing assistance to you under the terms of this contract must explain the contents of this contract to you and answer any questions about it that you may have."

§ 460-c. Required notices. 1. Posting of signs. Every provider shall post signs, at every location where such provider meets with customers, setting forth information in English and in every other language in which the person provides or offers to provide immigrant assistance services. There shall be a separate sign for each language, and each shall be posted in a location where it will be visible to customers.

(a) One sign shall be at least eleven inches by seventeen inches, and shall contain the following in not less than sixty point type:

"THE INDIVIDUAL PROVIDING ASSISTANCE TO YOU UNDER THIS CONTRACT IS NOT AN ATTORNEY LICENSED TO PRACTICE LAW OR ACCREDITED BY THE BOARD OF IMMIGRATION APPEALS TO PROVIDE REPRESENTATION TO YOU BEFORE THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, THE DEPARTMENT OF HOMELAND SECURITY, THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF STATE OR ANY IMMIGRATION AUTHORITIES AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE. FOR A FREE LEGAL REFERRAL CALL THE OFFICE FOR NEW AMERICANS HOTLINE AT (phone number of the office for new Americans). TO FILE A COMPLAINT ABOUT AN IMMIGRANT ASSISTANCE SERVICE PROVIDER CALL THE OFFICE FOR NEW AMERICANS HOTLINE AT (phone number of the office for new Americans), THE NEW YORK STATE OFFICE OF ATTORNEY GENERAL AT (phone number of the office of attorney general), OR YOUR LOCAL DISTRICT ATTORNEY OR PROSECUTOR'S OFFICE AT (phone number of the local district attorney)." The service provider shall be responsible for providing the accurate and up-to-date phone numbers required on such sign.

(b) A separate sign shall be posted in a location visible to customers in conspicuous size type and which contains the schedule of fees for services offered and the statement:

"YOU MAY CANCEL ANY CONTRACT WITHIN 3 BUSINESS DAYS AND GET BACK YOUR DOCUMENTS AND ANY MONEY YOU PAID."

2. Notice in advertisements. Every provider who advertises immigrant assistance services, whether by signs, pamphlets, newspapers, or any other written communication shall post or otherwise include with such advertisement a notice in the language in which the advertisement appears. This notice shall be of a conspicuous size and shall state: "THE INDIVIDUAL OFFERING TO PROVIDE IMMIGRANT ASSISTANCE SERVICES IS NOT AN ATTORNEY LICENSED TO PRACTICE LAW OR ACCREDITED BY THE BOARD OF IMMIGRATION APPEALS TO PROVIDE REPRESENTATION BEFORE THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, THE DEPARTMENT OF HOMELAND SECURITY, THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, THE DEPARTMENT OF LABOR, THE DEPARTMENT OF STATE OR ANY IMMIGRATION AUTHORITIES AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

§ 460-d. Prohibited acts. No provider shall:

1. Give legal advice, or otherwise engage in the practice of law.

2. Assume, use or advertise the title of lawyer or attorney at law, or equivalent terms in the English language or any other language, or represent or advertise other titles or credentials, including but not limited to "notary public", "accredited representative of the board of immigration appeals," "notario public", "notario", "immigration specialist" or "immigration consultant," that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided that a notary public licensed by the secretary of state may use the term "notary public."

3. State or imply that the provider can or will obtain special favors from or has special influence with the United States citizenship and immigration services, the United States department of Homeland Security, the executive office for Immigration review or any other governmental entity.

4. Threaten to report the customer to immigration or other authorities or threaten to undermine in any way the customer's immigration status or attempt to secure lawful status.

5. Demand or retain any fees or compensation for services not performed, services to be performed in the future, or costs that are not actually incurred.

6. Advise, direct or permit a customer to answer questions on a government document, or in a discussion with a government official, in a specific way where the provider knows or has reasonable cause to believe that the answers are false or misleading.

7. Disclose any information to, or file any forms or documents with, immigration or other authorities on behalf of a customer without the knowledge or consent of the customer except where required by law. A provider shall promptly notify the customer in writing when such

provider has disclosed any information to or filed any form or document with immigration or other authorities when such disclosure or filing was required by law and done without the knowledge and consent of the customer.

8. Fail to provide customers with copies of documents filed with a governmental entity or refuse to return original documents supplied by, prepared on behalf of, or paid for by the customer, upon the request of the customer, or upon termination of the contract. Original documents must be returned promptly upon request and upon cancellation of the contract, even if there is a fee dispute between the immigration assistance service provider and the customer.

9. Make any misrepresentation or false statement, directly or indirectly.

10. Make any guarantee or promise to a customer, unless there is a basis in fact for such representation, and the guarantee or promise is in writing.

11. Represent that a fee may be charged, or charge a fee for the distribution, provision or submission of an official document or form issued or promulgated by a state or federal governmental entity, or for a referral of the customer to another person or entity that is qualified to provide services or assistance which the immigrant assistance service provider will not provide.

12. For a fee or other compensation refer a customer to an attorney or any other individual or entity that can provide services that the immigrant assistance service provider cannot provide.

13. Give advice on the determination of a person's immigration status, including advising him or her as to answers on a government form regarding such determination.

14. Promise to expedite immigration or other immigration related governmental benefit processes, through claims to have special

relationships with or special access to government employees who will expedite applications or issue favorable decisions for any reason other than the merits of the application.

15. Knowingly provide misleading or false information to a noncitizen about his or her individual or family's eligibility for immigration benefits or status, or to noncitizens or citizens about their individual or family's eligibility for other government benefits, with the intent to induce an individual to employ the services of the service provider to obtain such immigration benefits or status, or such other government benefits.

§ 460-e. Retention of documents. A provider shall retain copies of all documents prepared or obtained in connection with a customer's request for assistance for a period of three years after a written contract is executed by the provider and the customer, whether or not such contract is subsequently cancelled.

§ 460-f. Surety requirement. Every provider shall maintain in full force and effect for the entire period during which the provider provides immigrant assistance services and for one year after the provider ceased to do business as an immigrant assistance service provider, a bond, contract of indemnity, or irrevocable letter of credit, payable to the people of the state of New York, in the principal amount of fifty thousand dollars; provided, however, that every provider that receives in excess of two hundred fifty thousand dollars in total fees and other compensation for providing immigrant assistance service during any twelve-month period shall maintain in full force and effect a bond, contract of indemnity, or irrevocable letter of credit, payable to the people of the state of New York, in the principal amount of twenty percent of such total fees and compensation. Such surety shall be for the benefit of any customer who does not receive a refund of fees from the provider to which he or she is entitled, or is otherwise injured by the provider. The attorney general on behalf of the customer or the customer in his or her own name, may maintain an action against the

provider and the surety.

§ 460-g. Action. An individual who is harmed by a provider as a result of a provider's violation of this article may bring an action in his or her own name against a provider to enjoin such unlawful act or practice, an action to recover his or her actual damages or twenty-five hundred dollars, whichever is greater, or both such actions, in addition to any other remedy available in law or equity. The court may award costs and reasonable attorney's fees to a prevailing plaintiff.

§ 460-h. Enforcement. Upon any violation of this article, an application may be made by the attorney general in the name of the people of the state to a court having jurisdiction to issue an injunction, and upon notice to the respondent of not fewer than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each violation.

§ 460-i. Violations. Any violation of any provision of this article shall be a class A misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment; provided however, a second or subsequent offense shall be punishable by a fine of not more than three thousand dollars or by imprisonment for not more than one year, or by both such fine and

imprisonment. In addition, the court may order as part of the sentence imposed restitution or reparation to the victim of the crime pursuant to section 60.27 of the penal law. The attorney general shall have the power to prosecute any violation of this article.

§ 460-j. Other remedies. The civil and criminal remedies set forth in this article shall not preclude any individual or entity or government authority from seeking relief under any other statutory or common law right to relief.

§ 460-k. Additional civil penalty for consumer frauds committed against users of immigrant assistance services. 1. (a) In addition to any liability for damages or a civil penalty imposed pursuant to sections three hundred forty-nine, three hundred fifty-c and three hundred fifty-d of this chapter, regarding deceptive practices and false advertising, and subdivision twelve of section sixty-three of the executive law, regarding proceedings by the attorney general for equitable relief against fraudulent or illegal consumer fraud, a person or entity who engages in any conduct prohibited by said provisions of law, and whose conduct is perpetrated against one or more persons seeking or using immigrant assistance services, may be liable for an additional civil penalty not to exceed ten thousand dollars, in accordance with paragraph (b) of this subdivision.

(b) In determining whether to impose a supplemental civil penalty pursuant to paragraph (a) of this subdivision, and the amount of any such penalty, the court shall consider, in addition to other appropriate factors, the extent to which the following factors are present:

(1) Whether the defendant knew that his or her conduct was directed to one or more persons seeking or using immigrant assistance services or whether the defendant knowingly acted with disregard for the rights of a person seeking or using immigrant assistance services;

(2) Whether the defendant's conduct: (i) caused a person seeking or using immigrant assistance services to suffer loss or encumbrance of a primary residence, loss of employment or source of income, substantial loss of property or assets essential to the health or welfare of the

person seeking or using immigrant assistance services; or (ii) whether one or more persons seeking or using immigrant assistance services were substantially more vulnerable to the defendant's conduct because of impaired understanding, or any other perceived disadvantage, and actually suffered physical or economic damage resulting from the defendant's conduct.

2. Restitution ordered pursuant to the provisions of law listed in subdivision one of this section or pursuant to any other section of law shall be given priority over the imposition of civil penalties ordered by the court under this section.

ARTICLE 28-D

LASERS, RADIATION, CRANE OPERATORS AND BLASTERS

Section 480. Legislative findings.

481. Definitions.

482. Licensing and registration.

483. Administration.

484. Enforcement.

485. Application.

486. Crane inspectors.

§ 480. Legislative findings. The legislature hereby finds that the use of lasers and radioactive materials, the operation of cranes, the detonation of explosives, and the preparation and firing of pyrotechnics involve such elements of potential danger to the lives, health and safety of the citizens of this state and to their property that special regulations are necessary to insure that only persons of proper ability and experience shall engage in such uses and operations.

The legislature hereby declares that this article shall be deemed an exercise of the police power of this state for the protection of the lives, health and safety of citizens in this state and of their property.

§ 481. Definitions. As used in this article:

1. "Laser" means light amplification by simulated emission of radiation.

2. "Radioactive material" means any material in any form that emits ionizing radiation spontaneously. "Radiation equipment" means any equipment or device which can emit ionizing or non-ionizing radiation.

3. "Crane" includes but is not limited to cranes and equipment of the following types: a mobile, carrier-mounted, power-operated hoisting machine utilizing a power-operated boom which moves laterally by rotation of the machine on the carrier, tower cranes, hydraulic cranes and power-operated derricks; provided, however, that "crane" shall not include public utility company line trucks used by a public utility company in the construction and maintenance of its generation, transmission and distribution facilities.

4. "Blaster" means a person who performs the act of preparation for detonation and the detonation of an explosive.

5. "Pyrotechnician" means a person who performs the preparation for and the firing of pyrotechnics, as defined in article sixteen of the labor law.

6. "Commissioner" means the commissioner of labor of the state of New York, except that any reference to the commissioner with respect to radioactive material, as defined in this article, or radiation equipment, as defined in this article, shall be a reference to the commissioner of health of the state of New York.

§ 482. Licensing and registration. 1. No individual shall use lasers, operate a crane, act as a blaster or as a pyrotechnician without holding a valid certificate of competence issued by the commissioner of labor.

2. No person shall possess or use any radioactive material without a valid license issued by the commissioner of health. Every installation and mobile source consisting of radiation equipment shall be registered with the commissioner of health.

3. No employer, contractor or agent thereof shall knowingly permit any individual to use lasers, operate a crane or act as a blaster or as a pyrotechnician without holding a valid certificate of competence issued by the commissioner of labor.

§ 483. Administration. 1. a. The commissioner of labor is hereby authorized and directed to prescribe such rules and regulations as may be necessary and proper for the administration and enforcement of this article with respect to lasers, crane operators, blasters and pyrotechnicians.

b. Pursuant to section two hundred twenty-five of the public health law, the public health and health planning council, subject to the approval of the commissioner of health, is hereby authorized and directed to prescribe such rules and regulations as may be necessary and proper for the administration and enforcement of this article with respect to radioactive material and radiation equipment. Such regulations may require the posting of a bond or other security.

2. Such regulations may provide for examinations, categories of certificates, licenses, or registrations, age and experience requirements, payment of fees, and may also provide for such limitations and exemptions as the commissioner finds necessary and proper. In the case of blasters and pyrotechnicians, such regulations may require fingerprinting, and in the case of users of radioactive material, such regulations may require the posting of a bond or other security.

3. Any member of a blaster examining board, crane operating examining board or other board created pursuant to rules and regulations of the commissioner to implement this article shall serve without salary or other compensation.

4. The laser operating examining board is hereby abolished and any reference to the laser operating examining board, in law or regulation, shall be deemed a reference to the commissioner of labor. Any inconsistent regulation or part thereof shall be deemed repealed as of the effective date of this subdivision.

§ 484. Enforcement. 1. a. For the purpose of administering and enforcing the provisions of this article with respect to lasers, cranes, blasters and pyrotechnicians, the commissioner of labor shall have and may use all of the powers conferred upon him or her by the labor law, in addition to the powers conferred herein.

b. For the purpose of administering and enforcing the provisions of this article with respect to radioactive material and radiation equipment the commissioner of health shall have and may use all of the powers conferred upon him or her by the public health law, in addition to the powers conferred in this article.

2. Any person who violates any provision of this article or of any rule or regulation of the commissioner promulgated hereunder or of any rule or regulation promulgated pursuant to paragraph b of subdivision two of section four hundred eighty-five of this article shall be guilty of a misdemeanor, and upon conviction shall be punished, by a fine of not more than one thousand dollars; for a second offense by a fine of not less than one thousand nor more than three thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment; for a subsequent offense by a fine of not less than three thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

3. Where the employer, contractor or agent thereof permitting a violation of any provision of this article or of any rule or regulation of the commissioner promulgated hereunder or of any rule or regulation promulgated pursuant to paragraph b of subdivision two of section four hundred eighty-five of this article shall be a corporation, then in

addition to the corporation, the officer or agent of such corporation who knowingly permits the corporation to violate such provisions is guilty of a misdemeanor; and upon conviction thereof shall be punished for a first offense by a fine of not more than one thousand dollars; for a second offense by a fine of not less than one thousand nor more than three thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment; for a subsequent offense by a fine of not less than three thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

4. (a) Any person who operates a crane without a certificate of competence issued by the commissioner of labor as required by section four hundred eighty-two of this article shall be deemed to have violated this article. The commissioner may impose a civil penalty upon such person of no more than one thousand dollars for the initial violation, no more than two thousand dollars for the second violation, and no more than three thousand dollars for a third or subsequent violation.

(b) Any employer, contractor or agent thereof who willfully permits a person to operate a crane without a certificate of competence issued by the commissioner of labor as required by section four hundred eighty-two of this article shall be deemed to have violated this article. The commissioner may impose a civil penalty upon such employer, contractor, or agent of no more than five thousand dollars for the initial violation, and no more than ten thousand dollars for a second or subsequent violation.

(c) When two final determinations have been rendered under this section against a person who operates a crane in violation of this article, such person shall be ineligible to apply for a certificate of competence from the commissioner of labor for a period of two years from the date of the second final determination.

§ 485. Application. 1. Except as otherwise provided in this article, this article shall not apply to the use or possession of lasers, radioactive material or radiation equipment which are subject to the regulatory powers and jurisdiction of the state department of health or the health department of the city of New York.

2. a. Sections four hundred eighty-two, four hundred eighty-three and subdivision one of section four hundred eighty-four of this article shall not apply to an individual operating a crane or acting as a blaster in a city having a population of one million or more.

b. No individual shall operate a crane or act as a blaster in a city having a population of one million or more without holding a valid license or certificate of fitness issued by such city, and such city is hereby authorized and directed to prescribe rules and regulations as described in section four hundred eighty-three of this article.

c. No employer, contractor or agent thereof shall knowingly permit any individual to operate a crane or act as a blaster in a city having a population of one million or more unless such individual holds a valid license or certificate of fitness issued by such city.

§ 486. Crane inspectors. 1. Civil penalty and enforcement.
Notwithstanding any other provision of law, where it is proven, after a hearing on the merits, that a crane inspector:

a. willfully failed to inspect a crane for which he or she filed an inspection report; or

b. willfully falsified an inspection report; or

c. willfully made material misstatements or material omissions on an inspection report; or

d. willfully accepted a bribe, regardless of its effect on his or her official duties;

such crane inspector shall be subject to a civil penalty of not less than one thousand dollars nor more than five thousand dollars for each such occurrence or transaction. The attorney general shall have jurisdiction to enforce the provisions of this subdivision.

2. Scope. The provisions of this section shall not be deemed to establish an exclusive remedy, and shall not be deemed to bar the prosecution of criminal charges in addition to any action brought pursuant to the provisions of this section.

ARTICLE 28-E

CHILDREN'S PRODUCT SAFETY AND RECALL EFFECTIVENESS ACT OF 2008

Section 490. Short title.

490-a. Definitions.

490-b. Manufacturers' requirements to include product safety owner's cards.

490-c. Labeling of children's products and durable juvenile products.

490-d. Product recall or warning requirements.

490-e. Retailer responsibilities.

490-f. Non-retail sales responsibilities.

490-g. Enforcement.

490-h. Promulgation of rules and regulations.

§ 490. Short title. This article shall be known and may be cited as the "children's product safety and recall effectiveness act of 2008".

§ 490-a. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Department" means the department of state.

2. "Children's product" shall mean a toy or other article, other than clothing, primarily intended for use by a child under twelve years of age. The following shall be considered in determining if the toy or article is intended for a child under twelve years of age:

(a) A statement by a manufacturer about the intended use of such toy or article, including a label on such toy or article;

(b) The context and manner of the advertising, promotion, and marketing associated with the toy or article; and

(c) Whether the toy or article is commonly recognized by consumers as being intended for use by a child under twelve years of age.

3. "Commercial dealer" means any person who is in the business of manufacturing, remanufacturing, retrofitting, distributing, importing, or selling at wholesale children's products in New York state. This definition shall not be construed to include retailers.

4. "Secretary" means the secretary of state.

5. "Initial consumer" means a person who purchases a children's product or durable juvenile product for any purpose other than resale.

6. "Secondhand dealer" means a person who sells as a primary source of income reconditioned, remanufactured, refurbished, previously owned, or consignment items. Such term shall not include the initial consumer or someone who purchases a children's product or durable juvenile product primarily for personal use but who subsequently sells the product.

7. "Durable juvenile product" means products intended for use, or that may be reasonably expected to be used, by children under the age of five years as defined in subsection (f) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 or other similar durable juvenile products designed for children under age five as shall be specified in regulations promulgated by the United States consumer product safety commission.

8. "Person" means a natural person and any entity, including but not limited to a sole proprietorship, partnership, firm, corporation, limited liability company, or association, and any employee or agent thereof.

9. "Product safety owner's card" means a postage paid registration form that (a) requests the initial consumer to provide prescribed information to the manufacturer, and (b) requires the manufacturer

provide certain prescribed information to the initial consumer. All such information shall be prescribed by the United States consumer product safety commission, pursuant to subsection (d) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 and the United States consumer product safety commission rules promulgated in accordance with such act.

10. "Recall" means a request to return a product to the manufacturer due to a defect in the product.

11. "Retailer" means any person who as a business or for-profit venture sells or leases children's products or durable juvenile products for-profit in New York to initial consumers. Such term shall not include (a) someone who purchased or acquired a product primarily for personal use and who subsequently resells the product, or (b) any secondhand dealer, as defined in this section.

12. "Knowledge" means (a) the receipt of notice or having actual knowledge or (b) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

§ 490-b. Manufacturers' requirements to include product safety owner's cards. 1. Manufacturers of durable juvenile products distributed, sold or made available in New York state shall include a product safety owner's card with all sales to initial consumers of durable juvenile products. The manufacturer shall not use or disseminate to any other party the information collected by the manufacturer for any purpose other than notification to the consumer concerned in the event of a product recall or safety alert regarding the product concerned. Within the product safety owner's card, such manufacturers shall request initial consumer information as prescribed by the United States consumer product safety commission, pursuant to subsection (d) of section 104 of the United States Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 and the United States consumer product safety commission rules promulgated in accordance with such act, to effectuate the

notification required by this article. The product safety owner's card shall include a statement indicating that the information shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

2. Such manufacturer shall retain for a period of no less than six years any initial consumer contact information obtained. This information shall not be sold, posted, transferred or used for any other purpose other than to communicate information relating to a recall, warning or defect directly associated with the product.

3. Nothing in this section shall be deemed to compel a consumer to complete and return such product safety owner's card.

§ 490-c. Labeling of children's products and durable juvenile products. 1. Every manufacturer or importer of a children's product or a durable juvenile product sold or distributed in New York state shall label such product or its packaging with a label as prescribed by 15 USC 2063 and the United States consumer product safety commission rules promulgated in accordance with the United States Consumer Product Safety Improvement Act of 2008.

2. No commercial dealer or retailer shall obscure, in part or in full, any label required under this section.

§ 490-d. Product recall or warning requirements. 1. When a commercial dealer of children's products or durable juvenile products has made available or placed for sale in this state a children's product or durable juvenile product for which a recall or warning has been issued, the commercial dealer must discontinue distribution of any recalled product and initiate the following process within twenty-four hours of issuing or receiving the recall or warning from the consumer product safety commission:

(a) Contact in writing any persons to whom it sold or otherwise made available that particular children's product or durable juvenile product

in this state and inform them of the recall or warning. The recall notice shall direct all such persons to stop the sale or distribution of the recalled product and provide directions on the disposition of such product;

(b) If the commercial dealer maintains a website, such dealer must place on the home page (or the first entry point) of its website a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question;

(c) Give notice of the recall or warning directly to the initial consumer, if contact information for such consumer is known; and

(d) Provide notification to the department of such recall or warning. All notices under this subdivision must include in a clear and conspicuous fashion a description of the product, the reason for the recall or warning, a picture of the product if available, and instructions on how to return or exchange the recalled product. Such notice shall include only the product recall or warning information and may not include sales or marketing information on that product or any other product, excluding return and exchange policies.

2. (a) When a commercial dealer of children's products or durable juvenile products has sold or otherwise made available in this state a children's product or durable juvenile product for which a recall has been issued, and such commercial dealer receives such products back from purchaser, the commercial dealer shall take actions, consistent with commonly accepted industry practices and with state and federal environmental standards, to ensure that no person shall use the recalled product unless and until the defect or other basis for the recall has been corrected on such recalled product.

(b) The commercial dealer shall provide to the department certification of disposition for such recalled products within ninety days after the issuance of the recall, unless upon written application by such dealer the department determines an extension of time is warranted.

§ 490-e. Retailer responsibilities. 1. A retailer shall not sell, lease or otherwise make available a children's product or durable

juvenile product that does not contain an appropriate label as provided under section four hundred ninety-c of this article.

2. When a retailer has knowledge of a commercial dealer or a federal or state agency's notice of a recall or warning regarding a children's product or durable juvenile product, and if the retailer currently offers for sale or otherwise makes available or had offered for sale or otherwise made available such product, the retailer shall do the following:

(a) Within one business day of knowledge of a recall notice, initiate a corrective undertaking that includes (i) removing the children's product or durable juvenile product from the store shelves and (ii) taking steps to ensure that such product is not sold or made available, including, but not limited to implementing a mechanism or procedure which will prevent a recalled product or products from being purchased at a point of sale.

(b) Within one business day of knowledge of either a notice of a recall or a warning:

(i) post recall and warning notices conspicuously at the retailer's locations for a period of at least sixty days; and

(ii) if the retailer maintains a website, post on the home page (or the first entry point) for a period of sixty days a link to recall or warning information that contains the specific recall or warning notice that was issued for the product. The information may include only a photograph or detailed rendering of the product and the product recall or warning information and may not include sales or marketing information.

(c) Upon knowledge of a recall or warning notice, when contact information was provided at the time of purchase and remains available at the time of receipt of the recall or warning notice the retailer shall contact the initial consumer of a durable juvenile product to provide the recall or warning information. The recall or warning information must include a description of the product, the reason for the recall or warning, and instructions on how to exchange, return for a refund or otherwise respond to the children's product involved in the recall or warning. Such notice shall include only the product recall or warning information and may not include sales or marketing information

on that product or any other product, other than the pertinent return and exchange policies.

§ 490-f. Non-retail sales responsibilities. 1. Any person that acts as an operator or manager of a website that serves as a platform to facilitate by a competitive bidding process or solely between third parties the resale, sale or distribution of children's products or durable juvenile products shall conspicuously post on its homepage advisory language which notifies buyers or sellers of children's products or durable juvenile products of the importance of checking recall lists before engaging in such transactions that incorporates a direct link to the recall information available at the United States consumer product safety commission website.

2. Secondhand dealers who sell children's products and/or durable children's products shall post a notice instructing consumers on how to obtain recall information and advisory language notifying buyers and sellers of children's products or durable juvenile products of the importance of checking recall lists before engaging in such transactions. Such notice shall be prominently posted at the point of sale or at the entrance to the premises where the product is offered for sale.

§ 490-g. Enforcement. 1. Where it is determined after a hearing that any person has violated one or more provisions of this article, the secretary may assess a civil penalty no greater than five thousand dollars for each violation. Any proceeding conducted pursuant to this section shall be subject to the state administrative procedure act. Upon the occasion of a second violation or subsequent violations of this article, a civil penalty no greater than fifty thousand dollars may be assessed.

2. The department shall provide the attorney general any information on recalled or unsafe products, complaints regarding recalled or unsafe products and violations of this section that are necessary for the

purposes of enforcement by the attorney general pursuant to section sixty-three of the executive law.

3. The secretary or his or her designee may administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the powers and duties under this article. The secretary or his or her designee may subpoena and require the attendance of witnesses and the production of books, papers, contracts and any other documents pertaining to any investigation or hearing conducted pursuant to this article.

4. If any person refuses to comply with a subpoena issued under this section, the department may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.

5. Nothing in this section shall be construed to restrict any right which any person may have under any other statute or at common law.

§ 490-h. Promulgation of rules and regulations. The department shall promulgate rules and regulations to administer this article.

ARTICLE 28-F

CROHN'S AND COLITIS FAIRNESS ACT

Section 491. Definition.

492. Access to restroom facilities.

493. Required changes.

494. Denial of access.

§ 491. Definition. As used in this article, "eligible medical condition" means Crohn's disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome or any other medical condition that requires immediate access to a toilet facility.

§ 492. Access to restroom facilities. 1. A place of business open to the general public for the sale of goods or services that has a toilet facility for its employees shall allow any individual who is lawfully on the premises of such place of business to use that toilet facility during normal business hours, even if the place of business does not normally make the employee toilet facility available to the public, provided that all of the following conditions are met:

(a) the individual requesting the use of the employee toilet facility has an eligible medical condition or utilizes an ostomy device, provided that the place of business may require the individual to present reasonable evidence that the individual has an eligible medical condition or uses an ostomy device;

(b) two or more employees of the place of business are working at the time the individual requests use of the employee toilet facility;

(c) the employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the requesting individual or create an obvious security risk to the place of business;

(d) use of the toilet facility would not create an obvious health or safety risk to the requesting individual; and

(e) a public restroom is not immediately accessible to the requesting individual.

2. Reasonable evidence that an individual has an eligible medical condition or uses an ostomy device shall include, but not be limited to, at the option of the individual:

(a) a signed statement by a physician, nurse practitioner, or physician assistant licensed under title eight of the education law, on a form that has been developed by the department of health under subdivision three of this section; or

(b) an identification card that is issued by a nonprofit organization whose purpose includes serving individuals who suffer from an eligible medical condition.

3. The department of health shall develop a standard electronic form that may be signed by a health care provider as evidence of the existence of an eligible medical condition. The form shall be posted on

the department's website in a printable format and include the following information:

- (a) space for the form bearer's name;
- (b) space for the form bearer's address;
- (c) space for the form bearer's date of birth;
- (d) space for the health care provider's name, signature, and statement as provided in subparagraph (ii) of paragraph (e) of this subdivision;
- (e) the following statements:
 - (i) "MEDICAL ALERT: RESTROOM ACCESS REQUIRED";
 - (ii) "The holder of this form suffers from Crohn's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medical condition that requires immediate access to a toilet facility."
 - (iii) "Complaints regarding enforcement should be directed to the state consumer protection division, or the county, city, or town office of consumer protection as applicable"; and
- (f) a reference to the Crohn's and colitis fairness act under this article.

§ 493. Required changes. Nothing in section four hundred ninety-two of this article shall be construed as requiring a place of business open to the general public for the sale of goods or services that has a toilet facility for its employees to make any physical changes to an employee toilet facility.

§ 494. Denial of access. 1. The consumer protection division, as established in section ninety-four-a of the executive law, shall have the power and duty:

- (a) to receive complaints from any individual that has been denied access to an employee toilet facility in violation of this article;
- (b) to attempt to mediate such complaints where appropriate; and
- (c) to refer such complaints to the appropriate unit of the department or the federal, state or other agency authorized by law for appropriate action on such complaints.

2. Any county, city or town office of consumer protection shall have the power and duty:

(a) to receive complaints from any individual that has been denied access to an employee toilet facility in violation of this article;

(b) to attempt to mediate such complaints where appropriate; and

(c) to refer such complaints to the appropriate unit of the department or the federal, state or other agency authorized by law for appropriate action on such complaints.

ARTICLE 28-G

BATTERIES FOR MICROMOBILITY DEVICES, BICYCLES WITH ELECTRIC ASSIST, AND LIMITED USE MOTORCYCLES

Section 495. Definitions.

495-a. Sale of lithium-ion batteries and second-use lithium-ion batteries.

495-b. Tags on charging cords of micromobility devices, limited use motorcycles, and bicycles with electric assist.

495-c. Lithium-ion battery safety resources.

495-d. Operating manuals for micromobility devices, bicycles with electric assist and limited use motorcycles powered by lithium-ion batteries, and lithium-ion batteries intended for use in such devices or bicycles.

§ 495. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Lithium-ion battery" means a rechargeable battery with an organic solvent electrolyte and positive and negative electrodes which utilize an intercalation compound in which lithium is stored.

2. "Second-use lithium-ion battery" means a lithium-ion battery that has been assembled, refurbished, repaired, repurposed or reconditioned using cells removed from used batteries.

3. "Micromobility device" means an electric scooter as defined in section one hundred fourteen-e of the vehicle and traffic law, an electrical personal assistive mobility device as defined in section one hundred fourteen-d of the vehicle and traffic law, or other personal mobility device powered by a lithium-ion battery, including but not limited to a skateboard or unicycle. The term "micromobility device" shall not include bicycles with electric assist as defined in section one hundred two-c of the vehicle and traffic law, limited use motorcycles as defined in section one hundred twenty-one-b of the vehicle and traffic law, wheelchairs or other electrically driven mobility assistance devices as defined in section one hundred thirty-a of the vehicle and traffic law, or any vehicle that is capable of being registered with the department of motor vehicles.

4. "Accredited testing laboratory" means a nationally recognized testing laboratory as recognized by the federal occupational safety and health administration or an independent laboratory that has been certified by an accrediting body to ISO 17025 or ISO 17065.

§ 495-a. Sale of lithium-ion batteries and second-use lithium-ion batteries. 1. (a) No person, firm, partnership, association, or corporation shall manufacture, distribute, assemble, recondition, sell or offer for sale, lease, or rent a lithium-ion battery or a second-use lithium-ion battery either as part of or intended for use in a bicycle with electric assist as defined in section one hundred two-c of the vehicle and traffic law or for use in a limited use motorcycle as defined in section one hundred twenty-one-b of the vehicle and traffic law unless the lithium-ion battery or second-use lithium-ion battery has been certified by an accredited testing laboratory for compliance with a battery standard referenced in UL 2849, UL 2271 or EN 15194, or such other safety standard approved by the department of state pursuant to regulation. Such certification or the logo, wordmark, or name of such accredited testing laboratory shall be displayed on packaging or documentation at the time of sale for the product and directly on the product itself.

(b) No person, firm, partnership, association, or corporation shall

manufacture, distribute, assemble, recondition, sell or offer for sale, lease, or rent a lithium-ion battery or a second-use lithium-ion battery either as part of or intended for use in a micromobility device unless the lithium-ion battery or second-use lithium-ion battery has been certified by an accredited testing laboratory for compliance with UL 2271 or UL 2272, or such other safety standard approved by the department of state pursuant to regulation. Such certification or the logo, wordmark, or name of such accredited testing laboratory shall be displayed on packaging or documentation at the time of sale for the product and directly on the product itself.

2. A person who violates subdivision one of this section is liable for a civil penalty as follows:

(a) for the first violation, a civil penalty of not more than five hundred dollars; and

(b) for each subsequent violation issued for the same offense within two years of the date of a first violation, a civil penalty of not more than one thousand dollars.

3. Each failure to comply with subdivision one of this section with respect to each separate lithium-ion battery or second-use lithium-ion battery constitutes a separate violation.

4. The district attorney, county attorney, and the corporation counsel shall have concurrent authority to seek the relief in this section, and all civil penalties obtained in any such action shall be retained by such municipality or county.

5. The department of state may promulgate rules and regulations that provide for any additional acceptable safety standard relating to a lithium-ion battery or second-use lithium-ion battery.

6. Nothing contained in this section shall be deemed to authorize the operation of any bicycle with electric assist, limited use motorcycle, or micromobility device on public roads, private roads open to public motor vehicle traffic, or any parking lot unless the operation of such bicycle with electric assist, limited use motorcycles, or micromobility

device thereon is authorized pursuant to the provisions of the vehicle and traffic law and such bicycle with electric assist, limited use motorcycle, or micromobility device is in compliance with such law.

§ 495-b. Tags on charging cords of micromobility devices, limited use motorcycles, and bicycles with electric assist. 1. No person, firm, partnership, association, or corporation shall manufacture, distribute, assemble, recondition, sell or offer for sale at retail any micromobility device, limited use motorcycles as defined in section one hundred twenty-one-b of the vehicle and traffic law, or bicycle with electric assist as defined in section one hundred two-c of the vehicle and traffic law unless there is a red tag affixed to the charging cord of such micromobility device, limited use motorcycles as defined in section one hundred twenty-one-b of the vehicle and traffic law, or bicycle with electric assist which clearly and conspicuously states "UNPLUG WHEN NOT IN USE". Such tag shall include additional consumer safety information regarding safe usage of the product and its charging equipment and shall be affixed to the cord near the end which is plugged into the electricity source.

2. The department of state shall promulgate rules and regulations providing guidance on the consumer safety information required to be on the tag pursuant to subdivision one of this section.

3. The department of state shall post a model tag containing the information outlined in subdivision one of this section that persons, firms, partnerships, associations, and corporations can affix to such charging cords as outlined in subdivision one of this section.

§ 495-c. Lithium-ion battery safety resources. The department of state, in consultation with the division of homeland security and emergency services and the New York state energy research and development authority, shall develop and maintain safety resources, information, and protocols in regard to fire hazard prevention relating to, but not limited to, lithium-ion batteries, second-use lithium-ion

batteries, bicycles with electric assist as defined in section one hundred two-c of the vehicle and traffic law, limited use motorcycles as defined in section one hundred twenty-one-b of the vehicle and traffic law, and micromobility devices. The department of state shall post such safety resources, information and protocols on their website. Such safety resources, information and protocols shall be designed to educate the public on how to respond to and deal with emergency circumstances in regard to incidents associated with, but not limited to, the use and charging of lithium-ion batteries, second-use lithium-ion batteries, bicycles with electric assist as defined in section one hundred two-c of the vehicle and traffic law, limited use motorcycles as defined in section one hundred twenty-one-b of the vehicle and traffic law, and micromobility devices. Such safety resources, information and protocols shall include, but not be limited to, charging tips, how to dispose of lithium-ion batteries, handling and preventing lithium-ion battery fires.

*** § 495-d. Operating manuals for micromobility devices, bicycles with electric assist and limited use motorcycles powered by lithium-ion batteries,** and lithium-ion batteries intended for use in such devices or bicycles. 1. No person, firm, partnership, association or corporation shall manufacture, distribute, assemble, recondition, sell or offer for sale, lease or rent any bicycles with electric assist as defined in section one hundred two-c of the vehicle and traffic law powered by a lithium-ion battery, micromobility devices powered by a lithium-ion battery, limited use motorcycles as defined in section one hundred twenty-one-b of the vehicle and traffic law powered by a lithium-ion battery, or lithium-ion batteries intended for use in such bicycles with electric assist, micromobility devices, or limited use motorcycles without providing to the purchaser an operating manual for such device.

2. Such operating manual referred to in subdivision one of this section shall be printed in English and the three most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau. The manual shall

include instructions on how to store and charge the battery, when and where to charge the battery, and what to do if the battery overheats or leaks, there is a strange odor or noise associated with the battery or there is a change in the shape or color of the battery, and a website address where the electronic version of such manual is available in English and the twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau.

3. Violation of subdivisions one and two of this section shall be punishable by a fine of not more than two hundred fifty dollars for the first offense and not more than one thousand dollars for each subsequent offense.

4. This section shall not annul, alter, affect, or exempt any person, firm, partnership, corporation, or association, subject to the provisions of this section from complying with the laws, ordinances, rules, or regulations of any locality, relating to the affixing, labeling, or provision of identification, safety, informational, or other materials.

ARTICLE 29

MANUFACTURE, SALE AND INTRODUCTION OR MOVEMENT IN COMMERCE OF FLAMMABLE WEARING APPAREL, FABRICS, RELATED MATERIAL AND INTERIOR FURNISHINGS PROHIBITED

Section 500. Definitions.

501. Prohibitions.

502. Standards of flammability.

503. Administration.

504. Enforcement.

505. Guaranty.

506. Exclusions.

507. Violations.

508. Fees.

509. Interpretation and separability.

§ 500. Definitions. As used in this article,

1. "Person" means an individual, partnership, corporation, association, or any other form of business enterprise.

2. "Article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals.

3. "Interior furnishing" means any type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used in homes, offices, or other places of assembly or accommodation.

3-a. "Portable temporary shelter" shall include but shall not be limited to, any type of tent, fold-out or pop-up camping or tent trailer, recreational vehicle awning or add-on room or shelter, or screen house made in whole, or in part of fabric or related material.

4. "Fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended for use or which may reasonably be expected to be used in any product as defined in subdivision six of this section.

5. "Related material" means paper, plastic, rubber, synthetic film, or synthetic foam which is intended for use or which may reasonably be expected to be used in any product as defined in subdivision six of this section.

6. "Product" means any article of wearing apparel, interior furnishing, sleeping bag, or portable temporary shelter.

7. "Department" means the department of labor.

8. "Commissioner" means the "industrial commissioner" of the state of New York.

9. "Manufacture" means "making," or "made" and includes converting, processing, altering, repairing, finishing, or preparing for sale any product, fabric or related material.

10. "Sale," "sell" or "sold," includes offering or exposing for sale or exchange or hire or lease, or consigning or delivering in consignment for sale, exchange, hire or lease or holding in possession with like intent.

§ 501. Prohibitions. The manufacture and/or sale, or offering for sale, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce, of any product, fabric or related material which under the provisions of section five hundred two of this article is so highly flammable as to be dangerous when worn or used by individuals, shall be unlawful.

§ 502. Standards of flammability. Any product, fabric or related material shall be deemed so highly flammable within the meaning of section five hundred one of this article, when it fails to conform to a standard or regulation promulgated by the commissioner, and to an applicable standard or regulation issued or amended under the provisions of section four of the federal "Flammable Fabric Act" as promulgated by the Federal consumer product safety commission.

§ 503. Administration. 1. The commissioner is hereby authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to products, fabrics or related materials, and for the labeling for a product, fabric or related material, as may be necessary and proper for purposes of administration and enforcement of this article.

2. The commissioner is hereby authorized and directed to promulgate the standards of flammability and shall include such standards of flammability in such rules and regulations which he may publish.

3. Such standards, rules and regulations, promulgated by the commissioner pursuant to this article, shall be filed in the office of the secretary of state before becoming effective and may be amended and revised from time to time. Each such standard, rule or regulation or amendment thereto shall become effective twelve months from the date on which such standard, rule, regulation or amendment is promulgated, unless the commissioner finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding. Each such standard, rule or regulation or amendment thereto shall exempt products, fabrics or related materials in inventory or with the trade as of the date on which the standard, rule or regulation or amendment thereto becomes effective except that if the commissioner finds that any such product, fabric or related material is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, he may under such conditions as the commissioner may prescribe, withdraw, or limit the exemptions for such product, fabric or related material.

4. The commissioner is authorized to cooperate on matters related to the purposes of this article with any department or agency of the federal, state or municipal government; with any state, territory or possession of the United States or with the District of Columbia; or with any department, agency or political subdivision thereof; or with any person.

5. The commissioner may obtain from any person by regulation or subpoena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which he is required or authorized to make pursuant to this article.

All information reported to or otherwise obtained by the commissioner

or his representative pursuant to this subdivision which information contains or relates to a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this article or when relevant in any proceeding under this article.

§ 504. Enforcement. 1. Every place where products, fabrics or related materials are manufactured or sold shall be subject to inspection by the commissioner who shall have power to inspect the manufacture and sale or delivery of all products, fabrics or related materials covered by this article. The commissioner shall have power to cause examinations and tests to be made thereof and power to place off sale and to seize and hold for evidence any product, fabric or related material which he has reason to believe is made or sold or held in possession in violation of this article. For the purpose of administering and enforcing the provisions of this article the commissioner shall have and may use the powers conferred on him by the labor law in addition to the powers conferred herein. No person shall interfere with, obstruct or otherwise hinder any inspector, officer or employee of the department in the performance of his duties.

2. No person shall sell, alter, interfere with or remove in whole or in part any product, fabric or related material which has been placed off sale nor shall such product, fabric or related material be removed from the premises where placed off sale or seized until such product, fabric or related material is released by the commissioner. All products, fabrics or related materials placed off sale or seized shall be subject to frequent examination by inspectors of the department and must be so placed and stored as to be readily accessible at all times and shall be produced for examination upon demand of any inspector made upon the person or persons in charge of the establishment or premises where such products, fabrics or related materials were placed off sale or were seized.

3. Whenever the department ascertains that any product, fabric or related material has been manufactured or has been offered for sale in

violation of the provisions of this article, proceedings for the confiscation of such product, fabric or related material may be instituted by the commissioner in the supreme court in the county wherein such product, fabric or related material may be found.

4. If the court shall find that such product, fabric or related material does not comply with the standards established by this article and the rules and regulations promulgated hereunder it shall be disposed of by destruction or by delivery to the owner or claimant thereof upon payment of legal costs and charges and upon execution of good and sufficient bond that such product, fabric or related material will not be disposed of for wear or use until properly and adequately treated or processed so that it shall comply with the provisions of this article and the rules and regulations promulgated pursuant to this article.

§ 505. Guaranty. 1. No person shall be subject to prosecution under section five hundred one of this article if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the product, fabric or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made under the procedures provided in section five hundred two of this article show that the product, fabric or related material covered by the guaranty, or used in the product, fabric or related material covered by the guaranty, is not, under the provisions of section five hundred two of this article, so highly flammable as to be dangerous when worn or used by individuals, and (2) has not, by further processing, affected the flammability of the product, fabric or related material covered by the guaranty which he received. Such guaranty shall be either (a) a separate guaranty specifically designating the product, fabric or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric or related material; or (b) a continuing guaranty filed with the department or with the federal trade commission applicable to any product, fabric or related material handled by a guarantor, in such form as the department or the federal trade commission by rules or regulations may prescribe; or (c) a

continuing guaranty given by seller to buyer applicable to any product, fabric or related material sold or to be sold to buyer by seller in a form as the department or the federal trade commission by rules or regulations may prescribe.

2. The furnishing with respect to any product, fabric or related material, of a false guaranty, except by a person relying upon a guaranty to the same effect received in good faith and signed by and containing the name and address of the person residing in the United States by whom the product, fabric or related material guaranteed was manufactured or from whom it was received, with reason to believe the product, fabric or related material falsely guaranteed may be introduced, sold or transported in commerce, is unlawful.

§ 506. Exclusions. The provisions of this article shall not apply:

1. to any common carrier, contract carrier or freight forwarder with respect to a product, fabric or related material shipped or delivered for shipment into commerce in the ordinary course of its business; or

2. to any person manufacturing, delivering for shipment, shipping, selling, or offering for sale for export from the state to any foreign county a product, fabric or related material made in accordance with the specifications of the purchaser; or

3. to any convertor, processor, or finisher in performing a contract or commission service for the account of a person subject to the provisions of this article provided that such convertor, processor, or finisher does not cause any product, fabric or related material to become subject to this article contrary to the terms of the contract or commission service; or

4. to any product, fabric or related material shipped or delivered for shipment into commerce for the purpose of finishing or processing to render such product, fabric or related material not so highly flammable under the provisions of section five hundred two of this article as to

be dangerous when worn or used by individuals.

§ 507. Violations. A violation of any provision of this article or any rule or regulation of the commissioner promulgated hereunder is a misdemeanor. Each product, fabric or related material made, sold or exposed for sale, shall constitute a separate violation.

§ 508. Fees. All court costs, fines and penalties derived from the operation of this article shall be paid into the state treasury.

§ 509. Interpretation and separability. The provisions of this article shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other law of this state. If any provision of this article or the application thereof to any person or circumstances is held invalid the remainder of the article and the application of such provision to any other person or circumstance shall not be affected thereby.

ARTICLE 29-A

UNAUTHORIZED OR IMPROPER USE OF CREDIT CARDS AND DEBIT CARDS

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§ 511. Definitions. In this article, unless the context or subject matter otherwise requires:

1. "Credit card" means and includes any credit card, credit plate, charge plate, courtesy card, or other identification card or device issued by a person to another person which may be used to obtain a cash advance or a loan or credit or to purchase or lease property or services on the credit of the issuer or of the holder;

2. "Person" includes an individual, corporation, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity;

3. "Issuer" means a person who issues a credit card or a debit card;

4. "Holder" means a person to whom such a credit card or debit card is issued or who has agreed with the issuer to pay obligations arising from the use of a credit card or debit card issued to another person;

5. "Unauthorized use" means use of a credit card or a debit card by a person other than the holder who does not have actual, implied or apparent authority from the holder for such use and from which use the holder receives no benefit;

6. "Seller" means any person who honors credit cards or debit cards which may be used to purchase or lease property or services;

7. "Lender" means any person who honors credit cards which may be used to obtain a cash advance or loan.

8. "Improper use" means unauthorized use of a credit card or a debit card or use of a revoked, cancelled, expired or forged credit card or debit card at the premises of a seller or lender, to obtain a cash advance or loan, or to purchase or lease property or services, or an attempt to do so;

9. "Debit card" means a card, plate or other similar device issued by a person to another person which may be used, without a personal identification number, code or similar identification number, code or similar identification, to purchase or lease property or services. The term does not include a credit card or a check, draft or similar instrument.

10. "Secured credit card" means any credit card for which an issuer takes a pledge of a specifically identified interest-bearing deposit account as provided in section four hundred thirteen of the personal property law.

§ 511-a. Additional definition. For purposes of this article "credit card" shall also mean any number assigned to a credit card.

§ 512. Limitation of liability for unauthorized use of a credit card or a debit card. A provision which imposes liability upon a holder for a cash advance or loan or for the purchase or lease of property or services obtained by the unauthorized use of a credit card or a debit card shall not be enforceable to the extent that it imposes a greater liability upon the holder than is imposed upon the holder of a credit card under the provisions of the act of congress entitled "Truth in

Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

§ 513. Injunctive relief. Whenever the attorney general has reason to believe that any violation of this article is a continuous practice, he may apply to the supreme court in any county wherein any such violation occurred for the purpose of restraining and enjoining the continuance of such violations.

§ 514. Defenses. 1. In any action for a cash advance or loan or for the purchase or lease of property or services through the use of a credit card or a debit card, it shall be a defense that such obligation

- (a) arose out of the unauthorized use of a credit card or a debit card which was not delivered to the holder; or
- (b) arose subsequent to the giving of notice by the holder to the issuer of the unauthorized use, loss or theft, of such credit card or debit card; or
- (c) is in excess of the limitation of liability for the unauthorized use of a credit card provided in the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

2. If any of the defenses set forth in subdivision one of this section be established, the court shall order the issuer to pay the reasonable attorney's fees incurred in the defense of the action if the court finds

- (a) that the holder has cooperated with the issuer in determining the facts and circumstances relating to such unauthorized use, loss or theft, of the credit card or debit card; and
- (b) that notwithstanding such cooperation with the issuer, the issuer has brought the action without reasonable cause.

§ 515. Issuance of credit cards. 1. Notwithstanding any other provision of law, no person shall issue a credit card in violation of the provisions of an act of congress entitled "Truth in Lending Act" and

the regulations thereunder, as such act and regulations may from time to time be amended.

2. The issuance of a credit card in violation of the provisions of subdivision one of this section shall constitute a misdemeanor.

§ 516. Improper use of credit cards or debit cards; defense of lawful detention. In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights, brought by any person by reason of having been detained on or in the immediate vicinity of the premises of a seller, lender or issuer, for the purpose of investigation or questioning as to the ownership, possession, validity or use of a credit card or debit card, it shall be a defense to such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer, acting pursuant to his special duties, or a police officer, or by a person acting on behalf of or by such seller, lender or issuer, and that such officer, person, seller, lender or issuer had reasonable grounds to believe that the person so detained was using or attempting to use a stolen or forged credit card or debit card or was making or attempting to make unlawful use of a credit card or debit card. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that the credit card or debit card has been, or has been reported to be, lost, stolen, revoked, cancelled, or forged and knowledge that the person had used or attempted to use the credit card or debit card to purchase or lease property or services or to obtain a cash advance, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the seller, lender, issuer or holder relative to whether improper use was being made of the card.

§ 517. Statements of account. No agreement between the issuer and the holder shall contain any provision that a statement sent by the issuer to the holder shall be deemed correct unless objected to within a

specified period of time. Any such provision is against public policy and shall be of no force or effect.

§ 518. 1. Credit card surcharge notice requirement. Any seller in any sales transaction imposing a surcharge on a customer who elects to use a credit card in lieu of payment by cash, check, or similar means shall clearly and conspicuously post the total price for using a credit card in such transaction, inclusive of surcharge, provided however, any such surcharge may not exceed the amount of the surcharge charged to the business by the credit card company for such credit card use. The final sales price of any such sales transaction, inclusive of such surcharge, shall not amount to a price greater than the posted price for such sales transaction. Nothing in this subdivision shall be deemed to prohibit merchants from offering a two-tier pricing system. For the purposes of this section, "two-tier pricing system" shall mean the tagging or posting of two different prices in which the credit card price, inclusive of any surcharge, is posted alongside the cash price.

2. Any seller who violates the provisions of this section shall be liable for a civil penalty, recoverable in an action or proceeding brought in a court of competent jurisdiction not to exceed five hundred dollars for each such violation. The provisions of this subdivision may be enforced concurrently by the director or commissioner of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

§ 518-a. Presentment of social security number as condition for accepting a check, traveler's check, gift certificate, money order or other negotiable instrument in payment of sales transaction prohibited.

1. No seller in any sales transaction shall record on a check, traveler's check, gift certificate, money order, other negotiable instrument or attachment thereto, a social security number of a buyer in such transaction as a condition for accepting such instrument as payment

in such transaction. Nothing contained in this subdivision shall prohibit a seller from so recording the identifying number from a buyer's driver's license where such number is identical to or is a part of the buyer's social security number.

2. A violation of the provisions of this section shall be punishable by a civil fine not to exceed one hundred dollars for a first violation and not to exceed two hundred fifty dollars for subsequent violations.

§ 519. Disclosure by commercial establishments honoring credit cards.

1. Any person who honors credit cards that may be used to purchase or lease property on the credit of the issuer or of the holder and requires a minimum purchase before accepting credit cards or refuses to allow the use of such card on discounted or sale items must post such limitations or conditions conspicuously and in all advertisements that mention that credit cards are accepted. The disclosure provisions with respect to these requirements shall be satisfied if the retail installment credit agreement discloses the fact that the use of the credit card requires a minimum purchase or shall not be used to purchase sale items, or if the issuer of the credit card notifies the holder in writing that the use of the card requires a minimum purchase or that the card shall not be used to purchase sale items. This section shall not apply to minimum purchase requirements or other restrictions which are applicable regardless of the method of payment.

2. Any person violating the provisions of this section shall be subject to a civil fine of not more than one hundred dollars on the first violation and not more than two hundred fifty dollars on the second and all subsequent violations.

3. This section does not annul, alter, affect or exempt any person subject to the provisions of this section from complying with the laws, ordinances, rules or regulations of any locality relating to disclosure of limitations and conditions of credit card purchases, except to the extent that those local laws, ordinances, rules or regulations are inconsistent with any provision of this section and then only to the

extent of the inconsistency. However, any local law, ordinance, rule or regulation shall not be considered inconsistent with any provision of this section if such local law, ordinance, rule or regulation gives greater protection to the consumer.

§ 519-a. Credit cards and payment for health care services. 1. For purposes of this section, the term "credit card" shall have the same meaning as in section five hundred eleven of this article.

2. No hospital or health care provider shall require credit card pre-authorization nor require the patient to have a credit card on file prior to providing emergency or medically necessary medical services to such patient.

3. Hospitals and health care providers shall notify all patients about the risks of paying for medical services with a credit card. Such notification shall highlight the fact that by using a credit card to pay for medical services, the patient is forgoing state and federal protections that regard medical debt. The commissioner of health shall have the authority and sole discretion to set requirements for the contents of such notices.

§ 520. Application forms or solicitation for credit cards. Any application form or preapproved written solicitation to enter into a credit card agreement for personal, family, or household purposes which is mailed to an individual residing in this state on or after January first, nineteen hundred eighty-eight, by or on behalf of a issuer, whether or not the issuer is located in this state, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the issuer, and, any application primarily for a credit card to be used for personal, family or household purposes which is distributed or made available in this state to a resident of this state on or after January first, nineteen hundred eighty-eight in an office or other place of business owned or operated by the issuer, shall contain the following disclosures in chart

form and shall put chart headings in bold face type of at least ten point in size and material inside the chart of at least eight point type in size. Such chart shall use substantially the same format and terminology shown below. In completing the chart with the information required for each category, the guidelines hereinafter contained in the corresponding subdivisions numbered one through four shall be utilized:

1					Cash Advance
2	Variable				Fee, Trans-
3 Annual	Rate Index	Annualized	Grace		action Fee,
4 Percentage	and	Membership	Period for		Late Fee, and
5 Rate (1)	Spread (1a)	Fee (2)	Purchases (3)		Over-the-
6					Limit Fees(4)
7					
8					
9					
0					
1					
2					
3					
4					

(1) and (1a) Any periodic rate or rates that may be applied, shall be expressed as an annual percentage rate or rates. If the credit card agreement provides for a variable rate, the issuer shall disclose the rate as of a specific date and identify the index and any amount or percentage added to, or subtracted from, that index. For purposes of this category, that amount of percentage shall be referred to as the "spread". If a fixed rate is to be applied, the issuer shall indicate "No" or "None" or "Does not apply" in category (1-a) and further the issuer may elect to disclose a rate as of a specified date.

(2) Any membership or participation fee that may be imposed for availability of a credit agreement, shall be expressed as an annualized amount. If no such fee will be imposed, issuer shall indicate "No" or "None" or "Does not apply".

(3) If the issuer provides a period during which the holder may repay

the full balance reflected on a monthly statement which is attributable to purchases of goods and services without the imposition of a service charge, the issuer shall either disclose the number of days of that period, calculated from the closing date of the prior billing period to the date designated in the monthly statement sent to the holder as the date by which that payment must be received to avoid additional service or other charges, or describe the manner in which the period is calculated. For purposes of this category, the period shall be referred to as the "grace period". If the issuer does not provide such a period, the disclosure shall so indicate. The issuer may, at its option, and without disclosure impose no service or other charge where payment is received after the expiration of the grace period.

(4) Any cash advance fee, per transaction fee, late fee or over-the-limit fee that may be imposed shall be expressed as an amount or as a percentage of the transaction, as applicable. If no such fee will be imposed, the issuer shall indicate "No" or "None" or "Does not apply".

(5) (a) Nothing in this section shall be deemed or construed to prohibit an issuer from disclosing additional terms, conditions, or information, whether or not relating to the disclosures required under this section, in conjunction with the disclosures required by this section.

(b) All application forms for a credit card agreement, including those in a magazine, newspaper, or other publication, distributed by someone other than the issuer in this state on or after January first, nineteen hundred eighty-eight shall contain a statement in substantially the following form:

"If you wish to receive disclosure of the terms of this credit card, check here and return to the address on this application".

A box shall be printed in or next to this statement for placement of such a check mark.

However, this requirement does not apply if the application contains the disclosures provided for in subdivisions one through four of this section.

(6) For purposes of this section, "Regulation Z" and all of the terms

used in this section shall have the same meaning as attributed to them in Federal Regulation Z (12 C.F.R. Sec.226.1 et seq.).

(7) This section shall not apply to any application form or written advertisement where the credit to be extended will be secured by a lien on real property or a lien on an existing ownership interest in certificates of stock or other evidences of an ownership interest in a proprietary lease from a corporation or partnership formed for the purpose of the co-operative ownership of real estate.

(8) If an issuer is required under federal law to make any disclosure of the terms applicable to a credit card plan or account under this section in connection with application forms or solicitation, the seller or issuer shall be deemed to have complied with the requirements of this section with respect to those application forms or solicitations if the seller or issuer complies with the federal disclosure requirements.

(9) Any application form or preapproved written solicitation to enter into a retail installment credit agreement in which the retail seller or financing agency may take or retain a purchase money security interest, as set forth in paragraph (c) of subdivision twelve of section four hundred thirteen of the personal property law, which is mailed or otherwise made available to an individual residing in this state on or after the effective date of this subdivision, by or on behalf of an issuer, whether or not the issuer is located in this state, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the issuer, shall contain a clear and conspicuous written notice or disclosure to the buyer that the retail seller or financing agency has or may retain a security interest in merchandise covered under paragraph (c) of subdivision twelve of section four hundred thirteen of the personal property law until the full payment price of said merchandise is paid. Further provided, however, in all instances, said written notice must be provided to any buyer prior to the first transaction made under any such retail installment credit agreement in which a security interest has been or may be taken or retained.

§ 520-a. Certain credit and debit card transaction forms required. 1. Any person, firm, partnership, association or corporation which issues

forms used for credit or debit card transactions between the credit card or debit card holder and seller, shall only issue such credit or debit card forms, except for such forms utilized for a special purpose incidental but related to the actual purchase and sale agreement including but not limited to shipping, delivery or installment of purchased merchandise or special orders, which:

a. are carbonless; or

b. after the transaction is complete, do not render a separate piece of paper, carbon or otherwise, which readily identifies the cardholder by name or number, other than those necessary for use by the seller, credit or debit card holder and issuer to complete the credit or debit card transaction.

2. Any person, firm, partnership, association or corporation which accepts credit or debit cards used for credit or debit card transactions between the credit card or debit card holder and seller, shall only use credit or debit card forms except for such forms utilized for a special purpose incidental but related to the actual purchase and sale agreement including but not limited to shipping, delivery or installment of purchased merchandise or special orders, which:

a. are carbonless; or

b. after the transaction is complete, do not render a separate piece of paper, carbon or otherwise, which readily identifies the cardholder by name or number, other than those necessary for use by the seller, credit card or debit card holder and issuer to complete the credit or debit card transaction. No person, firm, partnership, association or corporation which accepts credit or debit cards for the transaction of business shall be deemed to have violated the provisions of this subdivision, if such person, firm, partnership, association or corporation shows by a preponderance of evidence that the violation was not intentional and resulted from bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

3. No person, firm, partnership or corporation which accepts credit or debit cards for the transaction of business shall require the credit or debit card holder to write on the credit or debit card transaction form, nor shall it write or cause to be written on such form or on any attachment thereto, any personal identification information, including but not limited to the credit or debit card holder's address or telephone number, that is not required by the credit or debit card issuer to complete the credit or debit card transaction; provided, however, that the credit or debit card holder's address and telephone number may be required on such form or attachment thereto where (i) such information is necessary for shipping, delivery or installation of purchased merchandise or for special orders; or (ii) the person, firm, partnership or corporation processes credit or debit card transactions by mailing transaction forms to a designated bankcard center for settlement.

4. No person, firm, partnership, association or corporation which accepts a personal check, gift certificate, traveler's check or money order in payment for goods or services used or bought for use primarily for personal, family or household purposes, and which as a condition of such acceptance requires that the check drawer or redeemer of the gift certificate, traveler's check or money order provide a credit or charge card, shall record on such check, gift certificate, traveler's check or money order or elsewhere, the card account number. Nothing in this subdivision shall be construed to prohibit any person, firm, partnership, association or corporation, as a condition for the acceptance of a check, gift certificate, traveler's check or money order in payment for goods or services from: (i) requesting a purchaser to display a credit or charge card as a means of identification, or as an indication of credit worthiness or financial responsibility; or (ii) recording on the check, gift certificate, traveler's check or money order the type of credit or charge card so displayed and/or the credit or charge card expiration date; provided, further, that nothing in this subdivision shall require any business entity to accept a check, gift certificate, traveler's check or money order in payment for goods or services whether or not a credit or charge card is displayed.

4-a. a. No person, firm, partnership, association, limited liability company, corporation, or other entity that accepts charge, credit, or debit cards for the transaction of business shall print the expiration date of the charge, credit, or debit card nor shall any person, firm, corporation, partnership, association, limited liability company, or other entity print more than the last five digits of the charge, credit, or debit card account number upon any receipt provided to the card holder.

b. This subdivision shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the person's charge, credit, or debit card number is by handwriting or by an imprint or copy of the credit card.

c. The provisions of this subdivision shall apply to all cash registers or other machines or devices, which electronically print receipts for charge, credit, or debit card transactions, that are placed in service on or after January first, two thousand four.

d. For all cash registers or other machines or devices that electronically print receipts for charge, credit, or debit card transactions in service prior to January first, two thousand four, the provisions of this subdivision shall not apply until January first, two thousand seven.

e. A person, firm, corporation, partnership, association, limited liability company, or other entity who violates this subdivision shall be given notice with specificity of such violation and be granted two weeks to correct such violation in its entirety. If such violation is not corrected in its entirety at the end of such two-week period, the violation shall be punishable by a civil penalty of five hundred dollars, and the violator shall be granted an additional one week in which to correct such violation in its entirety. If such violation is not corrected in its entirety at the end of such one-week period, such violation shall be punishable by a civil penalty of one thousand dollars per week until such violation is corrected in its entirety. The

aggregate penalties imposed on an individual person, firm, corporation, partnership, association, limited liability company, or other entity for violations of this subdivision shall not exceed four thousand five hundred dollars for violations occurring on the same premises.

5. A violation of subdivision one of this section shall be punishable by a civil fine not to exceed one thousand dollars. A violation of subdivision two, three, or four of this section, if such violation constitutes the first such offense by such person shall be punishable by a civil fine not to exceed two hundred fifty dollars. The second offense and any offense committed thereafter shall be punishable by a civil fine not to exceed one thousand dollars.

6. Whenever there shall be a violation of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 520-b. Secured credit cards. 1. If an issuer or any other person uses a 900 telephone number to solicit or market a secured credit card to an individual residing in this state, or otherwise advertises or promotes the availability of a secured credit card through use of a 900 telephone number to an individual residing in this state, the issuer or

other person must disclose all of the following terms that may be applicable:

(a) either the flat fee charged for the call or the cost of the call per minute and the anticipated number of minutes for such call;

(b) the fact that the fee described in paragraph (a) of this subdivision is refundable in its entirety, at the consumer's request, if for whatever reason the consumer does not get a secured credit card; and

(c) the fact that no fees may be imposed or collected, other than a refundable fee for a 900 telephone number, until the consumer has asked the issuer to open a credit card account and the issuer has agreed to open such an account under the terms and conditions of the offer.

2. The disclosures required by subdivision one of this section shall be provided before the 900 telephone number call is placed by the consumer. Such disclosures shall be provided clearly and conspicuously.

3. An issuer of a secured credit card shall, either prior to or at the time of issuance, disclose the minimum amount of money the consumer must keep on deposit to qualify for such a card, the interest that will be paid on said deposit, and the amount of credit that will be extended either in absolute terms or expressed as a percentage of such deposit.

4. In connection with any application or solicitation for a secured credit card, no person shall impose any fee or charge as an application fee, set-up fee, credit review fee, search fee, or any other fee by any other name prior to, contemporaneous with, or incidental to the opening of such a secured credit card agreement. Provided, however, that nothing contained herein shall prohibit an issuer from contracting for and imposing any fees and charges authorized by section four hundred thirteen of the personal property law and provided further that nothing contained herein shall prohibit solicitation for such a card by use of a 900 telephone number pursuant to the provisions of this section.

§ 520-c. Credit information. 1. The department of financial services shall establish a telephone number and an area on its website, or provide a link on such site to other websites with a toll-free telephone

number service at which customers may obtain information on annual percentage rates, annual fees, per-transaction charges, late payment fees, overlimit fees and grace periods for credit cards to the extent readily available to the department. Every issuer of credit cards to natural persons residing in this state shall set forth on each solicitation, application and monthly billing statement mailed or otherwise presented to such persons, a notice stating "New York residents may contact the New York state department of financial services by telephone or visit its website for free information on comparative credit card rates, fees and grace periods." Such notice shall be printed on the same side as the disclosure of rates, fees and charges, in case of the solicitations and applications, and on the same side as the notice of the balance of the account and the amount due are printed, in the case of the monthly billing statement. The superintendent of financial services shall prescribe the web address and telephone number to be printed next to the notice. The notice shall be in type no smaller than eight points. The telephone number of the credit card issuer shall appear higher up on the page and in the type at least as large as that provided for the telephone number of the department of financial services. Issuers shall include such notice in materials sent to residents of this state as required under this section commencing October first, nineteen hundred ninety-four.

2. The superintendent of financial services is authorized to adopt such rules and regulations as consistent with the provisions of this section.

3. For the purposes of this section:

(a) "Credit card" means any card issued pursuant to an agreement which allows the holder of the card to obtain goods and services on the credit of the issuer; and

(b) "Issuer" means any bank, trust company, savings bank, savings and loan association, or branch of a foreign banking corporation the deposits of which are insured by the federal deposit insurance corporation, which is incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States, which issues credit cards to natural persons residing in this state.

4. The authority of the superintendent of financial services pursuant to sections thirty-nine and forty-four of the banking law shall extend to violations of this section by any issuer.

§ 520-d. Unsolicited convenience checks. 1. As used in this section, the following terms shall have the following meanings:

(a) "check" means any negotiable instrument, as defined by section 3-104 of the uniform commercial code, that has imprinted on it the holder's name and the depository institution's name, location, and routing number.

(b) "unsolicited check" means any check mailed or otherwise delivered to a holder by an issuer or agent acting on behalf of an issuer for the purpose of drawing on an existing account that is an extension of credit or activating an account to obtain credit other than:

(1) in response to a request or application for a check or account; or

(2) as a substitute for a check or account previously issued to the person to whom the check is mailed or otherwise delivered.

2. No holder in whose name an unsolicited check is issued shall be liable for any amount resulting from use of that check or account, unless the holder has accepted the check or account by using the check or account. Failure to destroy or return an unsolicited check shall not constitute acceptance of the check or account.

3. Any agreement entered into by a holder which waives, limits or disclaims the rights set forth in this section shall be void as contrary to public policy.

§ 520-e. Grace period for use of credit card reward points. 1. As used in this section, the following terms shall have the following meanings:

(a) "credit card points" or "points" shall mean denominated units that can be accumulated in an account in connection with a credit card reward, loyalty, or other incentive program, often referred to as points or for certain travel-related rewards as miles, which are redeemable,

fungible, or otherwise exchangeable, in whole or in part, for rewards;

(b) "rewards" shall mean goods, services, cash, merchant-specific gift cards, travel benefits, or one or more other things of value;

(c) "rewards program" shall mean any agreement between a holder and an issuer regarding points related to an account; and

(d) "modified" or "modification" shall mean a change that has the effect of eliminating points, reducing the value of points, affecting the ability of a holder to accumulate points, limiting or reducing rewards availability, limiting a holder's use of points or the credit card account, otherwise diminishing the value of the rewards program or the credit card account to the holder or changing the obligations of the holder with respect to the rewards program or credit card account.

2. If any credit card account or rewards program is modified, cancelled, closed or terminated, the holder must be provided notice from the issuer of such cancellation, closure, termination or modification as soon as possible, and in any event within forty-five days of such cancellation, closure, termination or modification. Beginning with the date on which notice is sent, the holder shall have ninety days to redeem, exchange, or otherwise use any credit card points that the holder accumulated at the time of such modification, cancellation, closure, or termination as permitted under the terms of the agreement or agreements between the holder and the issuer which is servicing the applicable credit card account or related rewards program, subject to the availability of rewards.

3. It shall be unlawful for any agreement between an issuer and a holder, or any rewards program, to provide for the expiration, forfeiture or cancellation of credit card points prior to the expiration of the ninety day period set forth in subdivision two of this section.

4. The provisions of subdivisions two and three of this section shall not apply in the case of fraud by the holder with respect to the credit card account or any related rewards program, or misuse by the holder of the credit card account or any related rewards program.

5. Any agreement entered into by a holder that waives, limits or

disclaims the rights set forth in this section shall be void as contrary to public policy.

ARTICLE 29-AAA

CREDIT CARD REGISTRATION SERVICES

Section 521. Definitions.

521-a. Disclosure requirements.

521-b. Contract renewals.

521-c. Limitation on release of subscriber names.

521-d. Deceptive acts prohibited.

521-e. Contracts void and unenforceable.

521-f. Enforcement by attorney general.

§ 521. Definitions. As used in this article:

1. "Consumer" means a natural person.

2. "Subscriber" means a consumer who is solicited to purchase or who purchases the services of a credit card registration service.

3. "Person" means any individual, firm, partnership, corporation, association or other legal entity.

4. "Credit card registration service" means any person who provides to subscribers for a fee services including, but not limited to, any of the following: maintenance of a registry of credit cards or access devices owned by a subscriber; notification on behalf of a subscriber to card issuers or financial institutions that any of a subscriber's credit cards or access devices have been lost or stolen; assistance to a subscriber in obtaining new cards or access devices when the subscriber's cards or access devices have been lost or stolen; and notification on behalf of a subscriber to card issuers or financial institutions that a subscriber's address has changed. If a person contracts with another for the other to provide credit card registration services, the actual provider of the service and not the offeror of the

service shall be deemed to be the credit card registration service and subject to the provisions of this article.

5. "Credit card" means and includes any credit card, credit plate, charge plate, courtesy card, or other identification card or device which may be used to obtain a cash advance or a loan or credit or to purchase or lease property or services on the credit of the issuer or of the holder.

6. "Access device" means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer for the purpose of initiating electronic fund transfers.

7. "Contract for services" means a contract between a subscriber and a credit card registration service under which the credit card registration service agrees to provide to a subscriber for a fee any of its services.

§ 521-a. Disclosure requirements. Prior to entering into a contract for services, the credit card registration service shall make the following disclosures: (a) a notice that the purchase of the services or the renewal thereof is not required for a consumer to retain his credit card or access device; (b) a concise statement regarding the limitations of a consumer's liability for unauthorized use of credit cards or access devices as established by the acts of Congress entitled "Truth in Lending Act" and "Electronic Fund Transfer Act" and the regulations thereunder, as such acts and regulations may from time to time be amended.

Such disclosures if made orally shall also be made in writing by the credit card registration service to the subscriber no later than thirty days after the contract for services is entered into.

§ 521-b. Contract renewals. 1. No contract for services shall provide that services will be automatically renewed and the subscriber billed,

unless the subscriber named in the expiring contract is notified not more than sixty and not less than fifteen days prior to the termination of the existing contract, by mail, of the credit card registration services' intention to automatically renew the contract.

2. The written notice of renewal shall state the proposed renewal term, the price for renewal and any additions, changes or deletions in the services to be furnished. The notice shall state, conspicuously, that the subscriber may elect not to renew the service by sending a written notice of cancellation or by calling a toll free telephone number prior to the end of the expiring contract.

§ 521-c. Limitation on release of subscriber names. No credit card registration service shall rent, sell, exchange or otherwise make available the names, addresses and account numbers of cardholders or owners of access devices entrusted to it by a credit card or access device issuer or other financial institution to any other person for use in direct mail marketing or solicitation without prior written approval of the cardholder or access device owner. Notwithstanding the foregoing, nothing in this section shall be construed to restrict a card issuer's use of its own cardholder list.

§ 521-d. Deceptive acts prohibited. It is hereby declared to be a deceptive trade practice and unlawful for a credit card registration service to misrepresent in its advertising, promotional materials, sales materials, or in any other manner the nature of the services to be performed, the identity of the provider of the services, or the consequences of failing to subscribe to the services.

§ 521-e. Contracts void and unenforceable. 1. Any contract for services which does not comply with the applicable provisions of this article shall be void and unenforceable as contrary to public policy.

2. Any waiver by a consumer of the provisions of this article shall be

deemed void and unenforceable.

§ 521-f. Enforcement by attorney general. Whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 29-B

PROHIBITED CREDIT CARD PRACTICES

INVOLVING PROVIDERS OF TRAVEL SERVICES

Section 523. Definitions.

524. Application.

525. Prohibited practices.

526. Enforcement.

§ 523. Definitions. As used in this article: 1. "Travel services" means public transportation, public accommodations in hotels, motels or motor courts, rental of motor vehicles or any other service related to

travel.

2. "Provider of travel services" means every person, firm or corporation engaged in the business of furnishing travel, transportation or vacation services.

2-a. "Travel agent" shall mean any person, firm, corporation, partnership or association, other than a common carrier or employee of a common carrier, that is an officially appointed agent of a common carrier and meets standards no less than those required on January first, nineteen hundred ninety, for authorized agents of the airline reporting corporation, or is a registered member of the Cruise Lines International Association and who operates exclusively as an agent for cruise lines in the sale of cruise travel products or services, and who, as a legal agent of a supplier, sells or offers for sale any travel, transportation or vacation arrangements, or who negotiates for or holds himself or herself out by solicitation, advertisement or otherwise as one who sells, provides, furnishes contracts or arranges for such travel, transportation or vacation services.

3. "Consumer" means a natural person.

4. "Credit card" and "issuer" shall have the same meanings as in article twenty-nine-A of this chapter.

§ 524. Application. This article shall apply with respect to any transaction involving the furnishing of travel services to a consumer where a credit card is used to obtain credit and where the provider of travel services is a person other than the credit card issuer.

§ 525. Prohibited practices. 1. It shall be unlawful for a provider of travel services to communicate with a credit card issuer for the purpose of reserving or setting aside any specified amount of credit in a consumer's credit card account to ensure payment for services to be rendered unless prior to such communication the provider of travel

services informs the consumer of the amount of credit which will be requested to be reserved or set aside and obtains the consumer's consent to the reservation or set aside of such amount.

2. It shall be unlawful for a provider of travel services to communicate with a credit card issuer for the purpose of reserving or setting aside an amount of credit in a consumer's credit card account in excess of the actual, agreed upon cost of the services contracted for by the consumer and provider of travel services unless, prior to such communication, the provider of travel services informs the consumer in writing of the amount of credit which will be requested to be reserved or set aside and obtains the consumer's written consent to the reservation or set aside of such amount.

3. It shall be unlawful for any provider of travel services, after it has determined the final charges for the travel services furnished to a consumer, to fail to promptly communicate with a credit card issuer to request the release of any amount of credit previously reserved or set aside by it in the consumer's credit card account which is in excess by more than twenty-five dollars of the charges actually billed.

4. It shall be unlawful for any provider of travel services to impose, as a result of the use of a credit card, a surcharge on a travel agent acting as an agent of such provider of travel services where, on behalf of a holder of a credit card, as defined in section five hundred eleven of this chapter, such travel agent facilitates the holder's use of a credit card in lieu of payment by cash, check or similar means.

§ 526. Enforcement. The attorney general may bring an action in the name of the people of the state to restrain or prevent any violation of this article or any continuance of any such violation.

ARTICLE 29-BB

PROHIBITED SERVICE OFFER PRACTICES

Section 527. Definitions.

527-a. Unlawful practices.

§ 527. Definitions. For the purposes of this article, the following definitions shall apply:

1. "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.

2. "Clear and conspicuous" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. In the case of an audio disclosure, "clear and conspicuous" means in a volume and cadence sufficient to be readily audible and understandable.

3. "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

4. "Continuous service" means a plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service.

§ 527-a. Unlawful practices. 1. It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to:

a. fail to present to the consumer, in a clear and conspicuous manner, the material terms of any automatic renewal offer or continuous service offer, including but not limited to a description of the product or service subject to renewal, the amount of the costs that will be charged, the frequency of charges, the deadline by date or frequency by which the consumer must act to prevent or stop further charges, and

cancellation mechanisms described in paragraphs d and d-1 of this subdivision, before consent to the offer or billing information has been requested and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer. If the offer also includes a free gift or trial, or the price is temporary, the offer shall include a clear and conspicuous explanation of how and when the price will change and the price or prices that will subsequently be charged to the consumer;

b. charge the consumer or the consumer's account with a third party for the initial term of an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the the terms of automatic renewal offer or continuous service offer, including the terms of an automatic renewal offer or continuous service offer that is made at a promotional or discounted price for a limited period of time;

b-1. charge the consumer or the consumer's account with a third party following an increase in price, or a price higher than what was disclosed pursuant to paragraph a of this subdivision, relating to an automatic renewal or continuous service offer to which the consumer previously consented, without either: (i) first obtaining the consumer's affirmative consent to such increased price; or (ii) allowing the consumer to cancel such automatic renewal or continuous service anytime within, at least, fourteen days after such charge and refund the consumer in the amount equivalent to the price of the remaining term of the service, at the time of such cancellation, on a pro rata basis. The provisions of this paragraph shall not be construed to require any business to obtain affirmative consent from the consumer regarding a price increase, or a price increase not disclosed pursuant to paragraph a of this subdivision, more than once prior to charging the consumer such increased price;

c. fail to provide a notice promptly following affirmative consent, in a manner that is capable of being retained by the consumer. Such notice shall include:

(i) the terms of the automatic renewal or continuous service

agreement;

(ii) the amount of costs that will be charged;

(iii) the frequency of charges;

(iv) the deadline by date or frequency by which the consumer must act to prevent or stop further charges; and

(v) the cancellation mechanisms, as described in paragraphs d and d-1 of this subdivision;

d. fail to provide the consumer with the option to cancel at any time using a simple cancellation mechanism that is as easy to use as the mechanism that the consumer used to provide consent and that is through the same medium that the consumer used to provide consent;

d-1. fail to provide the consumer with the option to cancel, at any time through all mediums by which the business allows a consumer to provide affirmative consent to, the automatic renewal, continuous service offer, or any price increase. Provided further that, where consent was obtained in person, in addition to offering cancellation, where practical via an in-person method similar to that the user used to consent, the business shall at least offer cancellation through an online mechanism or over a telephone number;

e. impose unreasonable or unlawful conditions upon, refuse to acknowledge, obstruct or unreasonably delay cancellation requested or attempts to request cancellation by a consumer. Provided further that:

(i) unreasonable or unlawful conditions include, but without limitation, hanging up on consumers who call to cancel, providing false information about how to cancel, misrepresenting the consequences or costs of cancellation, or misrepresenting the reasons for delays in processing consumers' cancellation requests; and

(ii) if a consumer conveys a request to cancel, the business may present the consumer with a discounted offer, retention benefit or information regarding the effect of cancellation but may not impose unreasonable or unlawful conditions upon consumer's ability to cancel, refuse to acknowledge, obstruct or unreasonably delay cancellation requested;

f. fail to notify a consumer of an automatic renewal or continuous service charge for an automatic renewal or continuous service offer with an initial paid term of one year or longer, provided that such automatic renewal or continuous service renews for a paid term of six months or longer, at least fifteen days before, but not more than forty-five days before, the cancellation deadline for such automatic renewal in the manner selected by the consumer, including text, email, app notification or any other notification channel offered by the business. Such notice shall include instructions on how to cancel such renewal charge;

g. fail to provide a consumer who has accepted an automatic renewal or continuous service offer with a clear and conspicuous notice of any material change to the terms of the automatic renewal or continuous service offer, including any price increases, at least five business days prior, but no more than thirty days prior, to the date of the change, in the same manner as required by paragraph f of this subdivision; or

h. fail to notify a consumer of an automatic renewal or continuous service charge for an automatic renewal or continuous service offer if the automatic renewal or continuous service offer includes a free gift or trial for a period of more than a month, followed by an upcoming automatic renewal or continuous service charge, at least three days before but not more than twenty-one days before the cancellation deadline for the first chargeable period in the manner selected by the consumer, including text, email, app notification or any other notification channel offered by the business. Such notice shall include instructions on how to cancel such renewal charge.

2. In any case in which a business sends any goods, wares, merchandise, or products to a consumer, under a continuous service agreement or automatic renewal of a purchase, without first obtaining the consumer's affirmative consent, the goods, wares, merchandise, or products shall for all purposes be deemed an unconditional gift to the consumer, who may use or dispose of the same in any manner such consumer sees fit without any obligation whatsoever on the consumer's part to the business, including, but not limited to, bearing the cost of, or

responsibility for, shipping any goods, wares, merchandise, or products to the business.

3. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one hundred dollars for a single violation and not more than five hundred dollars for multiple violations resulting from a single act or incident. A knowing violation of this section shall be punishable by a civil penalty of not more than five hundred dollars for a single violation and not more than one thousand dollars for multiple violations resulting from a single act or incident. No business shall be deemed to have violated the provisions of this section if such business shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

4. The following are exempt from the requirements of this article:

a. any service provided by a business or its affiliate where either the business or its affiliate is doing business pursuant to a franchise issued by a political subdivision of the state;

b. any entity, or subsidiary or affiliate thereof, regulated by the department of financial services;

c. security system alarm operators;

d. banks, bank holding companies, or the subsidiary or affiliate of either, or credit unions or other financial institutions, licensed under state or federal law; and

e. sellers and administrators of a service contract, as defined pursuant to section seven thousand nine hundred two of the insurance law.

ARTICLE 29-BBB

CREDIT AND DEBIT CARDS

Section 529. Definitions.

529-a. Merchant category-codes.

§ 529. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Merchant acquirer" means an entity that establishes a relationship with a merchant for the purposes of processing credit, debit, or prepaid transactions.

2. "Payment card network" means an entity that provides services that route transactions between participants on the network to conduct debit, credit, or prepaid transactions for the purpose of authorization, clearance, or settlement.

3. "Person" includes an individual, corporation, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity.

4. "Issuer" means a person who issues a credit card or a debit card.

§ 529-a. Merchant category-codes. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Dealer of firearms" means a gunsmith or dealers in firearms in this state licensed pursuant to section 400.00 of the penal law, for which the highest sales value is, or is expected to be, from the combined sale in New York of firearms, firearm accessories, or ammunition, as stated by the business to its merchant acquirer in the ordinary course of business.

(b) "Firearm" has the same meaning as that term is defined in subdivision three of section 265.00 of the penal law.

2. (a) On or before November first, two thousand twenty-four, each payment card network shall make the merchant category-code for firearms and ammunition businesses established by the international organization for standardization on September ninth, two thousand twenty-two, available for merchant acquirers that provide payment services for dealers of firearms.

(b) On and after May first, two thousand twenty-five, each merchant acquirer shall assign to each dealer of firearms in this state the merchant category-code for firearms and ammunition businesses established by the international organization for standardization on September ninth, two thousand twenty-two.

3. Whenever there shall be a violation of this section, the attorney general shall give written notice to the person violating this section identifying the specific provisions of this section that are or were being violated. The attorney general shall not bring an action under this section where, within thirty days of receiving such written notice, the person cures the violation and provides the attorney general with a written statement confirming the violation was cured, including supporting documentation on how the violation was cured, and stating how internal policies were changed to prevent such violations in the future. If the violations were not cured or proper written notice not received by the attorney general within thirty days of written notice being

received by such person violating this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each violation and reasonable attorney's fees and costs incurred in investigating and bringing an action under this section. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 29-C

RADIO AND TELEVISION TUBES

Section 532. Definitions.

533. Prohibitions.

534. Violation.

535. Enforcement by attorney-general.

536. Construction.

537. Separability.

§ 532. Definitions. As used in this article: A "tube" is an electron receiving tube or cathode ray tube (commonly known as a picture tube) designed primarily for use in a home type television or radio receiver, phonograph, tape recorder, or any combination thereof, or other home

type electronic device or appliance.

"Used tube" or a "second-hand tube" is a tube which has been subjected to consumer or demonstrator use as an entity.

A "used component" is any part or material salvaged from a used or second-hand tube.

A "tube utilizing used components" is a tube which has not been used as an entity but which in the manufacture thereof has utilized one or more used components. Such a tube shall not be deemed to be a used or second-hand tube within the meaning of this article.

A "reactivated tube" is a weak, worn-out or defective tube which has been temporarily reactivated by the administration of a charge of high voltage electric current to the elements thereof.

A "reduction" is the sale of a tube at a price that is less than the manufacturer's list price for that tube.

A "savings" is the sale of a tube at a price that is less than the list price for a tube by the same or another manufacturer when the tubes are identical.

"Person" means an individual, partnership, firm, association or corporation.

§ 533. Prohibitions. 1. Except as hereinafter provided, no person shall knowingly distribute or sell, offer to distribute or sell, expose for distribution or sale, possess with intent to distribute or sell or otherwise dispose of for a consideration any reactivated tube, second-hand tube or used tube or tube utilizing used components without clearly disclosing the true or actual quality or condition of such tube by means of a stamp, mark, tag, notice or label attached to such tube and to any carton or container thereof in such manner that it cannot readily be removed or of such a nature as to remain in place until removed by the purchaser at retail.

2. No person other than a purchaser at retail for his own use and consumption shall remove, deface, cover, obliterate, mutilate, alter or cause to be removed, defaced, covered, obliterated, mutilated or altered any notice, tag or label from any tube, carton or container therefor, required under this article.

3. No person performing services or repairs for any consideration whatsoever on a home type radio or television receiver, phonograph, tape recorder or any combination thereof, or other home type electronic device or appliance shall knowingly install therein any reactivated tube, second-hand tube or used tube or tube utilizing used components, without disclosing the true or actual quality or condition of such tube on a written invoice furnished to the customer irrespective of the fact that such tube or the carton or container therefor contains a notice, tag or label disclosing such quality or condition.

4. No used tube, second-hand tube, or reactivated tube, or tube utilizing used components may be knowingly represented, directly or indirectly, to be a new tube.

5. No reactivated tube, second-hand tube or used tube may be knowingly represented, directly or indirectly, to be a first quality tube.

6. No person shall reactivate or cause to be reactivated any weak, worn-out or defective tube for the purpose of deceiving any other person.

7. No person shall have in his possession any electrical device or tool or other instrument adapted to or commonly used for reactivating any weak, worn-out or defective tube under circumstances evincing an intent to use or employ or allow the same to be used or employed, for the purpose of deceiving any other person, or knowing that the same are intended to be so used.

8. No tube which is represented by the retail seller thereof as guaranteed by the use of such word or words of similar import shall be knowingly sold to any purchaser at retail for home consumption unless a

writing disclosing the nature, extent and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder is furnished to such purchaser at the time of purchase. No tube knowingly sold as aforesaid shall be represented as fully guaranteed or unconditionally guaranteed by the use of such words or words of similar import unless the written guarantee furnished to the purchaser at retail for home consumption at the time of purchase is free from any conditions or limitations whatsoever.

9. No person shall knowingly represent that a tube is being sold at a reduction or at a savings when the alleged reduction or savings is from a fictitious price. Without limiting the generality of the foregoing, an alleged reduction or savings is from a fictitious price.

a. When the alleged reduction or savings of a rejuvenated tube, second-hand tube or used tube is from the manufacturer's established list price for his first quality new tubes or

b. When the alleged reduction of a tube utilizing used components is from the manufacturer's established list price for tubes utilizing only new components in the manufacture thereof or

c. When the alleged reduction is, in fact, a savings in that it is from the list price of a manufacturer other than the owner of the brand name appearing on the tube being sold.

10. No representations shall be made, directly or indirectly, concerning a tube by reference to a patent license pursuant to which such tube was manufactured which could mislead any other person into the belief that such tube is manufactured or sponsored by said patent licensor, when such is not the fact.

§ 534. Violation. 1. A violation of any provision of the preceding section shall constitute a misdemeanor.

2. Proof that no person has been misled or deceived or otherwise

damaged by any violation of this article shall not constitute a defense in any prosecution under this article.

3. It shall not be necessary, in order to make out a prima facie case, for the prosecution to prove that the defendant knowingly or intentionally violated any provision of this article but proof that the defendant did not knowingly or intentionally violate such provision shall constitute a good defense in any prosecution for a misdemeanor under this article.

§ 535. Enforcement by attorney-general. 1. Whenever any person has violated any provision of this article the attorney-general may bring a special proceeding in the supreme court of the state of New York, on notice of not less than five days, for a judgment enjoining the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has violated any provision of this article, no proof shall be required that any person has been misled or deceived or otherwise damaged thereby nor that the defendant knowingly or intentionally violated such provision.

2. In connection with any such proposed application, the attorney-general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules.

§ 536. Construction. Nothing in this article shall apply to any television or sound radio broadcasting station or to any publisher or printer of a newspaper, magazine or other form of printed advertising who broadcasts, publishes or prints such advertisement.

§ 537. Separability. If any section of this article or any part thereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any other section or part thereof.

ARTICLE 29-CC

MODEM HIJACKING DETERRENCE ACT

- Section 538. In general.
538-a. Enforcement.
538-b. Definitions.

§ 538. In general. (a) No person, firm, corporation, or other business entity, regardless of its form of organization, shall deceptively cause computer software to be copied onto the computer or internet-capable device of a consumer in this state and use the software to access, hijack, or use the consumer's modem, internet-capable device, or internet service for the purpose of causing an authorized user or a third party affected by such conduct to incur financial charges for a service that is not authorized by the owner or an authorized user of the computer.

(b) Any provision of a contract or an agreement entered into by a consumer that deceives a consumer and that purports or may be construed to authorize, divert, or require anything that would constitute a violation of any of the provisions of this section is hereby declared to be void as against public policy and shall not be enforceable.

§ 538-a. Enforcement. (a) The attorney general may bring a civil action against any person, firm, corporation, or other business entity, regardless of its form of organization, that violates this article to enjoin the violation and may recover the following:

(1) a civil penalty of one thousand dollars per violation of this article or, for a pattern or practice of such violations, up to three thousand dollars per violation; and/or

(2) costs and reasonable attorneys' fees.

(c) Nothing in this section shall in any way limit rights or remedies which are otherwise available under law to the attorney general or any other person authorized to bring an action under this section.

§ 538-b. Definitions. For the purposes of this article:

(a) the term "hijack", with respect to a modem or internet-capable device, means taking control of the modem or the modem-function of a user's computer or internet-capable device to initiate a toll telephone call via a telecommunications network, a voice over internet protocol, or other internet communication for which the authorized user or provider pays a monetary charge.

(b) the term "authorized user" with respect to a computer or internet-capable device, means a person who is authorized by the owner or lessee to use the computer or internet-capable device.

(c) the term "internet-capable device" means any hardware technology including, but not limited to, a cellular telephone, handheld computer, or calendaring and messaging device with telephony functions, that is individually or collectively capable of providing wireless or wireline internet access, in addition to origination and completion of telephone calls.

ARTICLE 29-D

NOTES GIVEN FOR PATENT RIGHTS AND FOR A SPECULATIVE CONSIDERATION

Section 550. Negotiable notes given for patent rights.

551. Negotiable notes given for a speculative consideration.

552. Notes given for patent-rights.

553. Notes given for a speculative consideration.

554. Retention of forged, counterfeit or spurious documents or negotiable instruments permitted.

§ 550. Negotiable notes given for patent rights. Notwithstanding article three of the uniform commercial code, a negotiable promissory note, the consideration of which consists wholly or partly of the right to make, use or sell any invention claimed or represented by the vendor at the time of sale to be patented, must contain the words "given for a patent right" prominently and legibly written or printed on the face of such note above the signature thereto; and such note in the hands of any purchaser or holder is subject to the same defenses as in the hands of

the original holder; but this section does not apply to a negotiable note given solely for the purchase price or the use of a patented article.

§ 551. Negotiable notes given for a speculative consideration.

Notwithstanding article three of the uniform commercial code, a negotiable promissory note, the consideration of which consists in whole or in part of the purchase price of any farm product, at a price greater by at least four times than the fair market value of the same product at the time in the locality, or of the membership and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at a price greater by four times than the market value of the same product at the time in the locality, must contain the words "given for a speculative consideration" or other words clearly showing the nature of the consideration, prominently and legibly written or printed on the face of such note above the signature thereof; and such note, in the hands of any purchaser or holder, is subject to the same defenses as in the hands of the original owner or holder.

§ 552. Notes given for patent-rights. A person who takes, sells or transfers a negotiable promissory note within article three of the uniform commercial code, knowing the consideration of such note to consist in whole or in part, of the right to make, use or sell, any patent invention or inventions, or any invention claimed or represented to be patented, without having the words "given for a patent-right" written or printed legibly and prominently on the face of such note above the signature thereto, is guilty of a misdemeanor.

§ 553. Notes given for a speculative consideration. A person who takes, sells or transfers a negotiable promissory note within article three of the uniform commercial code, knowing the consideration of such note to consist in whole or in part of the purchase price of any farm product at a price greater by four or more times than the fair market

value of the same product at the time in the locality, or in which the consideration shall be in whole or in part, membership of and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at such rate, without having the words "given for a speculative consideration" or other words clearly showing the nature of the consideration prominently and legibly written or printed on the face of such note above the signature thereof, is guilty of a misdemeanor.

§ 554. Retention of forged, counterfeit or spurious documents or negotiable instruments permitted. Any bank, banker, transfer agent, railroad, warehouseman or any other person charged with the issue, reissue, transfer or payment of any of the documents hereinafter described, in any spurious, counterfeit, forged, altered note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, money order, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise; or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, or, in general, any instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, is presented for payment or transfer or for the purpose of obtaining possession of goods or any property under or pursuant to the terms of such instrument, whether the same is presented through any clearing house or otherwise, and whether or not the owner, or purported owner or presentor of such instrument is within or without the state of New York, may without civil or other liability, retain such counterfeit, forged or spurious instrument or document for the purpose of preserving the same, and return in lieu thereof a photostatic copy with an affidavit setting forth the infirmity

in the original, and the name and address of the person in whose custody such original remains; provided, however, that such act of retention shall not in any way vary the effect or alter the property or civil rights of any person in, to or by reason of such instrument or document or anything done with or pursuant to the same; and provided further, that such instrument shall be delivered within fourteen days to the district attorney within whose jurisdiction the same is retained and upon such surrender a receipt therefor shall be given to the custodian thereof; and provided further, that such instrument shall be produced for use in any court or by any public officer when required to do so under proper notice, demand or subpoena. The right to require the production of such document is hereby extended to all officers or courts whether within the state of New York or elsewhere.

ARTICLE 29-E

TRADING STAMPS

Section 570. Definitions as used in this article.

571. Declared face value; cash redemption.

572. Registration required.

573. Statement of registration.

574. Registration fee.

575. Bond required.

576. Claims by rightful holders of trading stamps.

577. Notice of intention to suspend or cease redemption of stamps.

578. Pre-emption by state.

579. Violation a misdemeanor; injunction.

§ 570. Definitions as used in this article. 1. "Trading stamp" means any stamp or similar device issued in connection with the retail sale of merchandise or service, as a cash discount or for any other marketing purpose, which entitles the rightful holder, on its due presentation for redemption, to receive merchandise, service or cash. "Trading stamp" shall not mean any redeemable device used by the manufacturer or packer of an article in advertising or selling it, or any redeemable device

issued and redeemed by a non-profit membership corporation for the benefit of its members only, or any redeemable device issued and redeemed by a newspaper, magazine or other publication.

2. "Trading stamp company" means any person engaged in distributing trading stamps for retail issuance by others, or in redeeming trading stamps for retailers, in any manner.

3. "Person" means any individual, partnership, corporation, association or other organization.

4. "Secretary" means the secretary of state.

§ 571. Declared face value; cash redemption. No trading stamp company shall advertise, distribute or redeem trading stamps hereafter issued in this state unless:

1. Each stamp has legibly printed upon its face a cash value determined by the company in cents or any fraction thereof, and

2. The rightful holders may, at their option, redeem the stamps in cash when duly presented to the company for redemption in a number having an aggregate cash value of not less than one dollar.

§ 572. Registration required. No trading stamp company shall advertise or distribute trading stamps issued in this state unless it shall have filed with the secretary of state a statement of registration accompanied by representative samples of its stamps, stamp collection books, stamp redemption catalogues and stamp distribution and redemption agreement forms, currently used in this state. Such statement of registration shall be filed for a one year period commencing on July first, nineteen hundred seventy-one and annually thereafter on or before July first of each year; provided however, that any trading stamp company advertising or distributing such trading stamps for the first time subsequent to July first, nineteen hundred seventy-one shall file

its initial statement of registration prior to advertising or distributing such trading stamps and thereafter shall file annually on or before July first of each year as provided herein.

§ 573. Statement of registration. Each statement of registration hereinbefore required shall contain the following information:

1. The name and principal address of the company;
2. The state of its incorporation or origin;
3. The names and addresses of its principal officers, partners or proprietors;
4. The address of its principal office in this state;
5. The name and address of its principal officer, employee or agent therein;
6. The addresses of the places where its stamps are redeemable therein;
7. A short form of its balance sheet as of the end of its last fiscal year prior to such filing, certified by an independent public accountant or certified under oath by one of its principal officers, a partner or the proprietor.
8. A statement of its total gross receipts from its business in this state as a trading stamp company during such last fiscal year, certified by an independent public accountant or certified under oath by one of its principal officers, a partner or the proprietor, unless the principal sum of the bond hereinafter required is the maximum amount required under this article.

§ 574. Registration fee. The trading stamp company shall pay an annual

registration fee of one hundred dollars to the secretary of state at the time of filing each registration statement.

§ 575. Bond required. 1. At the time of filing each registration statement, the trading stamp company must also file with the secretary of state a bond payable to the people of the state of New York and duly executed by the company and a corporate surety qualified to do business in this state; such bond shall be conditioned upon the performance by the trading stamp company of its obligation to redeem trading stamps issued by retailers in this state when they are duly presented for redemption by the rightful holders.

2. The principal sum of the bond required by this article shall be as follows: if the company has not previously done business as a trading stamp company in this state, or if the company's gross receipts from such business during its last fiscal year was not in excess of one hundred thousand dollars the principal sum shall be ten thousand dollars; for each additional one hundred thousand dollars, or fraction thereof, of gross receipts from such business in this state, an additional ten thousand dollars, but such bond shall not exceed one hundred fifty thousand dollars.

3. On the effective date of each new bond, any and all liability on all bonds previously filed under this article shall terminate, and all rightful holders of trading stamps who prosecute their claims under this article shall prosecute such claims solely against the new bond and only by filing proofs of claim with the secretary of state in the manner provided in this article.

4. In lieu of the bond required by this section, the trading stamp company may post with the secretary of state (a) money equal to the amount of the bond otherwise required or (b) securities equal to one hundred twenty percent of the bond otherwise required. Such securities shall be of the same kinds and classes as those in which the comptroller may invest the funds of the state pursuant to section ninety-eight of the state finance law, or in which a fiduciary may invest funds he holds

for investment pursuant to subparagraphs A through I of subparagraph (1) of paragraph (a) of section 11-2.2 of the Estates, Powers and Trusts Law.

§ 576. Claims by rightful holders of trading stamps. 1. If a trading stamp company defaults in the redemption of its stamps when they are duly presented for redemption by residents of this state who are the rightful holders of such stamps, all such holders of such trading stamps, including retailers in possession of such stamps for issuance to customers, shall be entitled to make claim against such bond. Any such rightful holder of trading stamps may, after such default, file a complaint with the secretary of state, who shall forthwith make a determination whether there has been a default. If said secretary determines that there has been a default, he shall give notice of such determination to the company and, if such default is not corrected within ten days, he shall publish notice of such default in three consecutive publications of one or more newspapers having general circulation throughout this state and therein require that proof of all claims for redemption of the trading stamps of such company be filed with him, together with the trading stamps upon which the claim is based, within six months after the date of the first such publication. The secretary of state shall acknowledge receipt of all trading stamps submitted with such claims and determine the validity of all claims so filed promptly after the expiration of such period. Thereupon the secretary shall be paid by the surety such amount, not exceeding the principal sum of the bond, as shall be necessary to satisfy all valid claims so filed. The secretary shall promptly thereafter make an equitable distribution of the proceeds of the bond to such claimants and shall destroy the trading stamps so surrendered.

2. The assertion of a claim by holders of trading stamps against the bond of a defaulting trading stamp company pursuant to this section shall not affect or impair any other rights or remedies such holders may have against such company under any other statute or at common law. In the pursuit of any such right or remedy, the receipt issued by the secretary of state for trading stamps received in connection with such

claims asserted pursuant to this section shall be evidence that persons having such receipts were holders of such stamps prior to their surrender to the secretary.

3. The costs and other charges incurred by the secretary of state in performing the duties set forth in this section shall constitute a proper charge against the trading stamp company which has defaulted, or, in the event of the trading stamp company's failure to pay, against the bond filed by that company, and shall constitute a prior claim against such company or such bond, except that in no event shall the surety be liable for such charge and all other valid claims as an aggregate in excess of the principal sum of the bond.

§ 577. Notice of intention to suspend or cease redemption of stamps.

No trading stamp company shall cease or suspend the redemption of trading stamps in this state without filing with the secretary of state at least ninety days' prior written notice of its intention to do so and concurrently mailing a copy of such notice to each retailer within this state which has at any time theretofore within one year issued trading stamps which the trading stamp company is obligated to redeem.

§ 578. Pre-emption by state. The regulation of trading stamp companies and trading stamps, including the advertising, issuance and redemption thereof, shall be governed solely by the provisions of this article and no local laws or ordinances shall be promulgated with respect thereto.

§ 579. Violation a misdemeanor; injunction. 1. Any person or trading stamp company violating any provision of this article shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars.

2. The supreme court of this state shall have jurisdiction in equity on the complaint of the attorney general to restrain and enjoin the violation of any provisions of this article.

ARTICLE 29-F

GOING OUT OF BUSINESS SALES

Section 580. Purpose and intent.

581. Definitions.

582. Unlawful advertisement.

583. Application requirements.

584. Exceptions.

585. Branch stores and warehouses.

586. Substitution, addition and commingling of goods; license void; certain purchases prohibited.

587. Investigation of application; grounds for denial; revocation of license.

588. Appeal from denial or revocation of license.

589. Copy of application; inventory and license to be posted; license to be referred to in advertisements.

590. Duration of sale; license fee.

591. Opening of a similar business.

592. Records.

593. Injunctions.

594. Penalties.

595. Application of article.

596. Saving clause.

§ 580. Purpose and intent. It is hereby determined and declared that sales to be licensed and regulated pursuant to the provisions of this article have often been conducted and advertised in such a manner as to mislead and defraud the public and otherwise to result in harm to the public interest. Such fraud and imposition on the public has included, by way of partial enumeration only: the misrepresentation of the condition or necessity which is the occasion of such sale; the misrepresentation of the identity of the person conducting such sale, and the name and style in which such sale is to be conducted; the misrepresentation that the goods offered at such sale are selling at sacrifice prices; the misrepresentation that the operator of the sale is

selling merchandise on hand at the time when the necessity, which is the occasion of such sale, arose, when in fact he is replenishing his stock with additional merchandise both prior to the commencement and during the conduct of such sale so as to foist upon the public such added merchandise as though it were part of the original stock; and the excessive valuation and misrepresentation of the quality, former price and ownership of the goods to be sold at such sale. In order to prevent such fraud and imposition, the public interest requires the regulation of such sales and the duration and conduct thereof; and the public interest, therefore requires that no such sale should be conducted without a license or otherwise than in accordance with this article.

§ 581. Definitions. (a) The term "closing out sale" shall include, but not be limited to, all sales advertised, represented, or held forth under the designation of "quitting business," "going out of business," "discontinuance of business," "closing out," "selling out," "liquidation," "lost our lease," "must vacate," "forced out," "removal," "branch store discontinuance sale," "building coming down," "end," "final days," "final clearance," "last days," "lease expires," "we give up sale," "we quit sale," "warehouse closing sale," "warehouse removal sale," "reorganization sale," or any other advertising or designation by any other expression or characterization similar to any of the foregoing giving notice to the public that the sale will precede the abandonment of a business location.

(b) The term "sale of goods damaged by fire, smoke or water" shall include, but not be limited to, all sales advertised, represented or held forth under the designation of "fire sale," "smoke damage sale," "water damage sale," "flood damage sale," "insurance sale," or any other advertising or designation by any other expression or characterization similar to any of the foregoing giving notice to the public that the goods, wares or merchandise offered for sale have been damaged.

(c) The term "defunct business sale" shall include, but not be limited to, all sales advertised, represented or held forth under the designation of "adjuster's sale," "administrator's sale," "assignee's sale," "bankrupt sale," "bankrupt stock sale," "benefit of administrator's sale," "benefit of creditor's sale," "benefit of

trustee's sale," "creditor's committee sale," "creditor's sale," "executor's sale," "insolvent sale," "mortgage sale," "receiver's sale," "trustee's sale," or any other advertising or designation by any other expression or characterization similar to any of the foregoing conveying the same meaning or giving notice to the public of a sale resulting from death, business failure, or other adversity.

(d) "Unusual purchase or addition" shall mean any purchase of goods, wares or merchandise during the ninety days preceding the application for a license, the total value of which is at least twenty-five per cent greater than purchases made by the applicant for a like ninety-day period during the year next preceding the year in which the application is made or the total value of which is at least twenty-five per cent greater than the purchases made by the applicant for any ninety-day period if the applicant has been in business for less than one year.

(e) "Person" shall mean any individual, partnership, association, firm or corporation.

(f) "Licensee" shall mean any person granted a license pursuant to the provisions of this article.

(g) "Licensing authority" shall mean that department or officer of any city, town or village established for the specific purpose of issuing licenses, and where there is no such department or officer, it shall mean the clerk of such city, town or village.

§ 582. Unlawful advertisement. It shall be unlawful for any person to advertise or hold out by any means that the sale of any goods, wares or merchandise to the public is a "closing out sale," "a sale of goods damaged by fire, smoke or water," or a "defunct business sale," unless a license is first obtained to conduct such a sale from the licensing authority of the appropriate city, town or village in which such sale is to be held.

§ 583. Application requirements. (a) Any person desiring to conduct any sale as defined in section five hundred eighty-one shall make a written application under oath to the licensing authority of the appropriate city, town or village in which the sale is to be held.

(b) If the application is for a "closing out sale" or a "defunct business sale," it shall be filed at least fifteen days prior to the date on which such sale is to commence.

(c) If the application is for a "sale of goods damaged by fire, smoke or water," it may be made at any time prior to the date on which such sale is to commence.

(d) Such application shall set forth and contain the following information: (1) The name and address of the applicant, whether the applicant is the true owner of the goods, wares or merchandise to be sold, and if the applicant be a partnership, the names and addresses of all partners, or if the applicant be a corporation or association, the date and place of incorporation or organization, the address of the principal office within the state, the names and addresses of all the officers of the applicant and whether controlling interest in the corporation or association was transferred within six months prior to the date of the filing of the application.

(2) The name and address of the person or persons who will be in charge and responsible for the conduct of such sale.

(3) The exact address of the place at which the proposed sale is to be conducted and the length of time the applicant has been engaged in business at such location.

(4) The date on which it is proposed to begin the sale.

(5) The nature of the occupancy where such sale is to be held, whether by lease or otherwise, and the effective date of termination of such occupancy.

(6) The reason for the urgent and expeditious disposal of the goods, wares or merchandise to be offered at such sale.

(7) A statement of the descriptive name of the sale.

(8) If the application is for a "closing out sale" or a "defunct business sale," a statement whether the business is to be terminated permanently or reopened at another location; the location of the premises at which the business is to be reopened; whether the applicant intends to resume the operation of the business upon the termination of the sale; and the name or designation under which such business is to be resumed.

(9) A full, complete, detailed, and itemized inventory of the goods, wares, and merchandise to be offered at such sale as disclosed by

applicant's records, which inventory shall:

(i) Itemize the goods, wares and merchandise to be offered for sale and contain sufficient information concerning each item, including quantity, make, brand name, model and manufacturer's number, if any, to clearly identify it;

(ii) List separately any goods, wares and merchandise to be offered for sale which were purchased and received during a ninety-day period immediately prior to the date of making application for the license;

(iii) List the total retail value of the inventory of goods, wares and merchandise to be offered at such sale based on the inventory used for applicant's most recent federal income tax return adjusted for sales and purchases.

(10) If the application is for a license to conduct a "sale of goods damaged by fire, smoke, or water" and the applicant was not the owner at the time when the goods, wares and merchandise to be offered at the contemplated sale were damaged, he shall attach to the said application copies of the bill of sale and all other documents connected with such transfer obtained by him from the previous owner of such goods, wares and merchandise.

(11) If the application is for a license to conduct a "defunct business sale," and the applicant was not the owner of the goods, wares and merchandise to be offered at the contemplated sale at the time of occurrence of the circumstances warranting the termination of such business, he shall attach to the application copies of the bill of sale and the official appraisal made by the trustee, receiver, assignee for benefit of creditors, referee in bankruptcy, or the personal representative of a decedent.

(12) A statement that no goods, wares and merchandise will be added to the inventory after the application is made.

(13) A statement that all goods, wares and merchandise included in such inventory have been purchased by the applicant for resale on orders without cancellation privileges and that said inventory comprises no goods, wares and merchandise purchased on consignment.

(14) A statement that no goods, wares and merchandise listed in the inventory have been the subject of a licensed sale conducted within one year prior to the date of the application, unless they were damaged by fire, smoke, or water while in the possession of the applicant.

(e) Upon compliance with the foregoing and subject to the provisions of subdivision (a) of section five hundred eighty-seven, the licensing authority of the appropriate city, town or village in which the sale is to be held shall, within forty-eight hours after submission of the application to it, exclusive of Saturdays, Sundays and public holidays, issue a license to conduct the sale which is the subject of the application.

§ 584. Exceptions. The provisions of this article shall not apply to any sale advertised as an "alteration sale," "remodeling sale," "clearance sale," "surplus stock liquidation sale," "floor sample sale," "inventory reduction sale," "special purchase sale," or any other advertising or designation by any other expression or characterization similar to any of the foregoing giving notice to the public that the sale will not precede the abandonment of a business location, nor shall this article apply to the following persons:

(a) Persons acting pursuant to an order or process of a court of competent jurisdiction;

(b) Persons who are required to file an accounting with a court of competent jurisdiction;

(c) Persons acting in accordance with their powers and duties as public officers;

(d) Any publisher or employee of a newspaper, magazine, or any operator or employee of a radio or television broadcasting station, who publishes or broadcasts any such advertisement in good faith without knowledge of its false, deceptive and misleading character, or without knowledge that the provisions of this article have not been complied with;

(e) Any duly licensed auctioneer, selling at auction;

(f) Any insurance corporation, or any association, firm or corporation, the controlling interest in which is owned by any insurance corporation or corporations, which, pursuant to the terms of a policy or policies of insurance, acquires title in or to any goods, wares or merchandise damaged by fire, smoke, water or otherwise, and which advertises and sells such goods, wares and merchandise as salvage.

§ 585. Branch stores and warehouses. If the applicant for a license hereunder owns, conducts or operates more than one store, or a warehouse in connection with such store or stores, the license issued will apply only to the one store or warehouse for which it was issued, and no other store, branch or warehouse may advertise or represent in any way that it is cooperating with or participating in any way in the licensed sale, nor shall a store licensed pursuant to this article or any person advertise or represent that any other store or warehouse is cooperating with or participating in the licensed sale. The licensed sale conducted by any store of a chain or group of stores shall be conducted solely at the location of the store for which the license was issued and no goods, wares or merchandise shall be brought from any other store and placed on sale at the store licensed pursuant to this article.

§ 586. Substitution, addition and commingling of goods; license void; certain purchases prohibited. (a) Any substitution for or addition to goods described in an inventory filed pursuant to this article, or any change in the time or place of a sale conducted pursuant thereto, shall be unlawful and any license issued for such sale shall thereupon become void.

(b) Where an applicant, conducting a sale licensed under this article, also conducts a business of selling other goods, wares or merchandise not included in the inventory accompanying the application, the goods, wares and merchandise to be sold at such sale shall be clearly and distinctly segregated, marked or identified, and advertised, if at all, so that, both on display and in advertising, such goods, wares and merchandise may be readily distinguished from other goods, wares and merchandise and their identity readily ascertained. Any commingling of such goods, wares and merchandise with other goods, wares and merchandise of the licensee in such a manner as to cause them to lose their separate identity, either on display or in advertising, shall be unlawful and any license issued pursuant for such sale shall thereupon become void.

§ 587. Investigation of application; grounds for denial; revocation of license. (a) Upon receipt of the application, the licensing authority of the appropriate city, town or village in which such sale is to be held may make or cause to be made an examination into any or all the facts contained in the application and inventory in relation to the proposed sale. A license shall be denied or refused if any one or more of the following facts or circumstances is found to exist:

(1) That the applicant is not the true owner of the goods, wares and merchandise to be sold.

(2) That the applicant has not been the owner of the business advertised or described in the application for a license hereunder for a period of at least six months prior to the date of the application, or, if the applicant be a corporation or association, controlling interest in the corporation or association had been transferred within six months prior to the date of the application for a license hereunder, except-

(i) Where the application is for a license for a "sale of goods damaged by fire, smoke, or water," or a "defunct business sale," and the inventory listed in the application contains only those goods, wares or merchandise which were on the premises at the time of the occurrence of the circumstances warranting the granting of a license hereunder;

(ii) Upon the death of a person doing business in the state, the representatives of his estate, or his or her heirs, distributees, devisees, legatees, or their successors and assignees, shall have the right to apply at anytime for a license hereunder;

(iii) Where a business is required or compelled to be discontinued because the premises upon which it is being conducted have been taken by eminent domain or because the premises must be vacated pursuant to legal or judicial proceedings.

(3) That in the case of a "closing out sale," the applicant, either as owner, partner, member of an association, or principal stockholder of a corporation, was granted a prior license hereunder within one year preceding the date of the filing of the application, or the applicant, within one year prior to the date of filing of the application, has conducted a sale in connection with which he advertised or represented that the entire business conducted at the particular location for which the license is sought was to be closed out or terminated.

(4) That the inventory contains goods, wares or merchandise not

purchased by the applicant for resale on bona fide orders without cancellation privileges.

(5) That the inventory contains goods, wares or merchandise purchased by the applicant on consignment, except if the consigned goods, wares or merchandise have been damaged while in the applicant's actual possession.

(6) That the applicant has within one year prior to the filing of the application been convicted of a violation of this act.

(7) That the goods, wares or merchandise as described in the inventory were transferred or assigned to the applicant prior to the date of the filing of the application and that said transfer or assignment was not made for a valuable and adequate consideration.

(8) That in the case of a "closing out sale" or a "defunct business sale," the inventory contains goods, wares or merchandise purchased by the applicant or added to his stock in contemplation of such sale and for the purpose of selling the same at such sale. Any unusual purchase or addition shall be presumptive evidence that such purchase or additions were made in contemplation of such sale and for the purpose of selling the same at such sale.

(9) That any representation made in the application is knowingly false.

(b) Revocation. The licensing authority shall revoke any license granted under the provisions of this article if, after investigation, it shall determine:

(1) That any sale by the applicant has been or is being conducted in violation of any provision of this article, or;

(2) That the applicant has made any material misstatement in his application for said license, or;

(3) That the applicant has knowingly failed to include in the inventory, filed with this application, all goods, wares or merchandise required to be contained in such inventory, or;

(4) That the applicant has added or permitted to be added to said sale or offered or permitted to be offered at said sale, any goods, wares or merchandise not described in the original application and inventory, or;

(5) That the applicant made or permitted to be made any false, misleading or deceptive statements, whether written or oral, in advertising said sale, or in displaying, ticketing, or pricing goods,

wares or merchandise offered for sale.

(c) Any complaint filed with the licensing authority concerning any violation of this article shall be in writing and duly verified by the complainant.

(d) If the licensing authority shall revoke any license pursuant to the provisions of subsection (b), it shall serve notice of such revocation upon the licensee within twenty-four hours of the revocation. Notice of revocation shall be served on the licensee in the same manner as a summons as prescribed by the civil practice law and rules or by registered or certified mail, return receipt requested. The failure of the licensee to discontinue said sale upon receipt of such notice shall constitute a violation of this article.

§ 588. Appeal from denial or revocation of license. Any applicant for a license who is aggrieved by the denial or revocation of a license may apply to the supreme court in the judicial district in which the place of the proposed sale is located for a review of such denial or revocation by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days of the date of the receipt of such denial or revocation.

§ 589. Copy of application; inventory and license to be posted; license to be referred to in advertisements. A copy of the application for a license to conduct a sale under this article, including the inventory filed therewith, shall be posted in a conspicuous place in the sales room or place where the inventoried goods, wares or merchandise are to be sold, so that the public may be informed of the facts relating to such goods, wares and merchandise before purchasing them. Any advertisement or announcement published in connection with the sale shall conspicuously show on its face the number of the license, the date of its expiration, and if applicable, the location where the business is to be resumed.

§ 590. Duration of sale; license fee. (a) A license to conduct a sale

issued pursuant to this article shall be good for no more than a period of thirty consecutive calendar days and may be renewed for one consecutive period not exceeding thirty consecutive calendar days upon the affidavit of the applicant that the goods, wares and merchandise listed in the inventory have not been disposed of and that no new goods, wares and merchandise have been or will be added to the inventory previously filed pursuant to this article by purchase, acquisition, on consignment or otherwise. The application for renewal shall be made not more than ten days prior to the date of the expiration of the license and shall contain an inventory of the goods, wares and merchandise remaining on hand at the time the application for renewal is made, which inventory shall be prepared and furnished in the same manner and form as the original inventory. The licensing authority of the appropriate city, town or village in which such sale is to be conducted shall receive from the applicant for such license, upon the filing of an application therefor, a fee of five hundred dollars, and upon the renewal thereof, a fee of fifty dollars. The applicant shall not be entitled to a refund of the fee paid if said application is revoked.

(b) Any person desiring to conduct any sale defined in subdivision (a) of section five hundred eighty-one of this article shall place the fees prescribed in subdivision (a) of this section with the licensing authority, all except seventy-five dollars of which shall be returned to such person provided the store is closed within sixty days of the receipt of such a license. In the event that the person going out of business and which is holding the closing out sale does not close his doors within sixty days of the receipt of such a license, the applicant shall not be entitled to a refund of such fees.

§ 591. Opening of a similar business. Opening of a business similar to the one for which the sale, licensed pursuant to this article, was conducted, except the licensed "sale of goods damaged by fire, smoke or water," by the person, partnership, association, corporation, or partner of a partnership, officer of an association or principal stockholder of a corporation, who or which conducted the sale upon the same premises within a period of one year of the termination of the sale, shall constitute a violation of this article, and every day in which business

is conducted within such period shall constitute a separate violation of this article.

§ 592. Records. (a) Suitable books and records concerning any sale licensed pursuant to this article shall be kept by the licensee for the duration of the licensed sale and one year thereafter, and shall be open for inspection by the licensing authority of the appropriate city, town or village in which such sale was held.

(b) Upon the termination of a sale licensed hereunder the applicant shall, within thirty days of such termination, file a statement with the licensing authority of the appropriate city, town or village in which the sale was held stating the total retail value of the goods, wares or merchandise not disposed of during the sale and the ultimate disposition thereof and, if transferred to another, the name, address and business, if any, of the transferee.

§ 593. Injunctions. Upon application by the licensing authority of the appropriate city, town or village in which a "closing out sale," "a sale of goods damaged by fire, smoke or water," or a "defunct business sale" is being held, the supreme court of the county wherein a violation of this act occurred may restrain and enjoin any act forbidden or declared illegal by any provision of this article.

§ 594. Penalties. Any person violating any provision of this article shall be guilty of an unclassified misdemeanor punishable by a fine of two hundred fifty dollars or imprisonment for one year or both, and each day upon which any sale is conducted in violation of this article shall be a separate violation.

§ 595. Application of article. This article shall apply only to any city, town or village having a population of less than one million.

§ 596. Saving clause. If any section or provision of this article shall at any time be declared to be unconstitutional, it is the expressed legislative intent that no other section or provision hereof be thereby affected.

ARTICLE 29-G

RECEIPTS FOR PERSONAL PROPERTY

Section 597. Receipts for personal property being repaired, rebuilt or reconditioned.

598. Penalty for violation.

§ 597. Receipts for personal property being repaired, rebuilt or reconditioned. An owner, employee or person in charge of a personal service business including but not limited to laundries, dry cleaners, shoemakers, radio and television repair shops, electrical appliance repair dealers, and other appliance repair dealers must issue upon the demand of the customer an itemized receipt for all articles left in his custody or possession.

This section shall only apply in cases where such articles are delivered by the customer to the place of business of such personal service business.

§ 598. Penalty for violation. A wilfull refusal to issue such receipt when requested by said customer, shall constitute an offense punishable by a fine not to exceed twenty-five dollars.

ARTICLE 29-GG

SALE OF TRAFFIC CONTROL DEVICES

Section 599. Definitions.

599-a. Prohibition on sale.

599-b. Certificate of approval.

599-c. Penalties.

599-d. Application of article.

599-e. Rules and regulations.

§ 599. Definitions. Traffic control devices mean all signs, signals, markings and devices not inconsistent with the vehicle and traffic law placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.

§ 599-a. Prohibition on sale. It shall be unlawful for any person, firm, association or corporation to sell, lease, or offer for sale or hire for use in this state any traffic control device unless it conforms to the current manual and specifications for a uniform system of traffic-control devices maintained by the department of transportation or unless a certificate of approval has been issued by the commissioner of transportation.

§ 599-b. Certificate of approval. Any person, firm, association or corporation desiring a certificate of approval of any traffic control device not conforming to the current manual and specifications for a uniform system of traffic-control devices shall submit to the department of transportation one or more sets of each type of device for which approval is desired or such plans, specifications, design information or data that the commissioner may require, in accordance with and together with the fee provided by the rules and regulations promulgated by the commissioner of transportation pursuant to this article. Upon a finding by the commissioner that the use of any such traffic-control device is necessary, because there are no equivalent conforming devices, and because such use is consistent with the safe regulation of traffic on highways within this state, he may issue a certificate of approval for the sale, lease or offer for sale or hire of any such device.

§ 599-c. Penalties. A violation of the provisions of section five hundred ninety-nine-a of this chapter shall be punishable by a fine of

not less than one hundred dollars and not to exceed one thousand dollars.

§ 599-d. Application of article. This article shall not apply to the sale, lease or offer for sale or hire to a city having a population in excess of one million.

§ 599-e. Rules and regulations. The commissioner of transportation shall have the power to establish such rules and regulations to carry into effect the provisions of this article as he may deem necessary, and to modify or amend such rules and regulations from time to time.

ARTICLE 29-H

DEBT COLLECTION PROCEDURES

Section 600. Definitions.

601. Prohibited practices.

601-a. Disclosure by principal creditors and/or debt collection agencies.

601-b. Large print notices.

602. Violations and penalties.

603. Severability.

§ 600. Definitions. As used in this article, unless the context or subject matter otherwise requires:

1. "Consumer claim" means any obligation of a natural person for the payment of money or its equivalent which is or is alleged to be in default and which arises out of a transaction wherein credit has been offered or extended to a natural person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes. The term includes an obligation of a natural person who is a co-maker, endorser, guarantor or surety as well as the natural person to whom such credit was originally extended.

2. "Debtor" means any natural person who owes or who is asserted to owe a consumer claim.

3. "Principal creditor" means any person, firm, corporation or organization to whom a consumer claim is owed, due or asserted to be due or owed, or any assignee for value of said person, firm, corporation or organization.

4. "Debt collection agency" shall mean a person, firm or corporation engaged in business, the principal purpose of which is to regularly collect or attempt to collect debts: (a) owed or due or asserted to be owed or due to another; or (b) obtained by, or assigned to, such person, firm or corporation, that are in default when obtained or acquired by such person, firm or corporation.

5. "Communication" shall mean the conveying of information regarding a debt directly or indirectly to any person through any medium.

6. "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

7. "Debt collector" means an individual who, as part of his or her job, regularly collects or attempts to collect debts: (a) owed or due or asserted to be owed or due to another; or (b) obtained by, or assigned to, such person, firm or corporation, that are in default when obtained or acquired by such person, firm or corporation.

§ 601. Prohibited practices. No principal creditor, as defined by this article, or his agent shall:

1. Simulate in any manner a law enforcement officer, or a representative of any governmental agency of the state of New York or

any of its political subdivisions; or

2. Knowingly collect, attempt to collect, or assert a right to any collection fee, attorney's fee, court cost or expense unless such changes are justly due and legally chargeable against the debtor; or

3. Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false; or

4. Communicate or threaten to communicate the nature of a consumer claim to the debtor's employer prior to obtaining final judgment against the debtor. The provisions of this subdivision shall not prohibit a principal creditor from communicating with the debtor's employer to execute a wage assignment agreement if the debtor has consented to such an agreement; or

5. Disclose or threaten to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact; or

6. Communicate with the debtor or any member of his family or household with such frequency or at such unusual hours or in such a manner as can reasonably be expected to abuse or harass the debtor; or

7. Threaten any action which the principal creditor in the usual course of his business does not in fact take; or

8. Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist; or

9. Use a communication which simulates in any manner legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, governmental agency, or attorney at law when it is not; or

10. Remotely disable a vehicle using a payment assurance device

defined in paragraph sixty-a of subsection (a) of section 9-102 of the uniform commercial code or by any other means in order to repossess a debtor's vehicle without first having given written notice of the possible remote disabling of a vehicle in the method and timetable agreed upon by the consumer and the creditor in the initial contract for services. The notice shall be mailed by registered or certified mail to the address at which the debtor will be residing on the expected date of the remote disabling of the vehicle. The notice shall be postmarked no later than ten days prior to the date on which the principal creditor or his agent obtains the right to remotely disable the vehicle; or

11. If such principal creditor or agent sends more than fifty information subpoenas per month, fail to keep complete records concerning all information subpoenas sent by such principal creditor or agent. Such records shall be maintained for five years. Contemporaneous records shall be kept that set forth with specificity the grounds for such principal creditor or agent's reasonable belief, which must be certified and accompany each information subpoena pursuant to rule fifty-two hundred twenty-four of the civil practice law and rules, that the party receiving the subpoena has in its possession information about the debtor that will assist the creditor in collecting his or her judgement. In addition to any other penalty that may be imposed, failure to maintain records in accordance with this subdivision shall subject such principal creditor or agent to a civil penalty of not more than fifty dollars per subpoena, up to a maximum of five thousand dollars per violation, in an action brought by the attorney general; or

12. Use a social media platform as a means to collect on a consumer claim from a debtor. For purposes of this subdivision, "social media platform" means a public or semi-public internet-based service or application that has users in New York state that meets the following criteria:

(a) a substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application. A service or application that provides e-mail or direct messaging services shall not be considered to meet this criterion on the basis of that function alone; and

(b) the service or application allows individuals to: (i) construct a public or semi-public profile for purposes of signing up and using the service or application; (ii) create a list of other users with whom they share a connection within the system; and (iii) create or post content viewable or audible by other users, including, but not limited to, livestreams, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users.

§ 601-a. Disclosure by principal creditors and/or debt collection agencies. No principal creditors and/or debt collection agencies shall make any representation that a person is required to pay the debt of a family member in a way that contravenes with the Fair Debt Collection Practices Act (15 USC § 1692 et seq.). In addition, the principal creditors and/or debt collection agencies shall not make any misrepresentation about the family member's obligation to pay such debts.

§ 601-b. Large print notices. 1. Each and every principal creditor or debt collector shall, in each initial communication, clearly and conspicuously disclose to the debtor that each communication can be provided in an alternative, reasonably accommodatable, format. Such disclosure shall substantively contain the following:

(a) A statement that the consumer may request the letter in an alternative, reasonably accommodatable format selected by the principal creditor or debt collector such as large print, braille, audio compact disc, or other means; and

(b) A business phone number that the consumer may call to make such a request.

2. For the purposes of this section, a principal creditor or debt collector providing reasonable accommodation in compliance with the Americans with Disabilities Act of 1990 shall not be deemed to have violated any provision herein.

§ 602. Violations and penalties. 1. Except as otherwise provided by law, any person who violates the terms of section six hundred one of this article is guilty of a misdemeanor, and each such violation shall be deemed a separate offense. A violation by any person of section six hundred one-a of this article, if such violation constitutes the first such offense by such person, is punishable by a civil penalty not to exceed two hundred fifty dollars. The second offense and any offense committed thereafter is punishable by a civil penalty not to exceed five hundred dollars.

2. The attorney general or the district attorney of any county may bring an action in the name of the people of the state to restrain or prevent any violation of this article or any continuance of any such violation.

3. Any aggrieved person or entity served with more than fifty information subpoenas per month by a principal creditor or his or her agent shall also have a cause of action to challenge compliance with subdivision ten of section six hundred one of this article and/or the certification requirements of rule fifty-two hundred twenty-four of the civil practice law and rules. In such action, a successful plaintiff shall be awarded ten dollars for each information subpoena served upon such plaintiff where it is shown that the required certification for such information subpoena was not made pursuant to rule fifty-two hundred twenty-four of the civil practice law and rules, that the required record for such information subpoena was not maintained pursuant to subdivision ten of section six hundred one of this article, or that the specific grounds for the certification required to accompany such information subpoena pursuant to rule fifty-two hundred twenty-four of the civil practice law and rules were not reasonable. A successful plaintiff may also be awarded court costs and attorney fees.

§ 603. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid the invalidity thereof shall not affect other provisions or applications of

the article which can be given effect without the invalid provision or application, and to this and the provisions of this article are severable.

ARTICLE 29-HH

DEBT COLLECTION PROCEDURES RELATED TO IDENTITY THEFT

Section 604. Definitions.

604-a. Prohibited practices.

604-b. Penalties.

§ 604. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Consumer claim" means any obligation of a natural person for the payment of money or its equivalent which is or is alleged to be in default and which arises out of a transaction wherein credit has been offered or extended to a natural person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes. Such term includes an obligation of a natural person who is a co-maker, endorser, guarantor or surety as well as the natural person to whom such credit was originally extended.

2. "Debtor" means any natural person who owes or who is asserted to owe a consumer claim.

3. "Principal creditor" means any person, firm, corporation or organization to whom a consumer claim is owed, due or asserted to be due or owed, or any assignee for value of such person, firm, corporation or organization. Such term shall include any person, firm or corporation engaged in business, the principal purpose of which is to regularly collect or attempt to collect debts obtained by or assigned to such person, firm or corporation, that are in default when obtained or acquired by such person, firm or corporation.

§ 604-a. Prohibited practices. 1. Upon receipt from a debtor of the following, a principal creditor shall cease collection activities until completion of the review provided in subdivision five of this section:

(a) a copy of a valid police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, including, but not limited to, a violation of section 190.78, 190.79, 190.80, 190.81, 190.82 or 190.83 of the penal law, for the specific debt being collected by the principal creditor; or

(b) a copy of a completed and signed federal trade commission identity theft victim's report filed by the debtor alleging that the debtor is the victim of identity theft; and

(c) the debtor's written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the principal creditor.

2. The written statement described in paragraph (c) of subdivision one of this section shall consist of either of the following:

(a) a signed federal trade commission ID theft victim's affidavit; or

(b) a written statement that certifies that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting such certification who declares as true any material matter pursuant to this subdivision that he or she knows to be false is guilty of a misdemeanor. Such statement shall contain or be accompanied by, the following, to the extent that such items are relevant to the debtor's allegation of identity theft with respect to the debt in question:

(i) a statement that the debtor is a victim of identity theft;

(ii) a copy of the debtor's driver's license or identification card, as issued by the state;

(iii) any other identification document that supports the statement of identity theft;

(iv) specific facts supporting the claim of identity theft, if available;

(v) any explanation showing that the debtor did not incur the debt;

(vi) any available correspondence disputing the debt after transaction information has been provided to the debtor;

(vii) documentation of the residence of the debtor at the time of the alleged debt. This may include copies of bills and statements, such as utility bills, tax statements, or other statements from businesses sent to the debtor, showing that the debtor lived at another residence at the time the debt was incurred;

(viii) a telephone number for contacting the debtor concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement;

(ix) to the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible;

(x) an express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt;

(xi) an express statement that the debtor was coerced to authorize the use of the debtor's name or personal information for incurring the debt; or

(xii) criminal or family court documents that support the statement of identity theft.

3. The certification required pursuant to subdivision two of this section shall be sufficient if it is in substantially the following form:

"I certify the representations made are true, correct, and contain no material omissions of fact.

_____"
(Date and Place) (Signature)

4. If a debtor notifies a principal creditor orally that he or she is a victim of identity theft, the principal creditor shall notify the debtor, orally or in writing, that the debtor's claim must be in writing. If a debtor notifies a principal creditor in writing that he or she is a victim of identity theft, but omits information required pursuant to subdivision one of this section and the principal creditor does not cease collection activities, the principal creditor shall provide written notice to the debtor of the additional information that is required.

5. Upon receipt of the complete statement and information described in subdivision one of this section, the principal creditor shall review and consider all of the information provided by the debtor and other information relevant to the review. The principal creditor may recommence debt collection activities only upon making a good faith determination based on all of the information provided by the debtor and other information available to the principal creditor in its file or from the creditor that the information does not establish that the debtor is not responsible for the specific debt in question. The principal creditor's determination shall be made in a manner consistent with the provisions of 15 U.S.C.1692f(1). The debt collector shall notify the debtor in writing of that determination and the basis for that determination before proceeding with any further collection activities.

6. No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for the debt, shall arise if the principal creditor decides after the review described in subdivision five of this section to cease or recommence the debt collection activities. The exercise or non-exercise of rights under this section is not a waiver of any other right or defense of the debtor or debt collector.

7. A principal creditor who ceases collection activities under this section and does not recommence those collection activities, shall within five business days of the cessation of collection activities, do the following:

(a) if the principal creditor has furnished adverse information to a consumer credit reporting agency, notify the agency to delete that information; and

(b) notify the creditor that debt collection activities have been terminated based upon the debtor's claim of identity theft.

§ 604-b. Penalties. (a) Whenever there shall be a violation of this article, an application may be made by the attorney general in the name

of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin or restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not less than five hundred dollars nor more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(b) A principal creditor shall have no civil liability under this article if, within fifteen days either after discovering a violation which is able to be cured, or after the receipt of a written notice of such violation, the principal creditor notifies the debtor of the violation, and makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor.

(c) No principal creditor shall be deemed to have violated the provisions of this article, if such person, firm, partnership, association or corporation shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

ARTICLE 29-HHH

ACTIONS INVOLVING COERCED DEBTS

Section 604-aa. Definitions.

604-bb. Notice of coerced debt.

604-cc. Coerced debt cause of action and affirmative defense.

- 604-dd. Application to secured debt.
- 604-ee. Right of action against person who causes another to incur coerced debt.
- 604-ff. Attorney general enforcement.
- 604-gg. Scope.

§ 604-aa. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Action" means any civil judicial proceeding as defined in section one hundred five of the civil practice law and rules.

2. "Adequate documentation of coerced debt" means documentation that identifies a particular debt, or a portion thereof, as coerced debt, describes the circumstances under which such coerced debt was incurred, and takes the form of any of the following:

(a) a police report;

(b) a copy of an official, valid report filed by the debtor with a federal, state or local law enforcement agency, the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if, in fact, the information in the report is false, that identifies a particular debt, or portion thereof, as a coerced debt;

(c) an order from a court of competent jurisdiction setting forth findings of coerced debt; or

(d) a written verification, from a qualified third party to whom the debtor reported the coerced debt while the qualified third party was acting in their professional capacity, which shall be satisfied by any sworn or notarized statement including the required information as well as the name, mailing address, and email address or telephone number, as applicable, of such qualified third party's employer or, if self-employed, of such qualified third party.

3. "Coerced debt" means a debt arising out of a transaction primarily for personal, family or household purposes that was incurred because of duress, intimidation, threat, force, coercion, manipulation, or undue

influence within the context of intimate relationships or relationships between family or household members as defined by section four hundred fifty-nine-a of the social services law, relationships between victims of human trafficking and traffickers as defined by paragraph (i) of subdivision (c) of section four hundred eighty-three-bb of the social services law, relationships between children and their parents or caretakers as defined in subdivisions (b) and (c) of section one thousand ninety-two of the family court act, the elderly or individuals eligible for protective services under subdivision one of section four hundred seventy-three of the social services law, and their caregivers.

4. "Creditor" means any person, firm, corporation or organization to whom a debt is owed, due, or asserted to be due or owed, any assignee for value of said person, firm, corporation or organization, or any debt collection agency or debt collector as defined by section six hundred of this chapter; provided, however, that "creditor" shall not include a person to whom a debt is allegedly owed, due, or asserted to be due or owed, where the person asserting such claim caused the debt to arise by engaging in one or more acts of coercion, as identified in subdivision three of this section, against the debtor.

5. "Debtor" means any natural person who owes or who is asserted to owe a debt.

6. "Personal information" includes, but is not limited to, a name, address, telephone or mobile phone number, driver registration number or non-driver identification card number, social security number, email address, social media profile or screen name, place of employment, employee identification number, mother's maiden name, financial services account number or code, savings account number or code, checking account number or code, debit or credit card number or code, automated teller machine number or code, electronic serial number, any personal identification number or password of a debtor, and a debtor's personal documents, including, but not limited to, such debtor's driver's license or non-driver identification card, passport, permanent resident card, visa, birth certificate, social security card, and any copies thereof or information contained therein. "Personal identification number or

password", as used in this subdivision, means any number or alphanumeric code which may be used alone or in conjunction with any other information to assume the identity of another person or access financial resources or credit information of another person.

7. "Qualified third party" means any (a) law enforcement officer; (b) employee of a court of the state, court-appointed special advocate; (c) attorney, physician, psychiatrist, psychologist, social worker, registered nurse, therapist, or clinical professional counselor licensed to practice in any state; (d) person employed by or working on behalf of a government or non-profit office, agency, or service that advises or provides services to persons regarding domestic violence, family violence, human trafficking, or abuse of children, the elderly, or dependent adults; or (e) member of the clergy of a church or religious society or denomination.

§ 604-bb. Notice of coerced debt. 1. Within ten business days of receipt of the following, a creditor shall cease collection activities until completion of the review under subdivision three of this section:

(a) adequate documentation of coerced debt; and

(b) the debtor's statement that a particular debt being collected, or portion thereof, is coerced debt.

2. (a) If a debtor notifies a creditor, either orally or in writing, that a debt is a coerced debt but does not provide the documentation required in subdivision one of this section, or such documentation is insufficient, such creditor shall provide written notice to such debtor that includes the following text:

"UNDER NEW YORK GENERAL BUSINESS LAW 604-BB, YOU HAVE THE RIGHT TO DISPUTE DEBT THAT YOU BELIEVE IS COERCED DEBT. A DEBT IS "COERCED" WHEN IT IS INCURRED IN A CONSUMER'S NAME BECAUSE OF THREATS, INTIMIDATION, OR FORCE BY ANOTHER PERSON.

TO DISPUTE COERCED DEBT, YOU MUST SUBMIT A "NOTICE OF COERCED DEBT" IN WRITING. THE "NOTICE OF COERCED DEBT" MUST INCLUDE TWO DOCUMENTS:

1 - A SWORN OR NOTARIZED STATEMENT BY YOU, THE ALLEGED DEBTOR, UNDER PENALTY OF PERJURY, STATING THAT A CERTAIN DEBT OR PORTION OF A DEBT BEING COLLECTED IS COERCED DEBT.

2 - "ADEQUATE DOCUMENTATION OF COERCED DEBT"

TO PROVIDE "ADEQUATE DOCUMENTATION OF COERCED DEBT," YOU ARE REQUIRED TO PROVIDE ONLY ONE OF THE FOLLOWING DOCUMENTS, BUT YOU MAY PROVIDE MORE THAN ONE.

1 - A POLICE REPORT

2 - A COPY OF AN OFFICIAL VALID REPORT FILED BY YOU WITH A FEDERAL, STATE OR LOCAL LAW ENFORCEMENT AGENCY

3 - A COURT ORDER FINDING THAT THE DEBT WAS COERCED

4 - A NOTARIZED STATEMENT FROM A "QUALIFIED THIRD PARTY" THAT YOU REPORTED THE COERCED DEBT TO.

EXAMPLES OF "QUALIFIED THIRD PARTIES" INCLUDE SOCIAL WORKERS AND ATTORNEYS; DOCTORS, NURSES, AND THERAPISTS; EMPLOYEES FROM GOVERNMENT OR NON-PROFIT AGENCIES THAT WORK WITH SURVIVORS OF VIOLENCE; MEMBERS OF THE CLERGY; AND LAW ENFORCEMENT OFFICERS.

NO MATTER WHICH FORM OF "ADEQUATE DOCUMENTATION OF COERCED DEBT" YOU PROVIDE, IT MUST IDENTIFY THE PARTICULAR DEBT, STATE THAT IT IS COERCED DEBT, AND DESCRIBE THE CIRCUMSTANCES THAT CAUSED THE DEBT TO BE INCURRED.

TO DISPUTE DEBT THAT YOU BELIEVE IS COERCED DEBT, PLEASE SEND THE REQUIRED DOCUMENTS TO (DESIGNATED ADDRESS). AFTER RECEIVING YOUR NOTICE OF COERCED DEBT, WE WILL INVESTIGATE YOUR CLAIM AND RESPOND IN WRITING WITHIN 35 BUSINESS DAYS. FOR MORE INFORMATION, PLEASE CALL (DESIGNATED PHONE NUMBER)."

(b) If a debtor notifies a creditor in writing that a particular debt being collected, or portion thereof, is coerced debt, but omits

information under subdivision one of this section, and if such creditor does not cease such collection activities, such creditor shall provide written notice to such debtor of the additional information that is required.

3. (a) Within ten business days of receiving all the information required under subdivision one of this section, the creditor shall, if such creditor furnishes adverse information about the debtor to a consumer reporting agency, notify such consumer reporting agency that the account is disputed.

(b) Within thirty business days of receiving all the information required under subdivision one of this section, the creditor shall complete a review considering all information provided by the debtor and other information available to such creditor in such creditor's file. In connection with such review and communication of the outcome of such review, the creditor shall:

(i) neither directly nor indirectly contact the individual accused of causing the coerced debt to be incurred;

(ii) use only the contact information the debtor provides with the information under subdivision one of this section when attempting to contact such debtor and shall not use any other contact information, even if associated with the account under review, when attempting to contact such debtor; and

(iii) not disclose the documents, information, or contact information the debtor provides with the information under subdivision one of this section to any other person, including, but not limited to, joint account holders, without such debtor's express written authorization, except as reasonably necessary to bring and maintain an action authorized by subdivision one of section six hundred four-cc of this article, provided that under no circumstance shall the creditor disclose the contact information of the debtor unless directed by a court and such court shall only direct the disclosure of such information in a manner reasonably calculated to protect the safety of the debtor. For purposes of this subparagraph, sending documents, information, or contact information the debtor provides under subdivision one of this section to a mailing or electronic mail address other than the one provided by the debtor constitutes unlawful disclosure to a third party,

even if such mail or electronic mail address is associated with the account.

(c) Within five business days of completing the review under paragraph (b) of this subdivision, a creditor who recommences collection activities based on such review shall notify the debtor in writing of such creditor's determination and the good faith basis for such determination, provided however such documentation shall not include personally identifiable information of another person. The written notice shall also include a notice of the debtor's right to request reconsideration of such determination to recommence collection activities under subdivision four of this section.

(d) Within five business days of completing the review under paragraph (b) of this subdivision, a creditor who ceases collection activities under this section and, based on such review, does not recommence such collection activities, shall:

(i) notify the debtor in writing that it is ceasing collection activities based on such debtor's claim of coerced debt;

(ii) contact any consumer reporting agencies to which it furnishes information about the debtor and the particular debt and instruct such consumer reporting agencies to delete such information; and

(iii) if the creditor is also a debt collector or debt collection agency, as defined in section six hundred of this chapter, notify the original creditor that it has ceased collection activities because the debt was found to be a coerced debt.

4. A debtor who receives written notice under paragraph (c) of subdivision three of this section that the creditor will recommence collection activities against such debtor based on such creditor's determination under subdivision three of this section may make a request to the creditor that the creditor reconsider such determination to recommence collection activities within thirty days of the date of mailing of such written determination. A debtor requesting reconsideration of a creditor's determination to recommence collection activities shall be permitted to submit additional adequate documentation of coerced debt, as defined in this article. A creditor who receives a debtors request for reconsideration shall complete a review of all information, including additional adequate documentation

submitted, within thirty days of receiving such request. Any further reconsideration of the creditor's determination with regard to such particular debt shall be at the discretion of the creditor. Submitting a request for reconsideration of the determination to the creditor shall not be a condition to bringing an action under section six hundred four-cc of this article.

5. No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for such debt, shall arise if the creditor decides after completing the review under subdivision three of this section to cease or recommence the debt collection activities. The exercise or non-exercise of rights under this section shall not constitute a waiver of any other right or defense of the debtor, creditor, debt collector, or any other person.

6. If at any time any individual or entity, including, but not limited to the creditor, such creditor's assignor, or any assignee, recommences collection activities on the debt after ceasing collection activities on such debt after the creditor determined the debt was a coerced debt, such debtor may submit a subsequent notice of coerced debt. A subsequent notice of coerced debt submitted under this subdivision shall be governed by subdivisions one through five of this section.

7. (a) If a debtor injured by a violation of this section notifies the creditor of such violation, the creditor shall have fifteen days to cure such violation. If the creditor determines the violation is able to be cured, the creditor shall make any and all reasonable adjustments or corrections necessary to cure the violation with respect to the debtor. If the debtor notifies the creditor of a violation and the violation is not cured with respect to the debtor within fifteen days, and such inability to cure is not the result of a bona fide error, the debtor shall have a cause of action against the creditor to recover statutory damages of one thousand dollars, actual damages, if any, and the costs and reasonable attorneys' fees incurred in bringing such action.

(b) Collection activities, for the purposes of this section, do not include any communication between a creditor or debtor that is required by state or federal law or regulation.

§ 604-cc. Coerced debt cause of action and affirmative defense. 1. A debtor shall have a cause of action against a creditor in any court having jurisdiction to issue a declaratory judgment establishing that a debt or portion of a debt asserted to be owed to such creditor is a coerced debt. Notwithstanding section one thousand one of the civil practice law and rules, any individual alleged to have caused such coerced debt to be incurred shall not be a necessary party to such action. Such action shall not be commenced and maintained unless the debtor has submitted a request for reconsideration under subdivision four of section six hundred four-bb of this article of the creditor's decision to recommence debt collection activities based on such creditor's review of the debtor's notice of coerced debt and the creditor either affirmed the creditor's determination that the debt is not coerced or the debtor has not received written notice the creditor determined that the debt is coerced debt within thirty-five days of submitting the request for reconsideration.

2. In an action under subdivision one of this section, a debtor shall plead the allegations of coerced debt with particularity and shall attach the documents provided to the creditor pursuant to subdivision one of section six hundred four-bb of this article to any complaint.

3. A debtor who establishes by a preponderance of the evidence in an action pursuant to subdivision one of this section that a debt or portion of a debt asserted to be owed to the creditor is coerced debt shall, unless the creditor provides information that would otherwise show that the determination that the debt was not coerced was the result of the creditor's bona fide error, be entitled to the following relief:

(a) a declaratory judgment stating that the debt or portion thereof is coerced debt and that the alleged debtor shall not be liable for such coerced debt;

(b) an order enjoining or restraining the creditor from holding or attempting to hold the debtor personally liable for the coerced debt or attempting to obtain or enforce any judgment thereon against such debtor and enjoining and restraining all future collection activities with

respect to such debt;

(c) an order dismissing any other cause of action brought by the creditor to enforce or collect the coerced debt from the debtor;

(d) if the creditor has furnished adverse information to a consumer reporting agency with respect to such coerced debt, an order directing the creditor to notify such agency to delete all such adverse information; and

(e) the costs and attorneys' fees reasonably incurred in bringing such action.

4. In any action by a creditor against a debtor to collect a debt, it shall be an affirmative defense to such action that all or a portion of the debt is coerced debt. Providing notice to the creditor under section six hundred four-bb of this article shall not be a prerequisite to asserting such defense; provided, however, the documents described in subdivision one of section six hundred four-bb of this article shall be annexed to the debtor's answer. Notwithstanding section one thousand one of the civil practice law and rules, any individual alleged to have caused such coerced debt to be incurred shall not be or become a necessary party to such action.

5. An action pursuant to subdivision one of this section shall be commenced within three years after the date on which the debtor provided the notice of coerced debt pursuant to section six hundred four-bb of this article to the creditor; provided, however, that if such creditor, its assignor, or any assignee recommences collection activities on the debt after ceasing collection activities on such debt based on such creditor's review of the debtor's claim of coerced debt, such debtor shall have the right to file a subsequent notice of coerced debt pursuant to subdivision six of section six hundred four-bb of this article and the statute of limitations shall commence on the date on which such debtor provided such subsequent notice of coerced debt.

6. If requested by the debtor, the court presiding over any action in which coerced debt is raised as a claim or affirmative defense shall take appropriate steps necessary to prevent abuse of such debtor or an immediate family member of such debtor, including but not limited to the

sealing of court records, the redaction of such debtor's or their immediate family member's personal information, and/or directing that any disposition or hearing be held remotely.

7. The provisions of this article shall not be construed so as to prevent a creditor from enforcing any claim or collecting judgment arising out of a lawful debt or portion thereof from any other person or entity other than the coerced debtor.

8. Collection activities, for the purpose of this section, do not include any communication between a creditor or debtor that is required by state or federal law or regulation.

§ 604-dd. Application to secured debt. 1. Except with respect to section six hundred four-ee of this article, this article shall not apply to debts secured by real property.

2. Section six hundred four-bb of this article and the cause of action authorized by subdivision one of section six hundred four-cc of this article shall not apply to debts secured by personal property.

3. For debts secured by personal property, the affirmative defense authorized by section six hundred four-cc of this article shall not affect the creditor's right to enforce any security interest upon default of the financing and security agreement under article nine of the uniform commercial code including, but not limited to, repossession or voluntary surrender of the subject personal property or seeking and obtaining a court order to retake the subject personal property. The affirmative defense shall affect only the coerced debtor's liability for any deficiency after the repossession or surrender and disposition of the subject collateral.

§ 604-ee. Right of action against person who causes another to incur coerced debt. A person shall not cause another person to incur a coerced debt. 1. A person who causes another person to incur a coerced debt in

violation of this section shall be civilly liable to the creditor and/or the debtor in whose name such coerced debt was incurred if such debtor has already paid all or part of such coerced debt, for the amount of such debt, or portion thereof, including for any deficiency after the foreclosure, repossession or surrender and disposition of the subject collateral of a secured debt, determined by the court to be a coerced debt, as well as such creditor's and/or debtor's costs and attorneys' fees reasonably incurred in bringing the action.

2. An action under this section shall be commenced within three years of the later of: (a) the creditor's determination that all or part of such debt is coerced debt; or (b) a court's determination that all or part of such debt is coerced debt.

§ 604-ff. Attorney general enforcement. Whenever there shall be a violation of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than fifteen days, to enjoin and restrain the continuance of such violations. If it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining or restraining any violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in section eighty-three hundred three of the civil practice law and rules, and may make direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of this article has occurred, unless the creditor has provided information that would otherwise show the violation was the result of bona fide error, the court may impose a civil penalty for each violation up to five thousand dollars.

§ 604-gg. Scope. 1. The provisions of this article shall apply only to a creditor to whom a debt is owed, due, or asserted to be due or owed, where such debt is asserted to be coerced debt.

2. The provisions of this article shall not be construed to impose any duty or liability not expressly provided herein.

3. Nothing in this article shall prevent a creditor from seeking recourse for fraudulent claims of coerced debt.

ARTICLE 29-I

THE STORAGE OF HOUSEHOLD GOODS

Section 605. Short title.

606. Definitions.

607. Required disclosures.

607-a Storage of furs.

608. Unlawful detention of goods.

609. Private right of action.

610. Violation and penalties.

§ 605. Short title. This article should be known and may be cited as the "truth-in-storage" act.

§ 606. Definitions. Whenever used in this article:

(a) Warehouseman means a person engaged in the business of storing goods for hire.

(b) Storage of household goods means goods stored by a consumer bailor which are used or bought for use primarily for personal, family or household purposes.

(c) Consumer bailor means a natural person.

§ 607. Required disclosures. 1. No warehouseman shall accept household goods for storage from a consumer bailor unless prior to accepting the

goods, the consumer bailor is furnished with a written storage agreement which shall be dated and signed by the consumer bailor and the warehouseman or his duly authorized agent, be written or printed in a size equal to at least ten-point bold type and which shall set forth the following information:

(a) Name and address of warehouseman and consumer bailor.

(b) Street address of warehouse where goods will be stored.

(c) The reasonably estimated monthly storage charge for the particular household goods to be stored expressed in dollars. The actual monthly charge shall not exceed the given estimate by more than ten percent.

(d) An itemization of other charges imposed or which may be imposed in connection with the storage, a description of each such charge, whether the charge is mandatory or optional, and the amount of each charge expressed in dollars. Where such charges can only be estimated, a reasonable estimate must be set forth and the actual charges shall not exceed such estimates by more than ten percent.

(e) An inventory by item number of all goods accepted for storage or of the packages containing them together with a notation of the condition of each of the goods accepted; a statement that the bailor should review the condition noted for each of the goods before they are picked up for storage to make sure that a proper description of the condition of each of the goods has been entered on the inventory; and a statement that the bailor before signing the storage agreement should note on it by item number any exception he may have as to the condition descriptions. The notation of the condition of the goods by the warehouseman or his agent shall be expressed in readily understandable terms.

(f) A statement of any limitation of damages limiting the amount of the warehouseman's liability in case of loss or damage of the goods setting forth a specific liability per article or item of value per unit of weight beyond which the warehouseman will not be liable; provided that if damages are so limited, a statement shall be included that such liability may on the written request of the bailor at the time of signing such storage agreement or within a reasonable time thereafter be increased on part or all of the goods stored, in which event increased rates may be charged based on such increased valuation. The rates charged for an increased valuation shall be set forth and a

pre-addressed request form to enable the bailor to request an increased valuation shall be provided.

(g) Any other material terms and conditions of the storage transaction.

2. Every storage agreement as required by this section shall include the business address and telephone number to be used by the consumer bailor in making inquiries concerning the storage transaction.

3. Every storage agreement as required by this section shall contain the following conspicuous notices:

Notice: The monthly storage charge and other charges stated in this agreement are either the actual or reasonably estimated charges you must pay. If the charges are estimated the final charges you will be required to pay may not exceed the estimate by more than ten percent.

Notice: Storage charges do not include any charges for moving your goods from your home to the warehouse or from the warehouse to your home.

4. When a warehouseman accepts household goods for storage on behalf of a consumer bailor after a warrant of eviction has been executed pursuant to section seven hundred forty-nine of the real property actions and proceedings law, the warehouseman shall within three days after receipt of the goods mail a copy of a statement containing the disclosures required by subdivisions one, two and three of this section to the consumer bailor by registered or certified mail at his last known residence.

§ 607-a. Storage of furs. In addition to any other provision of this

article, a fur storage operator shall be subject to the following:

1. If there is any statement of limitation in damages in an agreement for the storage of furs, such agreement shall contain on its face immediately above the consumer bailor's signature the following notice "DO NOT SIGN THIS AGREEMENT UNLESS THE DECLARED VALUE OF EACH ARTICLE TO BE STORED OR SERVICED IS STATED."

2. Where the consumer bailor does not personally deliver furs for storage and the fur storage operator, in the normal course of his business, makes an appraisal of such furs before accepting them for storage, the fur storage operator, for purposes of compliance with the disclosure provisions of this article, shall be deemed to have complied if he supplies a consumer bailor with a written storage agreement within thirty days of receipt of such furs. Provided, however, that nothing contained in this subdivision shall diminish any existing duty of care which the fur storage operator owes to the consumer bailor.

3. For the purposes of this section, a fur storage operator means a warehouseman whose storage business is limited to furs and other items of valuable clothing and furs means articles of wearing apparel intended to be worn by individuals and consisting in whole or in part of animal fur.

§ 608. Unlawful detention of goods. 1. Notwithstanding the provisions of section 7-209 of the uniform commercial code, no warehouseman shall have a lien on any household goods stored by him in a particular case where the charges demanded for storage are in excess of the charges permitted by this article.

2. It shall constitute an unlawful detention of goods for a warehouseman to refuse to surrender household goods stored by him for a consumer bailor upon payment by the consumer bailor of the storage charges permitted by this article.

§ 609. Private right of action. 1. Any consumer bailor damaged by an unlawful detention of his goods or any other violation of this article may bring an action for recovery of damages and the return of his goods. Judgment may be entered in an amount not to exceed three times the actual damages plus reasonable attorneys fees.

2. Nothing in this article shall be construed so as to nullify or impair any right or rights which a buyer may have against a seller at common law, by statute or otherwise.

§ 610. Violation and penalties. Whenever there shall be a violation of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 29-J

FILM RATINGS LABELING

Section 611. Definitions.

612. Sale and rental of video games and films.

§ 611. Definitions. As used in this article:

1. "Film" means any videotape, video cassette or other reproduction of a motion picture, concert, musical production or other video event.

1-a. "Video game" means electronic or computerized game software that users manipulate through interactive devices to generate images on a display screen.

2. "Rating" means a standardized designation commonly used to inform parents about video games or motion pictures in retail or theatrical release, respectively, regarding viewing or playing by their children.

§ 612. Sale and rental of video games and films. 1. No person, partnership or corporation shall sell or rent at retail or attempt to sell or rent at retail a video game or film unless a video game rating or the rating of the motion picture from which the film was copied is clearly displayed on the outside of the case, jacket or other cover of the video game or film.

2. This section shall not apply to a "mail order business" as defined in section three hundred ninety-six-m of this chapter or to any film which is a reproduction of a motion picture, concert, musical production or other video event, or any video game, which has not been given a rating, nor shall it apply to any motion picture or video game which has been altered subsequent to receiving a rating.

3. A violation of subdivision one of this section shall be punishable by a civil penalty of not more than one hundred dollars.

ARTICLE 29-K

MOTOR VEHICLE PARTS WARRANTY

Section 616. Definitions.

617. Express written warranty required; contents.

618. Additional remedies of consumers.

619. Prohibition against waiver of rights.

§ 616. Definitions. Whenever used in this article, unless the context clearly requires otherwise, the following words or terms shall have the following meanings:

1. "Person" means an individual, partnership, corporation, association or other legal entity.

2. "Motor vehicle" means any motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law which is used primarily for personal, family or household purposes.

3. "Consumer" means the person who purchased the part for purposes other than resale or any person to whom the motor vehicle on which the part is installed is transferred during the term of the warranty provided by section six hundred seventeen of this article and any other person, other than a seller, entitled by the terms of such warranty to enforce the obligations of the warranty.

4. "Part" means any equipment or apparatus intended for use in a motor vehicle, including but not limited to a new part; a part which has been removed from another motor vehicle and modified, rebuilt, remanufactured, improved, or reconditioned; and a used part, except a used part which is removed from a motor vehicle and sold to a consumer without any attempt to improve the condition of the part and which is clearly marked as being in "as-is" condition. Notwithstanding the above, the term "part" shall not include any equipment or apparatus used in repairing a motor vehicle or any component of such motor vehicle if the repair is regulated by article twelve-A of the vehicle and traffic law.

5. "Seller" means any person who sells parts either to a consumer or to a purchaser for the purpose of resale to a consumer.

6. "Initial seller" means the seller who manufactured, modified, rebuilt, remanufactured, improved, reconditioned or recycled the part or who first sold the part.

7. "Intermediate seller" means any seller other than the initial seller.

§ 617. Express written warranty required; contents. 1. (a) An initial seller shall provide the consumer with an express written warranty which complies with the following requirements: the parts are warranted to be fit for the ordinary purposes for which such parts are used during the first three thousand miles of operation of the motor vehicle after installation of the part; and or during the period of ninety days following the original delivery of such parts to the consumer, whichever occurs first.

(b) An initial seller of new parts who or which has established a policy of accepting the return of a new part for an exchange or a complete refund of the purchase price for a period of time that meets or exceeds the warranty period required by this subdivision, and clearly communicates such policy to consumers, shall not have to provide the express written warranty required by this section.

2. (a) If a part does not conform to the warranty provided in subdivision one of this section, and the consumer or any intermediate seller reports such nonconformity, defect, or condition to the initial seller or its agents or authorized dealers during the term of the warranty, the initial seller shall make repairs as are necessary to correct such nonconformity, defect, or condition and, if the initial seller is unable to repair such part so as to conform it to the warranty, it shall either replace such part or cause the seller to the consumer to refund the purchase price of such part to the consumer.

(b) It shall be an affirmative defense to any claim under this section that the nonconformity, defect, or condition is the result of abuse, neglect, unauthorized modifications or alterations to the part, improper diagnosis and/or installation, or failure of another part.

(c) Any person making a warranty claim hereunder shall retain the part which is the subject of the claim until the claim is resolved or until the initial seller shall request return of such part, whichever occurs first. The initial seller shall pay the cost for shipping to it any part it requests. Failure to retain the part or return it to the initial seller upon request shall be grounds for denying warranty coverage.

(d) No repair or replacement of any part under paragraph (b) of this subdivision shall be deemed to alter or extend the term of the warranty on such part.

§ 618. Additional remedies of consumers. Nothing in this article shall in any way contravene or limit the rights, remedies or privileges which are otherwise available to a consumer under any other law.

§ 619. Prohibition against waiver of rights. Waiver of any rights by the consumer under this article shall be deemed contrary to public policy and shall be unenforceable and void.

ARTICLE 30

HEALTH CLUB SERVICES

- Section 620. Legislative intent.
621. Definitions.
622. Escrow required.
- 622-a. Bond, letter of credit or certificate of deposit required.
623. Contract restrictions.
624. Rights of cancellation of contracts for services.
625. Assignment of contracts for services.
626. Deceptive acts prohibited.
627. Contracts void and unenforceable.
- 627-a. Automated external defibrillator requirements.
628. Private right of action.
629. Violations.
630. Enforcement.

§ 620. Legislative intent. 1. The legislature finds that there exists in connection with a number of contracts for health club services, sales practices and business and financing methods which may have resulted in deception and financial hardship upon the people of this state, that existing legal remedies are inadequate to correct these abuses; that the health club services industry has a significant impact upon the economy and well being of this state and its local communities, and that the provisions of this article relating to such contracts are necessary for the public welfare.

2. The legislature declares that the purpose of this article is to safeguard the public and the ethical health club industry against deception and financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of health club services by prohibiting or restricting false or misleading advertising, erroneous contract terms, harmful financial practices, and other unfair, deceptive and discriminatory practices which have been conducted by some health club operators.

§ 621. Definitions. 1. "Contract for services." As used in this article, a contract for services means a contract for consumer services for instruction, training or assistance in bodybuilding, exercising, weight reducing, figure development, the martial arts to include, judo, karate and self-defense, or any similar course of physical training to be provided for the future use by a consumer of the facilities providing the foregoing instruction, training or assistance; or for membership in any group, club, association or organization for any of the above purposes; except however, that a contract for services shall not mean or include:

(a) Membership in any group, club, association or organization which provides any of the foregoing services and which is organized pursuant to the provisions of the not-for-profit corporation law; or

(b) Boarding accommodations; or

(c) Travel arrangements contracted for less than one year in advance;
or

(d) Contracts which incorporate warranties of services or repair given in conjunction with appliances or other goods, where the sale of goods is the primary object of the contract; or

(e) Services by a college or university chartered by the university of the state of New York, a secondary school, an elementary school, a nursery school or kindergarten; and

(f) Contracts for services to provide instruction, training or assistance to acquire a vocation or skill conducted in a training school or by home study.

(g) Contracts for programs which provide instruction for improving tennis skills, and are of eight weeks duration or less where the full fee does not exceed two hundred fifty dollars.

(h) Contracts relating solely to the seasonal use of tennis facilities.

2. "Health club" as used in this article means any person, firm, corporation, partnership, unincorporated association, or other business enterprise offering instruction, training or assistance or the facilities for the preservation, maintenance, encouragement or development of physical fitness or well being. Such term shall include but shall not be limited to health spas, sports, tennis, racquet ball, platform tennis and health clubs, figure salons, health studios, gymnasiums, weight control studios, martial arts and self-defense schools or any other similar course of physical training.

3. "Secretary" as used in this article shall mean the secretary of state.

4. "Seller" as used in this article means any person, firm, corporation, partnership, unincorporated association or other business enterprise which operates or intends to operate a health club.

5. "Buyer" as used in this article means any individual who enters into a contract for services with a health club.

6. "Cardiopulmonary resuscitation" or "CPR" as used in this article means measures, as specified in regulations promulgated by the commissioner of health, to restore function or support ventilation in the event of a cardiac or respiratory arrest. Cardiopulmonary resuscitation shall not include measures to improve ventilation and cardiac functions in the absence of an arrest.

7. "Automated external defibrillator" or "AED" as used in this article means a medical device approved by the federal food and drug administration that (a) is capable of recognizing the presence or absence in a patient of ventricular fibrillation and rapid ventricular tachycardia; (b) is capable of determining, without intervention by an operator, whether defibrillation should be performed on the patient; (c) upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to the patient's heart; and (d) upon action by an operator, delivers an appropriate electrical impulse to the patient's heart to perform defibrillation.

§ 622. Escrow required. All moneys received by a seller pursuant to a contract for services for use by a buyer of a health club prior to the full operation of such health club shall be placed in escrow.

1. Such funds shall be kept and maintained in an account separate and apart from any account maintained by or for the seller's personal use or for use in the construction or operation of the health club or for the payment or benefit of employees of the seller.

2. The escrow account shall be established in a bank or trust company doing business in this state.

3. The escrow account shall provide that the purpose of the account is to protect the consumer in the event that the seller fails to complete substantially and to open the facility within one year following establishment of the account. Any buyer who has advanced moneys on deposit in the escrow account may maintain a representative action pursuant to the provisions of the civil practice law and rules to close

the account and to release such moneys pro-rata to all buyers similarly situated if such health club facility has not been substantially completed and opened within one year of establishment of the account or if the buyer has not had the full use of another similar facility during this period.

4. Within three business days of a request therefor, a monthly statement of the escrow account is to be furnished to consumers who have advanced funds or obligation until such account is no longer required by this article.

5. The escrow account shall provide that funds deposited therein may be withdrawn by the seller upon the completion of the proposed construction in the following manner: (i) one-third of the funds may be distributed to the seller upon completion of one-half of the proposed construction; (ii) not more than two-thirds of the funds which have been deposited in escrow may be released upon the completion of three-fourths of the proposed construction; (iii) the escrow agent may accept as evidence of partial completion certification of any architect or engineer licensed pursuant to the provisions of the education law that the proposed construction has been completed in accordance with the plans and specifications.

6. The escrow account shall be released by the escrow agent to the seller not more than thirty days following full operation of the facility and certification of completion from any architect or engineer licensed pursuant to the provisions of the education law.

7. In lieu of the escrow provisions required by this section, the health club may furnish information as required by the secretary, executed under penalty of perjury by an officer or owner of the health club which reasonably demonstrates financial responsibility that will enable the health club to satisfy the possible claims against the escrow required by this section. In the event the health club is controlled by, under common control, or controls another corporation and the other corporation agrees in writing to satisfy the claims against the escrow required by this section, then the financial responsibility of the other

corporation shall be considered in determining the applicability of this section. In determining whether the health club has the requisite financial responsibility the secretary may consider the operating and business history and reputation of the health club and its management within and without the state as well as the operating and business history and reputation of any business controlled by, under common control with, or controlling the health club.

§ 622-a. Bond, letter of credit or certificate of deposit required. 1. Every health club, except as provided in subdivision ten of this section, before it enters into any contract for services for use by a buyer of a health club, shall file and at all times maintain with the secretary, in form, amount as prescribed herein and substance satisfactory to him:

(a) A bond with a corporate surety, from a company authorized to do business in this state; or

(b) An irrevocable letter of credit or a certificate of deposit from a New York state or federally chartered bank, trust company, savings bank or savings and loan association qualified to do business in New York state and insured by the federal deposit insurance corporation.

2. The principal sum of the bond, letter of credit, or certificate of deposit shall be;

(a) Fifty thousand dollars if the health club sells contracts for services for a term not greater than twelve months; or

(b) Seventy-five thousand dollars if the health club sells contracts for services for a term more than twelve months and up to twenty-four months; or

(c) One hundred fifty thousand dollars if the health club sells contracts for services for a term more than twenty-four months and up to thirty-six months.

3. For health clubs with three or more locations, or for multiple franchises of a common franchisor, the following amounts shall be added to the sum required in subdivision two of this section for the bond, letter of credit, or certificate of deposit:

- (a) For three to four locations an additional fifty thousand dollars,
- (b) For five to six locations an additional one hundred thousand dollars,
- (c) For seven to nine locations an additional one hundred fifty thousand dollars,
- (d) For ten or more locations an additional two hundred thousand dollars.

4. The bond, letter of credit or certificate of deposit shall be payable in favor of the people of the state of New York for the benefit of any buyer injured in the event that the seller goes out of business prior to the expiration of the buyer's contract for services, or otherwise fails to provide a refund to the buyer after cancellation of the buyer's contract for services as provided for in section six hundred twenty-four of this article.

5. The aggregate liability of the surety upon the bond or the banking organization upon the letter of credit or certificate of deposit to all persons for all breaches of the conditions of the bond shall in no event exceed the amount of the bond, letter of credit or certificate of deposit.

6. The bond, letter of credit or certificate of deposit filed and maintained pursuant to this section shall not be cancelled, revoked, or terminated except after notice to, and with the consent of, the secretary at least forty-five days in advance of such cancellation, revocation, or termination.

7. Any person claiming against the bond, letter of credit or certificate of deposit may bring and maintain an action against the seller and the surety or bank, trust company, savings bank or savings and loan association.

8. For the purposes of this section, a health club shall be considered to be a new health club subject to the requirements of a bond, letter of credit or certificate of deposit as provided herein, at the time the health club changes ownership, or, in the case of corporate ownership,

at the time thirty percent or more of the stock changes or has changed ownership. A change in ownership of a health club shall not release, cancel or terminate liability under this section under any bond, letter of credit or certificate of deposit filed for a health club as to any buyer who purchases a health club contract while such bond, letter of credit or certificate of deposit is in effect unless the transferee, purchaser, successor, or assignee of such health club obtains a bond, letter of credit or certificate of deposit under this section for the benefit of such buyer.

9. No contract for services shall be enforceable against the buyer if the seller has failed to comply with any requirements of this section.

10. Health clubs shall be excluded from the requirement to file a bond, letter of credit, or certificate of deposit if all payments for which the buyer is obligated including, but not limited to down payments, initiation fees, enrollment fees, membership fees or any other direct payments to the health club do not exceed one hundred fifty dollars. A health club shall also be excluded from the requirement to file a bond, letter of credit or certificate of deposit, if it offers its buyers a monthly dues payment option for each dues payment plan it offers to customers, provided that: (a) both the annual and the monthly membership options are disclosed to customers prior to entering into any membership contract; (b) that the monthly dues, including any initiation fee or other charge, do not exceed one hundred fifty dollars; (c) that the paid in full fee is not discounted by more than ten percent of the sum of the initiation fee and the monthly dues payments; and (d) that the term of either option be no more than twelve months and that the membership contract not contain an automatic renewal provision. Additionally, any health club which owns five or more acres of real property which is used directly for the purpose for which the club is formed, and any health club the use of which is exclusively restricted to residents of a homeowners' association, cooperative or condominium and which is owned by and operated on the premises of such homeowners' association, cooperative or condominium, shall be excluded from the requirement to file a bond, letter of credit or certificate of deposit.

11. (a) Every health club shall post, in at least two conspicuous areas within the club, including, if applicable, an entrance area where buyers are required to register, a sign no smaller than nine inches by fourteen inches that sets forth the following notice clearly and conspicuously:

IMPORTANT NOTICE FOR HEALTH CLUB MEMBERS

New York State law requires certain health clubs to have a bond or other form of financial security to protect members in the event the club closes.

This club (insert whichever term is applicable)

has posted the financial security required by law.

or

is exempt from this requirement.

YOU MAY ASK A REPRESENTATIVE OF THE CLUB FOR PROOF OF THE CLUB'S COMPLIANCE WITH THIS LAW. YOU MAY ALSO OBTAIN THIS INFORMATION FROM THE NEW YORK STATE DEPARTMENT OF STATE, DIVISION OF LICENSING SERVICES, 162 WASHINGTON AVENUE, ALBANY, N.Y. 12231.

(b) Health clubs that operate at two or more locations shall post notices in compliance with paragraph (a) of this subdivision at each such location.

12. The notice required by subdivision eleven of this section shall be incorporated into any contract for services executed by a health club in at least ten point bold type.

13. Every contract for services which offers the consumer the option to pay in installments shall contain the following notice, written in at least ten point bold type and placed directly above the space reserved for the signature of the buyer:

THIS NOTICE PROVIDES IMPORTANT INFORMATION ABOUT YOUR PAYMENT OPTIONS

You may make payments on an installment basis or in a single payment. Paying the full amount may be less expensive, but may involve financial risks to you. Read this notice carefully before making a decision.

New York State law requires certain health clubs to post a bond or other financial security to protect members in the event the club closes. This club is exempt from this requirement since it gives members the option of paying on an installment basis, therefore it need not post a bond or other form of financial security.

In deciding whether to make your payments on an installment basis, you should be aware that if the club closes, although the club will remain legally liable for a refund, you may risk losing your money if the club is unable to meet its financial obligations to members.

§ 623. Contract restrictions. 1. No contract for services shall require payment by the person receiving service or the use of the facilities of a total amount in excess of three thousand six hundred dollars per annum, provided, however, that this subdivision shall not apply to contracts relating solely to the use of tennis, platform tennis or racquet ball facilities.

2. No contract for services shall provide for a term longer than thirty-six months. No contract for services shall require payments or financing by the buyer over a period in excess of thirty-seven months from the date the contract is entered into, nor shall the term of any such contract be measured by or be for the life of the buyer. Provided, however, that the services to be rendered to the buyer under the contract may extend over a period not to exceed three years from the date the contract is entered into with the right to renew, at the option of the buyer for a like period. The buyer may have thirty days after the expiration to renew the contract. The installment payments shall be in substantially equal amounts exclusive of the down payment and shall be required to be made at substantially equal intervals, not to exceed one month.

3. No contract for services may contain any provisions whereby the buyer agrees not to assert against the seller or any assignee or transferee of the health club services contract any claim or defense arising out of the health club services contract.

4. No contract for services may require the buyer to execute a promissory note or series of promissory notes which, when negotiated, cuts off as to third parties a defense which the buyer may have against the seller.

5. No contract may be assigned by one health club to another health club not located on the same premises without written consent of the buyer.

§ 624. Rights of cancellation of contracts for services. 1. Every contract for services at a planned health club or a health club under construction shall, at the option of the buyer, be voidable in the event that the health club and the services to be provided pursuant to such contract are not available within one year from the date the contract is executed by the buyer.

2. Every contract for services shall provide that such contract may be cancelled within three business days after the date of receipt by the buyer of a copy of the written contract. Notice of cancellation shall be delivered by United States mail or electronic mail at the address or e-mail address specified in the contract. Such contract shall contain the following written notice in at least twelve point bold type:
CONSUMERS RIGHT TO CANCELLATION. YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR FURTHER OBLIGATION WITHIN THREE (3) BUSINESS DAYS FROM THIS DATE. Notice of cancellation shall be in writing subscribed by the buyer and mailed by United States mail or electronic mail to the seller at the address or e-mail address specified in such form. Such notice shall be accompanied by the contract forms, membership cards and any other documents or evidence of membership previously delivered to the buyer. All moneys paid pursuant to such contract shall be refunded within ten business days of receipt of such notice of cancellation. If the buyer has executed any credit or loan agreement to pay for all or part of health club services, any such negotiable instrument executed by the buyer shall also be returned within ten business days.

3. (a) Every contract for services shall provide that after such three business day period for cancellation as provided in subdivision two of this section, the buyer's estate may cancel a contract for services if the buyer dies. The buyer may also cancel after three business days if the buyer becomes significantly physically disabled for a period in excess of three months, or moves their residence to a location more than twenty-five miles from a health club operated by the seller, or after the services are no longer available or substantially available as provided in the contract because of the seller's permanent discontinuance of operation or substantial change in operation. Nothing contained herein shall restrict or prohibit the seller from offering or providing in such contract additional or broader reasons for cancellation. The seller may require reasonable evidence for a cancellation pursuant to this subdivision.

(b) Such contract shall contain the following notice captioned in at least twelve point bold type:

ADDITIONAL RIGHTS TO CANCELLATION:

You may also cancel this contract for any of the following reasons:

If upon a doctor's order, you cannot physically receive the services because of significant physical disability for a period in excess of three months.

If you die, your estate shall be relieved of any further obligation for payment under the contract not then due and owing.

If you move your residence more than twenty-five miles from any health club operated by seller.

If the services cease to be offered as stated in the contract.

(c) All moneys paid pursuant to such contract cancelled for the reasons contained in this subdivision shall be refunded within ten business days of receipt of such notice of cancellation; provided however that the seller may retain the expenses incurred and the portion of the total price representing the services used or completed, and further provided that the seller may demand the reasonable cost of goods

and services which the buyer has consumed or wishes to retain after cancellation of the contract. In no instance shall the seller demand more than the full contract price from the buyer. If the buyer has executed any credit or loan agreement to pay for all or part of health club services, any such negotiable instrument executed by the buyer shall also be returned within ten business days.

4. (a) Every contract for services shall provide that such health club shall accept cancellation of a membership by the buyer or the buyer's estate, as provided in this section, no later than three business days after receiving notice of the cancellation.

(b) Where a contract for services is due for renewal on an annual basis, such contract for services following the initial contract shall provide that such health club shall accept cancellation of renewal of a membership, by the buyer or the buyer's estate, provided such request is made within fifteen business days after such renewal takes effect. Where a contract for service is due for renewal on a monthly basis, such contract for services following the initial contract shall provide that such health club shall accept cancellation of renewal of a monthly membership, by the buyer or the buyer's estate provided such request is made within three business days after such renewal takes effect.

(c) Such health club shall accept notice of cancellation of a membership through methods including, but not limited to, website, electronic mail, telephone, mail, or in person.

(d) If a health club allows a buyer to enter into a contract for services through a website, such health club shall accept a notice of cancellation of such contract through such website in addition to the methods provided pursuant to paragraph (c) of this subdivision.

§ 625. Assignment of contracts for services. 1. No assignee who takes a note or other obligation as consideration for a contract containing the disclosure requirements of section six hundred twenty-four of this article shall fail to honor the consumer's right of cancellation as provided in this article.

2. No creditor holding a note or other obligation, to which a consumer

has obligated himself in order to purchase a contract shall fail to honor the consumer's right of cancellation under this article if:

- (a) the creditor is a person related to the seller of services; or
- (b) the seller prepares documents used in connection with the loan; or
- (c) the creditor supplies forms to the seller used by the consumer in obtaining the loan; or
- (d) the creditor makes twenty or more loans in any calendar year, the proceeds of which are used in transactions with the same seller or with a person related to the same seller; or
- (e) the consumer is referred to the creditor by the seller; or
- (f) the creditor, directly or indirectly, pays the seller any consideration whether or not it is in connection with the particular transactions; or
- (g) the creditor participated in or was connected with the sale.

3. No assignee of a contract shall fail to give notice of the assignment to the consumer. A notice of assignment shall be in writing addressed to the consumer at the address shown on the contract and shall identify the contract.

§ 626. Deceptive acts prohibited. It is hereby declared to be an unfair and deceptive trade practice and unlawful for a seller to:

1. Misrepresent directly or indirectly in its advertising, promotional materials, or in any manner the size, location, facilities or equipment of its studio, or place of business or the number or qualifications of its personnel;

2. Use or refer to fictional organization divisions or position titles or make any representation which has the tendency or capacity to mislead or deceive consumers as to the size or importance of the business, its divisions, or personnel, or in any other material respect;

3. Misrepresent directly or indirectly the size, importance, location, facilities, or equipment of the business through use of photographs, illustrations, or any other depictions in catalogs, advertisements, or

other promotional materials;

4. Misrepresent the location or locations at which its services will be offered;

5. Misrepresent the nature of its courses, training devices, methods or equipment or the number, qualifications, training, or experience of its personnel, whether by means of endorsements or otherwise;

6. Misrepresent the nature and extent of any personal services, guidance, assistance, or other attention the business will provide for consumers;

7. Designate or refer to his sales representation using terms that misrepresent in any other manner, the titles, qualifications, training, experience or status of his salesmen, agents, employees, or other representatives; and

8. Misrepresent in any manner by the seller or his assignee the buyer's right to cancel under this article.

§ 627. Contracts void and unenforceable. 1. Any contract for services which does not comply with the applicable provisions of this article shall be void and unenforceable as contrary to public policy.

2. Any waiver by the buyer of the provisions of this article shall be deemed void and unenforceable by the seller as contrary to public policy.

§ 627-a. Automated external defibrillator requirements. 1. Every health club as defined under paragraph b of subdivision one of section three thousand-d of the public health law whose membership is fifty persons or more shall have available on the premises in a manner that provides obvious and ready accessibility to staff, members and guests at least one automated external defibrillator and shall have in attendance,

at all times during staffed business hours, at least one individual performing employment or individual acting as an authorized volunteer who holds a valid certification of completion of a course in the study of the operation of AEDs and a valid certification of the completion of a course in the training of cardiopulmonary resuscitation provided by a nationally recognized organization or association.

2. Health clubs and staff pursuant to subdivision one of this section shall be deemed a "public access defibrillation provider" as defined in paragraph (c) of subdivision one of section three thousand-b of the public health law and shall be subject to the requirements and limitation of such section.

3. Pursuant to sections three thousand-a and three thousand-b of the public health law, any public access defibrillation provider, or any employee or other agent of the provider who, in accordance with the provisions of this section, voluntarily and without expectation of monetary compensation renders emergency medical or first aid treatment using an AED which has been made available pursuant to this section, to a person who is unconscious, ill or injured, shall be liable only pursuant to section three thousand-a of the public health law.

§ 628. Private right of action. 1. Any buyer damaged by a violation of this article may bring an action for recovery of damages. Judgment may be entered in an amount not to exceed three times the actual damages plus reasonable attorney fees.

2. Nothing in this article shall be construed so as to nullify or impair any right or rights which a buyer may have against a seller at common law, by statute, or otherwise.

§ 629. Violations. 1. Any seller or his assignees who violate any provision of this article, or who shall counsel, aid or abet such violation shall be liable for a civil fine of not more than twenty-five hundred dollars for each violation. The provisions of this article are

not exclusive and do not relieve the seller or his assignees or the contracts subject to this article from compliance with all other applicable provisions of law.

2. In addition to the provisions of subdivision one of this section, any seller or his assignees who violate section six hundred twenty-two-a of this article shall be guilty of a misdemeanor.

§ 630. Enforcement. In addition to the remedies hereinbefore provided, the attorney general may bring an action on behalf of the people of the state to restrain further violations of this article, to enforce the provisions of section six hundred twenty-two-a of this article and for such other relief as may be appropriate.

§ 631. Preemption. A political subdivision, otherwise authorized, may enact a local law, identical to the provisions of this article, to enable local enforcement of the provisions of this article and such local law. Any local law not identical with the provisions of this article, or with any rules and regulations promulgated hereunder, shall be pre-empted, superseded, and of no force and effect.

ARTICLE 30-A

HOME-USE MEDICAL DIAGNOSTIC DEVICE MARKETING PRACTICES

Section 640. Target marketing; prohibitions.

§ 640. Target marketing; prohibitions. 1. Definitions. For purposes of this article, the following terms shall have the following meanings:

(a) "Personal identifiable information" shall mean any information obtained by a manufacturer or distributor of a home-use medical diagnostic device by means of its warranty registration card, owner's registration card, or otherwise which information was furnished to it by or on behalf of a user of such device. Such information shall include but not be limited to the user's name, address, telephone number or

personal medical information. Such term shall not include data which does not identify a user.

(b) "Target marketing" shall mean the compilation of a list of users by a manufacturer or distributor of a home-use medical diagnostic device, for purposes of direct marketing transactions or solicitation which is based on users' personal identifiable information.

(c) "User" shall mean any natural person who uses a home-use medical diagnostic device.

(d) "Home-use medical diagnostic device" shall have such meaning as prescribed by the Federal Food, Drug and Cosmetic Act and the regulations thereunder, as such act and regulations may from time to time be amended.

(e) "Person" shall mean any individual, partnership, association, firm or corporation.

2. Restrictions on disclosure. (a) A manufacturer or distributor of a home-use medical diagnostic device shall not disclose to a marketer of goods or services or to a third party acting on behalf of any such marketer any personal identifiable information of a user for target marketing purposes without having first afforded such user the right to prohibit such disclosure as set forth in paragraph (b) of this subdivision.

(b) The warranty registration card, owner's registration card or other similar form shall conspicuously disclose, if applicable, that a user's personal identifiable information may be used for target marketing purposes and shall provide such user the opportunity to be excluded from any such target marketing list by means of a check-off box contained on the card or other similar form. Such notice shall include a pre-addressed postage paid form by which a user can exercise the right to prohibit disclosure.

3. Private remedy. Any person who has been injured by reason of any violation of this article may bring an action for recovery of actual damages or two hundred fifty dollars, whichever is greater. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds that the defendant willfully or knowingly violated the

provision of this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

4. Additional remedies of users. Nothing in this article shall in any way contravene or limit the rights, remedies or privileges which are otherwise available to a user under any other law.

5. Enforcement. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 30-B

WEIGHT LOSS SERVICES

Section 641. Weight loss services and products.

642. Weight loss services; notice.

643. Deceptive practices.

644. Local regulation.

645. Penalties.

§ 641. Weight loss services and products. For the purposes of this article:

1. "Weight loss services" shall mean counseling and educational activities, including, but not limited to, recommending the use of weight loss products, which have the primary purpose of helping individuals reduce body weight. Weight loss services does not include providing information to the public regarding individual weight loss products if the person, firm or corporation is not also engaged in counseling activities.

2. "Weight loss products" shall mean any foods, ingredients or components of foods, nutritional formulas or supplements, drugs, equipment or any other products sold or offered for the primary purpose of helping individuals reduce body weight.

3. "Direct seller" shall mean any person if (a) such person is (i) engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment, or (ii) engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment;

(b) substantially all the remuneration, whether or not paid in cash, for the performance of the services described in paragraph (a) of this subdivision is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(c) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for state and federal tax purposes.

§ 642. Weight loss services; notice. 1. Any person, firm or

corporation offering weight loss services or weight loss services and products in this state by means of selling or offering to sell such services or products to the public shall either (i) conspicuously post a sign, measuring at least nine inches by fourteen inches, where consumers are offered the services or products, in writing, in at least ten point print, or (ii) provide in writing, in at least ten point print, to individuals and consumers prior to the purchase of such goods or services the following notice or some other notice which substantially contains or provides the following information.

WEIGHT LOSS AND DIETING INFORMATION

a. WARNING! Rapid weight loss may cause serious health problems. Rapid weight loss is weight loss of more than 1 1/2 to 2 pounds per week or weight loss of more than 1 percent of body weight per week after the second week of participation in a weight loss program.

b. Consult your physician before starting any weight loss program or using any diet medications or formulas.

c. Long term weight control is the safest and most important goal of any diet program. Permanent lifestyle changes such as eating nutritious foods, calorie control and increasing physical activity help promote long term weight loss according to medical experts.

d. Ask the person providing or selling you weight loss advice or diet products, medications or formulas about their qualifications and training in nutrition and health.

e. You have the right to:

(i) Ask questions about the potential health risks of this program or product, its nutritional content, and its psychological-support and educational components;

(ii) Know the price of treatment, including the price of any extra products, services, supplements and laboratory tests; and

(iii) Know the program duration of the program recommended to you.

2. The provisions of this section shall not apply to direct sellers,

retail stores or pharmacies selling weight loss products and providing information to the public regarding individual products, unless such businesses offer both weight loss services and weight loss products. Furthermore, the provisions of this section shall not apply to weight loss services provided to an individual by any person, firm or corporation which provides weight loss services incidental to their primary professional services to such individual and which does not offer to sell weight loss services or weight loss products to the public.

§ 643. Deceptive practices. It shall be a deceptive trade practice for any person, firm or corporation offering or providing weight loss services or weight loss products to misrepresent, directly or indirectly:

1. the potential health risks of the weight loss services or products offered;

2. the success of participants using the weight loss services or products offered in achieving or maintaining weight loss or weight control. Any representation of successful weight loss or weight control by participants will be considered misleading if the person, firm or corporation does not possess or rely upon a reasonable basis for the representation at the time it is disseminated. If a claim is made that scientific evidence supports the representation, the person, firm or corporation must possess competent and reliable scientific evidence substantiating such claim. For the purposes of this subdivision, "competent and reliable scientific evidence" shall mean those tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

3. the educational and professional experience of the personnel providing weight loss services or weight loss products;

4. the total charges for any weight loss services and products; or
5. the actual or estimated duration of the use of the weight loss services or products offered.

§ 644. Local regulation. Nothing in this article shall be construed to restrict the power of any county, city, town or village to adopt and enforce local laws, ordinances or regulations which exceed the minimum requirements of this article, as long as such local laws, ordinances or regulations are not inconsistent with the provisions of this article. Any local laws or rules regulating weight loss services and products in a city having a population of one million or more and which were in effect prior to the effective date of this article and any notice provided pursuant to such law or rule, shall be deemed to be consistent with the provisions of this article.

§ 645. Penalties. Each day a person, firm or corporation violates any provision of this article shall constitute a single violation. Whenever there shall be a violation of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations. If it shall appear to the court or justice that the defendant has in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact been injured or damaged thereby. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one hundred dollars for the first violation and two hundred dollars for each violation thereafter, but in no event shall the total penalty therefor exceed one thousand dollars. In connection with any such application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue

subpoenas in accordance with the civil practice law and rules.

ARTICLE 31

MEMBERSHIP CAMPGROUNDS

- Section 650. Short title.
651. Definitions.
652. Applicability.
653. Specific disclosures.
654. Right of cancellation.
- 654-a. Cancellation of membership camping contracts.
655. Restriction on conveyance of campgrounds.
656. Advertising standards.
657. Escrow.
658. Violations.
659. Contracts void and unenforceable.
660. Construction.

§ 650. Short title. This article shall be known and may be cited as the "Membership campground act".

§ 651. Definitions. For the purposes of this article, the terms:

1. "Advertising" means any written, printed, audio or visual communication by a membership campground operator or an employee or agent of a membership campground operator made in conjunction with the promotion and sale of campground memberships.

2. "Business day" means any calendar day except Sunday or any legal holiday.

3. "Dues" means the annual or periodic fees, other than the purchase price or user fees, that must be paid as a condition to continued membership in and use of a membership campground.

4. "Major capital improvement" means an upgrade or improvement or improvements which, in the aggregate, cost in excess of fifty thousand dollars.

5. "Membership campground" means real property, together with such fixtures and improvements as campsites, bathrooms, showers, swimming pools, tennis courts, recreational buildings, stores and other amenities that are made available to purchasers of membership camping contracts.

6. "Membership camping contract" or "contract" means an agreement offered or sold evidencing a purchaser's right or license to use a membership campground under terms wherein no exclusive right to use is granted for a specific and identifiable unit, and where the operator does not assign a specific and fixed number of days or weeks which the purchaser may use and where the operator does not represent the contract as an investment opportunity under which the purchaser might assign, sell or transfer his or her contract for profit. This term does not include any arrangement or other device, whether by agreement or otherwise, under which a purchaser has the one-time right to use a specific, identified camping site, and related facilities, for a specific, identified time period, such as with an overnight or a seasonal rental. This term also does not include reciprocal programs or any arrangement or other device under which a purchaser acquires any leasehold, fee, timeshare or other ownership interest in a campground.

7. "Membership campground operator" or "operator" means any person, corporation, partnership, or other entity that owns or operates a membership campground.

8. "Purchase price" means the purchase price of a camping contract, including finance charges and related closing costs, if any, but excluding dues and user fees.

9. "Purchaser" means a person who enters into a membership camping contract and obtains the right or license to use membership campgrounds.

10. "Reciprocal program" means any arrangement allowing a purchaser to

use campgrounds or other properties other than the membership campground which is the subject of the purchaser's membership camping contract.

11. "User fees" means optional fees that may be charged for specific goods or services that are not covered under the membership camping contract.

§ 652. Applicability. 1. Except as provided herein, this article shall apply to the sale or offer of sale of membership camping contracts to residents of the state if the facilities which are the subject of the membership camping contract are in the state, or if the sale or offer of sale is made in the state.

2. Membership campground operators subject to regulation under this article shall not be subject to regulation under article twenty-three-A of this chapter or article nine-A of the real property law.

3. The resale of a single membership camping contract by the purchaser other than the membership campground operator, or an employee, agent or affiliate of the membership campground operator, shall not be subject to the provisions of this article.

4. This article shall not apply to the sale or offer for sale of a successor contract which replaces an existing contract, unless the successor contract is executed within the cancellation period provided for in section six hundred fifty-four of this article.

§ 653. Specific disclosures. 1. Prior to the execution of a membership camping contract, the purchaser must be provided with a disclosure document which shall begin with the following language printed in upper case boldface type of a minimum size of ten points:

DISCLOSURE DOCUMENT

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS CONCERNING THE

PURCHASE OF A MEMBERSHIP CAMPING CONTRACT. STATE LAW REQUIRES THAT THESE DISCLOSURES BE MADE, BUT NO STATE AGENCY OR OFFICIAL HAS REVIEWED THE INFORMATION CONTAINED IN THIS DOCUMENT. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS WHICH ARE INCONSISTENT WITH THE DISCLOSURES CONTAINED HEREIN AS BEING CORRECT. A MEMBERSHIP CAMPGROUND OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT OR THIS DISCLOSURE STATEMENT.

2. The disclosure document shall consist of a written statement containing all of the following information:

a. The name and address of the membership campground operator.

b. A description of the operator's business experience. Such description shall disclose any event within the last ten years in which the operator has filed for or been subject to involuntary bankruptcy, insolvency, or an assignment for the benefit of creditors, or has been convicted of a felony in any criminal case or proceeding or has been the subject of a judgment unless reversed on appeal in any civil or administrative case or proceeding involving fraud, or deceptive practices, or violation of any law applicable to membership campgrounds. The operator shall also make such disclosures as may be required and mutually agreed upon as a result of negotiations between the operator and the attorney general and contained in a consent order or assurance of discontinuance resulting from an investigation, action or proceeding commenced by the attorney general.

c. A brief description of the nature of the purchaser's right or license to use the membership campground operator's property or

facilities.

d. The location of each membership campground owned by the membership campground operator which is offered for purchaser's use and a brief description for each campground of the facilities then available for use by purchaser, and those facilities which are represented to purchaser as planned, together with a brief description of any facilities that are or will be available to non-purchasers or non-members. The description required herein shall include, but not be limited to, the number of camping sites in each campground, the number of camping sites in each campground with full or partial hook-ups, and a description of the facilities at each campground.

e. The following statement shall be given in the contract, printed in boldface type of a minimum size of ten points reading:

PURCHASE A MEMBERSHIP CAMPING CONTRACT ONLY ON THE BASIS OF EXISTING
FACILITIES. CONSTRUCTION OF PLANNED FACILITIES MAY SOMETIMES BE
DELAYED OR TERMINATED FOR A VARIETY OF REASONS.

f. A description of the membership campground operator's ownership or other right to use the campground together with the duration of any lease, license, or franchise entitling the membership campground operator to use the property, and any material provisions of any agreements which restrict a purchaser's use of the property.

g. A description of the effect on the purchaser's membership rights if a subsequent holder, successor, assign or other person later acquires the campground or campgrounds through foreclosure, bankruptcy, sale, deed, or other conveyance.

h. A copy of the rules, restrictions or covenants regulating the purchaser's use of the membership campground operator's property or properties, including a statement of whether and how the rules, restrictions or covenants may be changed.

i. A brief description of all payments required to be made by a purchaser under a membership camping contract, including initial fees and any further fees, dues, charges or assessments, together with an explanation of how such fees, dues, charges or assessments may be increased.

j. A description of any restraints on the transfer of the membership camping contract, including applicable fees.

k. A description of the policies relating to the availability of the camping sites and whether reservations are required, and what usage rights non-members have, if any.

l. A description of any grounds for forfeiture of any membership camping contract.

m. A statement describing the material terms and conditions of any reciprocal program represented to be available to purchasers, including whether the purchaser's participation in the reciprocal program is dependent upon the continued affiliation of the membership campground operator with the reciprocal program, and whether the reciprocal program operator and/or the membership campground operator have reserved the right to terminate that affiliation.

n. A statement of the maximum number of memberships to be sold as compared to the number of camping sites available to those members, expressed in a ratio form.

o. The following statement, in bold letters of at least ten point type where in capital letters below, which advises the purchaser of the right to cancel the contract under section six hundred fifty-four-a of this article, shall be contained in the disclosure document:

ADDITIONAL RIGHT OF CANCELLATION: AFTER THREE (3) BUSINESS DAYS FROM THE DATE THAT YOU EXECUTE SAID CONTRACT YOU MAY CANCEL FOR ANY OF THE FOLLOWING REASONS:

(1) A material breach in the provision of the essential services and programs set forth in the membership camping contract; or

(2) You have relocated to a permanent residence not less than five hundred miles from a campground or other facility where you can use your membership; or

(3) You, your spouse, or your domestic partner currently resides in or are notified of and accept the opportunity to commence occupancy in an adult care facility or a residential health care facility; or

(4) You, your spouse, or your domestic partner are certified by a physician as physically unable to visit the resort and materially use the services and programs as outlined in the contract; or

(5) You are the victim of domestic violence perpetrated by another signatory of the same contract.

Immediately following the above right of cancellation notice, the instructions below shall be given in the same type as the print for the contract text.

"Notice of cancellation shall be in writing subscribed by the purchaser or his or her legally designated representative and sent by certified mail to the membership campground operator at the address stated herein. Such notice shall be accompanied by the original or copies of the membership camping contract and all supporting documentation. If you are exercising your right to cancel after three business days, such notification shall also include a written statement that certifies that the representations are true and correct, and contain no material omissions of fact to the best of your knowledge and belief."

2-a. The following statement, in bold letters of at least ten point type, which advises the purchaser of the right to cancel the contract under section six hundred fifty-four of this article shall be contained in the contract:

YOU MAY CANCEL THIS MEMBERSHIP CONTRACT WITHOUT ANY PENALTY, FORFEITURE, OR FURTHER OBLIGATION WITHIN THREE (3) BUSINESS DAYS FROM THE DATE THAT YOU EXECUTE SAID CONTRACT. FOR ADDITIONAL RIGHT OF CANCELLATION SEE THE DISCLOSURE DOCUMENT.

Immediately following the above right of cancellation notice, the instructions below shall be given in the same type as the print for the contract text.

"Notice of cancellation shall be in writing subscribed by the purchaser or his or her legally designated representative and hand delivered or mailed by certified mail to the membership campground operator at the address stated herein and postmarked not later than three business days from the date of execution of said contract. Such notice shall be accompanied by the original or copies of the membership camping contract and all supporting documentation."

3. The disclosure statement shall contain a signature line for the purchaser immediately above which shall be printed in boldface type of a minimum size of ten points the following words:

THE UNDERSIGNED HAS READ ALL OF THE PROVISIONS OF THE DISCLOSURE STATEMENT.

§ 654. Right of cancellation. 1. The purchaser may cancel a membership camping contract with or without cause within three business days after the execution of such contract. Notice of cancellation shall be delivered by hand or mailed to the address specified in the contract. Notice of cancellation shall be deemed timely given if postmarked on or before the third business day following the date of execution.

2. A purchaser may cancel a membership camping contract pursuant to this section without penalty or obligation and all payments made by the purchaser prior to cancellation shall be refunded within thirty days after receipt of the notice of cancellation by the membership campground operator. Upon cancellation pursuant to this section, all notes, mortgages, security agreements or other loan documents executed by the purchaser in connection with the membership camping contract shall be deemed cancelled without penalty or obligation to the purchaser.

§ 654-a. Cancellation of membership camping contracts. 1. For the purposes of this section the following terms shall have the following

meanings:

a. "adult care facility" shall have the same meaning as such term is defined in subdivision twenty-one of section two of the social services law, provided, however, that for the purposes of this section the term "adult care facility" shall not include a shelter for adults;

b. "domestic partner" shall have the same meaning as such term is defined in subdivision seven of section twenty-nine hundred ninety-four-a of the public health law.

c. "residential health care facility" shall have the same meaning as such term is defined in subdivision three of section twenty-eight hundred one of the public health law; and

d. "shelter for adults" shall have the same meaning as such term is defined in subdivision twenty-three of section two of the social services law.

2. a. Upon the expiration of the cancellation period provided under section six hundred fifty-four of this article, a purchaser of a membership camping contract shall have the right to cancel such contract under the following conditions:

(1) there is a material breach of contract by the membership campground operator to provide the essential services and programs as set forth and in the manner provided in the membership camping contract. A natural disaster or phenomena, failure or shortage of electric power or other source of energy, unauthorized or illegal acts, labor strikes or disputes disrupting operations, or governmental, judicial, or law enforcement actions shall not be a basis for cancellation, unless the membership campground operator fails to diligently restore such services and programs within a reasonable period of time; or

(2) the purchaser has relocated to a permanent residence not less than five hundred miles from the campground or the location of any other campground available to the purchaser pursuant to one or more reciprocal programs outlined in the membership camping contract; or

(3) the purchaser, or the purchaser's spouse or domestic partner

currently resides in or is notified of and accepts the opportunity to commence occupancy in an adult care facility or a residential health care facility and the purchaser provides a copy of such notification or proof of residency to the operator; or

(4) the purchaser or the purchaser's spouse or domestic partner receives a written certification from a physician stating that the purchaser or the purchaser's spouse or domestic partner is bedridden, housebound, or similarly physically unable due to ailment or injury to visit the campground and materially utilize any of the services and programs as outlined in the membership camping contract, and such condition is not expected to be temporary. The purchaser must provide a copy of such certification to the operator; or

(5) the purchaser of a contract signed by more than one purchaser provides to the operator a copy of any of the following, within six months of its issuance, involving domestic violence by another signatory of the same contract: (A) a valid domestic violence incident report form as such term is defined in subdivision fifteen of section eight hundred thirty-seven of the executive law; (B) a valid police report; (C) a valid order of protection; or (D) a signed affidavit from a licensed medical or mental health care provider, employee of a court acting within the scope of his or her employment, social worker, a rape crisis counselor as defined in section forty-five hundred ten of the civil practice law and rules, or advocate acting on behalf of an agency that assists domestic violence victims. Paragraph d of this subdivision shall not apply to a purchaser canceling under this subparagraph. A claim for termination under this subparagraph shall be made in good faith. Termination under this subparagraph shall require, and the provision of any of the items in (A) through (D) of this subparagraph, for the purposes of this subparagraph, shall be presumptive evidence of the continued existence of a substantial risk of physical or emotional harm to the purchaser or purchaser's child.

b. When a purchaser cancels a contract pursuant to this subdivision such purchaser shall be required to have paid the purchase price of his or her membership in full, as well as all outstanding fees, dues, or any other payments due at the time of cancellation and for ninety days thereafter. However, if all of the purchasers who signed the contract

die, the relevant estate or estates shall be relieved of any further obligation under the contract not then due and owing.

c. Written notification of the intent to cancel a membership campground contract shall be signed by the purchaser or his or her legally designated representative and delivered to the operator by certified mail duly addressed to the operator. Such notification shall include a written statement that certifies that the representations are true and correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification.

d. In the event that the membership campground contract is signed by more than one purchaser, and one or more purchasers meet the requirements to cancel pursuant to this subdivision, every purchaser under the contract shall have the right to cancel the contract provided the other purchaser or purchasers so notify the operator by signing and delivering, at the same time, the same cancellation notice required by paragraph c of this subdivision signed by the purchaser or purchasers meeting the cancellation requirements, in which case all such purchaser or purchasers who sign the cancellation notice shall be relieved of any further obligation under the contract except for those obligations outlined in paragraph b of this subdivision.

§ 655. Restriction on conveyance of campgrounds. 1. No membership campground operator shall convey or transfer a membership campground unless the transferee takes title or possession subject to all rights of purchasers; or the membership campground operator immediately substitutes for the use of purchasers another campground which is located within a fifty-mile radius and is at least as desirable for the purpose of camping and outdoor recreation as the campground being conveyed or transferred.

2. For the purpose of this section, the terms "convey" and "transfer" shall not include the granting of a security interest in or the pledging of the property for financing purposes, but shall include the assignment of any leasehold interest the campground operator may have in the

campground property.

§ 656. Advertising standards. Membership campground operators, their employees and agents shall be subject to all relevant provisions of this chapter, including, but not limited to, sections three hundred forty-nine, three hundred fifty, and three hundred sixty-nine-ee in the marketing, promotion, and advertising of membership camping contracts.

§ 657. Escrow. 1. All monies, except dues, paid under a membership camping contract that is sold under a representation that a major capital improvement shall be constructed shall be placed in escrow.

2. All such funds received by a membership campground operator shall be kept and maintained in an interest bearing account separate and apart from any account maintained by or for the operator's personal use or the use and the construction or operation of the campground or for the payment or benefit of employees of the campground.

3. The escrow account shall be established in a bank or trust company doing business in the state of New York.

4. The escrow account shall provide that the purpose of the account is to protect the purchaser in the event that the operator fails to substantially complete and make available for use the major capital improvement within one year following establishment of the account.

5. Any purchaser who has advanced monies on deposit in the escrow account may maintain a representative action pursuant to the provisions of the civil practice law and rules to close the account and release such monies and interest, pro rata, to all purchasers similarly situated, if the major capital improvement has not been substantially completed and made available for use within one year of the establishment of the account or if the purchaser has not had the full use of another similar facility during such period.

6. So long as any such escrow account shall remain in existence, within five business days of a request therefor, a monthly statement of the escrow account is to be furnished to all purchasers who have advanced funds which are held in the account, provided that only one such statement need be given each month.

7. The escrow account shall provide that funds deposited therein may be withdrawn by the membership campground operator upon the completion of the proposed construction in the following manner:

a. One-third of the funds may be distributed to the membership campground operator upon completion of one-half of the proposed construction;

b. Two-thirds of the fund may be released upon completion of three-fourths of the proposed construction; and

c. The balance of the fund may be distributed upon completion of all of the proposed construction.

8. The escrow agent may accept as evidence of partial or full completion of such major capital improvement, the certification by any architect or engineer licensed pursuant to the provisions of the education law or the laws of the state in which the campground is located, that the proposed construction has been completed in accordance with the plans and specifications.

9. The escrow account shall be released by the escrow agent to the membership campground operator not more than thirty days following completion of instruction and the submission to the escrow agent of a certification from an architect or engineer that construction is complete.

10. In lieu of making such deposit of monies in escrow, the membership campground operator may post a bond or contract of indemnity issued by a surety company licensed to execute such an instrument, or an irrevocable letter of credit issued by a bank to guarantee the completion of the

major capital improvement.

§ 658. Violations. Any membership campground operator or his agents, employees or assignees who violate any provision of this article shall be liable for a civil penalty of not more than ten thousand dollars for each such violation.

§ 659. Contracts void and unenforceable. 1. Any membership camping contract which does not comply with the applicable provisions of this article shall be void and unenforceable as contrary to public policy.

2. Any waiver by the purchaser of the provisions of this article shall be deemed void and unenforceable by the seller and contrary to public policy.

§ 660. Construction. 1. This article neither enlarges nor diminishes the rights of parties in private litigation except as provided in this section.

2. Any person who has been injured by reason of any violation of this article may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages, up to ten thousand dollars, together with an award for reasonable attorney's fees, if the court finds the defendant willfully or knowingly violated this section.

3. The attorney general may enforce the provisions of this article by exercising the powers granted to him or her by subdivision twelve of section sixty-three of the executive law.

4. Whenever the court shall determine that an operator has engaged in repeated fraudulent or illegal acts, as defined in subdivision twelve of

section sixty-three of the executive law, in violation of section six hundred fifty-three, six hundred fifty-four, six hundred fifty-five, six hundred fifty-six or six hundred fifty-seven of this article, the court may impose a civil penalty of not more than five hundred dollars for each such act.

* ARTICLE 32

VIDEO CONSUMER PRIVACY ACT

Section 670. Short title.

671. Declaration of legislative findings and intent.

672. Definitions.

673. Wrongful disclosure of video tape rental records.

674. Wrongful disclosure of video tape sales records.

675. Civil liability.

* NB There are 2 Article 32's

* **§ 670. Short title.** This article shall be known and may be cited as the "video consumer privacy act".

* NB There are 2 § 670's

§ 671. Declaration of legislative findings and intent. The legislature finds and declares that the viewing of rented video tapes and movies in the home is a popular and widespread leisure pastime. Innumerable retail establishments in this state commonly record, often by computer, data containing the identities of consumers who have rented video tapes and movies and the titles of the videos rented. The large amounts of personally identifiable information collected by such establishments, and the possibility of public dissemination of that information, pose a serious threat to the personal privacy of New Yorkers and is therefore a matter of state concern.

It is the intent of the legislature by enactment of this article to protect the personal privacy of individuals and their families who rent video cassette tapes and movies and similar audio visual materials,

without unreasonably restricting the ability of video tape service providers to collect and use information as is necessary to conducting their businesses.

§ 672. Definitions. 1. The term "consumer" means any renter, purchaser, or subscriber of goods or services from a video tape service provider or video tape seller.

2. The term "ordinary course of business" means only debt collection activities, order fulfillment, request processing, and the transfer of ownership.

3. The term "personally identifiable information" means any information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider or video tape seller.

4. The term "video tape service provider" means any person engaged in the business of rental of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made pursuant to section six hundred seventy-three of this article but only with respect to the information contained in the disclosure.

5. The term "video tape seller" means any person engaged in the business of selling prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made pursuant to section six hundred seventy-four of this article, but only with respect to the information contained in the disclosure.

6. The term "informed, written consent of the consumer" means that the video tape service provider prior to furnishing any video tape services shall offer the consumer an opportunity conforming to the notice contained herein to elect not to have personally identifiable information disclosed. Such notice shall be in writing in at least ten point bold face type, affixed to any membership, subscriber or rental

agreement between the consumer and the video tape service provider, and shall be posted on a sign in full and clear view of the consumer at the point of rental transaction, and shall read as follows:

This video tape service provider from time to time provides to marketers of goods and services, the names and addresses of customers and a description or subject matter of materials rented by video customers. You have the right to elect not to have your name, address or the description or subject matter of any material rented included in such lists. This election may be changed by you, in writing, at any time.

I do not object to the release of my name, address or the description or subject matter of the material rented.

Signature

I do object to the release of such information.

Signature

§ 673. Wrongful disclosure of video tape rental records. 1. A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in section six hundred seventy-five of this article.

2. A video tape service provider shall disclose personally identifiable information concerning any consumer:

(a) to a grand jury pursuant to a grand jury subpoena;

(b) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, or in a criminal proceeding upon a showing of legitimate need for the information that cannot be accommodated by any other means, if:

(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order;

(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure; and

(iii) the court imposes appropriate safeguards against unauthorized disclosure;

(c) to a law enforcement agency pursuant to a warrant lawfully obtained under the laws of this state or the United States; or

(d) to a court pursuant to a civil action for conversion commenced by the video tape service provider or to enforce collection of fines for overdue or unreturned video tapes, and then only to the extent necessary to establish the fact of the rental. Notwithstanding the foregoing, a court shall impose appropriate safeguards against unauthorized disclosure.

3. A video tape service provider may disclose personally identifiable information concerning any consumer:

(a) to the consumer;

(b) to any person with the informed, written consent of the consumer; or

(c) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider.

4. Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of the state or any political subdivision thereof.

5. A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under this article.

§ 674. Wrongful disclosure of video tape sales records. 1. A video tape seller who knowingly discloses, to any person, personally

identifiable information concerning any consumer of such seller shall be liable to the aggrieved person for the relief provided in section six hundred seventy-five of this article.

2. A video tape seller shall disclose personally identifiable information concerning any consumer:

(a) to a grand jury pursuant to a grand jury subpoena;

(b) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, or in a criminal proceeding upon a showing of legitimate need for the information that cannot be accommodated by any other means, if:

(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order;

(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure; and

(iii) the court imposes appropriate safeguards against unauthorized disclosure;

(c) to a law enforcement agency pursuant to a warrant lawfully obtained under the laws of this state or the United States; or

(d) to a court pursuant to a civil action for conversion commenced by the video tape seller or to enforce collection for unpaid video tapes, and then only to the extent necessary to establish the fact of the sale. Notwithstanding the foregoing, a court shall impose appropriate safeguards against unauthorized disclosure.

3. A video tape seller may disclose personally identifiable information concerning any consumer:

(a) to the consumer;

(b) (i) to any person with the informed, written consent of the consumer; or

(ii) to any person if the disclosure is solely of the names and addresses of consumers and if:

(1) the video tape seller has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure. The consumer is advised of such opportunity by means of a

sign posted in full and clear view of the consumer at the point of sale, if such seller maintains a retail sales outlet; and

(2) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer; or

(c) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider.

4. Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of the state or any political subdivision thereof.

5. A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under this article.

§ 675. Civil liability. 1. Any person found to be in violation of this article shall be liable to the aggrieved consumer for all actual damages sustained by such consumer as a result of the violation, provided that any consumer who prevails or substantially prevails in an action brought under this section shall receive not less than five hundred dollars in damages, regardless of the amount of actual damage proved, plus costs, disbursements and reasonable attorneys' fees.

2. Whenever there shall be a violation of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such

violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for such violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

3. No action may be brought under the provisions of this section unless such action is commenced within two years from the date of the act complained of or of the date of discovery of such act.

* ARTICLE 32

WHEELCHAIR WARRANTIES

Section 670*2. Repair, replacement and refund under new wheelchair warranties.

* NB There are 2 Article 32's

*** § 670. Repair, replacement and refund under new wheelchair warranties.** 1. As used in this section:

a. "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other assistive device for mobility.

b. "Consumer" means any of the following:

(1) The purchaser of a wheelchair, if the wheelchair was purchased

from a wheelchair dealer or manufacturer for purposes other than resale.

(2) A person to whom the wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the wheelchair.

(3) A person who may enforce the warranty.

(4) A person who leases a wheelchair from a wheelchair lessor under a written lease.

(5) State governmental agencies, subscribers to article forty-three of the insurance law, corporations, subscribers of organizations organized under article forty-four of the public health law, and programs governed by title eleven of article five of the social services law.

c. "Demonstrator" means a wheelchair used primarily for the purpose of demonstration to the public.

d. "Early termination cost" means any expense or obligation that a wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a wheelchair to a manufacturer pursuant to subparagraph three of paragraph b of subdivision three of this section. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

e. "Early termination savings" means any expense or obligation that a wheelchair lessor avoids as a result of both the termination of a written lease before that termination date set forth in that lease and the return of a wheelchair to a manufacturer pursuant to subparagraph three of paragraph b of subdivision three of this section. "Early termination savings" includes an interest charge that the wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair lessor does not finance the wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

f. "Manufacturer" means a person who manufactures or assembles wheelchairs and agents of that person, including an importer, a

distributor, factory branch, distributor branch and any warrantors of the manufacturer's wheelchair, but does not include a wheelchair dealer.

g. "Wheelchair" means any wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.

h. "Wheelchair dealer" means a person who is in the business of selling wheelchairs.

i. "Wheelchair lessor" means a person who leases a wheelchair to a consumer, or who holds the lessor's rights, under a written lease.

j. "Nonconformity" means a condition or defect that substantially impairs the use, value or safety of a wheelchair, and that is covered by an express warranty applicable to the wheelchair or to a component of the wheelchair, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the wheelchair by a consumer.

k. "Reasonable attempt to repair" means that, within the term of an express warranty applicable to a new wheelchair, any nonconformity within the warranty is either subject to repair by the manufacturer, wheelchair lessor or any of the manufacturer's authorized wheelchair dealers, for at least three times and a nonconformity continues, or that the wheelchair is out of service for an aggregate of at least thirty days because of warranty nonconformity, after having been returned to the manufacturer, wheelchair lessor or any of the manufacturer's authorized wheelchair dealers for repair.

2. a. A manufacturer who sells a wheelchair to a consumer, either directly or through a wheelchair dealer, shall furnish the consumer with an express warranty for the wheelchair. The duration of the express warranty shall be not less than one year after first delivery of the wheelchair to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of a wheelchair that, for a period of one year from the date of first delivery to the consumer, the wheelchair will be

free from any condition or defect which substantially impairs the value of the wheelchair to the consumer.

b. The following notice shall be provided in conspicuous type and in substantially the following form by the manufacturer, wheelchair dealer or wheelchair lessor to each consumer at the time of purchase:

WHEELCHAIR LEMON LAW BILL OF RIGHTS

(1) By law, the manufacturer shall be deemed to have provided to you, the purchaser of a wheelchair, a one year warranty which starts on the date of first delivery to you. This warranty provides that the wheelchair will be free from any condition or defect that substantially impairs its use, value or safety.

(2) To ensure you receive the benefits of this warranty, you must report any problems and make the wheelchair available to the manufacturer, authorized wheelchair dealer or wheelchair lessor for repair before one year after first delivery.

(3) Upon notification and the wheelchair's being made available to the manufacturer or its authorized dealer, the problem must be corrected free of charge.

(4) During the warranty period, if any condition or defect cannot be repaired after three attempts or if your wheelchair is out of service for a total of thirty days for repairs to any condition or defect which substantially impairs the use, value or safety of the wheelchair, you are entitled to either a comparable new wheelchair or a refund or, if you are leasing a wheelchair, replacement of your wheelchair with a comparable new wheelchair or a refund of the full purchase price plus any finance charge and collateral costs, minus a reasonable allowance for use.

(5) The warranty provided to you by law does not cover conditions or defects that result from abuse, neglect or unauthorized modification or alteration of the wheelchair and relieves the manufacturer of liability for repairs in these instances.

(6) A manufacturer may refuse to replace a wheelchair or refund your purchase price if a problem does not substantially impair the use, value or safety of your wheelchair.

(7) You may submit any dispute with a manufacturer, dealer or lessor arising from a dispute over the repair of your wheelchair to an

alternate arbitration mechanism established pursuant to rules promulgated by the New York state attorney general.

(8) No contract or agreement for the sale or lease of a wheelchair can void any of these rights.

3. a. If a new wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the wheelchair lessor or any of the manufacturer's authorized wheelchair dealers and makes the wheelchair available for repair before one year after first delivery of the wheelchair to a consumer, the nonconformity shall be repaired at no charge to the consumer.

b. (1) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement set forth under either subparagraph two or three of this paragraph, whichever is appropriate.

(2) At the direction of a consumer described under subparagraph one, two or three of paragraph b of subdivision one of this section, do one of the following:

(a) Accept return of the wheelchair and replace the wheelchair with a comparable new wheelchair and refund any collateral costs.

(b) Accept return of the wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's wheelchair, as their interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. A reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the wheelchair by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the wheelchair was driven before the consumer first reported the nonconformity to the wheelchair dealer.

(3) (a) With respect to a consumer described under subparagraph four of paragraph b of subdivision one of this section, accept return of the wheelchair, refund to the wheelchair lessor and to any holder of a perfected security interest in the wheelchair, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus

any collateral costs, less a reasonable allowance for use.

(b) The current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the wheelchair dealer's early termination costs and the value of the wheelchair at the lease expiration date if the lease sets forth that value, less the wheelchair lessor's early termination savings.

(c) A reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer drove the wheelchair before first reporting the nonconformity to the manufacturer, wheelchair lessor or wheelchair dealer.

c. To receive a comparable new wheelchair or a refund due under subparagraph one or two of paragraph b of this subdivision, a consumer described under subparagraph one, two or three of paragraph b of subdivision one of this section, shall offer to the manufacturer of the wheelchair having the nonconformity to transfer possession of that wheelchair to that manufacturer. No later than twenty days after that offer, the manufacturer shall provide the consumer with the comparable new wheelchair or refund. When the manufacturer provides the new wheelchair or refund, the consumer shall return the wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

d. (1) To receive a refund due under subparagraph three of paragraph b of this subdivision, a consumer described under subparagraph four of paragraph b of subdivision one of this section shall offer to return the wheelchair having the nonconformity to its manufacturer. No later than thirty days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the wheelchair having the nonconformity.

(2) To receive a refund due under subparagraph three of paragraph b of this subdivision, a wheelchair lessor shall offer to transfer possession

of the wheelchair having the nonconformity to its manufacturer. No later than thirty days after that offer, the manufacturer shall provide the refund to the wheelchair lessor. When the manufacturer provides the refund, the wheelchair lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

(3) No person may enforce the lease against the consumer after the consumer receives a refund due under subparagraph three of paragraph b of this subdivision.

e. No wheelchair returned by a consumer or wheelchair lessor in this state pursuant to paragraph b of this subdivision, or by a consumer or wheelchair lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

4. a. Each consumer shall have the option of submitting any dispute arising under this section upon the payment of a prescribed filing fee to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the New York state attorney general. Upon application of the consumer and payment of the filing fee, all manufacturers shall submit to such alternate arbitration.

b. Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by and under regulations established by the New York state attorney general. Such mechanism shall insure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules. Where applicable, any action required of a manufacturer, wheelchair dealer or wheelchair lessor to comply with a final decision of such arbitrator shall be completed within forty days of the date of such decision.

5. This section does not limit rights or remedies available to a consumer under any other law.

6. Any waiver by a consumer of rights under this section is void.

7. In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

* NB There are 2 § 670's

ARTICLE 33

FRANCHISES

Section 680. Legislative findings and declaration of policy.

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§ 680. Legislative findings and declaration of policy. 1. The legislature hereby finds and declares that the widespread sale of franchises is a relatively new form of business which has created numerous problems in New York. New York residents have suffered substantial losses where the franchisor or his representative has not

provided full and complete information regarding the franchisor-franchisee relationship, the details of the contract between the franchisor and franchisee, the prior business experience of the franchisor, and other factors relevant to the franchise offered for sale.

2. It is hereby determined and declared that the offer and sale of franchises, as defined in this article, is a matter affected with a public interest and subject to the supervision of the state, for the purpose of providing prospective franchisees and potential franchise investors with material details of the franchise offering so that they may participate in the franchise system in a manner that may avoid detriment to the public interest and benefit the commerce and industry of the state. Further, it is the intent of this law to prohibit the sale of franchises where such sale would lead to fraud or a likelihood that the franchisor's promises would not be fulfilled.

§ 681. Definitions. 1. "Advertisement" includes any written or printed communication, or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, published in connection with an offer or sale of a franchise.

2. "Department" means the department of law.

3. "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

(a) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor, and the franchisee is required to pay, directly or indirectly, a franchise fee, or

(b) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate, and the franchisee is required to pay,

directly or indirectly, a franchise fee.

A franchise under this article shall not include any agreement, contract, or franchise subject to the provisions of article eleven-B of this chapter or section one hundred ninety-nine of this chapter, or any agreement or contract for the sale of motor fuel.

4. A "franchisee" is a person to whom a franchise is granted.

5. A "franchisor" is a person who grants a franchise.

6. "Area franchise" means a contract or agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, for consideration given in whole or in part for such right, to sell or negotiate the sale of franchises in the name or on behalf of the franchisor; unless specifically stated otherwise, "franchise" includes "area franchise".

7. "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay directly or indirectly for the right to enter into a business under a franchise agreement or otherwise sell, resell or distribute goods, services, or franchises under such an agreement, including, but not limited to, any such payment for goods or services. The following are not the payment of a franchise fee:

(a) The purchase or agreement to purchase goods at a bona fide wholesale price;

(b) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card;

(c) Amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or services;

(d) The purchase or lease, at fair market value, of real property or agreement to so purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement;

(e) The payment of a fee which on an annual basis does not exceed five hundred dollars where the payor receives sales materials of an

equivalent or greater value than his payment;

(f) The purchase of sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(g) A lease, license or other agreement by a retailer permitting the lessee, licensee or beneficiary to offer, sell or distribute goods or services on or about the premises occupied by said retailer.

8. "Franchise sales agent" means a person who directly or indirectly engages in the offer or sale of any franchise on behalf of another. Franchisors, subfranchisors, and their employees are not to be considered franchise sales agents.

9. "Franchise salesman" means each and every person employed by a franchisor or franchise sales agent for the purpose of representing such franchisor or franchise sales agent in the offer or sale of any franchise.

10. "Fraud," "fraudulent practice," and "deceit" are not limited to common law fraud or deceit, and include:

(a) Any deception, concealment, suppression, device, scheme or artifice employed by a franchisor, franchise sales agent, subfranchisor or franchise salesman to obtain any money, promissory note, commitment or property by any false or visionary pretense, representation or promise;

(b) Any material misrepresentation in any registered prospectus filed under this article; or

(c) The omission of any material fact in any registered prospectus filed under this article.

11. "Offer" or "offer to sell" includes any attempt to offer to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value. The terms "offer" and "offer to sell" do not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee.

12. (a) An offer or sale of a franchise is made in this state when an

offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state.

(b) An offer to sell is made in this state when the offer either originated from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror from this state.

(c) An offer to sell is not made in this state merely because a publisher circulates or there is circulated on his behalf in this state a bona fide newspaper or other publication of general, regular and paid circulation which has had more than two-thirds of its circulation outside this state during the past twelve months, or a radio or television program originating outside this state is received in this state.

13. "Person" means an individual, corporation, partnership, joint venture, association, company, trust, unincorporated organization or other entity and shall include any other person that has a substantial interest in or effectively controls such person, as well as the individual officers, directors, general partners, trustees or other individuals in control of the activities of each such person.

14. "Publish" means publicly to issue or circulate by newspaper, mail, radio or television, or otherwise to disseminate to the public.

15. "Sale" or "sell" includes every contract or agreement of sale, contract to sell, or disposition of, a franchise or interest in a franchise for value.

16. "State" means any state, territory, or possession of the United States, the District of Columbia and Puerto Rico.

17. "Subfranchisor" means a franchisee who has the right to sell or subdivide his franchise to another or others, known as "subfranchisees," while having and retaining all or part of the franchisor's interest or rights under franchise agreements with such subfranchisee. Under this

article and in this situation, the subfranchisee shall be considered the franchisee, and both the principal franchisor and the subfranchisor shall be considered the franchisor.

18. In any proceeding under this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

§ 682. Scope. The disclosure requirements mandated by this article apply to all written or oral arrangements between a franchisor and franchisee in connection with the offer or sale of a franchise, including, but not limited to, the franchise offering, the franchise agreement, sales of goods or services, leases and mortgages of real or personal property, promises to pay, security interests, pledges, insurance, advertising, construction or installation contracts, servicing contracts, and all other arrangements in which the franchisor or subfranchisor has an interest.

§ 683. Disclosure requirements. 1. It shall be unlawful and prohibited for any person to offer to sell or sell in this state any franchise unless and until there shall have been registered with the department of law, prior to such offer or sale, a written statement to be known as an "offering prospectus" concerning the contemplated offer or sale, which shall contain the information and representations set forth in and required by this section. Any uniform disclosure document approved for use by any agency of the federal government or sister state may be utilized and sought to be registered, provided that said uniform disclosure documents comply with the provisions of this article.

2. The offering prospectus sought to be registered with the department of law shall be filed with the department, accompanied by an application for registration on forms prescribed by the department, and shall contain the following:

(a) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or

affiliated company that will engage in business transactions with franchisees.

(b) The franchisor's principal business address and the name and address of its agent in this state authorized to receive process.

(c) The business form of the franchisor, whether corporate, partnership, or otherwise.

(d) Such information concerning the identity and business experience of persons affiliated with the franchisor as the department of law may by rule prescribe.

(e) A statement as to whether the franchisor and its principals, officers, partners, directors, or any other person identified in the application for registration:

(1) Has been convicted of a felony, or pleaded nolo contendere to a felony charge, or held liable or enjoined in a civil action by a final judgment if such civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property.

(2) Is subject to any currently effective order of the United States securities and exchange commission or the securities administrator of any state denying the registration of or barring, revoking or suspending the registration of such person as a securities broker or dealer, or investment advisor, or securities agent or registered representative, or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange.

(3) Is subject to a currently effective order or ruling of the federal trade commission.

(4) Is subject to any currently effective injunctive or restrictive order relating to business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or salesman.

Such statement shall set forth the court, date of conviction or judgment, any penalty imposed or damages assessed, or the date, nature and issuer of such order.

(f) The length of time the franchisor: (1) has conducted a business of the type to be operated by the franchisees, (2) has granted franchises

for such business, and (3) has granted franchises in other lines of business.

(g) The most recent financial statement of the franchisor, together with a statement of any material changes in the financial condition of the franchisor from the date thereof. The department of law may by rule or order prescribe (1) the form and content of financial statements required under this article, (2) the circumstances under which consolidated financial statements shall be required, and (3) the circumstances under which financial statements shall be audited by independent certified public accountants.

(h) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not uniform and the same in all cases.

(i) A statement describing any payments or fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor, including royalties and payments of fees which the franchisor collects in whole or in part on behalf of a third party or parties.

(j) A statement of the conditions under which the franchise agreement may be terminated or renewal refused or repurchased at the option of the franchisor.

(k) A statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee or subfranchisor is required to purchase from the franchisor or his designee services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business, together with a description and the terms and conditions thereof.

(l) A statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services offered by him to his customers.

(m) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his agent or affiliate.

(n) A statement of any past or present practice or of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee or subfranchisor in

whole or in part.

(o) Any representation of estimated or projected franchisee earnings or income, together with a statement setting forth the data, methods and computations upon which such estimate or projection is based.

(p) A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from (1) the use of the public figure in the name or symbol of the franchise, or (2) the endorsement or recommendation of the franchise by the public figure in advertisements.

(q) A statement of the total number and location of franchises presently operating and proposed to be sold.

(r) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory.

(s) A representation that the registered prospectus does not knowingly omit any material fact or contain any untrue statement of a material fact.

(t) Other information which the franchisor may desire to present.

(u) Other information or such additional disclosures related to the offer or sale of the franchise as the department of law may prescribe by rules or regulations promulgated under section six hundred ninety-four of this article as will afford prospective franchisees an adequate basis upon which to found their judgment.

(v) When the person filing the application for registration of an offering prospectus is a subfranchisor, the prospectus shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this article.

3. Applications for registration of an offering prospectus shall be signed and verified by the franchisor or by the subfranchisor in the same manner provided in the civil practice law and rules for the verification of pleadings.

4. Every application by a franchisor for registration of an offering prospectus shall be accompanied by a copy of the typical franchise contract or agreement proposed for use or in use in this state, including all amendments, deletions, variations, and supplements thereto.

5. Every application by a franchisor for registration of an offering prospectus shall be accompanied by such materials, data, records, or other information as the department may by rule require in connection with its consideration of the application.

6. The offering prospectus shall recite in bold type of not less than twelve-point that registration does not constitute approval, recommendation, or endorsement by the department of law. The department may require that the applicant set forth in its prospectus potentially adverse information in designated positions and in a type size acceptable to the department.

7. Unless otherwise provided by regulation issued by the department, applications to register the offering prospectus required by subdivision one of this section shall be filed with the department of law at its office in the city of New York prior to the offering of the franchise involved. No offer, advertisement, or sale of such a franchise shall be made in or from the state of New York until the department has issued to the franchisor or other offeror a letter stating that the offering prospectus sought to be registered has been accepted for filing and filed. The department, not later than thirty days after such filing, shall issue such a letter or, in the alternative, a notification in writing indicating the respect in which the application for registration or the proposed offering prospectus itself is deficient or otherwise fails to make adequate disclosure. A refusal to register an offering prospectus, and notification thereof, shall be forthcoming if the department finds:

(a) That there has been a failure to comply with any of the provisions of this article or the rules of the department pertaining thereto.

(b) That the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud of, prospective franchisees.

(c) That the application for registration of the offering prospectus or the proposed offering prospectus itself is incomplete in any material respect or contains any statement which is, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(d) That the franchisor's method of business includes or would include activities which are illegal where performed.

(e) That a person identified in the application has been convicted of an offense described in subparagraph one of paragraph (e) of subdivision two of this section, is subject to an administrative order, or has had a civil judgment entered against him involving the illegal offering of franchises or securities, and the department determines that the involvement of the person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees.

(f) That the franchise offering sought to be registered is the subject of a permanent or temporary injunction entered under any federal or state act applicable to the offering.

(g) That the franchisor has failed to pay the proper fee.

8. A franchise which is subject to registration under this article shall not be sold without first providing to the prospective franchisee, a copy of the offering prospectus, together with a copy of all proposed agreements relating to the sale of the franchise at the earlier of (a) the first personal meeting between the franchisor or its agent and the prospective franchisee, (b) at least ten business days prior to the execution of a binding franchise or other agreement, or (c) at least ten days prior to the receipt of any consideration in connection with the sale or proposed sale of a franchise. For the purposes of this chapter, the words: (i) "first personal meeting" shall mean the first face to face meeting between a franchisor or franchisor's agent or any representative or employee thereof and a prospective franchisee which is held for the purpose of discussing the sale or possible sale of a franchise; (ii) "other agreement" shall mean an agreement imposing a binding legal obligation on such prospective franchisee, about which the franchisor, franchise sales agent, or any agent, representative or employee thereof, knows or should know, in connection with the sale or proposed sale of a franchise; and, (iii) "receipt of any consideration" shall mean the payment by a prospective franchisee, about which the franchisor, franchise sales agent, or any agent, representative or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a franchise.

9. (a) A franchisor shall promptly notify the department in writing, by an application to amend the registered offering prospectus, of any material change in the information contained in the prospectus as originally submitted or amended. The department may further define by rule what is a material change for the purpose and circumstances under which an amendment of a registered prospectus shall be mandatory.

(b) An amendment to a registered offering prospectus filed after the effective date of the registration of the original offering prospectus, if the amendment is approved by the department, shall become effective on such date the department may determine, having due regard for the public interest and the protection of franchisees.

10. (a) Neither the fact that an application for registration of an offering prospectus under this article has been filed, nor the fact that such registration has become effective, constitutes a finding by the department that any document filed under this article, including the registered offering prospectus, is true, complete or not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the department has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, franchise, or transaction.

(b) It is unlawful to make or cause to be made to any prospective purchaser or offeree a representation inconsistent with paragraph (a) of this subdivision.

11. No offer of a franchise shall be made except by the offering prospectus registered with the department of law pursuant to this section. Any advertisement in whatever form, including periodicals or on radio or television, shall contain a statement that no offer of such franchise is made except by such offering prospectus, and all such advertising shall be consistent with the representations and information required to be set forth in such prospectus as hereinbefore in this section provided.

12. In all literature employed in the offer and sale of a franchise and in all advertising in connection therewith, there shall be contained, in easily readable print on the face thereof, a statement

that the filing of an application for registration of an offering prospectus or the acceptance and filing thereof by the department of law as required by this section does not constitute approval of the offering or the sale of such franchise by the department of law or the attorney general of this state.

13. A person shall not offer to sell or sell a franchise in this state on behalf of a franchisor or subfranchisor, except in transactions exempted under this article, unless the franchisor or subfranchisor and the person file a franchise agent's application with the department of law on the form prescribed by the department, and the department issues an order of registration for such person. The department may prescribe rules relating to the qualifications, conduct, and denial, suspension, or revocation or registrations of franchise sales agents.

14. (a) Every franchisor or subfranchisor offering franchises for sale in this state shall keep and maintain a complete set of books and records and shall keep and maintain accounts of franchise sales in accordance with generally accepted accounting principles, and shall make and file with the department such reports as the department may by rule prescribe, including an annual report setting forth the franchises sold by it and the proceeds derived therefrom, and shall furnish to the department such materials relating to the offer or sale of the franchise as it may by rule require. All such records are subject at any time to reasonable periodic, special, or other examinations by a representative of the department, within or without this state, as the department deems necessary or appropriate in the public interest or for the protection of investors.

(b) The department may consider the opinions, appraisals, and reports of engineers, appraisers, or other experts which may be presented by an applicant or any interested party, on any question of fact concerning or affecting the franchises proposed to be offered and sold. In lieu of, or in addition to, such opinions, appraisals, and reports, the department may have any or all matters concerning or affecting such franchises investigated, appraised, passed upon, and certified to it by engineers, appraisers, or other experts selected by it. The experts' cost of travel and lodging relating to such investigation, and the costs of experts'

fees, shall be borne by the applicant and shall be paid before effectiveness of its registration, provided that the applicant shall have agreed in writing with the department to bear such costs and fees, or shall have had the opportunity to establish that no good cause exists for such investigation or expenditure, or shall have himself furnished the desired information to the department.

(c) If information that the department deems necessary relating to the franchise is requested by the department and is not furnished by the applicant, or the department deems information submitted to be unreliable or substantially incomplete, the department may investigate any or all matters concerning or affecting such franchise. The costs of all travel and lodging expenses relating to investigations outside of this state shall be borne by the applicant and shall be paid before effectiveness of its registration.

15. The department may by rule require the filing and approval prior to use of any pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed to or intended for distribution to prospective franchisees.

§ 684. Exemptions. 1. The department of law is hereby authorized and empowered to exempt by rule or regulation any person, franchise, or transaction from any provision of section six hundred eighty-three of this article or from any rule or regulation thereunder if the department finds that such action is not inconsistent with the public interest or the protection of prospective franchisees.

2. The department of law may, upon application and within its discretion, exempt from the registration requirements of section six hundred eighty-three of this article the offer and sale of a franchise if:

(a) The franchisor has a net worth on a consolidated basis, according to its most recently audited financial statement, of not less than five million dollars; or the franchisor has a net worth, according to its most recently audited financial statement, of not less than one million dollars and is at least eighty percent owned by a corporation which has

a net worth on a consolidated basis, according to its most recently audited financial statement, of not less than five million dollars; and

(b) The franchisor files with the department of law an application for an exemption, on forms and in the manner prescribed by the department, and a consent to service of process on the form required by the department; and

(c) The franchisor discloses in writing to each prospective franchisee, at least seven days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least seven days prior to the receipt of any consideration, whichever occurs first, the following information:

(1) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transaction with the franchisee.

(2) The franchisor's principal business address and the name and address of its agent in this state authorized to receive process.

(3) The business form of the franchisor, whether corporate, partnership, or otherwise.

(4) Such information concerning the identity and business experience of persons affiliated with the franchisor as the department may by rule prescribe.

(5) The business experience of the franchisor, including the length of time the franchisor (i) has conducted a business of the type to be operated by franchisees, (ii) has granted franchises for such business, and (iii) has granted franchises in other lines of business.

(6) A copy of the typical franchise contract or agreement proposed for use and in use in this state, including all amendments, deletions, variations, and supplements thereto.

(7) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not uniform and the same in all cases.

(8) A statement describing any payments or fees other than franchise fees that the franchisee is required to pay to the franchisor, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.

(9) A statement of the conditions under which the franchise agreement may be terminated or renewal refused, or repurchased at the option of the franchisor.

(10) A statement as to whether, by the terms of the agreement or by other device or practice, the franchisee is required to purchase from the franchisor or his designee services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business, together with a description and the terms and conditions thereof.

(11) A statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee is limited in the goods or services offered by him to his customers.

(12) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his agent or affiliate.

(13) A statement of any past or present practice or of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part.

(14) If any statement of estimated or projected franchisee earnings or income is used, a statement of such estimate or projection and the data, methods and computations upon which such estimate or projection is based.

(15) A statement as to whether franchisees receive an exclusive area or territory.

(16) Other information related to the offer and sale of the franchise as the department of law may reasonably require.

(d) Applications for exemptions shall be signed and verified by the franchisor in the same manner provided in the civil practice law and rules for the verification of pleadings, and shall be filed with the department of law at its office in the city of New York.

3. There shall be exempted from the registration provisions of section six hundred eighty-three of this article the offer and sale of a franchise if:

(a) (i) The franchisor has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than fifteen million dollars; or the franchisor has a net worth,

according to its most recent audited financial statement, of not less than three million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than fifteen million dollars; and

(ii) The franchisor discloses in writing to each prospective franchisee, at least seven days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least seven days prior to the receipt of any consideration, whichever occurs first, such information as is required to be disclosed under subparagraph two of paragraph (c) of subdivision two of this section.

(b) The offer or sale is to a bank, savings institution, trust company, insurance company, investment company, or other financial institution, association, or institutional buyer, or to a broker-dealer, where the purchaser is acting for itself or in some fiduciary capacity.

(c) The transaction is pursuant to an offer directed by the franchisor to not more than two persons, other than persons specified in this subdivision, if the franchisor does not grant the franchisee the right to offer franchises to others, a commission or other remuneration is not paid directly or indirectly for soliciting a prospective franchisee in this state, and the franchisor is domiciled in this state or has filed with the department of law its consent to service of process on the form prescribed by the department.

(d) The offer or sale by a franchisor of a franchise to one of his existing franchisees. This exemption shall apply where:

(i) the existing franchisee has actively operated a franchise of the selling franchisor for the eighteen months preceding the offer; and

(ii) the existing franchisee purchases the franchise in order to operate the business and not for the purpose of resale; and

(iii) the franchisor reports the sale to the department of law on the form required by the department within fifteen days of the sale.

4. The department of law may, in its discretion, deny or revoke an exemption with respect to a specific franchisor or transaction, or withdraw or further condition any exemption enumerated in this section.

5. The offer or sale of a franchise by a franchisee for his own

account or the offer and sale of an entire area franchise owned by a subfranchisor for his own account is exempted from the registration provisions of section six hundred eighty-three of this article if:

- (a) The sale is an isolated sale and not part of a plan of distribution of franchises; and
- (b) The sale is not effected by or through a franchisor; and
- (c) The franchisee furnishes to the prospective purchaser, at least one week prior to the execution of any binding contract or purchase agreement, or at least one week prior to the receipt of any consideration, whichever occurs first, a copy of the offering prospectus of the franchisor (including amendments, if any) currently registered with the department of law.

A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.

6. This article shall not be applicable to any transaction relating to a bank credit card plan. "Bank credit card plan" means a credit card plan in which the issuers of credit cards are only: banks regulated by or under the supervision of the Federal Reserve Board; the Federal Deposit Insurance Corporation; the Controller of the Currency of the United States; or the Superintendent of Financial Services of this state; or persons controlling such banks, provided that the assets of such a bank or banks represent a majority of the assets on a consolidated basis of any holding company system of which such card issuers may be a party; or, persons controlled by such banks.

§ 685. Escrows and impoundments. If the department of law finds that the applicant for registration has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering, the department may require the escrow or impoundment of franchise fees and other funds paid by the franchisee or subfranchisor until the obligations are fulfilled, or, at the option of the franchisor, the furnishing of a surety bond as provided by rule of the department of law if it finds that the requirement is necessary and

appropriate to protect prospective franchisees or subfranchisors.

§ 686. Designation of secretary of state as agent for service of process; service of process. Any person who shall offer to sell or sell a franchise in this state as a franchisor, subfranchisor or franchise sales agent shall be deemed to have irrevocably appointed the secretary of state as his or its agent upon whom may be served any summons, complaint, subpoena, subpoena duces tecum, notice, order or other process directed to such person, or any partner, principal, officer, salesman or director thereof, or his or its successor, administrator or executor, in any action, investigation, or proceeding which arises under this article or a rule hereunder, with the same force and validity as if served personally on such person. Service of such process upon the secretary of state shall be made by personally delivering to and leaving with him or a deputy secretary of state a copy thereof at the office of the department of state, and such service shall be sufficient provided that notice of such service and a copy of such process are sent forthwith by the department to such person, by registered or certified mail with return receipt requested, at his address as set forth in the application for registration of his offering prospectus or in the registered offering prospectus itself filed with the department of law pursuant to this article, or in default of the filing of such application or prospectus, at the last address known to the department. Service of such process shall be complete upon receipt by the department of a return receipt purporting to be signed by the addressee or a person qualified to receive his or its registered or certified mail, in accordance with the rules and customs of the post office department, or, if acceptance was refused or unclaimed by the addressee or his or its agent, or if the addressee moved without leaving a forwarding address, upon return to the department of the original envelope bearing a notation by the postal authorities that receipt thereof was refused or that such mail was otherwise undeliverable.

§ 687. Fraudulent and unlawful practices. 1. It is unlawful for any person to make any untrue statement of a material fact in any

application, notice, statement, prospectus or report filed with the department under this article, or wilfully to omit to state in any such application, notice, statement, prospectus or report any material fact which is required to be stated therein, or to fail to notify the department of any material change as required by this article.

2. It is unlawful for a person, in connection with the offer, sale or purchase of any franchise, to directly or indirectly:

(a) Employ any device, scheme, or artifice to defraud.

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. It is an affirmative defense to one accused of omitting to state such a material fact that said omission was not an intentional act.

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

3. It is unlawful for any person to violate any provision of this article, or any rule of the department promulgated hereunder, or any condition to the effectiveness of the registration of an offering prospectus or of an exemption from the registration provisions of this article.

4. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this law, or rule promulgated hereunder, shall be void.

5. It is unlawful to require a franchisee to assent to a release, assignment, novation, waiver or estoppel which would relieve a person from any duty or liability imposed by this article.

§ 688. Investigations. 1. Whenever it shall appear to the department of law, either upon complaint or otherwise, that any person has violated any provision of this article, the department:

(a) may make such investigations within or outside of this state as it deems necessary to determine whether any person has violated any

provision of this article or any rule or regulation hereunder, or to aid in the enforcement of this article or in the prescribing of rules and forms hereunder, and

(b) may require or permit any person to file a statement in writing, under oath or otherwise as the attorney general determines, as to all the facts and circumstances concerning the matter to be investigated.

2. The costs of all out of state travel and lodging expenses relating to investigations by the department of persons who appear to the department to have violated any provision of this article shall be borne by such persons upon a judicial determination that said persons have committed unlawful and fraudulent acts or practices, as defined in this article, or so much thereof as is deemed proper by the court.

3. The department is empowered to subpoena witnesses, compel their attendance, examine them under oath before it or a court of record or a judge or justice thereof, and require the production of any books or papers which it deems relevant or material to the inquiry. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the department under this article.

4. (a) No person is excused from attending and testifying or from producing a document or record, in obedience to the subpoena of the department or in a proceeding instituted by the department, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but a person may not be prosecuted or subjected to a penalty of forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying. The department shall compel such testimony or the production of such evidence only after notifying and consulting with any appropriate local prosecuting authorities.

(b) No person shall be excused from attending such inquiry pursuant to the mandate of a subpoena, or from producing a paper or book, or from

being examined or required to answer a question, on the ground of failure of tender or payment of a witness fee and/or mileage, unless at the time of such appearance or production, as the case may be, such witness makes demand for such payment as a condition precedent to the offering of testimony or production required by the subpoena and unless such payment is not thereupon made. The provision for payment of witness fees and/or mileage shall not apply to any officer, director, salesman or other person in the employ of any person whose conduct or practice is being investigated.

5. If a person subpoenaed to attend such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce and permit reasonable examination of a book or paper when ordered so to do by the officer conducting such inquiry, or if a person fails to perform any act required hereunder to be performed, he shall be guilty of a class A misdemeanor punishable as provided in section six hundred ninety of this article.

6. It shall be the duty of all public officers, their deputies, assistants, subordinates, clerks or employees and all other persons to render and furnish to the department or other designated officer when requested all information and assistance in their possession or within their power with respect to all matters being investigated by the department under this article. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than his attorney or the department the name of any witness examined or any other information obtained upon such inquiry except as directed by the department shall be guilty of a class A misdemeanor punishable as provided in section six hundred ninety of this article.

§ 689. Action by the department of law. 1. Whenever the department shall believe from evidence satisfactory to it that any person has engaged in or is engaged in or is about to engage in any practice or

transaction heretofore referred to as and declared to be an unlawful or a fraudulent practice, it may bring an action in the name and on behalf of the people of the state of New York against such person and any other person theretofore concerned in or in any way participating in such unlawful or fraudulent practice, to enjoin such person or persons from continuing such unlawful and fraudulent practice or engaging therein or doing any act or acts in furtherance thereof or, if the department should believe from such evidence that such person actually has or is engaged in any such unlawful or fraudulent practice, it may include in such action an application to enjoin permanently such person and such other person as may have been or may be concerned with or in any way participating in such unlawful or fraudulent practice, from selling or offering for sale within or from this state as franchisor, franchise sales agent, franchise salesman, or a principal thereof, any franchise offered or to be offered or sold, or from continuing any such practice. In said action an order or a judgment may be entered awarding the relief applied for or so much thereof as the court may deem proper. Upon a showing by the department in its application for a permanent injunction hereunder that the defendant named in the action or an officer thereof has refused to be sworn or to be examined or to answer a material question or to produce a book or paper relevant to the inquiry when duly ordered to do so by the officer or judge duly conducting an inquiry into the subject matter forming the basis of the application for such injunction, such refusal shall be prima facie proof that such defendant is or has engaged in an unlawful or fraudulent practice as set forth in such application and a permanent injunction may issue from the supreme court without further showing by the department. In an action brought under this section the court may award to the plaintiff a sum not in excess of ten thousand dollars for each defendant as an additional allowance.

2. Upon a showing by the department, in an application for an injunction, that any person engaged in the offer or sale of a franchise in this state has ever been convicted by a court of competent jurisdiction in any state or county of any felony or of any other criminal offense by any such court, whether or not constituting a felony, involving franchises, securities or subdivided land, the supreme

court after a hearing may issue a permanent injunction awarding the relief applied for, or so much thereof as the court may deem proper, against such person shown to have been so convicted, in the form and manner provided for in subdivision one of this section in the case of one who actually has or is engaged in any unlawful or fraudulent practice.

3. If a franchise is offered or sold within the state of New York by a non-resident person and such non-resident person has not filed pursuant to laws heretofore or hereafter existing the designation of a person upon whom process against him or it may be served or the designation of the secretary of state as such person, pursuant to section thirteen hundred four of the business corporation law or other laws heretofore or hereafter existing, or in lieu thereof, an instrument in writing duly acknowledged and filed in the office of the secretary of state designating the secretary of state as the person upon whom may be served any subpoena, subpoena duces tecum or other process directed to such non-resident person and issued in any investigation, examination or proceeding pending or about to be instituted under and pursuant to the provisions of this article, the department may serve a notice upon such non-resident person by mailing the same in a securely sealed postpaid wrapper addressed to such non-resident person at its or his last known place of business or residence, and may in such notice require that such non-resident person furnish a written statement under oath, as required in said notice, giving the information therein specified relating to the franchise offered, to be offered or sold in the state of New York by such non-resident person or, in the alternative, that such non-resident person shall appear within a reasonable time from the date of mailing such notice at a designated place within this state for examination and shall produce at the time and place of such examination such books and papers of such non-resident person as may be designated in such notice.

If such non-resident person shall fail to appear pursuant thereto or to produce the books and papers required thereby to be produced, or shall refuse to submit to examination or to answer any proper question, the proof of such failure or refusal shall constitute prima facie evidence that the offer or sale of a franchise by such non-resident

person constitutes a fraudulent practice and may in the discretion of the court be treated as a sufficient basis for a permanent injunction against the continuance of such fraudulent practice.

4. In any action brought by the department as provided in this article, the court at any stage of the proceedings may appoint a receiver of any and all property derived by the defendant or defendants or any of them by means of any such unlawful or fraudulent practice, including also all property with which such property has been commingled if such property cannot be identified in kind because of such commingling, together with any or all books of account and papers relating to the same. The judgment entered in such action may provide that such receiver shall take title to any or all such property and books of account and papers relating to the same and liquidate such property or any part thereof for the benefit of all persons intervening in the said action and establishing an interest in such property. The judgment may also provide that all such property, the title to or interest in which has not been established in such action by intervenors or otherwise by due process to be in a person or persons other than defendant or defendants, shall be returned to the defendant or defendants as their interest may appear. Such receiver shall be subject to all the duties of receivers in civil actions as far as practicable except that such provisions relating to commissions or compensation of receivers shall not be applicable to receivers appointed pursuant to this section, but such commissions or compensations shall be fixed by the court in any amount which it may determine to be just and equitable. In any action brought by the department as provided in this article the court may grant such other and further relief as may be proper.

5. Whenever the department has determined to commence an action under this article, it may present to any justice of the supreme court, before beginning such action, an application in writing for an order directing the person or persons mentioned in the application to appear before the justice of the supreme court or referee designated in such order and answer such questions as may be put to them or to any of them, or to produce such papers, documents and books concerning the alleged unlawful or fraudulent practices to which the action which the department has

determined to bring relates, and it shall be the duty of the justice of the supreme court to whom such application for the order is made to grant such application. The application for such order may simply show upon information and belief that the testimony of such person or persons is material and necessary. The provisions of the civil practice law and rules, relating to an application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examination, shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made with such preliminary injunction or stay as may appear to such justice to be proper and expedient and shall specify the time when and place where the witnesses are required to appear. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him and must be filed in the office of the clerk of the county in which such order for examination is filed.

6. The order for such examination must be signed by the justice making it, and service of a copy thereof with an endorsement by the department to the effect that the person named therein is required to appear and be examined at the time and place before the justice and referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce at such examination all books, papers and documents in his possession or under his control relating to the subject of such examination. The order shall be served upon the person named in the endorsement aforesaid by delivering to and leaving with it or him a certified copy thereof, endorsed as above provided, subject to the payment of witness fees and mileage as and when provided to be paid by paragraph (b) of subdivision four of section six hundred eighty-eight of this article in connection with attendance pursuant to subpoenas authorized to be issued under said section. Service of such an order may also be served under section six hundred eighty-six of this article in cases falling thereunder.

7. The referee appointed as provided in this article possesses all the

powers and is subject to all the duties of a referee appointed in a civil action, so far as practicable, and may punish for contempt a witness duly served with the papers as prescribed in this article for non-attendance or refusal to be sworn or to testify or to produce books, papers and documents according to the direction of the endorsement aforesaid in the same manner and to the same extent as a referee to hear, try and determine an issue of fact or law.

8. Any person against whom a permanent injunction has been granted under the provisions of this article may apply to the supreme court at any time upon at least sixty days notice to the department for an order dissolving such injunction or modifying the same upon such terms and conditions as the court deems necessary or desirable. Such application for dissolution or modification of such injunction shall contain a recitation of the facts and circumstances which caused the granting of the injunction; the occupation and employment of the person making the application and his financial remuneration therefrom since the time the injunction was granted; his net worth at the time of the application and the source thereof; together with any other facts bearing upon the reasonableness of the application and the character of the applicant as may enable the court to issue an order that will properly dispose of such application in the interest of justice. A copy of such application together with copies of any other papers in support thereof shall be served upon the department at least sixty days prior to the return date thereof. In addition thereto the applicant shall file with the court a good and sufficient surety bond in the sum of one thousand dollars guaranteeing that he will pay all costs and expenses of an investigation by the department of such applicant and the statements and claims alleged in the application together with any further investigation which the department may deem necessary or desirable to determine whether it should consent to the application, oppose the same, or make such other recommendations to the court as in its opinion are desirable to be included in any modification of such injunction. Should it appear in the course of such investigation by the department that said sum is not sufficient, the department may apply to the court by usual notice of motion or order to show cause for an increase in the amount of security or further surety bond necessary to fully pay all of the costs of the

investigation and the court may require such further bond as the situation requires to fully pay the costs and expenses of the investigation. Upon the completion of such investigation, the department may file an answer to such application setting forth such facts as are pertinent to the determination by the court of the matter before it and whether said injunction should be dissolved, modified or continued in whole or in part and what conditions, if any, shall be attached to any dissolution or modification of said injunction. After a hearing upon such application and after any further investigation, proof or testimony which the court may desire has been offered, or at any adjourned dates thereof, the court may make a final order dissolving the permanent injunction or modifying the same upon such terms and conditions as in its opinion are just and desirable, or in its discretion may deny the application. Such order shall contain a direction that the applicant pay to the department the costs and expenses of the investigation in connection with the proceeding, and any judgment entered thereon may be enforced directly against the surety on the bond. The court shall grant no temporary or other relief from the injunction in force pending a final determination of such application. No application under this subdivision shall be entertained:

(a) in any case where the applicant has been convicted of a felony or a crime that would be a felony if committed in the state of New York since the issuance of the injunction, nor

(b) in any case where the injunction was granted incident to a felony, or the applicant has been convicted at any time of any felony involving franchises which are the subject matter of this article. Nor shall anything contained in this subdivision be construed to deny to or interfere with the power of the department to bring any other action or proceeding, civil or criminal, against the applicant at any time.

9. The provisions of the civil practice law and rules shall apply to all actions brought under this article except as herein otherwise provided.

§ 690. Violations and penalties. Any person who knowingly violates any of the provisions of this article or any rule or regulation issued

thereunder shall be guilty of a class A misdemeanor punishable by a fine of not more than one thousand dollars, or imprisonment for not more than one year, or both.

§ 691. Civil remedies. 1. A person who offers or sells a franchise in violation of section six hundred eighty-three, six hundred eighty-four or six hundred eighty-seven of this article is liable to the person purchasing the franchise for damages and, if such violation is willful and material, for rescission, with interest at six percent per year from the date of purchase, and reasonable attorney fees and court costs.

2. A person may not file or maintain suit under this section if the franchisee or such person received a written offer before suit, and at a time when he owned the franchise, to refund the consideration paid together with interest at six percent per year from the date of payment, less the amount of income earned by the franchisee from the franchise, conditioned only upon tender by the person of all items received by him for the consideration and not sold, and failed to accept the offer within thirty days of its receipt, provided that the offering documents are submitted to the department for approval at least ten business days prior to submission to the franchisee. The rescission offer shall recite the provisions of this section. If the franchise involves a substantial building or substantial equipment or fixtures and a significant period of time has elapsed since the sale of the franchise to the franchisee, the department in approving a rescission offer may approve an equitable offer recognizing depreciation, amortization, and other factors which bear upon the value of the franchise being returned to the franchisor. Nothing in this subdivision shall prohibit settlement of any dispute arising under or involving claims based on this chapter, with or without approval of the department.

3. A person who directly or indirectly controls a person liable under this article, a partner in a firm so liable, a principal executive officer or director of a corporation so liable, a person occupying a similar status or performing similar functions, and an employee of a person so liable, who materially aids in the act of transaction

constituting the violation, is also liable jointly and severally with and to the same extent as the controlled person, partnership, corporation or employer. It shall be a defense to any action based upon such liability that the defendant did not know or could not have known by the exercise of due diligence the facts upon which the action is predicated.

4. An action shall not be maintained to enforce a liability created under this section unless brought before the expiration of three years after the act or transaction constituting the violation.

5. Except as explicitly provided in this article, civil liability in favor of any private party shall not arise against a person by implication from or as a result of the violation of a provision of this article or a rule, regulation or order hereunder. Nothing in this article shall limit a liability which may exist by virtue of any other statute or under common law if this article were not in effect.

§ 692. Enforcement by attorney general. 1. The department may prosecute every person charged with a criminal offense in violation of this article and regulations issued thereunder. In all such proceedings, the department may appear before any court of record or any grand jury and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform; or the department may in its discretion transmit evidence, proof and information as to such offense to the district attorney of the county or counties in which the alleged violation has occurred, and every district attorney to whom such evidence, proof and information is so transmitted may proceed to investigate and prosecute any person charged with such violation. In any such proceeding wherein the department has appeared, the district attorney shall only exercise such powers and perform such duties as are required of him by the department.

2. Upon a showing by the department that a fraudulent practice as defined by this article has occurred, the department may include in an

action under this article an application to direct restitution of any moneys or property obtained directly or indirectly by any such fraudulent practice.

§ 693. Immunity. Upon any investigation or proceeding before the department, or in any criminal proceeding before any court or grand jury, pursuant to or for a violation of any provision of this article, the department or the court or grand jury may confer immunity in accordance with the applicable provisions of the criminal procedure law.

§ 694. Administration. 1. The department shall charge and collect the fees fixed by this section.

(a) The fee for filing an application for registration of an offering prospectus under subdivision two of section six hundred eighty-three of this article is seven hundred fifty dollars.

(b) The fee for filing an amendment to any registered offering prospectus filed under subdivision two, nine or thirteen of section six hundred eighty-three of this article is one hundred fifty dollars.

(c) The fee for filing a franchise agent's application under subdivision thirteen of section six hundred eighty-three of this article is one hundred fifty dollars.

2. The department may from time to time make, amend, and rescind such rules, forms and regulations as are necessary to carry out the provisions of this article, including rules and forms governing applications and reports, and defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article.

§ 695. Separability clause; construction. 1. If any part or provision of this article or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in

which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

2. This article shall be liberally construed to effect the purposes thereof.

ARTICLE 33-A
DEALER AGREEMENTS
FOR THE SALE OF FARM EQUIPMENT

Section 696-a. Definitions.

- 696-b. Dealer agreements; unlawful acts and practices.
- 696-c. Termination and non-renewal of dealer agreements.
- 696-d. Violations.
- 696-e. Parts and return of parts.
- 696-f. Repurchase of equipment upon termination.
- 696-g. Death or incapacity of dealer.
- 696-h. Warranty.
- 696-i. Separability.

§ 696-a. Definitions. As used in this article unless the context requires otherwise:

1. "Current net price" means the price listed in the supplier's effective price list or catalogue, less any applicable trade and cash discounts.

2. "Dealer" means any person selling or agreeing to sell primarily equipment under an agreement with a supplier.

3. "Equipment" means vehicles and machinery and the accessories and parts thereto which are designed to be used for farm and agricultural

purposes, lawn, garden, golf course, landscaping or grounds and maintenance/utility activities, provided however that self-propelled vehicles primarily for the transportation of persons or property on a street or highway are specifically excluded.

4. "Dealer agreement" means any agreement between a supplier and a dealer by which the dealer is authorized to engage in the business of the retail sale, lease and/or service of equipment in accordance with methods and procedures prescribed by the supplier.

5. "Net cost" means the price the dealer paid to the supplier for the equipment, less all applicable discounts allowed, plus the freight costs from the supplier's location to the dealer's location.

6. "Supplier" means the manufacturer, wholesaler or distributor of the equipment to be sold by the dealer.

§ 696-b. Dealer agreements; unlawful acts and practices. It shall be a violation of this article for a supplier:

1. To coerce, compel, or attempt to coerce or compel any dealer to order or accept delivery of any equipment or parts, or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the dealer has not voluntarily ordered; or

2. To coerce or compel any dealer to enter into any agreement, whether written or oral, supplementary to an existing dealer agreement with such supplier; or

3. To coerce or compel, any dealer to refuse to purchase equipment from another supplier, however it shall not be a violation of this section to require separate facilities, financial statements or sales staff for major competing lines provided that the dealer is given at least thirty-six months notice of such requirements; or

4. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of the dealer's order to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by such supplier, equipment covered by such dealer agreement specifically advertised or represented by such supplier to be available for immediate delivery. However, the failure to deliver any such equipment shall not be considered a violation of this article if such failure is due to prudent and reasonable restriction on extension of credit by the supplier to the dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control; or

5. To terminate or cancel the dealer agreement of any such dealer without due cause; or

6. To condition the renewal or extension of a dealer agreement on the dealer's substantial renovation of the dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the dealer unless the supplier has advised the dealer in writing of its demand for such renovation, construction, purchase, acquisition or rental within a reasonable time prior to the effective date of the proposed date of renewal or extensions, but in no case less than one year, and provided the supplier demonstrates the need for such change in the place of business and the reasonableness of such demand in view of the need to service the public and economic conditions existing at the time and, provided further, that the dealer makes a good faith effort to complete such construction or renovation plans within one year; or

7. To sell or offer to sell any new equipment to any other dealer at a lower actual price therefor than the actual price sold or offered to any other dealer for the same equipment identically equipped or to utilize any device including, but not limited to, sale promotion plans or programs which result in such lesser actual price, or result in a fixed price predetermined solely by the supplier provided, however, the provisions of this subdivision shall not apply to sales to a dealer for

resale to any unit or agency of the United States government, the state, or any of its political subdivisions or any municipality located within this state; and provided, further, that the provisions of this subdivision shall not apply so long as a supplier sells or offers to sell such new equipment to all of its dealers at an equal price; or

8. To willfully discriminate, either directly or indirectly, in price, programs, or terms of sale offered to dealers, where the effect of such discrimination may be to substantially lessen competition or give to one holder of a dealer agreement any economic business or competitive advantage not offered to all holders of the same or similar dealer agreements; or

9. To prevent by contract or otherwise, any dealer, from changing its capital structure, ownership or the means by or through which the dealer finances its operations, so long as the dealer gives prior notice to the supplier and provided the dealer at all times meets any responsible capital standards agreed to between the dealer and the supplier and imposed on similarly situated dealers and provided such change by the dealer does not result in a change in the person with actual or effective control of a majority of the voting interests of the dealer; or

10. If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealer's business or an equity ownership interest therein, the supplier shall approve or deny such a request within sixty days after receiving a written request from the dealer. If the supplier has neither approved nor denied the request within the sixty day period, the request will be deemed approved. The dealer's request shall include reasonable financial, personal background, character references and work history information for the acquiring persons. If a supplier denies a request made pursuant to this subdivision, the supplier must provide the dealer with a written notice of such denial that states the reasons for such denial. A supplier may only deny a request based on the failure of the proposed transferees to meet the reasonable requirements consistently imposed by the supplier in determining approval of such transfer and/or approvals of new dealers;

or

11. To require a dealer to assent to a release, assignment, notation, waiver, or estoppel which would relieve any person from liability imposed by this article; or

12. (a) To unreasonably withhold consent, in the event of the death of the dealer or the principal owner of the dealership, to the transfer of the dealer's interest in the dealership to a member or members of the family of the dealer or the principal owner of the dealership or to another qualified individual if the family member or other qualified individual meets the reasonable financial, business experience and character standards of the supplier. Furthermore, and only in the event that the transfer proposed is to a person other than a family member, such person shall have actively participated in the dealership or in the farm equipment or similar industry for at least twelve months preceding the proposed date of transfer. Should a supplier determine that the designated family member or other qualified individual is not acceptable, it shall provide the dealer with written notice of its objection and specific reasons for withholding its consent. A supplier shall have thirty days to consider a dealer's request to make a transfer to a family member or other qualified individual. As used in this paragraph, "family" means and includes a spouse, parents, siblings, children, step-children, sons-in-law, daughters-in-law and lineal descendants, including those by adoption of the dealer or principal owner of the dealership.

(b) Notwithstanding the foregoing, in the event that a supplier and dealer have duly executed an agreement concerning succession rights prior to the dealer's death, and if such agreement has not been revoked, such agreement shall be observed, even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

§ 696-c. Termination and non-renewal of dealer agreements. 1. Except where a grounds for termination or non-renewal of a dealer agreement are contained in paragraph (a), (b), (c), (d), (e) or (f) of subdivision two of this section, a supplier shall give a dealer ninety days' written

notice of the supplier's intent to terminate, cancel or not renew a dealer agreement. The contractual term of the dealer agreement shall not expire, without the written consent of the dealer, prior to the expiration of at least ninety days following such notice. Nothing in this section shall prohibit a dealer from terminating a dealer agreement with cause provided, however, that the dealer notify the supplier in writing at least ninety days prior to the effective date of such termination with the reasons for such termination. This notice will not apply for grounds of termination in following paragraphs (a) through (f) of subdivision two of this section.

2. As used in this article, a termination by a supplier of a dealer agreement shall be with cause when the dealer has:

(a) transferred a controlling ownership interest in the dealership without the supplier's consent;

(b) made a material misrepresentation in applying for the dealer agreement;

(c) filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within sixty days after the filing; is in default under the provisions of a security agreement in effect with the supplier; or is insolvent or in receivership;

(d) been convicted of a crime, punishable for a term of imprisonment for one year or more;

(e) failed to operate in the normal course of business for ten consecutive business days or has terminated said business;

(f) Significantly relocated the dealer's place of business without supplier's consent; or

(g) consistently engaged in business practices which are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, failure to provide service and replacement parts or perform warranty obligations;

(h) inadequately represented supplier over a measured period causing lack of performance in sales, service or warranty areas and failed to achieve market penetration at levels consistent with similiary located dealerships based on available recorded information compiled by industry associations regarded as the authorities in this area both in local and

national standards;

(i) consistently failed to meet building and housekeeping requirements, or has failed to provide adequate sales, service or parts personnel commensurate with the dealer agreement;

(j) consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf;

(k) consistently failed to comply with the terms of the dealership agreement.

3. No supplier shall base its decision to terminate, cancel or not to renew a dealer agreement on any of the paragraphs of subdivision two of this section except paragraph (a), (b), (c), (d), (e) or (f) thereof unless such supplier can demonstrate, through written documentation, the alleged misconduct and/or lack of performance by the dealer, and furthermore, such supplier shall also show that the reason for the decision to terminate, cancel or not to renew the dealer agreement was in no way caused by such supplier.

§ 696-d. Violations. It shall be deemed a violation of this article for a dealer:

1. To require a retail purchaser of new equipment, as a condition of sale and delivery thereof, also to purchase special features, appliances, parts, or accessories not desired or requested by the purchaser. However, this prohibition shall not apply to special features, appliances, parts or accessories which are already installed when the equipment is received by the dealer from the supplier thereof.

2. To represent and sell as new and unused any equipment which has been used and operated for demonstration or other purposes without stating to the purchaser prior to the sale the approximate amount of use the equipment has experienced or undergone.

3. To use any false or misleading advertisement in connection with such dealer's business.

§ 696-e. Parts and return of parts. 1. Every supplier shall provide for the availability of repair parts throughout the reasonable useful life of any equipment sold.

2. Every supplier shall provide to its dealers, on an annual basis, an opportunity to return a portion of their surplus parts inventory for credit. The surplus procedure shall be administered as follows:

(a) The supplier may notify its dealers of a time period, of at least sixty days duration, during which time dealers may submit their surplus parts list and return their surplus parts to the supplier.

(b) If a supplier has not notified a dealer of a specific time period for returning surplus parts within the preceding twelve months, then it shall authorize and allow the dealer's surplus parts return request within thirty days after receipt of such request from the dealer.

(c) Pursuant to the provisions of this subdivision, a supplier must allow surplus parts return authority on a dollar value of parts equal to six percent of the total dollar value of parts purchased by the dealer from the supplier during the twelve month period immediately preceding the notification to the dealer by the supplier of the surplus parts return program, or the month the dealer's return request is made, whichever is applicable. However, the dealer may elect to return a dollar value of the dealer's surplus parts equal to less than six percent of the total dollar value of parts purchased by the dealer from the supplier during the preceding twelve month period as provided herein.

(d) No obsolete or superceded part, may be returned, but any part listed in the supplier's current returnable parts list or any superceded part that has not been the subject of the supplier's parts return program at the date of notification to the dealer by the supplier of the surplus parts return program, or the date of the dealer's parts return request, whichever is applicable, shall be eligible for return and the credit specified. However, returned parts must be in new and unused condition and must have been purchased by the dealer from the supplier to whom they are returned unless no program for the return of such part has been offered by the supplier.

(e) The minimum lawful credit to be allowed for returned parts shall be eighty-five percent of the cost thereof as listed in the supplier's current returnable parts list at the date of the notification to the dealer by the supplier of the surplus parts return program, or the date of the dealer's parts return request, whichever is applicable.

(f) Applicable credit hereunder must be issued or furnished to the dealer within sixty days after receipt of the dealer's returned parts by the supplier.

(g) Packing and return freight expense incurred in any return of surplus parts pursuant to the terms of this subdivision shall be borne by the supplier.

(h) The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of equipment, attachments and repair parts which provides the dealer with greater protection. The dealer can elect to pursue either his or her contract remedy or the remedy provided by state law, and an election by the dealer to pursue his or her contract remedy shall not bar his or her right to the remedy provided herein as to those repair parts not affected by the contract remedy. Notwithstanding anything contained herein, the rights of a supplier to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods shall not be affected. Further, any repurchase hereunder shall not be subject to the provisions of the bulk sales law. Additionally, nothing shall preclude a price for return parts which is greater than the total allowance for parts allowed herein and the shipping allowance, in such case the packing, freight and handling expense charge, shall not be borne by the supplier.

§ 696-f. Repurchase of equipment upon termination. 1. Whenever any dealer enters into a dealer agreement with a supplier wherein the dealer agrees to maintain an inventory of equipment or repair parts and the dealer agreement is subsequently terminated, the supplier shall repurchase the inventory as provided in this article. The dealer may keep the inventory if such dealer desires provided the dealer has a contractual right to do so. If the dealer has any outstanding debts to the supplier then part or all of the repurchase amount equal to, but no

more than, the total amount of the debts may be credited to the dealer's account.

2. If the dealer decides not to keep the inventory, the supplier shall repurchase that inventory previously purchased and held by the dealer on the date of termination of the contract. The supplier shall pay one hundred percent of the net cost of all new, unsold, undamaged and complete equipment which is resalable, less a reasonable allowance for depreciation due to usage by the dealer and deterioration directly attributable to weather conditions at the dealer's location and less all programs and discounts previously allowed thereon and eighty-five percent of the current net price of all new, unused, undamaged repair parts and accessories which are listed in the supplier's effective price list or catalogue less all programs and discounts previously allowed thereon by the supplier to the dealer. The supplier shall also pay the dealer six percent of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. The supplier shall have the option of performing the handling, packing and loading or paying one hundred percent of the current net price of parts in lieu of paying the six percent sum imposed herein for these services and in this case the dealer shall make available to the supplier, at the dealer's address or at the places at which it is located, all equipment previously purchased by the dealer, after receipt by the dealer of the full repurchase amount.

3. Upon payment within sixty days of the repurchase amount to the dealer, the title and right to possession of the repurchased inventory shall transfer or be transferred to the supplier.

4. The provisions of this article shall not require the repurchase from the dealer of:

(a) any repair part which has a limited storage life or is otherwise subject to deterioration;

(b) any single repair part which is priced as a set of two or more items;

(c) any repair part which because of its condition is not resalable as a new part without repairing or reconditioning;

(d) any inventory for which the dealer is unable to furnish evidence reasonably satisfactory to the supplier, of good title, free and clear of all claims, liens and encumbrances;

(e) any inventory which the dealer desires to keep, provided the dealer has a contractual right to do so;

(f) any equipment which is not in new, unused, undamaged, and complete condition;

(g) any equipment which has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the supplier receives a reasonable allowance for such usage or deterioration;

(h) any repair parts which are not in new, unused, undamaged condition;

(i) any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the dealer agreement; or

(j) any inventory which was acquired by the dealer from any source other than the supplier.

5. If any supplier shall fail or refuse to repurchase any inventory covered under the provisions of this article within sixty days after termination of a dealer's contract, he shall be civilly liable for a total amount of one hundred fifteen percent of the current net price of the inventory plus any freight charges paid by the dealer plus all cost of financing such repurchase, including courts costs and reasonable attorneys' fees allowed by the court.

§ 696-g. Death or incapacity of dealer. 1. In the event of the death or incapacity of the dealer or the majority stockholder of a corporation operating as a dealer, the supplier shall, at the option of the heirs at law, if the dealer died intestate, or the executor under the terms of the deceased dealer's last will and testament, if said dealer died testate, repurchase the inventory from the estate as if the supplier had terminated the contract and the inventory repurchase provisions of section six hundred ninety-six-f of this article are made expressly applicable hereto. The heirs or executor shall have nine months from the

date of the death of the dealer or majority stockholder to exercise the option under this article. However, nothing in this article shall require the repurchase of inventory if the heirs or executor and the supplier enter into a new dealer agreement, or if a successor to the dealer is established pursuant to paragraph (j) of subdivision three of section six hundred ninety-six-b of this article. This section shall be subject to that portion of the supplier's agreement with the dealer pertaining to death of the dealer or succession, to the extent such agreement is not inconsistent herewith.

2. The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of equipment, attachments and repair parts which provides the dealer with greater protection. The heirs or executor can elect to pursue either the contract remedy or the remedy provided herein, and an election by the heirs or executor to pursue contract remedy shall not bar such heirs' or executor's right to the remedy provided herein as to those equipment, attachments and repair parts not affected by the contract remedy. Notwithstanding anything contained herein, the rights of a supplier to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods shall not be affected. Further, any repurchase hereunder shall not be subject to the provisions of the bulk sales law. Additionally, nothing shall preclude a price for return parts which is greater than the total allowance for parts allowed herein and the shipping allowance, in such case the packing, freight and handling expense charge shall not be borne by the supplier.

§ 696-h. Warranty. 1. Every supplier shall provide a fair and reasonable warranty agreement on any new equipment which it sells and shall fairly compensate each of its dealers for labor and parts used in fulfilling such warranty agreement. All claims for payment under such warranty agreements made by dealers hereunder for such labor and parts shall be paid within thirty days following their approval. If such claims are not approved or disapproved within thirty days after their receipt they shall be deemed approved and shall be paid within the time

specified herein. When any such claim is disapproved, the dealer who submits it shall be notified in writing of its disapproval within such period and each such notice shall state the specific grounds upon which the disapproval is based. Any special handling of claims required of the dealer by the supplier and not uniformly required of all dealers of that make, may be enforced only after thirty days' notice in writing to the dealer and upon good and sufficient reason.

2. (a) The minimum basis for compensating said dealer for warranty work as provided for herein shall be calculated for labor, service repair, diagnostic work and parts and shall be adequate for the work to be performed in accordance with the reasonable and customary account of time required to complete such work, including such reasonable time as required by the dealer for the diagnosis of such repair, expressed in hours and fractions of hours multiplied by the dealer's established hourly retail labor rate. Prior to filing a claim for reimbursement for warranty work, the dealer must notify the supplier of his hourly retail labor rate. The minimum lawful basis for compensation to the dealer for parts used in fulfilling said warranty work shall be at the dealer's costs thereof, including all freight and handling charges applicable thereto, plus at least twenty percent of said sum to reimburse the dealer's reasonable costs of doing business and providing such warranty service on the supplier's behalf.

(b) Nothing contained in this section shall prohibit a supplier from auditing such warranty claims submitted by such dealers for a period of up to one year following the payment of such claims and further provided that such suppliers may seek reimbursement from the dealers on all warranty claims which were misrepresented.

3. The provisions of this section shall not apply to a dealer agreement in writing that provides for compensation to a dealer for warranty costs either in the sale price of the equipment to the dealer or in the form of a lump sum payment.

§ 696-i. Separability. If any provision of this article or the application of such provision to any person or circumstance is held

invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected by such holding.

ARTICLE 33-B

EXPRESS CONSUMER WARRANTY ON FARM EQUIPMENT

Section 697. Definitions.

697-a. Warranty to consumers.

697-b. Affirmative defenses.

697-c. Cumulative remedies; prohibition against waiver.

697-d. New farm equipment bill of rights.

§ 697. Definitions. Whenever used in this article: 1. "Consumer" means a New York resident who is the purchaser, lessee or transferee of farm equipment, other than for the purposes of resale.

2. "Farm equipment" means any self propelled farm equipment and implements of husbandry and the accessories and parts included in the sale or lease of same designed and manufactured primarily to be used for agricultural purposes and for the United States market or in compliance with the laws and standards of the United States for which the purchase or lease price for each piece of farm equipment exceeds one thousand five hundred dollars and which is being transferred for the first time from a manufacturer, distributor or new farm machinery dealer and has not been registered or titled in this state or any other state.

3. "Express warranty" or "warranty" means the written affirmation of fact or promise made by a supplier to a consumer in connection with the sale of farm equipment which relates to the nature of the material or workmanship, including any terms or conditions precedent to the enforcement of obligations under that warranty.

4. (a) "Use deduction formula" shall be used on farm equipment which does not contain an engine hour meter or for which hours is not the basic usage standard and means a dollar amount obtained by multiplying

the full purchase price or lease price of the farm equipment by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days after delivery of the farm equipment.

(b) "Non-seasonal equipment hours deduction formula" shall be used on farm equipment which contains an engine hour meter and for which hours is the basic usage standard and means the hours of use times the full purchase price, or lease price if applicable, divided by five thousand hours.

(c) "Seasonal equipment hours deduction formula" shall be used on self-propelled harvesting equipment which contains an engine hour meter and for which hours is the basic usage standard and means the hours of use times the full purchase price, or lease price if applicable, divided by two thousand hours.

5. "Lessee" means any consumer who leases farm equipment pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such farm equipment.

6. "Lease price" means the aggregate of: (a) the lessor's actual purchase cost; (b) the freight cost, if applicable; (c) the cost for accessories, if applicable; (d) any fee paid to another to obtain the lease; and (e) an amount equal to five percent of the lessor's actual purchase cost as prescribed in paragraph (a) of this subdivision.

7. "Supplier" means the manufacturer, wholesaler or distributor that issues the warranty effective in New York state for the farm equipment sold by the dealer.

8. "Dealer" means any person selling or agreeing to sell farm equipment under an agreement with a manufacturer, wholesaler or distributor.

9. "Nonconformity" means any condition of the farm machinery that substantially impairs the value or safety of such equipment, or its use for the purpose for which it was intended.

§ 697-a. Warranty to consumers. 1. Every supplier of new farm equipment which is sold within or outside of this state shall provide a fair and reasonable warranty on all new farm equipment that shall be of no less duration than twelve months following the date of original delivery of the farm equipment to the consumer. If the new farm equipment does not conform to all applicable express warranties during the warranty period, and the consumer reports the nonconformity, defect or condition to the supplier or its dealer in writing before the end of the warranty period, or verbally within thirty days before the warranty ends and then in writing within thirty days after the expiration of the warranty period, such supplier or dealer shall make such repairs as are necessary to conform the new equipment to such express warranties at no charge to the consumer.

1-a. Farm equipment that is not specifically manufactured for the United States market or in compliance with the laws and standards of the United States is not covered by this article. A dealer who sells such farm equipment shall receive written acknowledgement from the purchaser that the purchaser has been made aware that such equipment is not covered by this article.

2. If the supplier or its dealer are unable to conform the farm equipment to any applicable express warranty by repairing the nonconformity after a reasonable number of attempts, the supplier, at the option of the consumer, shall replace the farm equipment with comparable farm equipment provided that such comparable equipment is available from the supplier, or accept return of the equipment from the consumer and refund to the consumer the full purchase price or, if applicable, the lease price and any trade-in allowance plus fees and charges, less a deduction for use calculated pursuant to the formula provided in subdivision four of section six hundred ninety-seven of this article. For purposes of this section, fees and charges shall include but not be limited to license fees, registration fees or other governmental charges. Refunds shall be made to the consumer or lienholder, if any, as their interests may appear on the records of ownership. Such refund shall also be accompanied by the proper

application for credit for refund of state and local sales tax as published by the department of taxation and finance and by a notice that the sales tax paid on the purchase price, lease price or portion thereof being refunded is refundable by the commissioner of taxation and finance in accordance with the provisions of subdivision (f) of section eleven hundred thirty-nine of the tax law.

3. If a dealer refuses to undertake the repairs within the time allotted pursuant to subdivision one of this section, the consumer may immediately forward written notice of such refusal to the supplier, who shall have twenty days from receipt of such notice to commence such repairs.

4. (a) If the supplier refuses to undertake the repairs, the supplier shall provide information for consumer complaint remedies which shall inform the consumer of, among other things, whether an informal dispute settlement mechanism has been established by the supplier and how the consumer may avail himself or herself of such mechanism.

(b) If a supplier has established an informal dispute settlement mechanism, such mechanism shall provide, at a minimum, the following:

(i) That the arbitrators and the consumers who request arbitration are given a written copy of the provisions of this article together with the notice set forth below entitled "New Farm Equipment Bill of Rights" and that the arbitrators participating in such mechanism are trained in arbitration and are familiar with the provisions of this article;

(ii) That the consumers, upon request, are given an opportunity to make an oral presentation to the arbitrator; and

(iii) That the rights and procedures used in the mechanism comply with federal regulations promulgated by the federal trade commission relating to informal dispute settlement mechanisms.

(c) Each consumer shall have the option of submitting any dispute arising under this section, upon the payment of a prescribed filing fee, to an alternate arbitration mechanism established pursuant to regulations promulgated hereunder by the state attorney general. Upon application of the consumer and payment of the filing fee, all suppliers shall submit to such alternate arbitration, and shall pay a fee established pursuant to regulations of the attorney general. Such

alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by the state attorney general. Such mechanism shall insure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut and refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules.

(d) A supplier shall have up to thirty days from the date the consumer notifies the supplier of his or her acceptance of the arbitrator's decision to comply with the terms of that decision. Failure to comply with the thirty day limitation shall also entitle the consumer to recover a fee of twenty-five dollars a day for each business day of noncompliance up to five hundred dollars. Provided, however, that nothing contained in this paragraph shall impose any liability on a supplier where a delay beyond the thirty day period is attributable to a consumer who has requested replacement farm equipment built to order or with options that are not comparable to the farm equipment being replaced or otherwise made compliance impossible within said period. In no event shall a consumer who has resorted to an informal dispute settlement mechanism be precluded from seeking the rights or remedies available by law.

(e) A court may award reasonable attorney's fees to a prevailing plaintiff or to a consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to paragraph (c) of this subdivision. In the event a prevailing plaintiff is required to retain the services of an attorney to enforce collection of an award granted pursuant to this section, the court may assess against the supplier reasonable attorney's fees for services rendered to enforce collection of such award.

(f) Any action brought pursuant to this section shall be commenced within twenty-four months of the date of original delivery of the farm equipment to the consumer.

(g) It shall be presumed that a reasonable number of attempts have been undertaken to conform the farm equipment to the applicable express warranties, if: (i) the same nonconformity, defect or condition has been subject to repair four times by the supplier or its authorized dealers

and such nonconformity continues to exist; or (ii) the farm equipment is out of service by reason of repair of one or more nonconformities by the supplier or its dealer for a cumulative total of thirty calendar days during the warranty period.

(h) The term of an express warranty, the one year warranty period and the thirty day out of service period shall be extended by any reasonable time during which repair services are not available to the consumer for reasons which shall include war, terrorist attack, pestilence, invasion or strike, fire, flood or other natural disaster or unforeseen and unanticipated extraordinary circumstances.

§ 697-b. Affirmative defenses. It shall be an affirmative defense to claim under this section that: (a) the nonconformity, defect or condition does not substantially impair the value, use or safety of the equipment; (b) the nonconformity, defect or condition is the result of abuse, neglect or unauthorized modifications or alterations of the farm equipment; (c) a claim by the consumer was not filed in a timely manner; or (d) any other affirmative defense allowed by law.

§ 697-c. Cumulative remedies; prohibition against waiver. The warranty under this article shall be in addition to and not in derogation of all other rights and privileges which such consumer may have under any other law or instrument. Waiver of any rights by the buyer under this article shall be deemed contrary to public policy and shall be unenforceable and void.

§ 697-d. New farm equipment bill of rights. A supplier shall provide the following notice, entitled "New Farm Equipment Bill of Rights" along with a written copy of the provisions of this article, to its authorized dealers in this state, and the dealer shall provide such bill of rights to each consumer at the time of purchase or lease of farm equipment. Such notice shall be printed in conspicuous ten point bold face type.

NEW FARM EQUIPMENT BILL OF RIGHTS

(1) IN ADDITION TO ANY WARRANTIES PROVIDED FOR YOUR FARM EQUIPMENT,

YOUR NEW FARM EQUIPMENT, PURCHASED WITHIN OR OUTSIDE OF THIS STATE, IS WARRANTED AGAINST ALL MATERIAL DEFECTS FOR ONE YEAR.

(2) YOU MUST REPORT ANY PROBLEMS TO THE WARRANTOR OR ITS DEALER IN WRITING WITHIN THE WARRANTY PERIOD. ALTHOUGH, IF IN THE LAST THIRTY DAYS OF THE WARRANTY, YOU ARE ONLY ABLE TO PROVIDE A VERBAL NOTICE, YOU WILL HAVE UP TO THIRTY DAYS AFTER THE EXPIRATION OF THE WARRANTY TO PROVIDE A WRITTEN NOTICE.

(3) A WARRANTOR OR A DEALER MAY NOT CHARGE FOR THE PARTS OR LABOR INVOLVED IN THE REPAIR OF THE DEFECT WITHIN THE WARRANTY PERIOD.

(4) IF THE SAME PROBLEM CANNOT BE REPAIRED AFTER FOUR ATTEMPTS DURING THE WARRANTY PERIOD; OR IF YOUR EQUIPMENT IS OUT OF SERVICE TO REPAIR A PROBLEM FOR A TOTAL OF THIRTY DAYS DURING THE WARRANTY PERIOD; OR IF THE SUPPLIER OR ITS DEALER REFUSES TO REPAIR A SUBSTANTIAL DEFECT OR CONDITION WITHIN TWENTY DAYS OF RECEIPT OF WRITTEN NOTICE SENT BY YOU TO THE SUPPLIER; THEN YOU MAY BE ENTITLED, AT YOUR OPTION, TO EITHER COMPARABLE FARM EQUIPMENT OR A REFUND OF YOUR PURCHASE PRICE FROM THE WARRANTOR, MINUS A USE ALLOWANCE.

(5) A WARRANTOR MAY DENY LIABILITY IF THE PROBLEM IS CAUSED BY ABUSE, NEGLIGENCE, OR UNAUTHORIZED MODIFICATIONS OF THE EQUIPMENT.

(6) A WARRANTOR MAY REFUSE TO EXCHANGE COMPARABLE EQUIPMENT OR REFUND YOUR PURCHASE PRICE IF THE PROBLEM DOES NOT SUBSTANTIALLY IMPAIR THE VALUE, SAFETY OR USE OF YOUR FARM EQUIPMENT.

(7) IF THE WARRANTOR DOES NOT HAVE AN ARBITRATION PROCEDURE, YOU MAY RESORT TO ANY REMEDY BY LAW AND MAY BE ENTITLED TO YOUR ATTORNEY'S FEES IF YOU PREVAIL.

(8) NO CONTRACT OR AGREEMENT CAN VOID ANY OF THESE RIGHTS.

(9) AS AN ALTERNATIVE TO THE ARBITRATION PROCEDURE MADE AVAILABLE THROUGH THE WARRANTOR, YOU MAY INSTEAD CHOOSE TO SUBMIT YOUR CLAIM TO AN INDEPENDENT ARBITRATOR, APPROVED BY THE ATTORNEY GENERAL. YOU WILL HAVE TO PAY A FEE FOR SUCH AN ARBITRATION. CONTACT YOUR LOCAL CONSUMER OFFICE OR ATTORNEY GENERAL'S OFFICE TO FIND OUT HOW TO ARRANGE FOR INDEPENDENT ARBITRATION.

ARTICLE 34

CREDITOR BILLING ERRORS

Section 701. Definitions.

702. Application.

703. Notice of error and response.

704. Permissible procedures by creditor.

705. Statement to contain instructions for notification of error.

706. Notice to consumer of this act.

707. Penalties.

§ 701. Definitions. Whenever used in this article:

1. "Consumer" means a natural person.

2. "Creditor" means a person, partnership, corporation, association or other entity who, in the ordinary course of business, regularly extends consumer credit.

3. "Consumer credit" means credit extended to a consumer, primarily for personal, family or household purposes, pursuant to a plan under which the creditor may permit the consumer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check or other device, as the plan may provide.

4. "Billing error" means the initial occurrence of an error by omission or commission by the creditor in a billing statement given to the consumer by the creditor in (a) posting any debit or credit or (b) the computation of any amount or (c) any similar error of an accounting nature or (d) posting any debit for goods which were not received by the consumer as required by the provisions of subdivision fourteen of section four hundred thirteen of the personal property law.

§ 702. Application. 1. Except as provided in subdivision two of this section, this chapter shall not apply to statements of accounts rendered to customers by public utilities whose billing practices are subject to the jurisdiction and regulation of the public service commission.

2. Subject to federal law and regulation, no creditor shall charge a consumer an additional rate or fee associated with payment on an account when the consumer chooses to pay by United States mail. This subdivision shall not be construed to prohibit a creditor from offering consumers a credit or other incentive to elect a specific payment option.

§ 703. Notice of error and response. If a creditor, having transmitted to a consumer a statement of the consumer's account, receives from the consumer at an address designated therefor by the creditor in accordance with section seven hundred five of this article, within sixty days of the mailing of said statement, a written notice, on a document other than a document provided by the creditor to accompany payment, setting forth sufficient information to enable the creditor to identify the consumer and the account, the amount and transaction shown in the statement which the consumer in good faith believes to be a billing error, and the facts providing the basis for the consumer's belief that the statement is in error; the creditor shall:

1. Not later than thirty days after receipt of the notice, mail a written acknowledgment to the consumer; and

2. Not later than ninety days after receipt of the notice and prior to taking any action to collect the amount believed by the consumer to be a billing error, (a) make appropriate corrections in the account of the consumer and mail to the consumer a written notice stating that the amount believed to be in error has been corrected and will be shown on the next statement mailed to the consumer or (b) send a written notice to the consumer setting forth the reasons why the creditor believes the account of the consumer was correctly shown in the statement; and

3. Not communicate unfavorable credit information concerning the consumer to any person, including but not limited to credit bureaus or credit reporting agencies, based upon the consumer's failure to pay the amount believed by him to be a billing error, until the creditor has complied with this section.

§ 704. Permissible procedures by creditor. Notwithstanding the receipt by a creditor of a notice from a consumer as described in section seven hundred three of this act, a creditor may, subject to the provisions of section seven hundred seven of this act, transmit statements of account to the consumer which include an amount believed by the consumer to be a billing error, and the creditor, further, may undertake collection procedures not attributable to such consumer's failure to pay, nor directed at, such disputed amount.

§ 705. Statement to contain instructions for notification of error. Every statement of account rendered by a creditor to a consumer shall include the address to be used by the consumer in making inquiries concerning his statement.

§ 706. Notice to consumer of this act. Not later than sixty days after the effective date of this act, a creditor shall send to each consumer, whose account was in existence on the effective date of this act, and with or before the first billing statement on any consumer credit plan issued or offered to a new consumer after the effective date of this act and upon each subsequent renewal of a consumer's account a written notice (by any means reasonably assuring the receipt thereof by the consumer) which describes the procedures to be followed under section seven hundred three of this act. Provided, however, that with respect to an existing account on which there is no debit or credit balance on the effective date of this act, a creditor shall have the option of sending such notice with or before the first billing statement issued on such account after the effective date of this act.

§ 707. Penalties. Any creditor, having received a notice from a consumer as provided in section seven hundred three of this act, who fails to comply with the requirements of that section:

1. If such an amount is not in fact a billing error, forfeits any

rights to collect from the consumer any finance charge or other charge imposed by the creditor in connection with the amount so specified, from the date of the mailing of such notice to the date the creditor complies with section seven hundred three of this act; and

2. If such amount is in fact a billing error, is liable to the consumer in an amount equal to the sum of:

(a) the actual damages sustained by the consumer as a result of the failure of the creditor to comply with such section;

(b) twice the amount of the billing error shown in the statement of the consumer's account except that liability under this paragraph shall not be greater than four hundred dollars; and

(c) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

3. If such amount is in fact a billing error but the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from bona fide error made despite the maintenance of procedures reasonably adopted to avoid any such error, the creditor shall be liable to the consumer only to the extent of the actual damages sustained by the consumer as a result of the failure of the creditor to comply with such section and the costs of any action brought to enforce collection of such erroneous bill together with a reasonable attorney's fee as determined by the court.

4. Whenever there shall be a violation of subdivision two of section seven hundred two of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin or restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated subdivision two of section seven hundred two of this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any

such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of subdivision two of section seven hundred two of this article has occurred, the court may impose a civil penalty of not more than two hundred fifty dollars for each such violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 34-A

CONSUMER CREDIT BALANCES

Section 710. Definitions.

711. Transfer of credit balances prohibited.

712. Mailing of statements of credit account balances.

713. Required notice in credit account statements; refund of balances.

714. Automatic refund of credit balances.

715. Disposition of unclaimed credit balances.

716. Violations and penalties.

§ 710. Definitions. Whenever used in this article:

1. "Consumer" means a natural person.

2. "Creditor" means a person, partnership, corporation, association or other entity who, in the ordinary course of business, regularly extends consumer credit. The term creditor includes any agent of a creditor for collection, processing or other purposes.

3. "Consumer credit" means credit extended to a consumer on an account pursuant to a plan under which the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device,

as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

4. "Credit balance" means any money or credit owed to, or held for the benefit of, a consumer by a creditor on a consumer credit account, whether resulting from an overpayment or return of merchandise by the consumer, or otherwise.

§ 711. Transfer of credit balances prohibited. No creditor shall write-off, delete or transfer any credit balance greater than one dollar from a consumer credit account except to the extent that the consumer has either received a cash refund or made offsetting purchases. Provided, however, that nothing herein shall prevent the creditor from deleting a credit balance created through an error.

§ 712. Mailing of statements of credit account balances. Each creditor shall provide every holder of a consumer credit account with a statement setting forth any credit balance greater than one dollar at the end of the billing cycle in which such balance is first posted, unless such balances have already been refunded, and thereafter at least once in every three billing cycles.

§ 713. Required notice in credit account statements; refund of balances. 1. Every statement reflecting a credit balance in favor of the consumer shall contain a clear and conspicuous notice stating the right of the consumer to request and receive a refund of the full credit balance, together with the address to which such request may be sent.

2. Every creditor shall refund the full credit balance by cash or check within thirty days of receipt of such request.

§ 714. Automatic refund of credit balances. Where a credit balance greater than one dollar exists, and where no purchases, payments or

other transactions (other than the imposition of service, membership or other administrative charges) occur with respect to a consumer credit account for six consecutive billing cycles, the creditor shall refund the full amount of such credit balance by cash or check within thirty days after the end of such period of inactivity.

§ 715. Disposition of unclaimed credit balances. In the event the creditor, after due diligence, cannot locate a consumer to make a credit balance refund pursuant to this article, such money shall be retained in a separate trust account to be maintained by the creditor for such purpose for a period of three years and thereafter shall be transferred to the New York state department of audit and control to be held pursuant to the provisions of the New York abandoned property law.

§ 716. Violations and penalties. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in section eighty-three hundred three, subdivision six of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 34-B
ANNUAL CREDIT INTEREST STATEMENTS

Section 717. Definitions.

718. Annual interest statements.

719. Violations and penalties.

§ 717. Definitions. Whenever used in this article:

1. "Obligor" means a natural person.

2. "Creditor" means a person, partnership, corporation, association or other entity who in the ordinary course of business, regularly extends consumer credit. The term creditor includes any agent of a creditor for collection, processing or other purposes.

3. "Consumer credit" means credit extended to an obligor on an account pursuant to a plan under which (a) the creditor may permit the obligor to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide; (b) the customer has the privilege of paying the balance in full or in installments; and (c) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

4. "Interest" means that part of the entire amount agreed to be paid for the purchase made or loan advanced which exceeds the aggregate of the cash value of such purchases or loans and is deemed to include service charges, time-price charges and per check charges.

§ 718. Annual interest statements. 1. The creditor of any account under a consumer credit plan on which interest aggregating fifty dollars or more has been paid in any calendar year and who maintains a computerized or otherwise automated electronic system for the issuance of periodic billing statements in the ordinary course of business shall furnish to the obligor a notice capable of being marked and returned to the creditor which, upon being marked and returned, shall require

issuance of a statement of the aggregate interest charges paid by such obligor. Such statement shall be issued on or before February fifteenth in the following year.

2. Notwithstanding the provisions of subdivision one of this section, a creditor may satisfy the requirements imposed therein by providing such a statement printed clearly and conspicuously on a periodic billing statement provided in the creditor's ordinary course of business, provided that such billing statement is furnished to the obligor on or before February fifteenth of the year following the year in which the interest charges were imposed.

§ 719. Violations and penalties. Whenever there shall be a violation of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

ARTICLE 35

WARRANTIES ON MOBILE HOMES

Section 720. Necessity of warranty.

721. Definitions.

722. Application.

723. Written warranty; contents.

724. Cumulative remedies; prohibition against waiver.

§ 720. Necessity of warranty. After the effective date of this article, all new mobile homes sold by a mobile home dealer situated in the state of New York shall be covered by the warranty set forth in this article.

§ 721. Definitions. As used in this article, unless the context otherwise indicates, the following words shall have the following meanings:

1. Dealer. "Dealer" shall include any person, corporation, association or any other legal entity who customarily sells mobile homes to consumers.

2. Manufacturer. "Manufacturer" means any person who makes, fabricates, constructs, or assembles a mobile home. A manufacturer shall not include the person who installs or sets up the mobile home on a site.

3. Mobile home. "Mobile home" means a moveable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year-round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be used exclusively for residential purposes, excluding travel trailers.

§ 722. Application. The warranty provided for in this article shall apply to the manufacturer of the mobile home as well as to the dealer who sells the mobile home to the buyer.

§ 723. Written warranty; contents. The mobile home warranty from the manufacturer to the buyer shall be set forth in writing and shall contain the following terms:

1. Defects. That the mobile home is free from any substantial defects in materials or workmanship.

2. Corrective action. That the manufacturer or the dealer for the account of the manufacturer shall take appropriate corrective action within sixty days of receipt of written notification at the site of the mobile home in instances of substantial defects in materials or workmanship, which become evident within one year from the date of the delivery of the mobile home to the consumer, provided the consumer or his transferee gives written notice of such defects to the manufacturer or dealer at their business address not later than one year and ten days after date of delivery.

§ 724. Cumulative remedies; prohibition against waiver. The warranty under this article shall be in addition to and not in derogation of all other rights and privileges which such consumer may have under any other law or instrument. Waiver of any rights by the buyer under this chapter shall be deemed contrary to public policy and shall be unenforceable and void.

ARTICLE 35-A

AFTERMARKET RUSTPROOFING WARRANTIES OF NEW MOTOR VEHICLES

Section 730. Definitions.

731. Written warranty required.

732. Written warranty; contents.

733. Warrantor liability for authorized aftermarket rustproofing; notification.

734. Remedies; violations and penalties.

735. Cumulative remedies; prohibition against waiver.

§ 730. Definitions. Whenever used in this article: 1. "Aftermarket rustproofing" means the application of rust-inhibiting material to various areas of a new motor vehicle after the vehicle has been assembled.

2. "Buyer" means a natural person who buys or receives aftermarket rustproofing on a new motor vehicle if such vehicle is bought for use primarily for personal, family or household purposes.

3. "Person" means an individual, partnership, corporation, association or any other legal entity.

4. "Warrantor" means any person who issues a written warranty pursuant to section seven hundred thirty-one of this article.

§ 731. Written warranty required. A person who applies aftermarket rustproofing to motor vehicles sold in this state shall provide the buyer with a written warranty which complies with the requirements of this article.

§ 732. Written warranty; contents. The aftermarket rustproofing warranty required by this article must contain the following terms:

1. Defects. The body sheet metal, structural members and frame of the motor vehicle are warranted not to rust through from the inside out during the warranty period specified.

2. Corrective action.

(a) The warrantor will, as a minimum remedy, make repairs or indemnify the buyer for the actual cost of repairing any rust damage covered by the warranty.

(b) The warrantor will honor all valid claims under the warranty regardless of their number.

(c) Nothing contained in this section shall be deemed to preclude a

warrantor from entering into a contract requiring a financially solvent applicator to be initially responsible for the cost of any corrective action as a result of the negligence of the applicator of the aftermarket rustproofing.

3. Length of warranty. This warranty shall be valid for a period of not less than five years from the date of the application of the aftermarket rustproofing, provided, however, that this section shall not be construed as to extend this warranty to a person who is a subsequent transferee of the buyer.

§ 733. Warrantor liability for authorized aftermarket rustproofing; notification. 1. It shall be unlawful for a warrantor to include in any warranty agreement a clause that purports to limit a buyer's warranty protection on the basis that the buyer has, or may have, a claim under an existing warranty.

2. It shall be unlawful for a warrantor to fail to notify a buyer in writing within ten business days of inspecting the buyer's motor vehicle for rust damage whether the warranty claim will be allowed or denied. If the claim is denied, the specific reasons for the denial shall be stated in writing.

3. It shall be unlawful for a warrantor to fail to honor a buyer's warranty claim on the basis that the aftermarket rustproofing was applied improperly, if such service was provided by a person authorized by the warrantor.

4. Nothing contained in this section shall be deemed to prevent a warrantor from refusing to honor a warranty claim based upon the failure of a buyer to comply with provisions of a warranty with respect to the proper care and maintenance of the aftermarket rustproofing.

§ 734. Remedies; violations and penalties. 1. A buyer injured by a violation of this article may bring an action to recover damages.

Judgment may be entered for up to three times the actual damages suffered by a consumer up to one thousand dollars, or one hundred dollars, whichever is greater, if the court finds such violation is willful. The court may also award reasonable attorneys fees to a prevailing plaintiff.

2. Upon any violation of this article, an application may be made by the attorney general in the name of the people of the state to a court or justice having jurisdiction to issue an injunction, and upon notice to the respondent of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the respondent has violated any provision of this article, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation.

§ 735. Cumulative remedies; prohibition against waiver. The warranty under this article shall be in addition to and not in derogation of all other rights and privileges which such consumer may have under any other law or instrument. Waiver of any rights by the buyer under this chapter shall be deemed contrary to public policy and shall be unenforceable and void. Nothing in this article shall affect a consumer's ability to settle with a warrantor any disputes which arise under the warranty.

ARTICLE 35-B

AUTOMOBILE BROKER BUSINESS

Section 736. Definitions.

736-a. Registration required.

736-b. Place of business required.

- 737. Advance fees prohibited.
- 738. Contracts; requirements and contents.
- 739. Contracts void and unenforceable.
- 740. Escrow required for advance payments.
- 740-a. Automobile broker business surety bond.
- 741. Deceptive acts prohibited.
- 741-a. Advertising.
- 741-b. Disclosure.
- 741-c. Private information security.
- 741-d. Prohibited acts.
- 742. Action for recovery of damages by consumer.
- 743. Enforcement by attorney general.
- 744. Severability.
- 745. Preemption.

§ 736. Definitions. As used in this article:

1. "Automobile broker business" means any person who, for a fee, commission or other valuable consideration, regardless of whether such fee, commission, or consideration is paid directly by a consumer, offers to provide, provides, or represents that such automobile broker business will provide a service of purchasing, arranging, assisting, facilitating or effecting the purchase or lease of an automobile as agent, broker, or intermediary for a consumer. "Automobile broker business" does not include any person registered as a dealer pursuant to article sixteen of the vehicle and traffic law, only when operating in a manner pursuant to such registration under article sixteen of the vehicle and traffic law, any person registered under section four hundred fifteen-a of the vehicle and traffic law, only when operating in a manner described in section four hundred fifteen-a of the vehicle and traffic law, an automobile auctioneer, only when operating in the manner described in section twenty-three of this chapter, nor any bona fide employee of a registered dealer while acting for such dealer, or any person who sells, offers for sale or lease or acts as agent, broker or intermediary in effecting the purchase or lease of three or fewer automobiles in any calendar year, any national service which aggregates information for

consumers, but does not otherwise have contact with consumers, or any motor vehicle franchisor, manufacturer, distributor, distributor branch or factory branch registered under article sixteen of the vehicle and traffic law.

2. "Consumer" means a natural person who is solicited to purchase or who purchases the services of an automobile broker business.

3. "Person" includes an individual, corporation, partnership, joint venture, or any other business entity.

4. "Place of business" means a designated permanent location at which the business of the automobile broker business is conducted.

§ 736-a. Registration required. 1. No person shall engage in business as an automobile broker business, as defined in section seven hundred thirty-six of this article, without first having been issued a certificate of registration for an automobile broker business pursuant to paragraph c of subdivision seven of section four hundred fifteen of the vehicle and traffic law.

2. A certificate of registration for an automobile broker business shall not permit the registrant to display for sale or lease any new or used motor vehicles without registration as a dealer under section four hundred fifteen of the vehicle and traffic law.

§ 736-b. Place of business required. 1. No person shall engage in business as an automobile broker business, as defined in section seven hundred thirty-six of this article, without maintaining a place of business.

2. The certificate of registration for an automobile broker business pursuant to paragraph c of subdivision seven of section four hundred fifteen of the vehicle and traffic law shall be amended within thirty days of a change of address of an automobile broker business to reflect

the new address of its place of business.

§ 737. Advance fees prohibited. No automobile broker business shall solicit, receive or collect from a consumer any fee, or commission, in advance of the performance of those services specified in the contract as required by section seven hundred thirty-eight of this article.

§ 738. Contracts; requirements and contents. 1. Prior to the purchase or lease of an automobile, the consumer and the automobile broker business shall enter into a contract. Every contract between a consumer and an automobile broker business for the purchase or lease of an automobile shall be in writing, shall be dated, shall contain the street address of the place of business of the automobile broker business, the registration number issued to the automobile broker business pursuant to section four hundred fifteen of the vehicle and traffic law and the name and address of the consumer and shall be signed by the consumer and by the automobile broker business. Every contract shall comply with the requirements set forth in this section and contain the following:

(a) A complete description of the automobile and each option, if any, ordered; a statement of whether the automobile is or will be manufactured in accordance with United States specifications and is or will be certified by the manufacturer as such; if the automobile is not or will not be manufactured in accordance with United States safety and environmental specifications, and the consumer has retained the automobile broker business to arrange for the modification of the automobile to meet such specifications, the name and street address of the modification facility and a statement in immediate proximity to such information that the automobile broker business assumes full financial responsibility that the automobile will be properly modified to meet all United States safety and environmental specifications.

(b) The price of the automobile including any options ordered. If the price set forth is an estimated price, a statement in immediate proximity to the price that the price is an estimated price only and that the consumer has the right to cancel the contract and to receive a full refund if the final price exceeds the estimated price by more than

five percent.

(c) The estimated delivery date of the automobile and the place of delivery and a statement in immediate proximity to the estimated delivery date that, if the automobile has not been delivered in accordance with the contract within thirty days following such estimated delivery date, the consumer has the right to cancel the contract and to receive a full refund, unless the delay in delivery is attributable to the consumer.

(d) A statement of whether or not the manufacturer's warranty accompanying the automobile is the same warranty as that furnished to purchasers of that make automobile from an authorized dealer located in the United States.

(e) A statement that the broker shall only accept payment for their services from either the dealer selling or leasing the automobile or the buyer or lessee of the automobile, but may not accept payment from both.

(f) A statement that the consumer has the option to take delivery of a motor vehicle at the selling or leasing dealership.

(g) A description of any other services and an itemization of the charges for each. Such description shall include disclosure of the automobile dealer from which the automobile was purchased or leased, as well as all fees, commissions or other valuable considerations paid by an automobile dealer to the automobile broker business for selling, arranging, assisting or effecting the sale or lease of an automobile as agent, broker, or intermediary between the consumer and the automobile dealer.

(h) If a consumer elects to cancel the contract pursuant to paragraph (b) or (c) of this subdivision, he or she shall notify in writing the automobile broker business at the address specified in the contract. The automobile broker business shall make a full refund to the consumer within ten business days following receipt of the request for a refund. The contract shall contain a statement, setting forth the consumer's right to cancel the contract under paragraphs (b) and (c) of this subdivision and the refund obligations of the automobile broker business.

(i) The statements required by paragraphs (a), (b), (c), (e), (f), (g) and (h) of this subdivision shall be printed in at least twelve point bold type.

2. The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the contract and easily detachable, and which shall contain in at least twelve point type the following:

"Notice of Cancellation"

"You may cancel this contract, without any penalty or obligation, within three days from the date that a copy of an executed contract is received by you or until the automobile described in Section () of this contract has been delivered to you, whichever is sooner, provided that if the automobile is not delivered to you in accordance with this contract within thirty days of the estimated delivery date, you may cancel this contract and receive a full refund, unless the delay in delivery is attributable to you. Additionally, you may cancel this contract, without any penalty or obligation, for other grounds under New York State law, including but not limited to the rights enumerated in Section 738 of the New York State General Business Law.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to
(_____) at (_____)
name of automobile broker business address
within the applicable timeframe.
I hereby cancel this transaction."

(signature of consumer)

(date)

3. An automobile broker business shall deliver to the consumer or mail to him or her at the address shown on the contract, an executed copy thereof.

4. An automobile broker business in any transaction involving the lease of a vehicle shall provide the retail lessee with a retail lease agreement as provided for in section three hundred thirty-seven of the personal property law. The automobile broker shall provide a written disclosure of the amount of any fee, commission or other consideration

paid or expected to be paid by the lessor to the automobile broker business in connection with a transaction involving the lease of a vehicle. Such disclosure shall be signed by the retail lessee. The automobile broker business shall provide the retail lessee with a signed copy of such disclosure together with the retail lease agreement referenced herein.

§ 739. Contracts void and unenforceable. 1. Any contract for services which does not comply with the applicable provisions of this article shall be void and unenforceable as contrary to public policy.

2. Any waiver by a consumer of the provisions of this article shall be deemed void and unenforceable as contrary to public policy.

§ 740. Escrow required for advance payments. All monies paid by a consumer to an automobile broker business in connection with a transaction covered by this article shall be trust funds in the possession of such automobile broker business and shall be deposited by it within five days after receipt thereof, in an account in a banking organization within the state. The automobile broker business shall thereupon notify in writing the consumer, giving the name and address of the banking organization and the amount deposited. The monies shall be held on deposit until fully applied to the contract price at the time the automobile is delivered to the consumer, unless sooner repaid in accordance with the provisions of this article.

§ 740-a. Automobile broker business surety bond. 1. Automobile broker businesses shall obtain and continue in effect a surety bond in an amount of one hundred thousand dollars executed by a surety company authorized to transact business in the state by the department of financial services of the state or its successor. The bonds shall be approved as to form by the secretary of state and shall be conditioned on the automobile broker business' payment of all valid bank drafts, including checks, drawn for the purchase of motor vehicles and

safekeeping of all customer deposits related to the sale of a motor vehicle between the time of receipt of such customer deposit and the transfer of good title to the vehicle to the customer.

2. Recovery against a bond may be made by a person, including the state, who obtains a judgment against the automobile broker business for an act or omission on which the bond is conditioned if the act or omission occurred during the term of the bond. The total liability imposed on the surety under this section for all breaches of the bond condition is limited to the face amount of the bond. Such liability may include, but is not limited to, the amount of the valid bank drafts, including checks, drawn by the automobile broker business for the purchase of motor vehicles. In no event shall the surety on a bond be liable for total claims in excess of the bond amount, regardless of the number or nature of claims made against the bond or the number of years the bond remained in force.

3. Any surety issuing a bond pursuant to this subdivision shall be required to provide sixty days' notice to the secretary of state prior to the effective date of cancellation of the bond.

§ 741. Deceptive acts prohibited. It is hereby declared to be a deceptive trade practice and unlawful for an automobile broker business to misrepresent directly or indirectly in its advertising, promotional materials, sales presentation, or in any manner:

1. The nature of the services to be performed;
2. The time within which the services will be performed;
3. The cost of the services to be performed; and
4. The ability of the automobile broker business to perform the services.

§ 741-a. Advertising. 1. Automobile broker businesses shall clearly and conspicuously disclose the following in all advertisements in any medium, and in any print advertisement such disclosures shall not appear in any footnotes and shall be situated in the top half of any such advertisement in an easily readable typeface:

(a) That the automobile broker business is not a registered new motor vehicle dealer but is a registered automobile broker business as defined in section four hundred fifteen of the vehicle and traffic law;

(b) The registration number issued to the automobile broker business pursuant to section four hundred fifteen of the vehicle and traffic law;

(c) Whether any fees may be imposed by the automobile broker business for services rendered. Details of such compensation shall be provided by the automobile broker business upon request by the consumer;

(d) That no warranty repair services will be provided by the automobile broker business; and

(e) That the automobile broker business is not affiliated with any dealer, as defined in section four hundred fifteen of the vehicle and traffic law, or any motor vehicle franchisor, manufacturer, or distributor as defined in section four hundred sixty-two of the vehicle and traffic law.

2. The official business certificate of registration shall be clearly and conspicuously displayed at the place of business of an automobile broker business.

§ 741-b. Disclosure. An automobile broker business shall provide a disclosure at the time such automobile broker business takes an order to search for a leased or purchased vehicle meeting the prospective lessee's specifications. Such disclosure shall provide the amount of any fees, commissions or other valuable consideration the automobile broker business expects to receive, if known, from a dealer, lessor or any other person or entity for any assistance the automobile broker business provides in effecting the lease or purchase transaction. If the amount of any such fees, commissions or other valuable consideration the automobile broker business expects to receive is unknown at the time of the required disclosure, the automobile broker business shall disclose:

(a) whether it has a contract with any dealer, lessor or any other person or entity for the provision of assistance in effecting a lease or purchase transaction; (b) that the automobile broker business shall be compensated by the dealer, lessor or any other person or entity for any assistance in effecting such lease transaction; and (c) that the amount of any such fees, commissions or other valuable consideration the automobile broker business receives, whether from the dealer or the buyer of the automobile, shall be disclosed on the executed lease or purchase contract or finance agreement pursuant to section three hundred two or three hundred thirty-seven of the personal property law.

§ 741-c. Private information security. In addition to the requirements of subdivision twenty-one of section four hundred fifteen of the vehicle and traffic law, an automobile broker business shall:

1. keep and maintain all consumer records containing private information in a safe place that is not accessible to persons not employed by the automobile broker business, including by keeping and maintaining a clear and permanent physical barrier from other businesses that share or neighbor its place of business;

2. have a separate mailbox at such place of business for the automobile broker business; and

3. have a method of securing personal information, including but not limited to in a locking cabinet or safe.

§ 741-d. Prohibited acts. An automobile broker business is prohibited from:

1. advertising that such automobile broker business has any new automobile in stock;

2. advertising any price figure in an advertisement unless such figure represents the actual price of the advertised automobile, exclusive of

registration and titles, fees and taxes;

3. starting, completing, or answering any portion of a financing or credit application or the lease or purchase agreement of an automobile, on behalf of a consumer or dealer, without including on or affixing to such application or agreement, the name and registration number of the automobile broker business; and

4. accepting any payment other than that disclosed under section seven hundred thirty-eight or seven hundred forty-one-b of this article, whether from the dealer or buyer of the automobile.

§ 742. Action for recovery of damages by consumer. Any consumer injured by a violation of this article or by the breach by an automobile broker business of a contract which has been entered into pursuant to section seven hundred thirty-nine of this article may bring an action for recovery of damages. Judgment shall be entered in favor of a consumer in an amount not to exceed three times the actual damages, but in no case less than the amount paid by the buyer to the automobile broker business. The court may award reasonable attorney's fees to a prevailing plaintiff.

§ 743. Enforcement by attorney general. 1. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of

section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court shall impose a civil penalty of not less than one thousand dollars and not more than three thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

2. The provisions of this article may be enforced concurrently by a municipal consumer affairs office.

§ 744. Severability. If any provision of this article or if any application thereof to any person or circumstance is held invalid, the remainder of this article and the application of the provision to other persons and circumstances shall not be affected thereby.

§ 745. Preemption. The provisions of this article and section four hundred fifteen of the vehicle and traffic law shall govern the requirements and obligations with respect to the automobile broker business notwithstanding any other law to the contrary. No local or municipal law shall be enacted which shall impose any different or other obligations on the automobile broker business including a requirement of any fee or license for the automobile broker business.

ARTICLE 35-C

OPERATION OF PET CEMETERIES AND PET CREMATORIALS

- Section 750. Declaration of policy.
- 750-a. Definitions.
 - 750-b. License required.
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- 750-u. Veterinary and agricultural production exclusions.
- 750-uu. Small pet cemetery exclusion.
- 750-v. Duties of pet cemetery owners and operators.
- 750-w. Separability clause.

§ 750. Declaration of policy. The legislature hereby finds and declares that the relationships that humans develop with other members of the animal kingdom that are taken into our homes and kept as pets are unique and special. These relationships can enrich our lives and increase our happiness. Even after the death of a pet, human attachment to the memory of the pet often remains very strong and many people feel the need to memorialize their love for their animal by burying their pet in a pet cemetery. Pet cemeteries, their managers and owners have a special responsibility to their customers who have entrusted their pets' remains with them. These pet cemeteries have a duty to act in an ethical and lawful manner to prevent grieving pet owners from experiencing further any emotional pain or financial manipulation. Perpetrations of fraud against grieving pet owners are unconscionable.

The legislature further finds and declares that the people of this state have a vital interest in the establishment, maintenance and

preservation of pet cemeteries and pet crematoriums and the proper operation of the businesses and individuals which own and manage the same. This article is determined an exercise of the police powers of this state to protect the well-being of our citizens, to promote the public welfare, to promote the health of the public and to prevent pet cemeteries and pet crematoriums from falling into disrepair and dilapidation and becoming a burden upon the community.

§ 750-a. Definitions. As used in this article, unless the context requires otherwise:

1. "Person" means an individual, corporation, company, partnership, municipality, not-for-profit corporation or any other entity whatsoever.

2. "Licensee" means a person as herein defined licensed to engage in the business of operating a pet cemetery or pet crematorium under this article.

3. "To engage for a fee in the business of operating a pet cemetery or pet crematorium" means and refers to a person who holds himself or herself out directly or indirectly, as being able, or who offers or undertakes, by any means or method, to dispose of pet remains by earth burial, entombment, inurnment, cremation or other means.

4. "License fee" and "renewal fee" mean the fees required to accompany an application for issuance of any license, including any temporary, apprentice or renewal license, pursuant to this article. Such fee shall be non-refundable.

5. "Pet cemetery" means any land, place, structure, facility or building provided by any person for a fee, whether or not for profit, to veterinarians or members of the general public for use, or reservation for use, for the permanent interment or inurnment above or below ground of pet remains. Provided, however, this definition shall not apply to:

(a) rendering plants licensed pursuant to article five-C of the agriculture and markets law, or

(b) a landfill or other disposal facility at which solid waste, or its residue after treatment, is intentionally placed and at which, solid waste shall remain indefinitely.

6. "Pet crematorium" means any land, place, structure, facility or building provided by any person for a fee, whether or not for profit, to veterinarians or members of the general public for the cremation of pets. However, a pet crematorium shall not provide for permanent interment or inurnment of pet remains. Provided, however, this definition shall not apply to facilities designed for resource recovery as defined in section 27-0701 of the environmental conservation law. Provided further, that it shall not include any disposal facility regulated under title fifteen of article twenty-seven of the environmental conservation law that is primarily engaged in incineration of medical waste.

7. "Pet" means any domestic animal that has been adapted or tamed to live in intimate association with people but is not limited to, dogs, cats, rodents, fish, birds, snakes, turtles, lizards, frogs and rabbits.

8. "Pet owner" means the person who is listed as the owner of the pet in veterinary records or pet cemetery or crematorium records or his or her agent or employee. In the event that such pet owner is a minor then a parent or legal guardian or his or her agent or employee shall be deemed the pet owner for the purposes of the pet disposal form required in section seven hundred fifty-s of this article.

9. "Individual burial" means the interment of a single pet's remains in a separate grave. However, nothing in this section shall prevent the interment of more than one pet in a grave with the written consent of the pet owner.

10. "Mass burial" means the interment of pet remains communally in a grave containing more than one pet.

11. "Individual cremation" means the cremation of a single pet's remains in a separate receptacle that allows the pet's cremains to

remain separate from the cremains of other pets.

12. "Mass cremation" means the cremation of pets communally in a receptacle containing more than one pet.

13. "Veterinarian" means a person licensed to practice the profession of veterinary medicine as defined by section sixty-seven hundred one of the education law.

14. "Entombment" means the placement of a pet in a grave or tomb.

15. "Inurnment" means the placement of pet cremains in a grave, urn or tomb.

16. "Land used in agricultural production" means such lands as defined in subdivision four of section three hundred one of the agriculture and markets law.

§ 750-b. License required. On and after July thirty-first, nineteen hundred ninety-three, no person shall engage for a fee in the business of operating a pet cemetery or pet crematorium or hold himself or herself out as being able so to do unless he or she is licensed therefor pursuant to this article. Nothing herein shall prohibit a person licensed in accordance with the provisions of this article from employing individuals to assist in the operation of a pet cemetery or pet crematorium.

§ 750-c. Powers of the secretary of state. The secretary of state shall inspect periodically all licensed pet cemeteries and pet crematoriums. The cost of such inspection shall not be charged to the pet cemeteries or crematoriums. In addition to the powers and duties elsewhere prescribed in this article, the secretary of state shall have power:

1. To appoint an adequate number of assistants, inspectors and other

employees as may be necessary to carry out the provisions of this article, to prescribe their duties, and to fix their compensation within the amount appropriated therefor.

2. To investigate applicants for licenses under this article.

3. To keep records of all licenses issued, suspended or revoked.

4. To conduct a physical inspection of all grounds and buildings of any pet cemetery or pet crematorium periodically or upon receiving a complaint.

5. To conduct a financial audit of all business records, trust fund records and pet disposal forms for any pet cemetery or pet crematorium.

6. To issue a subpoena for persons or records deemed appropriate to an investigation or any other action taken pursuant to this article.

§ 750-d. Rules and regulations. 1. With respect to pet cemeteries and pet crematoriums, the department of state shall have power to adopt such rules and regulations not inconsistent with the provisions of this article, as may be necessary with respect to the form and content of applications for licenses, the reception thereof, the investigation of applicants and their qualifications, the operation of pet cemeteries and pet crematoriums whose licenses to operate such enterprises are suspended, revoked or not renewed, and the other matters incidental or appropriate to his powers and duties as prescribed by this article and for the proper administration and enforcement of the provisions of this article, and to amend or repeal any of such rules and regulations.

2. With respect to pet disposal for a fee, whether by earth burial, entombment, inurnment, cremation, or otherwise, by a veterinarian, pet cemetery or pet crematorium, the department of state shall have the power to adopt such rules and regulations not inconsistent with the provisions of this article, as may be necessary with respect to the form and content of pet disposal forms, registration of disposals by pet

cemeteries or pet crematoriums, and the other matters incidental or appropriate to his powers and duties as prescribed by this article and for the proper administration and enforcement of the provisions of this article, and to amend or repeal any of such rules and regulations.

§ 750-e. License; application. 1. Any person desiring a license to engage in the business of operating a pet cemetery or pet crematorium under this article may make application to the secretary of state therefor. The application shall be subscribed by the applicant and affirmed by him or her as true under the penalties of perjury. Such application shall be in a form as the secretary of state shall prescribe setting forth:

(a) The name and address of the applicant: if an individual, the name under which he or she intends to conduct business; if a partnership, the name and business address of each member thereof, and the name under which business is to be conducted; if a corporation; the name of the corporation and the name and business address of each stockholder of the corporation holding stock interest of more than ten per centum.

(b) The place or places, including the complete address or addresses where the business is to be conducted.

(c) A summary of all relevant experience of all persons listed in paragraph (a) of this subdivision in the operation of a cemetery, pet cemetery, crematorium, pet crematorium and/or the management of funds.

(d) Satisfactory evidence of good moral character.

(e) Such further information as the secretary of state may prescribe by rule or regulation.

2. The secretary of state shall not issue a license to any person who:

(a) has had their license to operate a pet cemetery or pet crematorium suspended or revoked by the secretary of state; or

(b) has been convicted within the last five years of a felony under the laws of this state involving fraud, bribery, perjury, or theft or has been convicted under the laws of any other state or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar felony under such laws of this state.

3. Any person who has had an application for a license rejected by the secretary of state may appeal such determination pursuant to section seven hundred fifty-i of this article.

§ 750-f. Licenses; display; renewal; duplicates. 1. All licenses shall be for a period of two years.

2. No license shall be assignable or transferable except as hereinafter provided.

3. A license to conduct the business of operating a pet cemetery or pet crematorium issued to an individual may be assigned or transferred for the remainder of the license period to a partnership or corporation if such individual is a member of such partnership or an officer of such corporation at the time of such assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one member of such partnership, provided he obtains the consent of all of the other members of such partnership. A license issued to a corporation may be assigned or transferred for the remainder of the license period to any officer of the corporation, provided he obtains the consent of all of the other officers of such corporation. The application for such transfer or assignment must be accompanied by the requirements of section seven hundred fifty-e of this article and by proof satisfactory to the department that the requirements herein provided have been complied with. No assignment or transfer shall become effective unless and until the endorsement has been made on the face of the license by the department and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made without payment of any fee. A bona fide purchaser of such business from the holder of the license thereof may continue to use the license of the seller from the date of the sale, provided there is endorsed on the face thereof the name of the purchaser, the date of the sale, and the signature of the seller and the purchaser; and provided further within five days from the date of the sale, an application, in accordance with the provisions of this article, shall be presented by the purchaser to the secretary of state for a

license to conduct the business of operating a pet cemetery or pet crematorium. Such license shall be valid until the purchaser's license application is either granted or denied by the secretary of state.

4. A license to conduct the business of operating a pet cemetery or pet crematorium issued to an individual or to a partnership may be used after the death of the licensed individual or co-partner by his next of kin or duly appointed administrator or executor in the name of the estate from the date of death of such individual or co-partner, provided that there is endorsed upon the face of the license after the name of the decedent the word "deceased", the date of death and the name of the next of kin, administrator or executor under whose authority the license is being used, provided that within thirty days from the date of death of the licensee, an application, in accordance with the provisions of this article, shall be presented by the next of kin, administrator or executor to the secretary of state for a license to conduct the business of operating a pet cemetery or pet crematorium. Such license shall be valid until the next of kin's, administrator's or executor's license application is either granted or denied by the secretary of state.

5. A license to conduct the business of operating a pet cemetery or pet crematorium shall be conspicuously posted upon the premises where the licensee is engaged in the business of operating a pet cemetery or pet crematorium.

6. Any license which has not been suspended or revoked, may, upon the payment of the renewal fee prescribed by this article, be renewed for additional periods of two years from its expiration, upon the filing of an application for such renewal, on a form to be prescribed by the secretary of state.

7. Any person failing to file application and fee for renewal of a license to conduct the business of operating a pet cemetery or pet crematorium within forty-five days immediately following the expiration of his or her last license shall pay an additional fee of sixty dollars, and if he or she fails to file application and fee for renewal within ninety days he or she shall be ineligible for such license until he or

she shall have again met the requirements set forth in this article.

8. A duplicate license may be issued for one lost, destroyed or mutilated upon application therefor on a form prescribed by the secretary of state and the payment of the fee prescribed therefor by this article. Each such duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

9. Notice in writing shall be given the secretary of state within thirty days at his or her office in Albany by the holder of a license to conduct the business of operating a pet cemetery or pet crematorium of any change in address of the business or residence of the person engaged in the business of operating a pet cemetery or pet crematorium together with the return of license, whereupon a properly signed endorsement will be made on the face of the license as to such change and the license then returned to the licensee. A change of address by a licensee without such notice and endorsement of license shall operate to cancel the license.

§ 750-g. Fees. 1. The fee for a license to engage in the business of operating a pet cemetery or pet crematorium shall be one hundred fifty dollars. For each renewal thereof, the fee shall be one hundred fifty dollars.

2. The fee for issuing a duplicate license in substitution for one lost, destroyed or mutilated shall be twenty-five dollars.

3. The fee for changing a name or address shall be ten dollars.

4. The fees hereinabove set forth shall be those for licenses issued for the license period of two years or fraction of such period.

5. No fees listed in subdivisions one, two, three or four of this section shall be charged to any municipality seeking a license to operate a pet cemetery or pet crematorium.

§ 750-h. Denial of license application and suspension and revocation of licenses. 1. An application for a license under this article may be denied or a license to engage in the business of operating a pet cemetery or pet crematorium may be suspended or revoked, by the secretary of state, for any one or more of the following causes:

- (a) Fraud or bribery in securing a license;
- (b) The making of any false statement as to a material matter in any application or other statement or certificate required by or pursuant to this article;
- (c) Incompetency in the operation of a pet cemetery or pet crematorium;
- (d) Failure to display the license as provided in this article;
- (e) Violation of any provision of this article, or of any rule or regulation adopted hereunder;
- (f) Conviction of a crime involving fraud, theft, perjury or bribery or other cause which would permit disqualifications from receiving a license upon the original application;
- (g) Failure to retain all pet disposal forms for a period of two years following receipt;
- (h) Failure to comply with the duties of a pet cemetery owner or operator as set forth in section seven hundred fifty-v of this article; and
- (i) Conviction of a violation of article twenty-six of the agriculture and markets law involving cruelty to animals.

2. Whenever the license to engage in the business of operating a pet cemetery or pet crematorium is revoked, such license shall not be reinstated or reissued until after the expiration of a period of five years from the date of such revocation and the secretary of state approves the license application pursuant to section seven hundred fifty-e of this article.

§ 750-i. Hearing on charges; decision. 1. No license shall be suspended or revoked nor shall any fine or reprimand be imposed until

after a hearing had before an officer or employee of the department of state designated for such purpose by the secretary of state, upon notice to the licensee of at least ten days. The notice shall be served either personally or by certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee. The licensee shall have the opportunity to be heard in his defense either in person or by counsel and may produce witnesses and testify in his behalf. A stenographic record of the hearing shall be taken and preserved. Within ten days after a hearing a licensee shall receive a stenographic record of the hearing upon payment of fifty percent of the cost of preparation of such record. The hearing may be adjourned upon a showing of good cause at least five days before the hearing, in writing, to a hearing officer. The person conducting the hearing shall make a written report of his findings and a recommendation to the secretary of state for decision. The secretary of state shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation and dismissing the charges or suspending or revoking the license or in lieu thereof imposing a fine or reprimand upon the licensee.

2. Any person who has had their application for a license rejected shall be entitled to a hearing before an officer or employee of the department of state designated for such purpose by the secretary of state, upon notice to such person of at least ten days. Notice shall be served either personally or by certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the rejection of such application for license. The applicant shall have the opportunity to be heard in his or her defense either in person or by counsel and may produce witnesses and testify on his or her own behalf. A stenographic record of the hearing shall be taken and preserved. Within ten days after a hearing an applicant shall receive a stenographic record of the hearing upon payment of fifty percent of the cost of the preparation of such record. The hearing may be adjourned upon a showing of good cause at least five days before the hearing, in writing, to a hearing officer. The person conducting the hearing shall make a written report of his or her findings and a recommendation to the

secretary of state for decision. The secretary of state shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation and either grant a license or reject the license application.

3. For the purpose of this article, the secretary of state or any officer or employee of the department of state designated by him or her, may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

4. Strict rules of evidence do not apply to hearings held pursuant to this article.

§ 750-j. Judicial review. The action of the secretary of state in suspending, revoking or refusing to issue or renew a license, or imposing a fine or reprimand on the holder thereof may be reviewed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

§ 750-k. Violations and penalties. Any person not licensed pursuant to this article who shall directly or indirectly engage in the business of operating a pet cemetery or pet crematorium or hold himself or herself out to the public as being able so to do, or who shall violate any of the provisions of this article, or having had his license suspended or revoked, shall continue to engage in the business of operating a pet cemetery or pet crematorium or who, without a license to engage in the business of operating a pet cemetery or pet crematorium, directly or indirectly employs, permits or authorizes an unlicensed person to engage in the business of operating a pet cemetery or pet crematorium, shall for the first offense be guilty of a violation and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or by imprisonment for a term of not more than fifteen days, or by both such fine and imprisonment. If the conviction is for an offense committed after the first conviction of such person under this article,

such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand five hundred dollars or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. Each violation of this article shall be deemed a separate offense.

§ 750-l. Official acts used as evidence. The official acts of the secretary of state, department of state and department of environmental conservation shall be prima facie evidence of the facts therein and shall be entitled to be received in evidence in all actions at law and other legal proceedings in any court or before any board, body or officer.

§ 750-m. Dedication of moneys derived from operation of article. All moneys derived from the operation of this article shall on or before the tenth day of each month be paid into the pet cemetery and pet crematorium inspection and licensing fund established by section ninety-seven-nn of the state finance law.

§ 750-n. Dedication of real property for pet cemetery purposes. 1. The owner of any real property used or to be used for a pet cemetery shall file, or cause to be filed, in the office of the clerk or recorder of the county in which the real property is located, a dedication restricting the real property to be used only for such purposes as are usual and customary for the operation of a pet cemetery. Such person shall additionally file a certified copy of such dedication, together with notation of the date, time, book and page of filing by the clerk or recorder of said county, with the secretary of state. Such filing with the secretary of state shall additionally include a copy of a survey map and appropriate zoning approvals as may be reasonably required by the secretary of state.

2. The owner or operator of every pet cemetery shall keep adequate records of all purchasers of space for pet remains within the grounds of

such pet cemetery.

§ 750-o. Removal of dedication. Upon the filing of a dedication restricting real property for the operation of a pet cemetery, such dedication may only be amended or removed by order of the supreme court of the county where the pet cemetery is located. Such petition for amendment or removal of dedication shall include written consent by all persons who purchased or otherwise are entitled to rights of disposal or rights to continuing care of a pet grave in that portion of the pet cemetery for which the dedication is sought to be amended or removed. If the portion of the pet cemetery for which the dedication is sought to be amended or removed includes pet remains, such pet remains must be removed, upon the written consent of all persons who purchased or are otherwise entitled to rights of disposal or rights to continuing care of a pet grave, their heirs or assigns, with the removal to be entirely at the cost of the owner of the pet cemetery. The court, upon proof of diligent efforts and as determined by the court, may dispense with the written consent of any person who purchased or is otherwise entitled to rights of disposal whose whereabouts, identity or heirs or assigns are unknown. In the event that the court has dispensed with any person's written consent under this section, the court may make a determination as to the consideration appropriate for such consent and order that such monies be deposited with the court, which shall then be paid to such person upon appropriate proof of claim. If the premises are a pet cemetery, such petition may additionally include an environmental audit if required by the court, which audit shall identify any environmental problems caused by the pet cemetery activity, including an identification of pet disposal sites. If the environmental audit identifies any environmental problem, it shall additionally include a plan for the correction or remediation of such problems, including financial, human and other resources estimates, projected time schedules for the completion of the corrective and remedial actions, with the court to make any order on the petition conditional upon the completion of such corrective and remedial action or upon the deposit with the court with such money as determined necessary for such remediation or correction.

§ 750-p. Area requirements for pet cemeteries. A pet cemetery which commences operations on or after the effective date of this article and which provides for the permanent interment of pets shall consist of not less than five contiguous acres of real property in total area, inclusive of any structures, facilities, or buildings situated thereon and used for the business purposes of the pet cemetery. The secretary of state may grant a waiver of the minimum size limit based on factors including the number of above-ground entombments, the number of remains buried and the nature of the surrounding community. Nothing contained in this section shall restrict any town, village or city from enacting any local law which provides for an area requirement greater than as set forth herein.

§ 750-q. Maintenance fees for pet cemeteries. 1. A pet cemetery owner may charge a permanent maintenance endowment fee for the care of the pet cemetery, which if charged, shall be placed by the pet cemetery owner into a permanent maintenance endowment care or similar trust fund.

2. In lieu of a permanent maintenance endowment fee, the operator of a pet cemetery and a pet owner may enter into a contract for care of the pet cemetery on an annual basis. The pet owner then shall be charged an annual maintenance fee which shall be paid in the manner described below. However, only one contract for annual maintenance shall be entered into per gravesite and shall state specifically the amount of the annual maintenance fee to be paid each year. The contract shall also state that failure to pay these annual fees can result in the disinterment of the pet.

(a) The annual maintenance fee, billed each calendar year shall be placed by the pet cemetery owner in the general account of the pet cemetery to be used for pet cemetery operation and maintenance during the succeeding years. For the purposes of this section and section seven hundred fifty-r of this article, the term pet cemetery operation and maintenance shall mean all costs incurred to operate and maintain a pet cemetery including salaries and bonuses for employees, officers and

directors, but shall not include any fines or penalties imposed by the secretary of state or other agency or court.

(b) If the annual maintenance fee is not paid within ninety days of the date of which it is due, the pet cemetery owner shall notify the pet owner in writing that such fee is due and payable. If such annual maintenance fee is not paid within ninety days of such writing, the disposal rights or rights to continuing care of a pet grave of the pet owner shall terminate.

(c) If the annual maintenance fee is not paid within one hundred eighty days of the date of which it is due, the disposal rights of a pet owner shall then terminate and the pet cemetery owner may at anytime thereafter remove such pet and if removed dispose of remains by mass cremation or mass burial.

(d) Nothing in this section shall prevent a pet owner from prepaying annual maintenance fees for any number of years in advance.

§ 750-r. Endowment care or similar trust funds. 1. A pet cemetery which commenced operations prior to the effective date of this article shall establish an endowment care or similar trust fund, the balance of which shall not be less than twelve thousand dollars, by January first, nineteen hundred ninety-five. The secretary of state may grant a waiver to the provisions of this subdivision if an endowment care or similar trust fund is established and twelve thousand dollars is placed in such fund within a reasonable amount of time not to exceed ten years from the effective date of this article and the provisions of this section will present a significant financial hardship to the pet cemetery owner or operator.

2. A pet cemetery which commences operations on or after the effective date of this article, shall, prior to the acceptance of any moneys as annual maintenance fees, establish an endowment care or similar trust fund for the permanent operation and maintenance of the pet cemetery, in an amount of not less than twelve thousand dollars.

3. The fiduciary holding such endowment care or similar trust fund shall have such power to invest such fund as set forth in section 11-2.2

of the estates, powers and trusts law. The interest earnings of such trust fund shall be used exclusively for the operation and maintenance of such pet cemetery. Any distribution of principal of such option and trust fund shall only be upon order of the supreme court of the county where the pet cemetery is located, for good cause and exclusively for the operation and benefit of such pet cemetery. Unless such distribution of principal shall be as part of a removal of dedication for such pet cemetery, such order shall additionally make adequate provision for the permanent maintenance of the pet cemetery.

4. A pet cemetery, owned and operated by a not-for-profit corporation that has in excess of one million dollars in its endowment care or similar trust fund, may use any surplus income in such trust fund above and beyond its costs for pet cemetery operation and maintenance in any manner allowed by the not-for-profit corporation's charter or by-laws, provided that the use of such surplus does not endanger the integrity of such trust fund.

5. A pet cemetery, owned and operated by a not-for-profit corporation that is a humane society may be granted a waiver of the provisions of this section by the secretary of state if the secretary determines that the interests of the pet owners will be adequately protected and the provisions of this section present a significant financial hardship to the pet cemetery owner.

6. Such trust funds are not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries, nor shall they be invalid as violating any existing rule against perpetuities.

§ 750-s. Pet disposal forms. 1. Each person who gives to a veterinarian or a pet cemetery owner or pet crematorium owner a pet for disposal shall be provided by such veterinarian or pet cemetery owner or pet crematorium owner with a pet disposal disclosure document, in form approved by the secretary of state, which shall set forth the alternative methods of pet disposal, the cost of each such method of pet disposal, if available, and the nature of or place in which each method

of disposal will be carried out. The veterinarian or the pet cemetery owner or the pet crematorium owner, as the case may be, shall give to the person who completes the form a copy of the form and retain a copy of said form. If the person completing the form chooses to have the pet disposed of by a pet cemetery or pet crematorium and makes the arrangements therefor through a veterinarian, the veterinarian shall provide the person with the name, location and telephone number of the pet cemetery or pet crematorium so that the person may obtain information about the pet cemetery or pet crematorium. The veterinarian shall also ensure that a copy of the pet disposal form accompanies the pet when it is removed from the veterinarian's office.

2. A veterinarian or pet cemetery operator may complete a pet disposal form with the oral consent of the pet owner. Such oral consent shall be witnessed and a record of such consent and the completed pet disposal form shall be retained in the veterinarian's records. A copy of such completed pet disposal form shall be sent to the pet owner if requested.

3. If a pet owner is unwilling or unable to complete a pet disposal form then a veterinarian may complete the pet disposal form if two attempts are made to contact the pet owner. However, at least one attempt shall be made in writing and sent by first class mail. If the veterinarian does complete the pet disposal form without the consent of the pet owner then a copy of the completed pet disposal form shall be retained by the veterinarian along with the records of the attempts to contact the pet owner.

4. No pet disposal form shall be required if:

- (a) no pet owner can be identified;
- (b) the pet remains originate with a municipality;
- (c) the pet is abandoned pursuant to article twenty-five-B of the agriculture and markets law; or
- (d) the pet is to be disposed of without charge to the pet owner.

§ 750-t. Disposal in compliance with forms. A pet cemetery owner shall dispose of a pet in compliance with a pet disposal form completed by a

pet owner or veterinarian. If such pet is disposed of, either by individual cremation or individual burial, the pet cemetery owner shall within ten days of such disposal send or give a written confirmation of such disposal to the pet owner or veterinarian, depending on instructions in pet disposal form, and, shall attest to the method, date, and place of disposal. If a pet is disposed of either through mass cremation or mass burial, no written confirmation shall be required. Copies of all forms shall be retained for a period of two years after receipt. All pet remains shall be buried at least twelve inches below the surface of the ground or in accordance with section three hundred seventy-seven of the agriculture and markets law in the case of a large domestic animal or otherwise disposed of in a sanitary manner.

§ 750-u. Veterinary and agricultural production exclusions. Any pet cemetery which:

1. (a) is owned by a licensed veterinarian; or
(b) is located on land used in agricultural production;
2. does not allow individual burials;
3. does not allow individual grave markers;
4. does not charge a maintenance fee for the care of pet graves; and
5. does not make any representation that pet graves will be cared for or that the land is dedicated;

shall be exempt from the trust fund provisions provided by section seven hundred fifty-r of this article, the dedication provisions provided by section seven hundred fifty-n of this article and the area requirement provided by section seven hundred fifty-p of this article.

§ 750-uu. Small pet cemetery exclusion. Any pet cemetery which buries less than five animals a year, makes no representation that the pet graves will be cared for or that the land is dedicated, and does not

charge a maintenance fee for the care of the pet graves shall be exempt from the provisions of sections seven hundred fifty-n, seven hundred fifty-p and seven hundred fifty-r of this article.

§ 750-v. Duties of pet cemetery owners and operators. All pet cemetery owners and operators shall have the following duties:

1. To keep permanently maps and records containing the specific site of each pet grave, the grave owner's last known address, the date of burial, the size of such grave, the contract for sale of such grave and pet disposal forms provided however that the provisions of this subdivision shall apply only to individual burials.

2. To keep complete records of the names of trustees of any trust accounts and complete records of all trust fund money.

3. To clearly inform customers of the option of paying maintenance fees for care of pet graves, including costs and benefits for permanent care for pet graves and annual care for pet graves.

4. To cooperate with all reasonable requests of inspectors appointed by the secretary of state to inspect pet cemeteries and pet crematoriums.

5. To provide notice to customers about hours that the cemetery will open to customers to view pet graves.

§ 750-w. Separability clause. If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have

enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

ARTICLE 35-D

SALE OF DOGS AND CATS

- Section 751. Legislative intent.
752. Definitions.
753. Sale of animal.
- 753-a. Veterinarian examination.
- 753-b. Information statement for purchaser.
- 753-c. Animal pedigree registration.
- 753-d. Construction with other laws.
- 753-e. Prohibited contracts.
- 753-f. Sale of dogs, cats and rabbits prohibited.
754. Notice.
755. Penalties and enforcement.

§ 751. Legislative intent. It is hereby determined and declared that supervision by the state of the sale of dogs or cats by pet dealers is within the public interest and for the purpose of safeguarding the public and insuring the humane treatment of such animals by guaranteeing the good health of such dogs or cats in the course of such transactions, or providing other alternatives to the consumer.

§ 752. Definitions. As used in this article:

1. "Animal" means a dog or a cat.
2. "Consumer" means any individual purchasing an animal from a pet dealer. A pet dealer shall not be considered a consumer.
3. For purposes of section seven hundred fifty-three of this article, a "pet dealer" shall mean any person who, in the ordinary course of business, engages in the sale or offering for sale of more than nine

animals per year for profit to the public. Such definition shall include breeders of animals who sell or offer for sale animals directly to a consumer but it shall not include any retail pet shop as defined in subdivision eight of this section, any municipal pound or shelter established and maintained pursuant to subdivision one of section one hundred fourteen of the agriculture and markets law and duly licensed as an animal shelter pursuant to article twenty-six-C of the agriculture and markets law, or any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, duly incorporated animal protective association or other duly incorporated animal adoption or animal rescue organization that is tax exempt pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended, that duly licensed as an animal shelter pursuant to article twenty-six-C of the agriculture and markets law. For purposes of sections seven hundred fifty-three-a, seven hundred fifty-three-b, seven hundred fifty-three-c and seven hundred fifty-three-d of this article, "pet dealer" shall mean any person who engages in the sale or offering for sale of more than nine animals per year for profit to the public. Such definition shall include breeders who sell animals; but it shall not include the following:

(a) Any breeder who sells or offers to sell directly to the consumer fewer than twenty-five animals per year that are born and raised on the breeders residential premises.

(b) Any municipal pound or shelter established and maintained pursuant to subdivision one of section one hundred fourteen of the agriculture and markets law and duly licensed as an animal shelter pursuant to article twenty-six-C of the agriculture and markets law.

(c) Any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, duly incorporated animal protective association or other duly incorporated animal adoption or animal rescue organization that is exempt from taxes pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended, that is duly licensed as an animal shelter pursuant to article twenty-six-C of

the agriculture and markets law.

(d) Any retail pet shop as defined in subdivision eight of this section.

4. "Commissioner" shall mean the commissioner of agriculture and markets.

5. "Person" means any individual, corporation, partnership, association, municipality, or other legal entity.

6. "Nonelective surgical procedure" means a surgical procedure that is necessary to preserve or restore the health of an animal, to prevent an animal from experiencing pain or discomfort, or to correct a condition that would interfere with an animal's ability to walk, run, jump, or otherwise function in a normal manner.

7. "Clinically ill" means an illness that is apparent to a veterinarian based on observation, examination, or testing of an animal or upon review of the medical records relating to the animal.

8. "Retail pet shop" means any for-profit place of business that sells or offers for sale animals to be kept as household pets, pet food or supplies, but shall not include breeders who sell or offer to sell directly to the consumer animals that are born and raised on the breeder's residential premises.

§ 753. Sale of animal. 1. If, within fourteen business days following the sale of an animal subject to this article or receipt of the written notice required by section seven hundred fifty-four of this article, whichever occurred last, a veterinarian of the consumer's choosing, licensed by a state certifies such animal to be unfit for purchase due to illness or the presence of symptoms of a contagious or infectious disease, or if, within one hundred eighty calendar days following such sale or receipt, whichever occurred last, a licensed veterinarian certifies such animal to be unfit for purchase due to a congenital malformation which adversely affects the health of the animal, the pet

dealer shall afford the consumer the right to choose one of the following options:

(a) The right to return the animal and receive a refund of the purchase price including sales tax and reasonable veterinary costs directly related to the veterinarian's certification that the animal is unfit for purchase pursuant to this section;

(b) The right to return the animal and to receive an exchange animal of the consumer's choice of equivalent value and reasonable veterinary costs directly related to the veterinarian's certification that the animal is unfit for purchase pursuant to this section; or

(c) The right to retain the animal and to receive reimbursement from a pet dealer for veterinary services from a licensed veterinarian of the consumer's choosing, for the purpose of curing or attempting to cure the animal. The reasonable value of reimbursable services rendered to cure or attempting to cure the animal shall not exceed the purchase price of the animal. The value of such services is reasonable if comparable to the value of similar services rendered by other licensed veterinarians in proximity to the treating veterinarian. Such reimbursement shall not include the costs of initial veterinary examination fees and diagnostic fees not directly related to the veterinarian's certification that the animal is unfit for purchase pursuant to this section.

The commissioner by regulations shall prescribe a form for, and the content of, the certification that an animal is unfit for purchase, which shall be provided by an examining veterinarian to a consumer upon the examination of an animal which is subject to the provisions of this section. Such form shall include, but not be limited to, information which identifies the type of animal, the owner, the date and diagnosis of the animal, the treatment recommended if any, and an estimate or the actual cost of such treatment. Such form shall also include the notice prescribed in section seven hundred fifty-four of this article.

The commissioner by regulations shall prescribe information which shall be provided in writing by the pet dealer to the consumer upon the sale of the animal. Such information shall include, but not be limited to, a description, including breed of the animal, the date of purchase, the name, address and telephone number of the consumer, and the amount

of the purchase. The pet dealer shall certify such information by signing the document in which it is contained.

2. The refund and/or reimbursement required by subdivision one of this section shall be made by the pet dealer not later than ten business days following receipt of a signed veterinary certification as herein required. Such certification shall be presented to the pet dealer not later than three business days following receipt thereof by the consumer.

2-a. Every pet dealer who sells an animal required to be vaccinated against rabies, pursuant to section twenty-one hundred forty-one of the public health law, to a consumer shall provide the consumer at point of sale with a written notice, provided by the department of health, summarizing rabies immunization requirements.

3. A veterinary finding of intestinal parasites shall not be grounds for declaring the animal unfit for sale unless the animal is clinically ill due to such condition. An animal may not be found unfit for sale on account of an injury sustained or illness contracted subsequent to the consumer taking possession thereof.

4. In the event that a pet dealer wishes to contest a demand for refund, exchange or reimbursement made by a consumer pursuant to this section, such dealer shall have the right to require the consumer to produce the animal for examination by a licensed veterinarian designated by such dealer. Upon such examination, if the consumer and the dealer are unable to reach an agreement which constitutes one of the options set forth in subdivision one of this section within ten business days following receipt of the animal for such examination, the consumer may initiate an action in a court of competent jurisdiction to recover or obtain such refund, exchange and/or reimbursement.

5. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

§ 753-a. Veterinarian examination. 1. Within five business days of receipt, but prior to the sale of any dog or cat, the pet dealer shall have a duly licensed veterinarian conduct an examination and tests appropriate to the breed and age to determine if the animal has any medical conditions apparent at the time of the examination that adversely affect the health of the animal. For animals eighteen months of age or older, such examination shall include a diagnosis of any congenital conditions that adversely affect the health of the animal. Any animal diagnosed with a contagious disease shall be treated and caged separately from healthy animals in accordance with section four hundred one of the agriculture and markets law.

2. All animals shall be vaccinated as required by state or local law. Veterinary care appropriate to the species shall be provided without undue delay when necessary. Each animal shall be observed each day by the pet dealer or by a person working under the pet dealer's supervision.

3. No pet dealer shall knowingly sell any animal that has a diagnosed congenital condition or contagious disease that adversely affects the health of the animal without first informing the consumer, in writing, of such condition.

§ 753-b. Information statement for purchaser. Every pet dealer shall deliver to the purchaser of an animal, at the time of sale, a written statement in a standardized form prescribed by the commissioner of agriculture and markets containing the following information:

1. For cats:

(a) The breeder's and, if applicable, broker's name and address, if known, or, if not known, the source of the cat. If the person from whom the cat was obtained is a dealer licensed by the United States department of agriculture, the person's name, address, and federal identification number;

(b) The date of the cat's birth, unless unknown because of the source

of the cat, the date the pet dealer received the cat, and the location where the cat was received;

(c) A record of immunizations and worming treatments administered, if any, to the cat as of the time of sale while the cat was in the possession of the pet dealer, including the dates of administration and the type of vaccines or worming treatments administered;

(d) A record of any known disease, sickness, or congenital condition that adversely affects the health of the cat at the time of sale;

(e) A record of any veterinary treatment or medication received by the cat while in the possession of the pet dealer and either of the following:

(i) A statement, signed by the pet dealer at the time of sale, indicating all of the following: (1) The cat has no known disease or illness; (2) The cat has no known congenital or hereditary condition that adversely affects the health of the cat at the time of sale; or

(ii) A record of any known congenital or hereditary condition, disease, or illness that adversely affects the health of the cat at the time of sale, along with a statement signed by a licensed veterinarian that authorizes the sale of the cat, recommends necessary treatment, if any, and verifies that the condition, disease or illness does not require hospitalization or non-elective surgical procedures, and is not likely to require hospitalization or non-elective surgical procedures in the future. A veterinarian statement is not required for intestinal or external parasites unless their presence makes the cat clinically ill or is likely to make the cat clinically ill. The statement shall be valid for fourteen business days following examination of the cat by the veterinarian.

2. For dogs:

(a) The breeder's and, if applicable, broker's name and address, if known, or if not known, the source of the dog. If the person from whom the dog was obtained is a dealer licensed by the United States department of agriculture, the person's name, address, and federal identification number;

(b) The date of the dog's birth and the date and location the pet dealer received the dog. If the dog is not advertised or sold as a purebred, registered or registrable, the date of birth may be

approximated if not known by the seller;

(c) The breed, sex, color and identifying marks at the time of sale. If the dog is from a United States department of agriculture licensed source, the individual identifying tag, tattoo, or collar number for that animal. If the breed is unknown or mixed, the record shall so indicate. If the dog is being sold as being capable of registration, the names and registration numbers of the sire and dam, and the litter number, if known;

(d) A record of inoculations and worming treatments administered, if any, to the dog as of the time of sale while the dog was in the possession of the pet dealer, including dates of administration and the type of vaccines and/or worming treatments administered;

(e) A record of any veterinary treatment or medication received by the dog while in the possession of the pet dealer and either of the following:

(i) A statement, signed by the pet dealer at the time of sale, indicating all of the following: (1) The dog has no known disease or illness; (2) The dog has no known congenital or hereditary condition that adversely affects the health of the dog at the time of the sale; or

(ii) A record of any known congenital or hereditary condition, disease or illness that adversely affects the health of the dog at the time of sale, along with a statement signed by a licensed veterinarian that authorizes the sale of the dog, recommends necessary treatment, if any, and verifies that the condition, disease, or illness does not require hospitalization or non-elective surgical procedures, and is not likely to require hospitalization or non-elective surgical procedures in the future. A veterinarian statement is not required for intestinal or external parasites unless their presence makes the dog clinically ill or is likely to make the dog clinically ill. The statement shall be valid for fourteen business days following examination of the dog by the veterinarian.

(f) Notification that dogs residing in New York state must be licensed, and that a license may be obtained from the municipality in which the dog resides.

3. A disclosure made pursuant to subdivision one or two of this section shall be signed by both the pet dealer certifying the accuracy

of the statement and the purchaser acknowledging receipt of the statement. At the time of sale, each pet dealer shall provide the purchaser with information on the value of spaying and neutering of dogs and cats.

4. Every pet dealer shall post conspicuously within close proximity to the cages of dogs and cats offered for sale, a notice containing the following language in one hundred-point type: "Information on the source of these dogs and cats and the veterinary treatments received by these dogs and cats is available for review by prospective purchasers."

§ 753-c. Animal pedigree registration. 1. Representation regarding animal's pedigree registration. Any pet dealer who states, promises, or represents that an animal is registered or capable of registration with an animal pedigree registry organization shall provide the purchaser with the appropriate documents necessary for such registration within one hundred twenty days following sale of the animal. If the purchaser notifies the pet dealer in writing on or before such time that he or she has not received the appropriate registration documents, the pet dealer shall have, in addition to the one hundred twenty days, sixty more days in which to provide the appropriate documents.

2. If a pet dealer fails to provide documents as required under subdivision one of this section, the purchaser, upon written notice to the pet dealer, may keep the animal and receive a partial refund of seventy-five percent of the purchase price, in which event the pet dealer shall not be required to provide registration documents. Acceptance by the purchaser of appropriate registration documents, whether or not within the time periods set forth in subdivision one of this section, shall be deemed a waiver of the right to a partial refund pursuant to this subdivision.

3. Registration notice-disclosure statement. (a) A pet dealer that sells animals registered or registrable with a pedigree registry shall post conspicuously within close proximity to those animals a notice that states: "Pedigree registration means that the particular registry

maintains information on the parentage and identity of the animal".

(b) For every animal sold by a pet dealer that is sold with the representation that the animal is registered or registrable with an animal pedigree registry organization, the following fully completed disclosure shall be made by the pet dealer in writing on a sheet separate from any other statement in substantially the following form: "Disclosure of Animal pedigree registration: Description of animal: The animal you are purchasing is registered/registrable (circle one) with the (enter name of registry). Registration means that (enter name of registry) maintains information regarding the parentage and identity of this animal. Persons buying animals represented by a pet dealer as being registrable are entitled to the papers necessary to effect such registration within 120 days of purchase. Failure to provide such papers entitles the purchaser to remedies under law. However, if the purchaser notifies the pet dealer within the 120 day period that he or she has not received such papers, the pet dealer shall have an additional 60 days commencing at the end of the 120 day period in which to provide the documents. Acknowledged: Date: Purchaser's Signature."

(c) The disclosure shall be signed and dated by the purchaser of the animal, acknowledging receipt of a copy of the statement. The pet dealer shall retain a copy of the signed disclosure.

§ 753-d. Construction with other laws. Nothing in this article shall be construed to (a) limit or restrict agents or officers of societies for the prevention of cruelty to animals or the police from enforcing articles twenty-six and twenty-six-A of the agriculture and markets law or any other law relating to the humane treatment of, or cruelty to, animals, (b) limit or restrict any municipality from enacting or enforcing any authorized local law, rule, regulation or ordinance of general application to businesses governing public health, safety or the rights of consumers, or (c) limit or restrict any municipality from enacting or enforcing a local law, rule, regulation or ordinance governing pet dealers, as such term is defined in this article, including a law, rule, regulation or ordinance governing the health or safety of animals acquired or maintained by pet dealers, the source of animals sold or offered for sale by pet dealers, and the spay or neuter

of such animals; provided, however, that any such local law, rule, regulation or ordinance shall be no less stringent than the applicable provisions of this article and may not result in essentially banning all sales of dogs or cats raised and maintained in a healthy and safe manner. Where any penalty may be authorized for the violation of such a local law, rule, regulation or ordinance, the authorized penalty in such local law, rule, regulation or ordinance may not exceed a civil penalty of up to five hundred dollars. Where a municipality adopts such a local law, rule, regulation or ordinance that is more stringent than the applicable provisions of this article, such municipality shall have sole responsibility for enforcement of such law, rule, regulation or ordinance that is more stringent than the applicable provisions of this article.

§ 753-e. Prohibited contracts. No contract for the purchase of a dog or a cat or the financing of such purchase shall include any provisions which authorize the use of a dog or a cat as security where such dog or cat may be repossessed by the seller or lender contingent on the purchaser making payments under such contract. Provided, however, nothing in this section shall prohibit the purchase of a dog or cat through an unsecured personal loan, nor be construed to limit the enforcement of other provisions of this article, article twenty-six-A of the agriculture and markets law or other rights or remedies which are otherwise available to all parties under any other law. The provisions of this section shall also apply to the sale of a dog or cat through an online website.

§ 753-f. Sale of dogs, cats and rabbits prohibited. 1. A retail pet shop as defined in this article shall not sell, lease, offer to lease, offer to sell, barter, auction, or otherwise transfer ownership of any dog, cat or rabbit. This section shall not be construed to prohibit a retail pet shop from collaborating with the following entities to provide space to showcase dogs, cats or rabbits owned by such entities for the purpose of adoption; any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, duly

incorporated animal protective association or other duly incorporated animal adoption or animal rescue organization that:

(a) is exempt from taxes pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended;

(b) is registered with the department pursuant to section four hundred eight of the agriculture and markets law;

(c) is not affiliated with, or housed on the premises of a breeder or broker that does not obtain dogs, cats or rabbits from a breeder or broker in exchange for payment or compensation; and

(d) does not resell dogs, cats or rabbits obtained from a breeder or broker or provide payment or compensation to such breeder or broker.

2. This section shall not prohibit a retail pet shop from receiving a reasonable rental fee for space to showcase dogs, cats or rabbits for adoption at such retail pet shop.

§ 754. Notice. Every pet dealer who sells an animal to a consumer shall post a notice clearly visible to the consumer and provide the consumer at the time of sale with a written notice, printed or typed, setting forth the rights provided under this article. Such notices shall be prescribed by the commissioner, but the written notice may be contained in a written contract, an animal history certificate or separate document, provided such notices are in ten-point boldface type. No pet dealer shall restrict or diminish by contract or otherwise, the rights provided under this article.

§ 755. Penalties and enforcement. 1. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to

the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not less than one hundred dollars and not more than one thousand dollars. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

1-a. Any person who violates any provision of section seven hundred fifty-three-a, seven hundred fifty-three-b, seven hundred fifty-three-c, or seven hundred fifty-three-e of this article may also be subject to denial, suspension, revocation of, or refusal to renew a pet dealer license, in accordance with the provisions of sections four hundred three and four hundred four of the agriculture and markets law.

2. The provisions of this article may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, or city corporation counsel, and all moneys collected thereunder shall be retained by such municipality or local government.

ARTICLE 35-E

CONSTRUCTION CONTRACTS

Section 756. Definitions.

756-a. Obligations.

756-b. Remedies.

756-c. Retention.

756-d. Exceptions for failure of lender to disburse funds.

756-e. Exceptions for lower Manhattan reconstruction.

756-f. Wage theft prevention and enforcement.

757. Void provisions.

758. Severability.

§ 756. Definitions. As used in this article: 1. "Construction contract" means a written or oral agreement for the construction, reconstruction, alteration, maintenance, moving or demolition of any building, structure or improvement, or relating to the excavation of or other development or improvement to land, and where the aggregate cost of the construction project including all labor, services, materials and equipment to be furnished, equals or exceeds one hundred fifty thousand dollars. For the purposes of this article a construction contract shall not include any such contract made and awarded by the state, any public department, any public benefit corporation, any public corporation or official thereof, or a municipal corporation or official thereof for construction, reconstruction, alteration, repair, maintenance, moving or demolition of any public works project nor any contract with a contractor or subcontractor which is part of such project; or any such contract the purpose of which is the construction, reconstruction, alteration, repair, maintenance, moving or demolition of an individual one, two or three family residential dwelling or a residential tract development of one hundred or less one or two family dwellings, or any residential construction project where the aggregate size of such project is four thousand five hundred square feet or less, or any residential project of fewer than seventy-five units which receives financial assistance from the federal government, the state or a municipal entity designed for households earning an average of one hundred twenty-five percent of the housing and urban development agency area median income.

2. "Contractor" means any person, firm, partnership, corporation, association, company, organization or other entity, including a construction manager, or any combination thereof, which enters into a construction contract with an owner.

3. "Owner" means any person, firm, partnership, corporation, company, association or other organization or other entity, or a combination of

any thereof, (with an ownership interest, whether the interest or estate is in fee, as vendee under a contract to purchase, as lessee or another interest or estate less than fee) that causes a building, structure or improvement, new or existing, to be constructed, altered, repaired, maintained, moved or demolished or that causes land to be excavated or otherwise developed or improved.

4. "Subcontractor" means any person, firm, partnership, corporation, company, association, organization or other entity, or any combination thereof, which is a party to a contract with a contractor or another subcontractor to perform a portion of work pursuant to a construction contract.

5. "Material supplier" means any person, firm, partnership, corporation, company, association, or other organization or entity, or any combination thereof, which is party to a contract with an owner, contractor or subcontractor, for the provision of construction materials and/or equipment necessary to the completion of a construction contract.

6. "Notice." Any notice by the owner, contractor or subcontractor under this article shall be sent by facsimile and reputable overnight courier and shall be deemed effective on the date sent.

§ 756-a. Obligations. It is the policy and purpose of this article to expedite payment of all monies owed to those who perform contracting services pursuant to construction contracts. Except as otherwise provided in this article, the terms and conditions of a construction contract shall supersede the provisions of this article and govern the conduct of the parties thereto.

1. Billing cycle. The parties to a construction contract may, by mutual agreement, establish a billing cycle for the submission of invoices requesting payment for work performed pursuant to a construction contract. In the absence of an agreement by the parties as to the billing cycle, the billing cycle shall be the calendar month within which the work is performed.

2. Invoices. (a) A contractor shall be entitled to invoice the owner for interim payments at the end of the billing cycle. A contractor shall be entitled to submit a final invoice for payment in full upon reaching substantial completion, as such term is defined in the contract or as it is contemplated by the terms of the contract.

(i) Upon delivery of an invoice and all contractually required documentation, an owner shall approve or disapprove all or a portion of such invoice within twelve business days. Owner approval of invoices shall not be unreasonably withheld nor shall an owner, in bad faith disapprove all or a portion of an invoice. If an owner declines to approve an invoice or a portion thereof, it must prepare and issue a written statement describing those items in the invoice that are not approved. An owner may decline to approve an invoice or portion of an invoice for:

- (1) Unsatisfactory or disputed job progress;
- (2) Defective construction work or material not remedied;
- (3) Disputed work materials;
- (4) Failure to comply with other material provisions of the construction contract;
- (5) Failure of the contractor to make timely payments for labor including collectively bargained fringe benefit contributions, payroll taxes and insurance, equipment and materials, damage to the owner, or reasonable evidence that the construction contract cannot be completed for the unpaid balance of the construction contract sum; or
- (6) Failure of the owner's architect to certify payment for any or all of the reasons set forth in this section so long as the reasons are included in the owner's written statement of disapproval.

(ii) Upon delivery of an invoice and all contractually required documentation, a contractor or subcontractor shall approve or disapprove all or a portion of such invoice within twelve business days. Contractor and subcontractor approval of invoices shall not be unreasonably withheld nor shall a contractor or subcontractor, in bad faith, disapprove all or a portion of an invoice. Nothing in this section shall prohibit the contractor or subcontractor, at the time of application to the owner or contractor, from withholding such application to the owner or contractor for payment to the subcontractor or material supplier for:

- (1) Unsatisfactory or disputed job progress;
- (2) Defective construction work or material not remedied;
- (3) Disputed work;
- (4) Failure to comply with other material provisions of the construction contract; or
- (5) Failure of the subcontractor to make timely payments for labor including collectively bargained fringe benefit contributions; payroll taxes and insurance, equipment and materials, damage to contractor or another subcontractor or material supplier, or reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(b) Nothing in this subdivision shall authorize the withholding of an application to the owner or contractor for the payment to a subcontractor or material supplier when due to a delay in job progress by the owner, contractor or another subcontractor or material supplier other than the applicant or applicant's subcontractor or material supplier.

3. Payment. (a) The owner's payment of a contractor's interim and final invoices shall be made on the basis of a duly approved invoice of work performed and the material supplied during the billing cycle.

(i) Unless the provisions of this article provide otherwise, the owner shall pay the contractor strictly in accordance with the terms of the construction contract.

(ii) Payment of an interim or final invoice shall be due from the owner not later than thirty days after approval of the invoice.

(iii) If payment by the owner is contingent upon lender approval, payment of a contractor's interim or final invoice or the amount of loan proceeds disbursed by the lender for payment of the contractor's interim or final invoice shall be due from the owner seven days after receipt by the owner of good funds except where the provisions of section seven hundred fifty-six-d of this article applies.

(iv) An owner may withhold from an interim payment only an amount that is sufficient to pay the costs and expenses the owner reasonably expects to incur in order to cure the defect or correct any items set forth in writing pursuant to subparagraph (i) of paragraph (a) of subdivision two of this section, or in the alternative, to withhold an amount not to

exceed the line item amount appearing in the agreed schedule of values together with any change orders, additions and/or deletions, if such schedule has been previously submitted, and/or an amount sufficient to cover liquidated damages as established in an agreed upon schedule in the construction contract.

(b) The contractor or subcontractor's payment of subcontractor or material supplier's interim or final invoice shall be made on the basis of a duly approved invoice of the work performed and materials supplied during the billing cycle.

(i) Unless the provisions of this article provide otherwise, the contractor or subcontractor shall pay the subcontractor strictly in accordance with the terms of the construction contract. Performance by a subcontractor in accordance with the provisions of its contract shall entitle it to payment from the party with which it contracts.

Notwithstanding this article, where a contractor enters into a construction contract with a subcontractor as agent for a disclosed owner, the payment obligation shall flow directly from the disclosed owner as principal to the subcontractor and through the agent.

(ii) When a subcontractor has performed in accordance with the provisions of its construction contract, the contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportionate amount of funds received from the owner for each subcontractor's work and materials based on work or services provided under the construction contract, seven days after receipt of good funds for each interim or final payment, provided all contractually required documentation and waivers are received.

(iii) A contractor or subcontractor may withhold amounts received from an owner in connection with an interim payment due to a subcontractor or material supplier only such sums that are sufficient to pay the direct expenses as are reasonable to correct deficiencies identified pursuant to subparagraph (ii) of paragraph (a) of subdivision two of this section, or in the alternative, to withhold an amount not to exceed the line item amount appearing in the agreed schedule of values, together with any change order, additions or deletions, if such schedule has been previously submitted.

(iv) If a contractor, after submitting an invoice to an owner under a construction contract, but before making a payment to a subcontractor or

material supplier for the subcontractor's or material supplier's performance covered by such invoice, discovers that all or a portion of the payment otherwise due to the subcontractor or material supplier is subject to withholding from the subcontractor or material supplier in accordance with the construction contract and the conditions set forth in subparagraph (ii) of paragraph (a) of subdivision two of this section, then the contractor shall:

(1) As soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for a subcontractor or material supplier payment, furnish to the subcontractor or material supplier and the owner written notice of withholding specifying conditions for withholding payment and identifying the amount to be withheld;

(2) Reduce the subcontractor's or material supplier's interim payment by an amount not to exceed the amount specified in the notice of withholding; and

(3) Pay the subcontractor or material supplier amounts withheld within seven days after correction of the identified subcontractor or material supplier performance deficiency and receipt of all required documentation and waivers, unless the funds therefor must be obtained from the owner's next interim payment due to a reduction in the contractor's billing directly resulting from the subcontractor's or material supplier's performance deficiency identified in the notice of withholding.

(c) A written notice of any withholding under this subdivision shall be issued to a subcontractor or material supplier specifying:

(i) The amount to be withheld;

(ii) The specific causes for withholding under the terms of the construction contract and pursuant to this subdivision;

(iii) The remedial actions necessary to be taken by the subcontractor or material supplier in order to receive payments of the amounts withheld; and

(iv) The documentation and waivers required.

4. Notice. A contractor or subcontractor shall disclose to a subcontractor, at the time the construction subcontract is entered into, the due date for receipt of payments to the contractor or subcontractor from the owner or the contractor as the case may be. If a contractor or

subcontractor fails to accurately disclose the due date to a subcontractor, the contractor or subcontractor shall be obligated to pay the subcontractor as though the due dates established in paragraph (a) of subdivision three of this section were met by the owner. In addition, upon written request of a subcontractor, the owner shall provide notice to such subcontractor within five days of making any interim or final payment to the contractor. The subcontractor's request shall remain in effect for the duration of the subcontractor's work on the project.

§ 756-b. Remedies. 1. (a) If any interim or final payment to a contractor is delayed beyond the due date established in paragraph (a) of subdivision three of section seven hundred fifty-six-a of this article, the owner shall pay the contractor interest beginning on the next day at the rate of one percent per month or fraction of a month on the unpaid balance, or at a higher rate consistent with the construction contract.

(b) Notwithstanding any contrary agreement, if any interim or final payment to a subcontractor is delayed beyond the due date established in paragraph (b) of subdivision three of section seven hundred fifty-six-a of this article the contractor or subcontractor shall pay its subcontractor interest, beginning on the next day, at the rate of one percent a month or fraction of a month on the unpaid balance, or at a higher rate consistent with the construction contract.

2. (a) (i) If an owner fails to approve or disapprove an invoice within the time limits established in subparagraph (i) of paragraph (a) of subdivision two of section seven hundred fifty-six-a of this article, or to pay the contractor the undisputed invoice amount within the time limits provided by paragraph (a) of subdivision three of section seven hundred fifty-six-a of this article, the contractor may suspend contractually required performance, only after providing the owner written notice and an opportunity to cure consistent with subparagraph (ii) of this paragraph.

(ii) A contractor intending to suspend performance on the construction contract for failure of the owner to make timely payments or approvals within the time limits provided by this article must provide the owner

written notice at least ten calendar days before the contractor's intended suspension. Such notice shall:

(A) inform the owner that payment for undisputed invoice amounts have not been received; and

(B) state the intent of the contractor to suspend performance for non-payment.

If after the tenth calendar day following written notice the owner has not cured the deficiency, the contractor may suspend performance.

(iii) A contractor shall not be deemed in breach of the construction contract for suspending performance pursuant to this section.

(b)(i) A subcontractor may suspend contractually required performance if any or all of the occurrences outlined in clauses (A), (B) and (C) of this subparagraph occur and only after providing written notice and an opportunity to cure consistent with subparagraph (ii) of this paragraph:

(A) If an owner fails to make timely payments for undisputed invoices within the time limits established by subdivision three of section seven hundred fifty-six-a of this article for the subcontractor's work and the contractor also fails to pay the subcontractor for the approved work;

(B) If an owner pays the contractor within the time limits established by subdivision three of section seven hundred fifty-six-a of this article for undisputed invoices for work performed by the subcontractor but the contractor fails to make payment to the subcontractor within the time frames established by this article for the subcontractor's work;

(C) If an owner fails to approve or disapprove a portion of contractor's invoice for work performed by the subcontractor within the time limits established in paragraph (a) of subdivision two of section seven hundred fifty-six-a of this article;

(D) If a contractor or subcontractor fails to approve or disapprove a subcontractor's invoice within the time limits established in paragraph (b) of subdivision three of section seven hundred fifty-six-a of this article; or

(E) If an owner fails to approve portions of the contractors' billing for work performed by the subcontractor within the time limits established by this article and the reasons for such failure are not the fault of or directly related to the subcontractor's work.

(ii) A subcontractor intending to suspend performance for failure to receive timely payments within the time limits established pursuant to

this article must provide both the owner and the contractor written notice at least ten calendar days before the subcontractor's intended suspension. Such notice shall:

(A) inform the owner and the contractor that payment for undisputed billing amounts have not been received; and

(B) state the intent of the contractor to suspend performance for non-payment.

If after the tenth calendar day following written notice either the owner or the contractor has not cured the deficiency, the subcontractor may suspend performance and/or attempt to resolve in compliance with subdivision three of this section.

(iii) A subcontractor shall not be deemed in breach of the construction contract for suspending performance pursuant to this section.

(iv) (A) A contractor or subcontractor that suspends performance as provided in this section shall not be required to furnish further labor, materials or services until the contractor or subcontractor is paid the undisputed invoice amount at the time period for completion as provided in the construction contract, or a final determination has been made in compliance with subdivision three of this section and complied with. All of the time frames established within this section shall be extended for the length of time performance was suspended. Payment of documented actual costs incurred for re-mobilization resulting from suspension shall be negotiated between the parties.

(B) In the event of suspension of a construction contract, as provided in this article, all materials, equipment, tools, construction equipment and machinery located at the job site shall remain the sole and exclusive property of the contractor or subcontractor and shall be removed from the job site, if necessary, within a reasonable period of time. Access to the contractor's or subcontractor's property shall not be unreasonably withheld.

3. (a) Upon receipt of written notice of a complaint (i) that an owner has violated the provisions of this article; (ii) that a contractor has violated the provisions of this article; (iii) where a contractor alleges a subcontractor has violated the provisions of this article;

(iv) where a subcontractor alleges a contractor has violated the provisions of this article; (v) where a subcontractor alleges that another subcontractor has violated the provisions of this article; (vi) where a contractor or subcontractor alleges a material supplier has violated the provisions of this article; or (vii) where a material supplier alleges a contractor or subcontractor has violated the provisions of this article; the parties shall attempt to resolve the matter giving rise to such complaint.

(b) The written notice required under this section shall be delivered at or sent by any means that provides written, third-party verification of delivery to the last business address known to the party giving notice.

(c) If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the aggrieved party may refer the matter, not less than fifteen days of the receipt of third party verification of delivery of the complaint, to the American Arbitration Association for an expedited arbitration pursuant to the Rules of the American Arbitration Association.

(d) Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the parties his or her opinion and award regarding the alleged violation.

(e) The award of the arbitrator shall be final and may only be vacated or modified as provided in article seventy-five of the civil practice law and rules upon an application made within the time provided by section seventy-five hundred two of the civil practice law and rules.

§ 756-c. Retention. By mutual agreement of the relevant parties an owner may retain no more than five per centum of the contract sum as retainage. A contractor or subcontractor may also retain no more than five per centum for retainage and in no case shall retainage exceed the actual percentage retained by the owner. Retainage shall be released by the owner to the contractor no later than thirty days after the final approval of the work under a construction contract. In the event that an owner fails to release retainage as required by this article, or the contractor or subcontractor fails to release a proportionate amount of retainage to the relevant parties after receipt of retainage from the

owner, the owner, contractor, or subcontractor, as the case may be, shall be subject to the payment of interest at the rate of one percent per month on the date retention was due and owing.

§ 756-d. Exceptions for failure of lender to disburse funds. The date of payment required by the owner, the contractor and/or subcontractor pursuant to section seven hundred fifty-six-a of this article, shall be extended to the seventh day after the owner, contractor or subcontractor, as the case may be, receives loan proceeds necessary to make such payment in the event that:

1. the owner, contractor or subcontractor, as the case may be, has obtained a loan intended to pay for all or part of the construction contract;

2. the owner, contractor or subcontractor, as the case may be, has timely requested disbursement of proceeds from that loan; and

3. the lender is legally obligated to disburse such proceeds to the owner, contractor or subcontractor, as the case may be, but has failed to do so in a timely manner.

§ 756-e. Exceptions for lower Manhattan reconstruction. The provisions of this article shall not apply to any construction contracts for the reconstruction, alteration, moving or demolition of any building, structure or improvement, or relating to the excavation of or any development or improvement to land in and around the world trade center necessitated by the September eleventh, two thousand one terrorist attack on such center.

§ 756-f. Wage theft prevention and enforcement. 1. Upon request of a contractor, or a contractor's subcontractor, to any subcontractor which performs any portion of work within the scope of the contractor's construction contract with an owner, such subcontractor shall provide

certified payroll records which, at a minimum, contain all lawfully required information required by articles six and nineteen of the labor law for all employees providing labor on the project. Such payroll records shall contain sufficient information to apprise the contractor or subcontractor of such subcontractor's payment status in paying wages and benefits, as defined by section one hundred ninety-eight-c of the labor law, including payments or contributions on the employee's behalf. Payroll records shall be marked or redacted to an extent only to prevent disclosure of an individual's full social security number but shall provide the last four digits of the social security number.

2. Upon request of a contractor, or a contractor's subcontractor, to any subcontractor which performs any portion of work within the scope of the contractor's construction contract with an owner, such subcontractor shall provide: (a) the names of all workers of such subcontractor on the project, including the names of all those designated as independent contractors; (b) when applicable, the name of the contractor's subcontractor with whom such subcontractor is under contract; (c) the anticipated contract start date; (d) the scheduled duration of work; (e) when applicable, local unions with whom such subcontractor is a signatory contractor; and (f) the name, address and phone number of a contact for such subcontractor.

3. Failure to timely comply with a request for information as provided herein shall be a basis for a contractor to withhold payments owed to a subcontractor at any tier.

4. Unless otherwise required by law, a contractor or subcontractor shall not communicate an individual's personal identifying information to the general public. For purposes of this section, "personal identifying information" shall have the same definition as provided for in paragraph (d) of subdivision one of section two hundred three-d of the labor law.

5. For the purposes of this section, "contractor" means any person, firm, partnership, corporation, association, company, organization or other entity, including a construction manager, general or prime

contractor, joint venture, or any combination thereof, which enters into a construction contract with an owner.

6. For the purposes of this section, "owner" means any person, firm, partnership, corporation, company, association or other organization or other entity, or a combination of any thereof, (with an ownership interest, whether the interest or estate is in fee, as vendee under a contract to purchase, as lessee or another interest or estate less than fee) that causes a building, structure or improvement, new or existing, to be constructed, altered, repaired, maintained, moved or demolished or that causes land to be excavated or otherwise developed or improved.

7. For the purposes of this section, "subcontractor" means any person, firm, partnership, corporation, company, association, organization or other entity, or any combination thereof, which is a party to a contract with a contractor, and/or party to a contract with the contractor's subcontractors at any tier, to perform any portion of work within the scope of the contractor's construction contract with the owner, including where the subcontractor has no direct privity of contract with the contractor.

§ 757. Void provisions. The following provisions of construction contracts shall be void and unenforceable:

1. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract, with the exception of a contract with a material supplier, that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state.

2. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract stating that a party to the contract cannot suspend performance under the contract if another party to the contract fails to make prompt payments under the contract.

3. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract stating that expedited arbitration as expressly provided for and in the manner established by section seven hundred fifty-six-b of this article is unavailable to one or both parties.

4. A provision, covenant, clause or understanding in collateral to or affecting a construction contract establishing payment provisions which differ from those established in subdivision three of section seven hundred fifty-six-a and section seven hundred fifty-six-b as applicable.

5. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract requiring retainage as expressly provided for by section seven hundred fifty-six-c of this article in an amount exceeding five percent of the contract sum.

§ 758. Severability. If any clause, sentence, paragraph, subdivision or part of this article, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this article, or in its application to the person or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

* ARTICLE 35-F

FIRE SPRINKLER INFORMATION

Section 759. Definitions.

759-a. Disclosure of automatic fire sprinkler system information.

* NB Repealed upon provisions set forth in § 3 of chapter 201 of 2014

* **§ 759. Definitions.** When used in this article, the following terms

shall have the following meanings:

1. "Builder" means any person, corporation, partnership or other entity contracting with an owner for the construction of a one- or two-family residential dwelling having less than three stories.

2. "Buyer" means any person or persons who have contracted or who intend to contract with a builder for the construction of a one- or two-family residential dwelling having less than three stories.

* NB Repealed upon provisions set forth in § 3 of chapter 201 of 2014

*** § 759-a. Disclosure of automatic fire sprinkler system information.**

A builder of a one- or two-family residential dwelling having less than three stories, prior to entering into a contract for construction of such dwelling with a buyer, shall provide the buyer with a copy of written materials prepared by the office of fire prevention and control pursuant to subdivision twenty-one of section one hundred fifty-six of the executive law, which details the benefits of and includes factors that can affect the costs associated with the installation and maintenance of an automatic fire sprinkler system. The builder shall further provide an estimate of the cost for the installation of an automatic fire sprinkler system in such dwelling. Upon request of the buyer, the builder shall, at the buyer's expense, install an automatic fire sprinkler system in such one- or two-family residential dwelling having less than three stories.

* NB Repealed upon provisions set forth in § 3 of chapter 201 of 2014

ARTICLE 36

PROTECTION OF UNDERGROUND FACILITIES

Section 760. Definitions.

761. One-call notification systems.

762. Duties of local governments.

763. Duties of operators.

764. Duties of excavators.

765. Penalties and liabilities.

766. Rules and regulations.

767. Separability.

§ 760. Definitions. When used in this article, the following terms shall have the following meanings.

1. "Person" means any individual, firm, corporation, association or partnership, cooperative association, joint venture, joint stock association, business trust, their lessees, trustees or receivers, governmental unit or public authority whether or not incorporated.

2. "Excavation" means an operation for the purpose of movement or removal of earth, rock or other materials in or on the ground by use of mechanized equipment or by blasting, and includes, but is not limited to, auguring, backfilling, drilling, grading, plowing in, pulling in, trenching and tunneling; provided, however, that the movement of earth by tools manipulated only by human or animal power and the tilling of soil for agricultural purposes shall not be deemed excavation.

3. "Demolition" means the wrecking, razing, rending, moving or removing of any structure.

4. "Underground facilities" means pipelines, conduits, ducts, cables, wires, manholes, vaults or other such facilities or their attachments, which have been installed underground by an operator to provide services or materials. Such term shall not include oil and gas production and gathering pipeline systems used primarily to collect oil or gas production from wells.

5. "Excavator" means a person who is engaged in a trade or business which includes the carrying out of excavation or demolition; provided, however, that an individual employed by an excavator, and having no supervisory authority, other than the routine direction of employees, over an excavation or demolition, shall not be deemed an excavator for the purposes of this article. In construing and enforcing the provisions of this article, the act of any employee or agent of any excavator

acting within the scope of his or her official duties or employment shall be deemed to be the act of such excavator.

6. "Operator" means a person who operates an underground facility or facilities to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or telegraph communications, cable television, sewage removal, traffic control systems, or water.

7. "Damage" means an impact upon or removal of support from an underground facility consequent to excavation or demolition which, according to the operating practices of the operator, would necessitate repair of such facility, destruction of any underground facility or its protective coating, housing or other protective device, and impact with or severance of an underground facility.

8. "One-call notification system" means an organization among whose purposes is establishing and carrying out procedures and programs to protect underground facilities from damage due to excavation and demolition including, but not limited to, receiving notices of intent to perform excavation and demolition, and transmitting the notices to one or more of its member operators of underground facilities in the specified area.

9. "Local government" means a county, town, city or village.

§ 761. One-call notification systems. 1. Participation. Every operator shall participate in and be responsible for the administration of a one-call notification system. Any other persons interested in protection of underground facilities may also participate in the system.

2. Duties. The system shall:

a. Receive notices from excavators of proposed excavation and demolition activities and transmit the information contained in such notices to every member that operates an underground facility in the

area of the proposed activities;

b. Establish operating procedures, the technology needed for the system, a toll-free telephone number that operates on a twenty-four hour, seven days a week basis, a notification process and a method for assessing costs;

c. Maintain adequate records to document compliance with the requirements of this article, including records of notices, which can be obtained upon request of any person;

d. Provide local governments with the telephone number of the system and a sample or model notice informing operators and excavators of the system and their responsibilities relating to protection of underground facilities; cooperate with local governments to encourage their participation in the system to assure that when permits involving excavation and demolition are issued, excavators and operators receive information about the system and about their obligations to protect underground facilities;

e. Conduct a customer education program that includes publicizing the purpose of the one-call system and its programs, and the obligations of excavators and operators to protect underground facilities;

f. Provide services and programs applicable in all areas of the state in which underground facilities are located; and

g. Conduct programs to provide training and education to operators and excavators on the requirements and procedures for protection of underground facilities.

h. Provide any entity which leases excavation equipment to the public with the telephone number of the system and a sample or model notice informing lessees of excavation equipment of the system and their responsibilities relating to the protection of underground facilities; cooperate with entities that lease excavation equipment to encourage their participation in the system to ensure that when lessees lease

excavation equipment, such lessees receive information about the system and about their obligation to protect underground facilities.

3. Costs. The costs of operating the system shall be apportioned equitably among the members of the system, with the exception of local governments and public authorities that operate underground facilities and any operator of underground facilities that provides water service to less than four thousand customers. In apportioning such costs, the system shall take into account the number of customers, extent of underground facilities and frequency of use.

4. Consumer education programs. Each operator of an underground gas pipeline or hazardous liquid petroleum facility shall on its own initiative, or through a one-call identification system, conduct a program to educate the public on the possible hazards associated with damage to facilities and on the importance of reporting gas odors and leaks. The system may develop materials suitable for use in such programs.

§ 762. Duties of local governments. The local governments shall display in an appropriate location and provide a notice to each applicant for an excavation and demolition permit that informs them about their responsibilities under the law and regulations to protect underground facilities and the existence, operation and programs of the one-call notification system. Any local government which contracts for excavation of underground facilities shall require the excavator to have completed the training and education program provided by the one-call notification system pursuant to this article or any other provider authorized by the public service commission to administer such training and education program. Such training and education program shall be made available in-person and online. The cost of such training and education program shall not exceed twenty-five dollars and shall not be required more than once per five year period.

§ 763. Duties of operators. 1. Every operator shall participate in a

one-call notification system.

2. Upon receipt of the notification provided for by this article either directly from the excavator or from the one-call notification system and pursuant to the rules and regulations adopted by the public service commission pursuant to section one hundred nineteen-b of the public service law, an operator shall advise the excavator in a timely manner of those of its underground facilities that will be affected by the proposed excavation or demolition.

3. The operator shall accurately and with due care designate within a reasonable period of time the location of its underground facilities in the manner and during the time period set forth in the rules and regulations adopted by the public service commission pursuant to section one hundred nineteen-b of the public service law.

4. Any operator which performs or contracts for the excavation of underground facilities shall require the excavator to have completed the training and education program provided by the one-call notification system pursuant to this article or any other provider authorized by the public service commission to administer such training and education program. Such training and education program shall be made available in-person and online. The cost of such training and education program shall not exceed twenty-five dollars and shall not be required more than once per five year period. In the case of an operator subject to the jurisdiction of the public service commission, a training and education program that is subject to audit by the department of public service shall also satisfy the requirement herein.

§ 764. Duties of excavators. 1. No excavator shall commence or engage in any excavation or demolition unless and until timely notice is served of the location and date of the proposed excavation or demolition as provided in this article to operators who maintain underground facilities in the area in which the excavation or demolition is to take place. The provision of such notice to a one-call notification system is deemed to be compliance with this section; and notice to the one-call

notification center is notice to each member. Such notice shall be served in accordance with the rules and regulations adopted by the public service commission pursuant to section one hundred nineteen-b of the public service law.

2. Prior to any excavation or demolition, the excavator shall verify the precise location of the underground facilities in a manner set forth in the rules and regulations adopted by the public service commission pursuant to section one hundred nineteen-b of the public service law.

3. An excavator may proceed with such work if he has received notice from each operator notified by the one-call system that it has no underground facility in or within fifteen feet of the proposed work area or that the operator marked any underground facility located in or within fifteen feet of the proposed work area.

4. An excavator engaged in excavation or demolition shall be responsible for protecting and preserving the staking, marking or other designation by the operator until no longer required for proper and safe excavation or demolition work at or near the underground facility, maintain clearance between the underground facility, and the cutting edge or point of any equipment to avoid damage to the underground facility and provide support to and prevent damage to any underground facility or its protective coating, in the means and according to the methods set forth in the rules and regulations adopted by the public service commission pursuant to section one hundred nineteen-b of the public service law.

5. In the event of contact with and/or damage to an underground facility, the excavator shall immediately notify the operator of the facility and no backfilling shall be done by the excavator until inspection and/or repairs have been made by the operator and no repairs shall be undertaken by the excavator until authorized by the operator. In the event of an electrical short or the escape of gas or hazardous fluids endangering life, the excavator shall immediately notify the operator of the electric, gas or hazardous liquid underground facility and 911, and all persons who might be endangered and assist in the

evacuation of such persons.

§ 765. Penalties and liabilities. 1. Civil penalties. a. Failure to comply with any provision of this article shall subject an excavator or an operator to a civil penalty of up to four thousand three hundred seventy-five dollars for the first violation and up to an additional seventeen thousand five hundred dollars for each succeeding violation that occurs within a twelve month period.

b. The penalties provided for by this article shall not apply to an excavator who damages an underground facility due to the failure of the operator to comply with any of the provisions of this article nor shall in such instance the excavator be liable for repairs as prescribed in subdivision four of this section.

c. An action to recover a penalty under this article may be brought in the supreme court in the judicial district in which the violation was alleged to have occurred which shall be commenced and prosecuted by the attorney general. The public service commission shall, pursuant to section one hundred nineteen-b of the public service law, forward to the attorney general its determination of the amount of the penalty for violations or rules and regulations adopted to implement the requirements of this article. Upon receipt of such determination, the attorney general may commence an action to recover such penalty. All moneys recovered in any such action, together with the costs thereof, and all moneys recovered as the result of any such public service commission determination shall be paid into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

2. Except as otherwise provided in this subdivision, nothing in this article shall impair, limit or reduce the statutory, common law or contractual duties or tort or other liability of any excavator excavating or demolishing in the vicinity of underground facilities.

3. Any excavator engaging in or proposing to engage in excavation or

demolition in a negligent or unsafe manner, which has resulted in or is likely to result in damage to underground facilities in such a manner that life, property or the continuation of operator service is endangered, may be enjoined from such excavation or demolition or any aspect thereof upon application of the operator owning the facilities or the attorney general made in supreme court having jurisdiction in the county wherein the excavation or demolition or proposed excavation or demolition is to take place. Three or more instances of damage by an excavator to underground facilities in the course of the entire self-same excavation or demolition activity shall be prima facie grounds for enjoining the excavator from further performance of the excavation or demolition activity.

4. In the event that, as a result of a violation of any of the provisions of this article by an excavator, it is necessary that an operator make any repair to or provide new support to an underground facility, the excavator shall be liable to the operator for reasonable costs so incurred.

§ 766. Rules and regulations. The public service commission shall adopt rules and regulations to implement and enforce the provisions of this article pursuant to section one hundred nineteen-b of the public service law.

§ 767. Separability. If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of the article and the application of such provision to other persons or circumstance shall not be affected thereby.

ARTICLE 36-A

HOME IMPROVEMENT CONTRACTS

Section 770. Definitions.

771. Contract provisions.

771-a. Responsibilities of home improvement contractors.

- 771-b. Responsibilities of roofing contractors.
- 772. Penalty for fraud.
- 773. Violations.
- 774. Action by the attorney general.
- 775. Applicability.
- 776. Severability.

§ 770. Definitions. As used in this article, the following terms, unless the context requires otherwise, shall have the following meanings:

1. "Person" means a natural person.

2. "Owner" means any homeowner, co-operative shareholder owner, or residential tenant, or any person who purchases a custom home as defined in this section.

3. "Home improvement" means the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, siding, insulation, roofing, windows, terraces, patios, landscaping, fences, porches, garages, solar energy systems, flooring, basements, and other improvements of the residential property and all structures or land adjacent to it. "Home improvement" shall also mean the construction of a custom home, the installation of home improvement goods or the furnishing of home improvement services. "Home improvement" shall not include:

(a) the sale or construction of a new home, other than a custom home as defined in this section;

(b) the sale of goods by a seller who neither arranges to perform nor performs, directly or indirectly, any work or labor in connection with the installation or application of the goods;

(c) the sale or installation of appliances, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers or dryers, which are designed to be removable from the premises

without material alteration thereof;

(d) the sale or installation of decorative goods or services, such as draperies and carpets; or

(e) the performance of repairs, replacements, or other services pursuant to an express or implied warranty, or a maintenance agreement as defined in section three hundred ninety-five-a of this chapter.

4. "Home improvement goods or services" means goods and services which are bought in connection with home improvement. Such home improvement goods and services include burglar alarms, texture coating, fencing, air conditioning, heating equipment, and any other goods which, at the time of sale or subsequently, are to be so affixed to real property by the home improvement contractor as to become a part of real property whether or not severable therefrom.

5. "Home improvement contractor" means a person, firm or corporation which owns or operates a home improvement business or who undertakes, offers to undertake or agrees to perform any home improvement for a fee and for whom the total cash price of all of his home improvement contracts with all his customers exceeds one thousand five hundred dollars during any period of twelve consecutive months. Home improvement contractor does not include a person, firm, corporation, landlord, cooperative corporation, condominium board of managers, joint tenant or co-tenant that owns, in whole or in part, the property to be improved.

6. "Home improvement contract" means an agreement for the performance of home improvement, between a home improvement contractor and an owner, and where the aggregate contract price specified in one or more home improvement contracts, including all labor, services and materials to be furnished by the home improvement contractor, exceeds five hundred dollars.

7. "Custom home" means a new single family residence to be constructed on premises owned of record by the purchaser at the time of contract, provided that such residence is intended for residential occupancy by such purchaser and the contract of sale is entered into on or after the first day of March, nineteen hundred ninety.

8. "Roofing contractor" means a person, firm or corporation, including but not limited to, a person that is a nonresident roofing contractor, independent contractor, day laborer or subcontractor engaged in the business of roofing, gutter, downspout or siding services for a fee or who offers to engage in or solicits roofing-related services, including construction, installation, renovation, repair, maintenance, alteration or waterproofing. This definition shall not include a person engaged in the demolition of a structure or the cleanup of construction waste and debris that contains roofing material, nor a person engaged in building a new home or housing development. "Roofing contractor" shall not include:

(a) an owner or farm property owner who physically performs, or has employees who perform repairing, remodeling, altering, converting, or modernizing of, or adding to, their own dwelling or another structure located on the property owned by the person without the assistance of a roofing contractor.

(b) any authorized employee or representative of the United States government, the state of New York, or any political subdivision performing the repairing, remodeling, altering, converting, or modernizing of, or adding to, government property.

§ 771. Contract provisions. 1. Every home improvement contract subject to the provisions of this article, and all amendments thereto, shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain the following:

(a) The name, address, telephone number and license number, if applicable, of the contractor.

(b) The approximate dates, or estimated dates, when the work will begin and be substantially completed, including a statement of any contingencies that would materially change the approximate or estimated completion date. In addition to the estimated or approximate dates, the contract shall also specify whether or not the contractor and the owner have determined a definite completion date to be of the essence.

(c) A description of the work to be performed, the materials to be provided to the owner, including make, model number or any other

identifying information, and the agreed upon consideration for the work and materials.

(d) A notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract or the materialman who provides home improvement goods or services and is not paid may have a claim against the owner which may be enforced against the property in accordance with the applicable lien laws. Such home improvement contract shall also contain the following notice to the owner in clear and conspicuous bold face type:

"Any contractor, subcontractor, or materialman who provides home improvement goods or services pursuant to your home improvement contract and who is not paid may have a valid legal claim against your property known as a mechanic's lien. Any mechanic's lien filed against your property may be discharged. Payment of the agreed-upon price under the home improvement contract prior to filing of a mechanic's lien may invalidate such lien. The owner may contact an attorney to determine his rights to discharge a mechanic's lien".

(e) A notice to the owner purchasing the home improvement that, except as otherwise provided in paragraph (g) of this subdivision, the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with subdivision four of section seventy-one-a of the lien law and that, in lieu of such deposit, the home improvement contractor may post a bond, contract of indemnity or irrevocable letter of credit with the owner guaranteeing the return or proper application of such payments to the purposes of the contract.

(f) If the contract provides for one or more progress payments to be paid to the home improvement contractor by the owner before substantial completion of the work, a schedule of such progress payments showing the amount of each payment, as a sum in dollars and cents, and specifically identifying the state of completion of the work or services to be performed, including any materials to be supplied before each such progress payment is due. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials to be purchased, or expenses for which the contractor would be obligated at the time of payment.

(g) If the contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been

performed or charges for materials that have been supplied prior to the time that payment is due, such payments for such work or materials shall not be deemed to be progress payments for the purposes of paragraph (f) of this subdivision, and shall not be required to be deposited in accordance with the provisions of paragraph (e) of this subdivision.

(h) A notice to the owner that, in addition to any right otherwise to revoke an offer, the owner may cancel the home improvement contract until midnight of the third business day after the day on which the owner has signed an agreement or offer to purchase relating to such contract. Cancellation occurs when written notice of cancellation is given to the home improvement contractor. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of the owner not to be bound. Notwithstanding the foregoing, this paragraph shall not apply to a transaction in which the owner has initiated the contact and the home improvement is needed to meet a bona fide emergency of the owner, and the owner furnishes the home improvement contractor with a separate dated and signed personal statement in the owner's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the home improvement contract within three business days. For the purposes of this paragraph the term "owner" shall mean an owner or any representative of an owner.

* (i) Before a contractor or subcontractor begins work on a home, such writing shall disclose to the homeowner the existence of a property and/or casualty insurance policy that covers the scope of such contractor or subcontractor's employment should an insurance claim be filed resulting from losses arising from the work at such property. Such disclosure shall also include the contact information of the insurance company providing such property and/or casualty insurance, including a phone number and address.

* NB Effective April 23, 2022

2. The writing shall be legible, in plain English, and shall be in such form to describe clearly any other document which is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.

The writing may also contain other matters agreed to by the parties to the contract.

§ 771-a. Responsibilities of home improvement contractors. No home improvement contractor shall engage in any activity, transaction, or course of business or pay or receive any fee, payment, money, or other thing of value in connection with the financing of a home improvement contract without fully disclosing such activity, transaction, or course of business and any fees, payment, or other thing of value paid or to be paid in connection therewith, and without having obtained the agreement in writing from all parties to the transaction to such activity and the payment therefor.

§ 771-b. Responsibilities of roofing contractors. 1. Every roofing contractor shall enter into a written contract with an owner pursuant to all of the provisions of section seven hundred seventy-one of this article before engaging in the business of roofing, gutter, downspout or siding services for such owner. In addition, the contract entered into under this section shall contain the name of the insurer, type of insurance coverage as required by subdivision nine of this section, and the insurance policy limits obtained by the roofing contractor.

2. A roofing contractor shall not advertise or promise to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of goods or services. As used in this section, a promise to pay or rebate includes granting any allowance or offering any discount against the fees to be charged or paying the insured or any person directly or indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason.

3. An owner who has entered into a written contract with a roofing contractor to provide goods or services to be paid under a property and casualty insurance policy may cancel the contract prior to midnight on the third business day after the insured party has received written

notice from the insurer that all or any part of the claim or contract is not a covered loss under the insurance policy. Cancellation occurs when written notice of cancellation is given to the roofing contractor. Notice of cancellation, if given by registered or certified mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of the owner not to be bound. Notwithstanding the foregoing, this subdivision shall not apply to a transaction in which the owner has initiated the contact and the roofing contract is needed to meet a bona fide emergency of the owner, and the owner furnishes the roofing contractor with a separate dated and signed personal statement in the owner's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the roofing contract within three business days. For the purposes of this subdivision the term "owner" shall mean an owner or any representative of an owner.

4. Within ten days after a contract referred to in subdivision three of this section has been cancelled, the roofing contractor shall tender to the owner any payments, partial payments, or deposits made and any note or other evidence of indebtedness. If, however, the roofing contractor has performed any emergency services, acknowledged by the owner in writing to be necessary to prevent damage to the premises, the roofing contractor shall be entitled to the reasonable value of such services. Any provision in a contract referred to in this subdivision that requires the payment of any fee for anything except emergency services shall not be enforceable against the owner who has cancelled a contract pursuant to this section.

5. A roofing contractor shall not require an owner to provide a deposit for the work and materials. A roofing contractor shall not mandate that a particular form of payment be made in order to commence performance of the home improvement. A roofing contractor may invoice for payment of the materials portion of the project upon delivery of the materials to the owner of the property. The material cost must be disclosed to the property owner in writing in advance of payment. A roofing contractor may invoice the remainder of the project upon

successful completion of all contracted work.

6. A roofing contractor shall not abandon, or fail to perform, without justification, any roofing contract, nor shall the roofing contractor deviate from or disregard plans or specifications in any material respect without the consent of the owner. A roofing contractor shall abide by the applicable building code for the jurisdiction where the residential property is located.

7. A roofing contractor shall not fail to pay for materials or services rendered in connection with a roofing contract where the contractor has received sufficient funds as payment for the particular contract for which the services or material were rendered or purchased.

8. A roofing contractor shall not perform the reporting, adjusting, or negotiating a claim on behalf of the owner and shall not receive compensation for the referral to any entity that reports, adjusts or negotiates a claim on behalf of an owner. Nothing herein prevents a roofing contractor from communicating with an insurance company representative and sharing his or her technical knowledge when the insurer initiates the communication.

9. (a) A roofing contractor shall provide to the owner adequate proof of insurance of the types and amounts set forth in this subdivision:

(1) A certificate of workers' compensation covering all employees of the roofing contractor. If the roofing contractor does not have any employees, then the contractor must provide a certificate of attestation exemption (CE-200) form from the workers' compensation board; and

(2) Certificates of general liability and property damage insurance in the amount of one hundred thousand dollars per person, three hundred thousand dollars per occurrence, bodily injury; and fifty thousand dollars for each occurrence and aggregate, property damage.

(b) The insurance requirements set forth in this subdivision shall apply to roofing contracts performed in all political subdivisions that do not contain any insurance requirements for such contracts.

§ 772. Penalty for fraud. 1. Any owner who is induced to contract for a home improvement, in reliance on false or fraudulent written representations or false written statements, may sue and recover from such contractor a penalty of five hundred dollars plus reasonable attorney's fees, in addition to any damages sustained by the owner by reason of such statements or representations. In addition, if the court finds that the suit by the owner was without arguable legal merit, it may award reasonable attorney's fees to the contractor.

2. Nothing in this article shall impair, limit, or reduce the statutory, common law or contractual duties or liability of any contractor.

§ 773. Violations. 1. Technical violations. Every home improvement contractor who violates any of the provisions of this article shall be subject to a civil penalty not to exceed one hundred dollars.

2. Substantial violations. Every home improvement contractor who fails to deposit funds in an escrow account or provide a bond or contract of indemnity or irrevocable letter of credit in compliance with the requirements of section seventy-one-a of the lien law, or who fails to provide a written contract substantially in compliance with the requirements of this article, shall be subject to a civil penalty not to exceed the greater of two hundred fifty dollars for each violation or five percent of the aggregate contract price specified in the home improvement contract; provided, however, that in no event shall the total penalty exceed twenty-five hundred dollars for each contract.

3. Mitigating factors; defenses. In an instance where the contractor has been shown to have committed multiple violations of this article or the provisions of section seventy-one-a of the lien law, the court shall consider the following factors in assessing a civil penalty pursuant to subdivision two of this section: the volume of business which the home improvement contractor performs on an annual basis, the number of contracts in violation, the actual financial loss or exposure to financial loss suffered by any owner as a result of the violations, and

whether the home improvement contractor acted in good faith or willfully with respect to such violations. No home improvement contractor shall be subject to the increased penalties provided by subdivision two of this section if such contractor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such a violation.

§ 774. Action by the attorney general. 1. Upon any violation of the provisions of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eight thousand three hundred three of the civil practice law and rules, and direct restitution.

In connection with an application made under this section, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

2. The provisions of this article may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

§ 775. Applicability. This article shall not exempt any contractor

subject to its provisions from complying with any local law with respect to the regulation of home improvement contractors, provided, however, that after the effective date of this article, no political subdivision may enact a local law inconsistent with the provisions of section seven hundred seventy-one of this article.

§ 776. Severability. If any clause, sentence, paragraph, subdivision or part of this article or the application thereof to any person, firm or corporation, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this article; or in its application to the person, firm or corporation, or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

ARTICLE 36-B

WARRANTIES ON SALES OF NEW HOMES

Section 777. Definitions.

777-a. Housing merchant implied warranty.

777-b. Exclusion or modification of warranties.

§ 777. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Builder" means any person, corporation, partnership or other entity contracting with an owner for the construction or sale of a new home.

2. "Building code" means the uniform fire prevention and building code promulgated under section three hundred seventy-seven of the executive law, local building code standards approved by the uniform fire prevention and building code council under section three hundred seventy-nine of the executive law, and the building code of the city of

New York, as defined in title twenty-seven of the administrative code of the city of New York.

3. "Constructed in a skillful manner" means that workmanship and materials meet or exceed the specific standards of the applicable building code. When the applicable building code does not provide a relevant specific standard, such term means that workmanship and materials meet or exceed the standards of locally accepted building practices.

4. "Material defect" means actual physical damage to the following load-bearing portions of the home caused by failure of such load-bearing portions which affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary or otherwise unliveable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

5. "New home" or "home" means any single family house or for-sale unit in a multi-unit residential structure of five stories or less in which title to the individual units is transferred to owners under a condominium or cooperative regime. Such terms do not include dwellings constructed solely for lease, mobile homes as defined in section seven hundred twenty-one of this chapter, or any house or unit in which the builder has resided or leased continuously for three years or more following the date of completion of construction, as evidenced by a certificate of occupancy.

6. "Owner" means the first person to whom the home is sold and, during the unexpired portion of the warranty period, each successor in title to the home and any mortgagee in possession. Owner does not include the builder of the home or any firm under common control of the builder.

7. "Plumbing, electrical, heating, cooling and ventilation systems" shall mean:

a. in the case of plumbing systems: gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and

their drain fields; water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal system;

b. in the case of electrical systems: all wiring, electrical boxes, switches, outlets and connections up to the public utility connection; and

c. in the case of heating, cooling and ventilation systems: all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

8. "Warranty date" means the date of the passing of title to the first owner for occupancy by such owner or such owner's family as a residence, or the date of first occupancy of the home as a residence, whichever first occurs.

§ 777-a. Housing merchant implied warranty. 1. Notwithstanding the provisions of section two hundred fifty-one of the real property law, a housing merchant implied warranty is implied in the contract or agreement for the sale of a new home and shall survive the passing of title. A housing merchant implied warranty shall mean that:

a. one year from and after the warranty date the home will be free from defects due to a failure to have been constructed in a skillful manner;

b. two years from and after the warranty date the plumbing, electrical, heating, cooling and ventilation systems of the home will be free from defects due to a failure by the builder to have installed such systems in a skillful manner; and

c. six years from and after the warranty date the home will be free from material defects.

2. Unless the contract or agreement by its terms clearly evidences a

different intention of the seller, a housing merchant implied warranty does not extend to:

a. any defect that does not constitute (i) defective workmanship by the builder or by an agent, employee or subcontractor of the builder, (ii) defective materials supplied by the builder or by an agent, employee or subcontractor of the builder, or (iii) defective design provided by a design professional retained exclusively by the builder; or

b. any patent defect which an examination ought in the circumstances to have revealed, when the buyer before taking title or accepting construction as complete has examined the home as fully as the buyer desired, or has refused to examine the home.

3. In the case of goods sold incidentally with or included in the sale of the new home, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers and dryers, a housing merchant implied warranty shall mean that such goods shall be free from defects due to failure by the builder or any agent, employee or subcontractor of the builder to have installed such systems in a skillful manner. Merchantability, fitness and all other implied warranties with respect to goods shall be governed by part three of article two of the uniform commercial code and other applicable statutes.

4. a. Written notice of a warranty claim for breach of a housing merchant implied warranty must be received by the builder prior to the commencement of any action under paragraph b of this subdivision and no later than thirty days after the expiration of the applicable warranty period, as described in subdivision one of this section. The owner and occupant of the home shall afford the builder reasonable opportunity to inspect, test and repair the portion of the home to which the warranty claim relates.

b. An action for damages or other relief caused by the breach of a housing merchant implied warranty may be commenced prior to the

expiration of one year after the applicable warranty period, as described in subdivision one of this section, or within four years after the warranty date, whichever is later. In addition to the foregoing, if the builder makes repairs in response to a warranty claim under paragraph a of this subdivision, an action with respect to such claim may be commenced within one year after the last date on which such repairs are performed. The measure of damages shall be the reasonable cost of repair or replacement and property damage to the home proximately caused by the breach of warranty, not to exceed the replacement cost of the home exclusive of the value of the land, unless the court finds that, under the circumstances, the diminution in value of the home caused by the defect is a more equitable measure of damages.

c. In addition to any other period for the commencement of an action permitted by law, an action for contribution or indemnification may be commenced at any time prior to the expiration of one year after the entry of judgment in an action for damages under paragraph b of this subdivision.

5. Except as otherwise provided in section seven hundred seventy-seven-b of this article, any provision of a contract or agreement for the sale of a new home which excludes or modifies a housing merchant implied warranty shall be void as contrary to public policy.

6. Except as otherwise provided in section seven hundred seventy-seven-b of this article, other implied warranties may arise from the terms of the contract or agreement or from course of dealing or usage of trade.

§ 777-b. Exclusion or modification of warranties. 1. Except in the case of a housing merchant implied warranty, the builder or seller of a new home may exclude or modify all warranties by any clear and conspicuous terms contained in the written contract or agreement of sale which call the buyer's attention to the exclusion or modification of warranties and make the exclusion or modification plain.

2. Except in the case of a housing merchant implied warranty, the builder or seller of a new home may exclude or modify warranties with respect to particular defects by any clear and conspicuous terms contained in the written contract or agreement of sale which identify such defects, call the buyer's attention to the exclusion or modification of warranties and make the exclusion or modification plain.

3. A housing merchant implied warranty may be excluded or modified by the builder or seller of a new home only if the buyer is offered a limited warranty in accordance with the provisions of this subdivision.

a. A copy of the express terms of the limited warranty shall be provided in writing to the buyer for examination prior to the time of the buyer's execution of the contract or agreement to purchase the home.

b. A copy of the express terms of the limited warranty shall be included in, or annexed to and incorporated in, the contract or agreement.

c. The language of the contract or agreement for sale of the home must conspicuously mention the housing merchant implied warranty and provide that the limited warranty excludes or modifies the implied warranty. Language to exclude all implied warranties is sufficient if it states, for example, that "There are no warranties which extend beyond the face hereof."

d. The limited warranty shall meet or exceed the standards provided in subdivisions four and five of this section.

4. A limited warranty sufficient to exclude or modify a housing merchant implied warranty must be written in plain English and must clearly disclose:

a. that the warranty is a limited warranty which limits implied warranties on the sale of the home; the words "limited warranty" must be clearly and conspicuously captioned at the beginning of the warranty

document;

b. the identification of the names and addresses of all warrantors;

c. the identification of the party or parties to whom the warranty is extended and whether it is extended to subsequent owners; the limited warranty must be extended to the first owner of the home and survive the passing of title but may exclude any or all subsequent owners;

d. a statement of the products or parts covered by the limited warranty;

e. the clear and conspicuous identification of any parts or portions of the home or premises that are excepted or excluded from warranty coverage, and the standards that will be used to determine whether a defect has occurred; provided, however, that:

i. any exception, exclusion or standard which does not meet or exceed a relevant specific standard of the applicable building code, or in the absence of such relevant specific standard a locally accepted building practice, shall be void as contrary to public policy and shall be deemed to establish the applicable building code standard or locally accepted building practice as the warranty standard; and

ii. any exception, exclusion or standard that fails to ensure that the home is habitable, by permitting conditions to exist which render the home unsafe, shall be void as contrary to public policy.

f. what the builder and any other warrantor will do when a defect covered by the warranty does arise, and the time within which the builder and any other warrantor will act;

g. the term of the warranty coverage and when the term begins, provided, however, that such term shall be equal to or exceed the warranty periods of a housing merchant implied warranty, as defined in subdivision one of section seven hundred seventy-seven-a of this article;

h. step-by-step claims procedures required to be undertaken by the owner, if any, including directions for notification of the builder and any other warrantor; an owner shall not be required to submit to binding arbitration or to pay any fee or charge for participation in nonbinding arbitration or any mediation process;

i. any limitations on or exclusions of consequential or incidental damages, and any limitations on the builder's and other warrantor's total liability, conspicuously expressed on the first page of the warranty. Notwithstanding the foregoing, a limited warranty shall not be construed to permit any limitation on or exclusion of property damage to the home proximately caused by a breach of the limited warranty, where the court finds that such limitation or exclusion would cause the limited warranty to fail of its essential purpose, except that such property damage may be limited by an express limitation on the builder's or other warrantor's total liability in accordance with the provisions of this paragraph.

5. a. This article shall not be construed to authorize or validate any covenant, promise, agreement or understanding which is void and unenforceable under section 5-322.1 of the general obligations law.

b. This article shall preempt any local law inconsistent with the provisions of this article. This article shall not preempt any builder subject to its provisions from complying with any local law with respect to the regulation of home builders except as expressly provided herein.

c. Nothing in this article shall be construed to repeal, invalidate, supersede or restrict any right, liability or remedy provided by any other statute of the state, except where such construction would, as a matter of law, be unreasonable.

ARTICLE 36-C
**DOWN PAYMENTS IN THE PURCHASE AND SALE OF RESIDENTIAL
REAL ESTATE**

Section 778. Definitions.

778-a. Contracts requiring down payments in escrow.

§ 778. Definitions. When used in this article, the following terms, unless the context requires otherwise, shall have the following meanings:

1. "Bank" means a bank, trust company, savings bank, or state or federal savings and loan association which is located within this state.

2. "Contract" means a written agreement between a seller and buyer for the sale and purchase of a home.

3. "Down payment" means a contract deposit or similar advance toward the purchase price of a home that a buyer gives to an escrow agent pursuant to the provisions of a contract.

4. "Escrow agent" means a person, other than a seller, who holds a buyer's down payment deposit pursuant to the provisions of a contract.

5. "Home" means an existing, previously occupied one or two-family dwelling intended to be used primarily as a residence, or a residential unit in a multi-unit structure in which title or shares of stock are transferred to buyers under a condominium or cooperative regime. It does not mean a mobile home as defined in section seven hundred twenty-one of this chapter.

§ 778-a. Contracts requiring down payments in escrow. 1. An escrow agent who undertakes to hold a buyer's down payment in the purchase and sale of a home shall have the fiduciary obligation to segregate and safeguard the buyer's down payment in a special bank account, and shall not commingle such down payment with the escrow agent's personal or business funds.

2. A contract which requires that a down payment be held in escrow

shall identify the escrow agent and the bank in which the down payment shall be deposited during the term of the escrow.

3. An escrow agent shall not be required to maintain a down payment in a bank account which is separate from all other bank accounts, provided the escrow agent's books of account and banking records shall accurately show the allocation to each owner of all funds that are deposited in the escrow agent's special bank account and all transactions relating to the receipt and disbursement of escrow funds.

4. Unless the contract provides otherwise, an escrow agent shall not be required to deposit the down payment in an interest-bearing bank account. If the escrow agent is an attorney admitted to practice in this state, a bank account authorized by section four hundred ninety-seven of the judiciary law shall be a lawful depository for down payments held by the attorney in escrow.

5. The provisions of this section may be modified by a written agreement signed by the buyer, seller and escrow agent.

6. The provisions of this section are not exclusive and do not relieve a buyer, seller or escrow agent from compliance with all other applicable provisions of law, or from civil or criminal liability imposed by other applicable provisions of law.

ARTICLE 36-D

HOME HEATING SYSTEM CONVERSION

Section 778-aa. Home heating system conversion.

§ 778-aa. Home heating system conversion. 1. All home improvement contractors as defined in subdivision five of section seven hundred seventy of this chapter or any other person providing an estimate or engaged in the installation of home heating systems shall include in any estimate of the cost of converting an existing oil home heating system to a natural gas, electric or any other home heating system a separate

estimate detailing the costs related to the closure, abandonment and/or removal of a home heating oil storage tank. In addition, any person making such estimate shall also provide a copy of any applicable local law, or if there is no local law then such person shall provide a written statement to that effect.

2. Every estimate of the cost to secure a storage tank as part of a home heating system conversion shall include the removal of all fill and vent pipes and such other related materials and/or equipment.

3. Upon entering into an agreement for the conversion of an existing home heating system from an oil home heating system to an alternative method of home heating, and prior to the commencement of the new home heating service, any home improvement contractor installing the alternate home heating system shall provide to the homeowner a written copy of the notice created by the department of state pursuant to subdivision five of this section, in no less than 14 point bold type and separate from any other document provided to such homeowner and provide as may be required by state or local law, written notice of the agreement for the conversion of an existing home heating system to the municipal code enforcement official having authority to enforce the New York state uniform fire prevention and building code, or local code applicable to cities with a population of one million or more, whichever code applies to the jurisdiction in which the home heating system is located.

4. (a) Prior to the commencement of the new home heating service, the property owner shall provide written notice to such property owner's heating oil supplier or suppliers to inform them of such conversion to an alternate fuel prior to the commencement of the new home heating service.

(b) The department of state shall have the authority to promulgate any rules or regulations necessary to implement the provisions of this subdivision.

5. The department of state shall create and make available to the public on the department's website a notice informing homeowners who are

converting their existing oil home heating system to an alternative method of home heating of the provisions of subdivision thirteen of section three hundred seventy-eight of the executive law, in addition to any other state laws, rules, or regulations related to the closure, abandonment, and/or removal of a heating oil storage tank, including fill and vent pipes and other related materials and equipment. Such notice shall include information to inform the homeowner that the homeowner shall provide written notice to his or her home heating oil supplier to inform such supplier of such conversion prior to the commencement of the new home heating service, and shall also advise the homeowner that there may be other local laws related to such conversion.

ARTICLE 36-E

PROHIBITION OF UNFAIR REAL ESTATE SERVICE AGREEMENTS

Section 778-aaa. Definitions.

778-bbb. Prohibition against unfair service agreements;
recording thereof.

778-ccc. Deceptive acts and practices.

778-ddd. Enforcement; action by the attorney general.

778-eee. Severability.

§ 778-aaa. Definitions. As used in this article, the following terms, unless the context requires otherwise, shall have the following meanings:

1. "Person" means a natural person, partnership, association, cooperative, corporation, trust, or other legal entity.

2. "Real estate service agreement" means a written contract under which a person agrees to provide services in connection with the maintenance of or purchase or sale of residential real estate.

3. "Recording" means presenting a document to a recording officer, whether the county clerk of the county or the register of the county, consistent with the real property law.

4. "Residential real estate" means real property located in this state which is used primarily for personal, family, or household purposes and is improved by one to four dwelling units, including condominium units.

5. "Service provider" means an individual or entity that provides services to a person.

6. (a) "Unfair real estate service agreement" means any real estate service agreement that is not to be performed within two years after the time it is entered into and either:

(i) purports to run with the land or to be binding on future owners of interests in the real property; or

(ii) allows for assignment of the right to provide service without notice to and consent of the owner of residential real estate; or

(iii) purports to create a lien, encumbrance, or other real property security interest, other than a mechanics lien properly issued pursuant to the provisions of the lien law; or

(iv) is a real estate listing agreement as defined in paragraph e of subdivision one of section four hundred forty-three of the real property law.

(b) Notwithstanding the foregoing, an agreement shall not be considered an unfair real estate service agreement if it is a valid:

(i) home warranty or similar product that covers the cost of maintenance of a major home system for a fixed period;

(ii) insurance contract;

(iii) option or right of refusal to purchase the residential real estate;

(iv) declaration created in the formation of a common interest community or an amendment thereto;

(v) maintenance or repair agreement entered by a homeowners' association in a common interest community;

(vi) mortgage loan or a commitment to make or receive a mortgage loan;

(vii) security agreement under the uniform commercial code relating to the sale or rental of personal property or fixtures;

(viii) contract with a water, sewer, electrical, telephone, cable, or other regulated utility service provider; or

(ix) contract, restrictive declaration, regulatory agreement or other instrument, which is mandated by a governmental entity or to which a governmental entity is a party.

§ 778-bbb. Prohibition against unfair service agreements; recording thereof. 1. No unfair real estate service agreement shall be enforceable in the state.

2.(a) No person shall record or cause to be recorded an unfair real estate service agreement or notice or memorandum thereof.

(b) If an unfair real estate service agreement is recorded in this state, it shall not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.

(c) If an unfair service agreement or a notice or memorandum thereof is recorded, any person with an interest in the real property that is the subject of that agreement may apply to a court in the county where the recording exists to record a court order declaring the agreement unenforceable.

§ 778-ccc. Deceptive acts and practices. Any person in this state who enters into or causes a consumer to enter into an unfair real estate service agreement shall be considered to have violated section three hundred forty-nine of this chapter.

§ 778-ddd. Enforcement; action by the attorney general. Where the attorney general shall have reason to believe that there is an alleged violation of this article based upon, among other things, a consumer report of an alleged violation, the attorney general, in the name of the people of the state of New York, shall dispatch a cease and desist letter to the entity at issue, specifying the alleged violation or violations and the remedies to cure such violation or violations within a designated timeline. Where, after receipt of the cease and desist letter and the expiration of such designated timeline, the entity continues to violate the provisions of this article, an application may

be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the respondent of not less than five days, to enjoin and restrain the continuance of such violation or violations; and if it shall appear to the satisfaction of the court or justice that the respondent has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. This section shall not be construed to limit any other criminal or civil liability such entity may be subject to under law.

§ 778-eee. Severability. If any provision of this article is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this article, which remaining portions shall continue in full force and effect.

ARTICLE 37

DEPOSITS ON CONSTRUCTION OF NEW HOMES

Section 779. Applicability.

780. Definitions.

781. Security to be furnished by vendor.

782. Alternative to posting bond.

783. Disposition of security.

784. Penalties and liabilities.

785. Waiver prohibited.

§ 779. Applicability. Any municipality is hereby authorized to adopt the provisions of this article provided such municipality, after a public hearing, adopts a local law or ordinance providing therefor.

§ 780. Definitions. When used in this article, the following terms, unless the context requires otherwise, shall have the following meanings.

1. "Vendee" means any individual or individuals who have contracted with a vendor for construction of a home on land not owned at the time of such agreement by such individual or individuals.

2. "Vendor" means any person, firm, corporation, or association engaged in the business of erecting or constructing homes.

3. "Home" means a new one or two family dwelling intended to be used primarily as a residence.

4. "Municipality" means any town, village or city.

5. "Default" occurs where title to the home is not transferred to the vendee because of the failure of the vendor to substantially perform those provisions of the agreement between the vendor and vendee wherein vendor undertook to build or construct a home for the vendee, or where the vendor becomes insolvent.

6. "Deposit" means any moneys given as down payment by the vendee to the vendor as required by the vendor prior to the commencement of the work to be performed pursuant to an agreement between the vendor and vendee wherein vendor undertook to build or construct a home for the vendee.

7. "Demand" means communication of an actual notice to the vendor of requests made therein.

§ 781. Security to be furnished by vendor. When a vendor undertakes to build or construct a home for a vendee, and such vendee is required to pay a deposit to such vendor, the vendor shall post with the chief

fiscal officer of the municipality wherein such home is to be erected or constructed, a bond in the amount of such deposit or deposits. Such bond shall be posted within five business days after receipt of said deposit or deposits, by the vendor, and shall secure the payment of said deposit to the vendee upon the vendor's default. Such bond shall be in such form as required by the superintendent of financial services.

§ 782. Alternative to posting bond. In lieu of posting a bond as provided in this article, the vendor shall place the deposit or deposits paid to him by the vendee in an interest bearing escrow account with a bank as defined in the banking law within five business days after receipt of such deposit or deposits. Such deposit or deposits together with interest accumulated thereon shall remain the property of the vendee, except as otherwise provided herein.

§ 783. Disposition of security. 1. Upon transfer of title of the home to the vendee the bond posted pursuant to this article shall be released, and any funds held in escrow pursuant to the provisions of this article, together with interest accumulated thereon shall become the property of the vendor, unless otherwise agreed between the vendor and vendee.

2. Upon default by the vendor, the vendee may demand return of his deposit or deposits from the vendor. If the vendor has placed the deposit or deposits in an escrow account pursuant to the provisions of this article, he shall physically transfer the account to the vendee, or pay the balance of said account to the vendee within fourteen business days after the day on which the demand was made. If the vendor has posted a bond pursuant to the provisions of this article, the vendee may initiate action for payment thereon if his deposit or deposits have not been paid to such vendee by the vendor within fourteen business days after the day in which said demand was made.

§ 784. Penalties and liabilities. 1. Failure of the vendor to comply

with any of the provisions of this article is a misappropriation of funds and action may be brought by the vendee against the vendor for the return of any moneys advanced. In addition, such vendor shall be liable for criminal action pursuant to the provisions of subdivision two of this section.

2. Failure of the vendor to comply with any of the provisions of this article shall be deemed a misdemeanor.

3. Nothing in this article shall impair, limit or reduce the statutory, common law or contractual duties or liability of any vendor in the construction of a home nor shall these provisions apply to any local law or ordinance which requires the posting of public improvement bonds.

§ 785. Waiver prohibited. Any agreement entered into by a vendee which waives, limits or disclaims the rights or obligations set forth in this article shall be void as contrary to public policy.

ARTICLE 37-A

REGISTRATION OF HEARING AID DISPENSERS

Section 788. Legislative intent.

789. Definitions.

790. Certificate of registration required; qualifications and application.

791. Hearing aid dispensing advisory board.

792. Hearing aid dispensers account.

793. Registry.

794. Continuing education requirements.

795. Renewal of certificate of registration or temporary certificate of registration.

796. Training program; requirements; examination and re-examination.

797. Fees.

798. Business practice; requirements.

- 799. Administration; suspension and revocation of registrations; fines; reprimands.
- 800. Denial of registration; complaints; notice of hearing.
- 801. Judicial review.
- 802. Special provisions; not-for-profit sales.
- 803. Powers of the secretary.
- 804. Penalties.
- 805. Separability.

§ 788. Legislative intent. The legislature recognizes and acknowledges the value of hearing aids to many individuals with hearing loss and recognizes the valuable service provided by hearing aid dispensers and dispensing audiologists to such individuals by providing access to appropriate amplification devices and other valuable services related to their use. Due to the large number of individuals with hearing loss who do not use hearing aids, the legislature furthermore recognizes the positive benefits of the increased use of hearing aids. It is the intent of the legislature and this article to protect the hearing-impaired public by ensuring competent, honest and accountable dispensers of hearing aids who will protect the health, safety and welfare of the people of this state.

The legislature finds and declares that existing laws regulating the dispensing of hearing aids have been ineffective in providing adequate protection. To ensure against consumer abuses and thereby protect the public, the legislature determines that more rigorous education, training and business practice standards should be applied to those persons registered to dispense hearing aids pursuant to this article. It is the intention of the legislature to apply standards to more fully protect the general public, and to ensure continued consumer access to safe, reliable and appropriate hearing aid dispensing services.

§ 789. Definitions. As used in this article:

1. "Account" shall mean the hearing aid dispensing account.

2. "Audiologist" means an individual who is licensed under article one hundred fifty-nine of the education law to evaluate hearing, and hearing and communication disorders and to engage in those practices defined in section eighty-two hundred three of the education law.

3. "Board" shall mean the hearing aid dispensing advisory board.

4. "Business" means any individual, partnership, trust, association, organization or corporation.

5. "Department" means the department of state.

6. "Dispensing of hearing aids" means the act of fitting, selecting, selling, renting, adapting or servicing of hearing aids or any other instrument to compensate for impaired hearing; provided that such term shall include testing of hearing, solely for the purpose of fitting, selecting, selling, distribution, renting, adapting or servicing hearing aids or any instrument to compensate for impaired hearing, the making of impressions, castings and shells and appropriate counseling and instructions pertaining to the selection, adaptation and sale or rental of hearing aids and further provided that such term shall include any tasks, procedures, acts, or practices that are necessary (a) for the non-diagnostic testing of hearing solely for the purpose of fitting a hearing aid; (b) for training in the use of amplification including hearing aids; (c) for the making of ear molds for hearing aids; (d) for the fitting, dispensing, and sale of hearing aids; or (e) for otoscopic observation of solely the ear canal for the purposes of fitting, dispensing or sale of hearing aids; provided, however, that nothing contained in this subdivision shall be deemed to permit the performance of or reference to an otoscopic evaluation for medical diagnosis; and (f) for those other procedures necessary to determine proper amplification needs and the specific hearing aid which will be of maximum benefit to aid or to compensate for the impaired ear. Testing for the purpose of fitting a hearing aid shall include only such tests meeting standards acceptable to the secretary as needed to verify the optimum fitting characteristics and circuitry of any hearing aids or

amplification devices needed and shall not be for the purposes of, make any reference to, or include any medical diagnosis whatsoever. No hearing aid dispenser shall verbally or in writing make a statement or reference to a prospective hearing aid user regarding any medical condition or diagnosis except such communications required pursuant to paragraph (c) of subdivision eight of section seven hundred ninety-eight of this article. Nothing in this subdivision shall restrict or limit any person licensed under article one hundred fifty-nine of the education law from performing any activity authorized thereunder; provided, however, that every such person shall be registered as a hearing aid dispenser pursuant to the requirements of this article in order to dispense hearing aids.

7. "Hearing aid" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories but excluding batteries and cords or accessories thereto.

8. "Hearing aid dispenser" means any person twenty-one years of age or older or an audiologist licensed under article one hundred fifty-nine of the education law who is engaged in the dispensing of hearing aids who is registered and dispensing hearing aids in accordance with this article.

9. "Otolaryngologist" means a physician licensed under article one hundred thirty-one of the education law, who practices that branch of medicine which treats diseases of the ear, nose and throat.

10. "Secretary" means the secretary of state.

11. "Sell" or "sale" means any transfer of title or of the right of use by sale, conditional sales contract, lease bailments, including rentals of hearing aids hire-purchase, or any other means; excluding wholesale transactions of dealers and distributors.

12. "Trainee" means a person twenty-one years of age or older, who upon receiving a temporary certificate of registration, is studying

hearing aid dispensing full-time for the purpose of qualifying to sit for the registration examination.

§ 790. Certificate of registration required; qualifications and application. 1. Any person desiring to be engaged in the dispensing of hearing aids in this state shall be registered biennially pursuant to this article. Such person shall file with the secretary an application to be registered as a hearing aid dispenser. The secretary shall examine each application and issue a certificate of registration if either of the following criteria are satisfied:

- (a) (i) the applicant is twenty-one years of age or older;
- (ii) is of good moral character;
- (iii) has received a high school diploma or its equivalent;
- (iv) has two years college accredited coursework or its equivalent;
- (v) has fully completed the required training program;
- (vi) has achieved a passing score on the required examination;
- (vii) has not had a registration, license or other authorization to dispense hearing aids suspended or revoked;
- (viii) has paid the appropriate fees according to the provisions of section seven hundred ninety-seven of this article; and
- (ix) on or after January first, two thousand three, the applicant shall demonstrate the successful completion of post-secondary coursework approved by the secretary in conjunction with the advisory board; or
- (b) (i) the applicant has submitted proof of licensure under article one hundred fifty-nine of the education law as a licensed audiologist;
- (ii) has paid the appropriate fees according to the provisions of section seven hundred ninety-seven of this article;
- (iii) has achieved a passing score on the practical test of proficiency required pursuant to subdivision six of section seven hundred ninety-six of this article or who submits evidence satisfactory to the secretary of experience in dispensing hearing aids; and
- (iv) has not had a registration, license or other authorization to dispense hearing aids suspended or revoked according to the provisions of section seven hundred ninety-nine of this article.

2. An application for a certificate of registration as a hearing aid

dispenser shall be filed with the secretary in such form and detail as the secretary shall prescribe, duly signed and verified, setting forth:

- (a) the name and address of the applicant;
- (b) the name and business address or addresses at which the individual will be employed;
- (c) the information contained in subdivision one of this section; and
- (d) any further information deemed necessary and prescribed by rule or regulation by the secretary.

3. (a) Any person who has been continuously registered as a hearing aid dealer pursuant to the former article thirty-seven-A of this chapter for the three years immediately preceding January first, two thousand or who submits evidence satisfactory to the secretary of experience in the business of dispensing hearing aids in this state for the three years immediately preceding January first, two thousand, upon payment of applicable fees, shall be registered as a hearing aid dispenser and shall be exempt from requirements set forth in subparagraphs (iv), (v), (vi) and (ix) of paragraph (a) of subdivision one of this section.

(b) Any person who has been continuously registered as a hearing aid dealer pursuant to the former article thirty-seven-A of this chapter for less than three years but more than one year immediately preceding January first, two thousand, or who submits evidence satisfactory to the secretary of less than three years but more than one year's continuous experience in the business of dispensing hearing aids in this state immediately preceding January first, two thousand, may pay the applicable fees and register as a hearing aid dispenser. Such registrant shall be exempt from the requirements set forth in subparagraphs (iv), (v) and (ix) of paragraph (a) of subdivision one of this section. Such registrant shall achieve a passing score on the required registration examination by December thirty-first, two thousand; provided further that, upon failing to achieve a passing score such person shall continue under the supervision of a registered hearing aid dispenser until such time as a passing score is achieved, provided that such passing score is achieved on an examination administered within twelve months of the first examination.

(c) Any individual who has been continuously registered as a hearing aid dealer pursuant to the former article thirty-seven-A of this chapter

for less than twelve months immediately preceding January first, two thousand or any individual with less than twelve months experience in the business of dispensing hearing aids in this state immediately preceding January first, two thousand shall be required to comply with all the requirements set forth in subdivision one of this section.

(d) Any person licensed pursuant to article one hundred fifty-nine of the education law, who submits evidence satisfactory to the secretary of experience of dispensing hearing aids in this state for the period immediately preceding January first, two thousand, upon payment of applicable fees shall be registered as a hearing aid dispenser and shall be exempt from requirements set forth in subparagraph (iii) of paragraph (b) of subdivision one of this section.

4. Upon application to the secretary, a temporary certificate of registration authorized under section seven hundred ninety-five of this article shall be issued to: (i) individuals who prove to the satisfaction of the secretary that he or she will be supervised and trained by one or more registered hearing aid dispensers for a period of twelve months or (ii) individuals who are candidates for licensure under article one hundred fifty-nine of the education law, have satisfied the educational requirement in subdivision two of section eighty-two hundred six of the education law, and are actively engaged in completing the experience requirement in subdivision three of section eighty-two hundred six of the education law. A temporary certificate of registration may be renewed only once.

(a) A person holding a temporary certificate of registration shall not be the sole proprietor of, manage, or independently operate a business which engages in the business of dispensing hearing aids unless such business employs a registered hearing aid dispenser.

(b) A person holding a temporary certificate of registration shall not advertise or otherwise represent that he or she holds a certificate of registration as a hearing aid dispenser.

(c) A person holding a temporary certificate of registration who is a candidate for licensure under article one hundred fifty-nine of the education law shall be exempt from the requirement to complete the course of instruction prescribed by section seven hundred ninety-six of this article.

5. (a) Any individual, corporation, partnership, trust, association or other organization maintaining an established New York state business address desiring to engage in the business of dispensing hearing aids at retail, shall register with the department and submit the following information:

- (i) name and address or addresses of each permanent business location;
- (ii) names and addresses of the principal owner or manager of the business and if such owner is a corporation the names and titles of the corporate officers; if a partnership, the name and title of the general partners, if a limited liability company the name of the members or managers, if a limited liability partnership, the names of the partners, if a trust, the name of the trustee, if an association, the principal officers; and

- (iii) the appropriate fees.

(b) No such individual, corporation, partnership, trust, association or other organization maintaining an established New York state business address shall engage in the business of dispensing hearing aids unless such organization:

- (i) has obtained a valid business certificate of registration from the secretary;

- (ii) employs at least one registered hearing aid dispenser at each business location who regularly dispenses hearing aids at that location;

- (iii) files annually with the secretary a list of registered hearing aid dispensers currently employed; and

- (iv) files a statement with the secretary that such organization is in compliance with the provisions of this article and rules and regulations promulgated pursuant thereto and the regulations of the federal food and drug administration and the federal trade commission.

6. The secretary may grant a certificate of registration upon submission of an application and appropriate fees where such application contains satisfactory proof that the applicant holds a valid hearing aid dispenser's license or registration in another state, where the secretary has determined such state has requirements equivalent to or higher than those in effect pursuant to this article.

7. Notwithstanding the provisions of any law to the contrary, on or

after the first day of January first, two thousand, no person shall engage in the dispensing of hearing aids in this state unless such person is registered as a hearing aid dispenser in accordance with the provisions of this article.

8. Notwithstanding the requirements of this section, the secretary shall take steps necessary to provide for the immediate and orderly registration of applicants qualified pursuant to this article. Persons seeking to qualify for registration pursuant to paragraphs (b) and (c) of subdivision three of this section shall be immediately entitled to a temporary certificate of registration. Within one hundred twenty days of the effective date of this subdivision, the secretary shall approve an examination for completed registration pursuant to section seven hundred ninety-six of this article.

9. Anyone registered as a hearing aid dealer on the effective date of this article or who possesses the requisite experience for registration pursuant to paragraphs (a) and (b) of subdivision three of this section shall register on or before January first, two thousand and may continue to dispense hearing aids as if registered if an application for registration is submitted to the department within thirty days of the effective date of this article.

§ 791. Hearing aid dispensing advisory board. 1. There is created within the department a hearing aid dispensing advisory board which shall consist of thirteen members to be appointed by the secretary: four of whom shall be non-audiologist hearing aid dispensers who shall have been engaged in the business of dispensing hearing aids primarily in this state for at least five years immediately preceding their appointment, two to be appointed upon the recommendation of the governor, one to be appointed upon the recommendation of the temporary president of the senate and one to be appointed upon the recommendation of the speaker of the assembly; four members shall be audiologists who are engaged in the dispensing of hearing aids for at least five years immediately preceding their appointment, two to be appointed upon the recommendation of the governor, one to be appointed upon the

recommendation of the temporary president of the senate and one to be appointed upon the recommendation of the speaker of the assembly; two shall be otolaryngologists; and the remaining three members, none of whom shall derive nor have derived in the past economic benefit from the business of dispensing hearing aids, shall be from the resident lay public of this state who are knowledgeable about issues related to hearing loss. At least one lay member shall be an individual representing adults over the age of fifty. At least one of the lay members shall be a hearing aid user. Of the otolaryngologists and lay members, one shall be appointed by the secretary on the recommendation of the minority leader of the senate and one shall be appointed by the secretary on the recommendation of the minority leader of the assembly and three shall be appointed by the secretary on the recommendation of the governor. Each member of the board shall be appointed for a term of two years. Any member may be appointed for additional terms. In the event that any member shall die or resign during his or her term, a successor shall be appointed in the same manner and with the same qualifications as set forth in this section. A member may be reappointed for successive terms but no member shall serve more than a total of ten years. The secretary or the designee of the secretary shall serve in an ex officio non-voting position. The secretary shall serve as chairperson. The commissioner of education, the commissioner of health, and the attorney general or their designees shall serve as non-voting ex officio members.

2. The board shall advise and make recommendations regarding, and the secretary, upon consideration of such advice, shall promulgate rules and regulations, governing the implementation of the provisions of this article and the development of such rules and regulations as are required. In addition to other advice, the board shall advise the secretary with respect to the promulgation of rules and regulations governing:

(a) the rights of consumers of hearing aids including but not limited to (i) procedures whereby a consumer may file a complaint against those in violation of this article; and (ii) requirements for hearing aid dispensers to provide consumers with printed educational information on the general use of hearing aids and assistive listening devices and on

the advantages and disadvantages of binaural hearing aid use and (iii) the training of individuals in the use and maintenance of such instruments;

(b) continuing education including but not limited to (i) the content of such course of study, (ii) the procedures for approval of such course of study and (iii) those individuals and organizations who may permissibly offer such continuing education course or courses provided for in section seven hundred ninety-four of this article;

(c) the content, delivery and evaluation of any examination required as a condition of registration;

(d) the standards for advertisements, including but not limited to, proscriptions against misleading advertising relating to the scope of hearing aid dispensing practices, credentials of individual hearing aid dispensers, and the function, use and reliability of a particular hearing instrument;

(e) requirements for the secretary to regularly examine compliance with this article;

(f) requirements pertaining to the non-diagnostic testing of hearing and sale of hearing aids at office, residential and other out of office settings and the development of environmental standards for testing at office, residential and other out of office settings; requirements pertaining to telemarketing; and

(g) procedures that the secretary could use to increase public awareness of how to properly purchase, fit, adjust and use a hearing aid, as well as the rights of hearing aid purchasers under state law. In addition to such duties and other duties which may be assigned by the secretary, the board shall consult with the secretary, the commissioner of education and such other persons as may be appropriate to determine the proper level and degree of education for a hearing aid dispenser, the type of degree and the proper educational institution to offer such education and all other related issues.

3. Meetings of the board shall be set at such times as determined by the secretary but in no event fewer than four times annually.

4. The members of the board shall serve without compensation, however, they shall receive reimbursement for their actual and necessary expenses

incurred in the performance of their duties.

5. The secretary shall keep a record of all proceedings of the board and such record shall be open to public examination.

§ 792. Hearing aid dispensers account. There is hereby established in the custody of the state comptroller and the secretary a hearing aid dispensers account into which all fees collected pursuant to this article shall be deposited. The money in such account shall be utilized solely for the purpose of administering and enforcing the provisions of this article.

§ 793. Registry. The secretary shall establish a state registry which shall list and identify on a county-by-county basis all registered hearing aid dispensers, trainees, audiologists engaged in the business of dispensing hearing aids and businesses registered pursuant to subdivision five of section seven hundred ninety of this article. The registry shall contain all information relevant to the status of their registration including their standing, location of practice and telephone number.

§ 794. Continuing education requirements. 1. Prior to the expiration of a certificate of registration and as a condition of renewal, each hearing aid dispenser registered pursuant to subdivision one of section seven hundred ninety of this article shall submit documentation showing successful completion of twenty continuing education credits through a course or courses approved by the secretary in consultation with the advisory board, or, in relation to audiologists licensed pursuant to article one hundred fifty-nine of the education law, the office of the professions in the education department. Such formal courses of learning shall include, but not be limited to, collegiate level of credit in non-credit courses, professional development programs and technical sessions offered by national, state and local professional associations and other organizations acceptable to the secretary and any other

organized educational and technical programs acceptable to the secretary. The secretary may, in his or her discretion, and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement. Courses shall be taken from a sponsor approved by the secretary pursuant to regulations promulgated pursuant to this section.

2. A hearing aid dispenser registered under paragraph (b) of subdivision one of section seven hundred ninety of this article may satisfy the requirements of subdivision one of this section by demonstrating to the secretary compliance with such continuing competency requirements as are prescribed by article one hundred fifty-nine of the education law, provided, however, that, such persons shall submit documentation showing the successful completion of four continuing education credits relating to the dispensing of hearing aids.

3. (a) Within one year of the effective date of this article, the secretary shall promulgate rules and regulations establishing the method, content and supervision requirements for the continuing education course or courses provided for in this section. Properly prepared written materials of the subject matter of each course shall be distributed and each course shall be taught by an instructor who meets requirements established by the secretary upon the recommendation of the board. Any person or organization offering a course shall apply to the secretary for authorization to offer such course or courses pursuant to said rules and regulations.

(b) Credits shall be awarded based on one hour of credit for each sixty minutes of participation. The secretary may prescribe the form or forms on which participation and credits are documented. At the conclusion of each approved course, a certificate of completion shall be transmitted to the secretary.

§ 795. Renewal of certificate of registration or temporary certificate of registration. 1. The secretary shall provide a method for the biennial review of a certificate of registration and temporary

certificate of registration.

2. The department shall reissue a certificate of registration upon receipt of a renewal application, the renewal fee, and a written statement affirming compliance with all other requirements set forth in this article including evidence of compliance with section seven hundred ninety-four of this article. A registrant shall retain, if applicable, a certificate from a manufacturer or independent testing agent certifying that the testing room utilized by such registrant meets the requirements of section seven hundred ninety-eight of this article and, if applicable, a certificate from a manufacturer or independent testing agent stating that all audiometric testing equipment used by the registrant has been calibrated on an annual basis according to rules and regulations promulgated by the secretary, consistent with ANSI requirements or in accordance with standards promulgated under article one hundred fifty-nine of the education law.

3. Any certificate of registration which is not renewed at the end of the biennial period of registration as prescribed by the secretary shall automatically revert to an inactive status. If the certificate of registration has not been renewed within thirty days subsequent to the biennial expiration date, the secretary shall send notice by mail to the last known address of the registrant. Such notice shall advise the registrant of the inactive status and the procedures required to reactivate a valid certificate of registration. Such notice shall detail the criteria and fees to be satisfied for reactivation. If such registration is not reactivated, on the ninetieth day after the end of the biennial registration period, such registration shall lapse.

4. The department shall reissue a temporary certificate of registration valid for a period of one year upon the receipt of a renewal application, the renewal fee and a written statement verifying continued supervision by a registered hearing aid dispenser.

§ 796. Training program; requirements; examination and re-examination.

1. The secretary, in consultation with the board, shall establish a

full-time, twelve month training program for those persons wishing to apply for registration as a hearing aid dispenser, except those hearing aid dispensers otherwise licensed pursuant to article one hundred fifty-nine of the education law. For the purposes of this section, "full-time" shall mean seven hours per day for five days a week. Such program shall be conducted by a registered hearing aid dispenser or taught by appropriate faculty with credentials to verify substantial educational knowledge in the topics outlined below. Any trainee entering such a program shall operate under the direct supervision of a registered hearing aid dispenser for the first three months of such program. In addition, during such period, the trainee shall satisfactorily complete a course of instruction, which includes, but is not limited to, the following topics:

- (a) acoustics: general principles.
- (b) acoustics: hearing and speech.
- (c) the human ear.
- (d) disorders of hearing.
- (e) puretone audiometry.
- (f) speech audiometry.
- (g) hearing analysis.
- (h) hearing aids and instruments.

2. (a) During the first three months of such program, no trainee shall perform any activity directly related to the dispensing of a particular hearing aid or hearing aids unless such activity is conducted under the direct supervision of a registered hearing aid dispenser. For purposes of this section, "direct supervision" shall mean activity under the immediate observation and control of a registered hearing aid dispenser and shall require the registered hearing aid dispenser to be physically present during all dispensing activities of the trainee.

(b) For the next three months, no trainee shall perform any activity directly related to the dispensing of a particular hearing aid or hearing aids unless such activity is conducted with the immediate consent, review and approval of a registered hearing aid dispenser. For such purposes, the registered hearing aid dispenser shall be located on the premises and immediately available to the trainee but shall not be required to be physically present at all times.

3. For the entire twelve month training period, the registered hearing aid dispenser shall be held fully responsible for all actions of the trainee. Any aspect of the dispensing of hearing aids performed by a trainee shall be reviewed and approved by the registered hearing aid dispenser prior to the final disposition of any contractual agreement. The signatures of both the trainee and the registered hearing aid dispenser shall be required on all contracts in which a trainee has participated.

4. Upon application, payment of the required registration fee to the secretary, and satisfaction of all applicable registration requirements, the applicant shall receive a temporary certificate of registration and shall enter a training program. The twelve month program shall commence from the date of issuance of the temporary certificate of registration. No individual may begin a training program or otherwise engage in the dispensing of hearing aids without a valid temporary certificate of registration.

5. (a) A trainee may take the required course of instruction under the supervision of a registered hearing aid dispenser provided that such course of instruction has been approved by the secretary.

(b) A trainee may take the required course of instruction from any other provider offering a course of instruction approved by the secretary.

(c) At the conclusion of each component, the performance of the trainee shall be evaluated by the registered hearing aid dispenser or offeror of such approved course. Upon satisfactory completion of all components of the course of instruction, the trainee and the registered hearing aid dispenser or offeror shall transmit to the secretary proof of the satisfactory completion of each component which shall have been signed and affirmed as true under the penalties of perjury.

6. Upon satisfactory completion of the course of instruction required by this section and successful completion of at least six months of the training program, the trainee may take the written examination and practical test of proficiency offered by the secretary.

7. (a) Each applicant shall be required to pass a written examination covering the following areas, including but not limited to areas of required instruction in the training program, as they pertain to the dispensing of hearing aids:

- (i) basic physics of sound;
- (ii) the anatomy and physiology of the ear; and the pathology of the ear as it relates to hearing aid fitting;
- (iii) the function of hearing aids;
- (iv) hearing aid evaluation; and
- (v) knowledge and understanding of this article and the regulations adopted pursuant to it.

(b) in addition, the trainee shall also pass a practical test of proficiency in techniques that pertain to the fitting of hearing aids.

8. (a) If a trainee fails to pass the written examination or practical test of proficiency, he or she may request, and be given the opportunity to review the score of the exam according to the rules and regulations of the secretary.

(b) During the period of registration and the renewal thereof, a trainee may sit for the written exam and the practical test of proficiency exam or any combination thereof up to three times. The exam shall include both the written and practical components. A trainee who has passed any component of the examination within the prior six months need not re-take that component for final passage. A trainee who takes the exam three times but does not pass the entire exam or remaining individual component of the exam shall be terminated and shall be required to commence the training program including direct supervision and courses of study as if he or she is a new applicant. No trainee who fails such examination three times during such period shall be eligible for permanent registration until he or she has repeated the traineeship and passed the examination as required.

9. The examination shall be given at convenient times and places during the calendar year but in no event fewer than four times per year. The secretary shall prescribe the content and format of such examination.

§ 797. Fees. The secretary shall receive the following fees to be deposited into a special revenue fund - other entitled the "hearing aid dispensers account" for the implementation, operation and enforcement of this article:

1. a nonrefundable fee of fifty dollars from each person who takes the required examination or any component thereof pursuant to this article;

2. for an individual certificate of registration, one hundred fifty dollars and for the renewal of such registration, one hundred dollars;

3. for a business certificate of registration and renewal thereof:

(a) for a business certificate of registration for each permanent business location with ten or less employees, one hundred fifty dollars and for the renewal of such registration, one hundred dollars;

(b) for a business certificate of registration for each permanent business location with more than ten employees, two hundred dollars and for the renewal of such registration, one hundred fifty dollars;

4. for a temporary certificate of registration, thirty dollars and for the renewal of such registration, thirty dollars;

5. for filing a change of business address or change of name of the registrant whether individual or business, ten dollars;

6. for a duplicate certificate of registration, ten dollars;

7. except fees associated with a temporary certificate of registration the fees set forth shall be those for registrations issued for a period of two years; and

8. employees of a not-for-profit corporation doing business in this state who are required to register pursuant to this article who are not otherwise engaged in the dispensing of hearing aids for profit shall be exempt from payment of the registration fee required by this section.

§ 798. Business practice; requirements. 1. Every registrant who engages in the dispensing of hearing aids shall have and maintain a principal office or place of business. Each registrant shall report to the secretary the address of each such office or place of business at which he or she engages in such dispensing. Changes in address shall be reported within thirty days.

2. Except as limited by the provisions of this article, each registrant shall conspicuously post a valid individual certificate of registration in open view within his or her office or place of business at all times.

3. A hearing aid dispenser who is the owner, manager, or franchisee at a location where hearing aids are dispensed, shall be responsible for the dispensing of any hearing aid at that location.

4. The secretary shall in consultation with the hearing aid advisory board prescribe the minimum criteria, procedures and equipment which shall be used in the dispensing of hearing aids, including but not limited to:

- (a) a relevant personal history questionnaire;
- (b) a disclosure statement;
- (c) requirements for a testing room, if applicable;
- (d) requirements for the annual calibration and maintenance of audiometric equipment;
- (e) requirements for out of office dispensing of hearing aids; and
- (f) if applicable, requirements otherwise provided under article one hundred fifty-nine of the education law.

5. (a) Unless otherwise authorized by federal law, rule or regulation, no hearing aid shall be sold by a hearing aid dispenser under this article, to any person, unless that person provides the dispenser with a written statement from an otolaryngologist, or if none is available by another licensed physician stating that the prospective user's hearing loss has been medically evaluated and that the prospective user is a

candidate for a hearing aid.

(b) A replacement of an identical hearing aid within one year shall be an exception to such requirement.

(c) This subdivision shall not apply to any individual over the age of sixteen who has within the preceding three years been examined by an otolaryngologist, or if none was available by another licensed physician who issued a medical evaluation of their hearing loss for such individual.

6. If it is required by federal law or regulation, a hearing aid dispenser shall afford to an individual, who is eighteen years of age or older, the opportunity to waive the medical evaluation requirement of this section, provided however, the hearing aid dispenser shall:

(a) take no action to encourage, in any way, the prospective user to waive such a medical or audiological evaluation;

(b) prior to the performance of any activity required pursuant to subdivision eight of this section and prior to the performance of any hearing test the hearing aid dispenser shall inform the prospective user that, "Federal law requires a medical evaluation of their hearing loss. Medical evaluation shall be conducted by an otolaryngologist, or if none is available, by another licensed physician. You have the right to waive this requirement. You must sign a statement of waiver of your rights if you elect to do so";

(c) provide the prospective user with a copy of the manufacture's user instructional brochure for a hearing aid that has been or may be selected for the prospective user;

(d) review the contents of such brochure with the prospective user orally;

(e) conspicuously post a sign in at least forty point bold-faced type which states: "Federal law requires a medical evaluation of your hearing loss by an otolaryngologist, or if none is available, by another licensed physician. You have the right to waive this requirement. If you waive this requirement, you must sign a statement of waiver of your rights". Such sign shall also indicate the toll-free number required under section eight hundred three of this article that individuals wishing to register a complaint can call; and

(f) should the prospective user elect to waive his or her rights, the

prospective user shall sign the following advisory statement:

"I have been advised by (hearing aid dispenser's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician specializing in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid. I have also been advised that although the examination conducted by (hearing aid dispenser's name) reveals no indicators mandating referral to a licensed physician, preferably one specializing in diseases of the ear, for medical evaluation as required by law, it is in my best health interest to be examined by a physician specializing in diseases of the ear for any medical condition or disease at least once every three years."

If the prospective user is or the parent or guardian of any person under the age of eighteen years is a member of any church or religious denomination whose tenets and practices include reliance upon spiritual means through prayer alone and objects to medical treatment and so states in writing to the hearing aid dispenser or hearing aid trainee, such individual shall undergo a hearing examination as provided by this section, but no proof, ruling out any medically treatable problem causing hearing loss, shall be required.

7. No hearing aid dispenser shall verbally or in writing make a statement or reference to a prospective hearing aid user regarding any medical condition or medical diagnosis.

8. It is unlawful for a registered hearing aid dispenser to dispense a hearing aid unless he or she has first:

- (a) conducted a direct observation of the purchaser's ear canals;
- (b) inquired and made general observations for any of the following conditions:
 - (i) visible congenital or traumatic deformity of the ear;
 - (ii) history of, or active drainage from the ear within the previous ninety days;
 - (iii) history of sudden or rapidly progressive hearing loss within the previous ninety days;

- (iv) acute or chronic dizziness;
- (v) unilateral hearing loss of sudden or recent onset within the previous ninety days;
- (vi) audiometric air-bone gap equal to or greater than fifteen decibels at 500, 1000, and 2,000 hertz (hz);
- (vii) visible evidence of bleeding, significant cerumen accumulation, or a foreign body in the ear canal; and
- (viii) pain or discomfort in the ear.

(c) Whenever any of the conditions listed in paragraph (b) of this subdivision is found to exist, no hearing aid dispenser shall dispense a hearing aid to such prospective user. The hearing aid dispenser shall advise the prospective user of the observed condition and shall advise him or her to promptly consult a licensed physician, preferably a specialist in diseases of the ear. The prospective user shall be advised that he or she may consult with another licensed physician, if no otolaryngologist is available. A hearing aid dispenser may dispense a hearing aid to such prospective user after such user has obtained a medical clearance. No prospective user may waive medical evaluation under this subdivision if any of the conditions listed in paragraph (b) of this subdivision is found to exist except that a prospective user or the parent or guardian thereof may request a waiver on the basis that medical treatment violates his or her religious tenets or beliefs. A hearing aid dispenser shall read to and then present a waiver to such prospective user or parent or guardian thereof which shall provide: "at my request, (name of hearing aid dispenser) has informed me that I may waive medical evaluation of my hearing due to my personal religious beliefs, signed (name of prospective user or parent or guardian)." No hearing aid dispenser shall seek to induce a prospective user or parent or guardian of a prospective user to execute a waiver in order to effect the sale of a hearing aid.

9. It is unlawful for a registered hearing aid dispenser to dispense a hearing aid unless he or she has first:

- (a) complied with all provisions of state laws and regulations relating to the dispensing of hearing aids; and
- (b) has informed the purchaser of the address and office hours at which the registrant shall be available for fitting or post-fitting

adjustments and servicing of the hearing aid or aids sold.

10. (a) A hearing aid dispenser, not otherwise licensed pursuant to article one hundred fifty-nine of the education law, shall provide any prospective hearing aid users with a copy of their audiogram which shall include puretone (air and bone conduction) and speech audiometry test results, upon completion of such audiometric tests. Such audiogram shall clearly and conspicuously contain the following statement: "This information is intended for the sole purpose of fitting or selecting a hearing aid and is not a medical examination or audiological evaluation".

(b) Hearing aid dispensers licensed under article one hundred fifty-nine of the education law shall comply with the provisions of such article in the conduct of audiological evaluations and shall further provide a copy of the results of any audiological evaluation to any prospective hearing aid users with the following statement: "This is an audiological evaluation and is not a medical examination".

11. A registrant shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser a written receipt or purchase agreement, signed by the purchaser, the registrant and if applicable, the trainee, containing all of the following:

(a) the date of consummation of the sale;

(b) specifications as to the make, serial number, and model number of the hearing aid or aids sold;

(c) the address of the principal place of business of the registrant, and the office hours available for fitting or post-fitting adjustments and servicing of the hearing aid or aids sold;

(d) a statement to the effect that the hearing aid or aids delivered to the purchaser are used or reconditioned, as the case may be;

(e) the number of the registrant's certificate and the name and registration number of any other hearing aid dispenser or trainee who provided any recommendation or consultation regarding the purchase of the hearing aid;

(f) the terms of any written warranty, as required by this article;

(g) such receipt shall bear, or have attached to it in no smaller than fourteen point type, the following: "The purchaser has been verbally

advised at the outset of his or her relationship with the registered hearing aid dispenser that any examination or representation made by a hearing aid dispenser in connection with the business of dispensing this hearing aid, or hearing aids, is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state, and therefore, must not be regarded as medical opinion.";

(h) such written receipt or purchase agreement shall also outline the purchaser's right to return as required by subdivision twelve of this section. (i) The receipt shall include, in immediate proximity to the space reserved for the signature of the buyer, the following statement in all capital letters of no less than twelve point bold-faced type: "IN ADDITION TO OTHER RIGHTS, THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO TWELVE MIDNIGHT OF THE 45TH CALENDAR DAY () AFTER RECEIPT OF THE HEARING AID AND RETURN THE HEARING AID IN THE SAME CONDITION, ORDINARY WEAR AND TEAR EXCLUDED. BY LAW, THE SELLER IS ALLOWED TO RETAIN AN AMOUNT UP TO TEN PERCENT OF THE TOTAL PURCHASE PRICE OF THE CANCELLED HEARING AID, INCLUDING BATTERIES AND CORDS OR ACCESSORIES THERETO, INCLUSIVE OF ALL FEES RELATED TO THE HEARING AID".

(ii) If the dispenser is a not-for-profit hospital or facility licensed or certified pursuant to article twenty-eight of the public health law, the receipt shall include, in immediate proximity to the space reserved for the signature of the buyer, the following statement in all capital letters of no less than twelve point bold-faced type: "IN ADDITION TO OTHER RIGHTS, THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO TWELVE MIDNIGHT OF THE 45TH CALENDAR DAY () AFTER RECEIPT OF THE HEARING AID AND RETURN THE HEARING AID IN THE SAME CONDITION, ORDINARY WEAR AND TEAR EXCLUDED. BY LAW, THE DISPENSER IS ALLOWED TO RETAIN AN AMOUNT UP TO FIVE PERCENT OF THE TOTAL PURCHASE PRICE OF THE CANCELLED HEARING AID, INCLUDING BATTERIES AND CORDS OR ACCESSORIES THERETO, INCLUSIVE OF ALL FEES RELATED TO THE DISPENSING OF THE HEARING AID, PLUS A SERVICE FEE OF NOT MORE THAN TWO HUNDRED DOLLARS, UNLESS A SECOND HEARING AID WAS FITTED AND DISPENSED AT THE SAME TIME AS THE FIRST, THEN SUCH FEE SHALL NOT EXCEED THREE HUNDRED DOLLARS FOR BOTH HEARING AIDS."

12. No hearing aid shall be sold to any person unless accompanied by a

forty-five calendar day money-back written guarantee.

(a) If an individual returns a hearing aid in the same condition, ordinary wear and tear excluded, within the guarantee period, the customer shall be entitled to the return of the cost of the hearing aid and accessories as itemized on the receipt provided pursuant to subdivision eleven of this section; provided however that any hearing aid that has been used for a forty-five calendar day period as described in this subdivision, when refinished and totally reconditioned by the manufacturer or by the manufacturer's agent and such manufacturer or manufacturer's agent certifies that such hearing aid meets all the acoustical standards of a new hearing aid and is in all other respects the equivalent of a new hearing aid and with all warranties and guarantees that accompany a new hearing aid, shall be considered a new hearing aid and so designated; and further provided, however, that a hearing aid dispenser shall retain as a cancellation fee for return of the hearing aid, including batteries and cords or accessories thereto, a charge not in excess of ten per centum of the total purchase price of the cancelled hearing aid, including batteries and cords or accessories thereto, inclusive of all fees related to dispensing of hearing aids, as defined in subdivision six of section seven hundred eighty-nine of this article. Provided, however, if the hearing aid dispenser is a not-for-profit hospital or facility licensed or certified pursuant to article twenty-eight of the public health law, such dispenser is allowed to retain an amount up to five per centum of the total purchase price of the cancelled hearing aid, including batteries and cords or accessories thereto, inclusive of all fees related to the dispensing of the hearing aid, plus a service fee of not more than two hundred dollars, unless a second hearing aid was fitted and dispensed at the same time as the first, then such fee shall not exceed three hundred dollars for both hearing aids. Such money-back guarantee as provided in this subdivision shall not be in lieu of or in any way affect the right of the purchaser to recover the full amount paid and for any damages sustained for a breach of guarantee of fitness for use.

(c) The forty-five calendar day return period shall be tolled for any period during which a hearing aid dispenser takes possession or control of a hearing aid after its original delivery.

13. (a) Within one year from the date of purchase, in addition to any other rights and remedies the purchaser of a hearing aid may have, the purchaser shall have the right to rescind the transaction if: (i) the purchaser consults a licensed otolaryngologist, or if no such licensed otolaryngologist is available then another licensed physician qualified to diagnose diseases of the ear, subsequent to purchasing a hearing aid, (ii) and the physician certifies in writing that, in his or her professional judgement, at the time the dispensing occurred the purchaser had either a diagnosis of deafness or being hard of hearing for which a hearing aid provides no benefit or had a medical condition which contraindicates the use of a hearing aid, and (iii) as the result of either condition, the purchaser experienced no improvement in the quality of hearing.

(b) If the conditions of paragraph (a) of this subdivision are met, the seller shall refund to the purchaser, within ten days of the receipt of notice to rescind, a full and complete refund of all moneys received, in compliance with paragraph (a) of this subdivision. The purchaser shall incur no additional liability for rescinding the transaction.

(c) Any dispute over a purchaser's right to rescind the transaction as provided in this subdivision that is not resolved administratively by the department shall be determined by a court of competent jurisdiction.

14. A registrant shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his or her office or place of business at all times and each such record shall be kept and maintained for a six year period. These records shall include:

(a) results of the hearing test, fitting, selection, sales, rental and adaptation or service practices as required under this article;

(b) a copy of the written receipt required by subdivision eleven of this section;

(c) a copy of the signed written waiver, if any; and

(d) any other material which the secretary may feel is necessary.

15. A registrant shall comply with applicable statutes, rules and regulations regarding advertising of his or her services. In addition:

(a) no hearing aid dispenser shall, through advertisement, indicate or imply that any type of medical examination or audiological evaluation

will be provided or that the dispenser has been recommended by anyone other than an individual licensed to perform such examination or evaluation; provided, however, that nothing in this paragraph shall restrict or limit any person licensed under article one hundred fifty-nine of the education law from performing any activity thereunder or from stating in an advertisement that an audiological evaluation will be provided where an audiological evaluation is to be provided;

(b) no hearing aid device, part or accessory thereof shall be advertised as a new invention or involving a new mechanical or scientific principle unless such claim is true; and

(c) except for those hearing aid dispensers licensed as audiologists under article one hundred fifty-nine of the education law, no hearing aid dispenser shall, through advertisement, indicate or imply that he or she may perform a hearing test, examination, evaluation or consultation unless he or she includes the statement, "unless administered by an audiologist or physician, this test is for the purpose of amplification only. It is not a medical test."

16. No registered hearing aid dispenser, trainee or an employee of the registered hearing aid dispenser or trainee, shall canvass from house to house for the purpose of selling or renting a hearing aid. No registered hearing aid dispenser or trainee shall personally visit the home of a prospective customer for the purpose of selling or renting a hearing aid without the prior request of the prospective customer.

17. No registered hearing aid dispenser, manufacturer, organization or distributor shall sell or rent a hearing aid to a resident of this state through direct mail order sales.

18. No registered hearing aid dispenser or trainee shall conduct or consummate the sale of a hearing aid over the telephone unless the prospective user has been tested by that dispenser within the previous thirty days or a hearing aid user has initiated a request for a replacement of a specific hearing aid.

19. If a registered hearing aid dispenser utilizes telemarketing techniques or telephone contact, he or she shall comply with all

applicable provisions of federal and state law. Any initial telephone contact undertaken by a registered hearing aid dispenser or trainee shall include the following information:

- (a) a hearing aid will not restore normal hearing;
- (b) any hearing test or examination is not a medical test or examination and is solely for the purposes of fitting a hearing aid;
- (c) if there are indications of potential medical conditions, as defined by law, the prospective user will be referred to an otolaryngologist or if none is available to a physician; and
- (d) the costs of testing or office visits; and, the range of costs of hearing aids available from the registered hearing aid dispenser.

20. A registered hearing aid dispenser shall distribute printed educational information approved by the secretary to prospective hearing aid purchasers about the general use of hearing aids and assistive listening devices and on the advantages and disadvantages of binaural hearing aids, as well as rights and remedies available to the consumer pursuant to this article.

§ 799. Administration; suspension and revocation of registrations; fines; reprimands. 1. (a) The secretary shall refer each complaint which alleges conduct constituting a violation of article one hundred fifty-nine of the education law committed by an individual licensed pursuant to article one hundred fifty-nine of the education law to the office of professional discipline within the education department. Such complaints shall be processed pursuant to article one hundred thirty of the education law.

(b) Any order to suspend, revoke or refuse to issue a certificate of registration for hearing aid dispensing of a licensed audiologist shall be issued by the commissioner of education. Where such complaints allege violation of the provisions of this article relating to the dispensing of hearing aids by a registrant who is also subject to the provisions of article one hundred fifty-nine of the education law, the secretary shall have the powers as provided in this section. Such powers relate exclusively to the registration as a hearing aid dispenser.

2. Except as provided in subdivision one of this section, the secretary may suspend or revoke any registration issued pursuant to this article, and/or impose a fine of up to one thousand dollars per violation payable to the secretary. Such penalties may be imposed for the following reasons:

(a) engaging in the business of dispensing hearing aids unless the person is a registered hearing aid dispenser or a holder of a temporary certificate of registration.

(b) incompetency which includes, but is not limited to, the improper or unnecessary dispensing of a hearing aid.

(c) negligence and/or repeated negligent acts.

(d) conviction of any crime substantially related to the qualifications, functions and duties of a hearing aid dispenser.

(e) obtaining a certificate of registration by fraud or deceit; or presenting as his or her own the certificate of registration of another.

(f) use of the term "doctor" or "physician" or "clinic" or "hearing specialist" or "audiologist," or any derivation thereof, unless authorized by law; or any terms which suggest or imply medical board certification, medical training, competency or expertise. Any reference to certification or other professional training shall specify the grantor of such credential.

(g) fraud or misrepresentation in the dispensing of a hearing aid or aids.

(h) the employment, to perform any act covered by the provisions of this article, of any person whose certificate of registration has been suspended, revoked, or who does not possess a valid certificate of registration or temporary certificate of registration issued under this article.

(i) the use or causing the use, of any advertising or promotional literature in such manner as to have the capacity or tendency to mislead or deceive purchasers or prospective purchasers including any reference to "hearing consultation", unless permitted pursuant to article one hundred fifty-nine of the education law for those hearing aid dispensers licensed under such article, or medical consultation, diagnosis or treatment.

(j) the registrant's permitting another to use his or her certificate of registration for any purpose.

(k) failure to display the certificate of registration as provided in this article.

(l) violation of any provision of this article, other applicable federal or state law, rule or regulation, or of any existing applicable sanitary code.

(m) failure or refusal to perform repairs or service on any hearing aid sold by such trainee and/or registrant.

(n) no hearing aid dispenser, registrant or hearing aid trainee shall state or imply that the use of any hearing aid will restore hearing to normal, or preserve hearing, or prevent or retard the progression of deafness or being hard of hearing or any false or misleading or medically or audilogically unsupportable claims regarding the efficacy or benefits of hearing aids.

(o) fraud or bribery in securing a certificate of registration or permission to take an examination therefor.

(p) violation of a lawful order of the department previously entered in a disciplinary hearing or failure to comply with investigations or a lawfully issued subpoena of the department.

(q) making any predictions or prognostications as to the future course of deafness or being hard of hearing, either in general terms or with reference to an individual person, except where such predictions and prognostications are made by a hearing aid dispenser licensed pursuant to the provisions of article one hundred fifty-nine of the education law and consistent with such law.

(r) exerting influence on a client in such a manner as to exploit the client for financial gain for the registrant or for a third party.

(s) sale of a hearing aid by telephone or telemarketing. Such prohibition shall not limit the scheduling of appointments, offering of services or the sale of a hearing aid to a person whom has been tested by that dispenser or dispensing audiologist within the previous thirty days or is a hearing aid user who has initiated or specifically requested the telephone sale or offer of sale.

(t) inducing a prospective user or the parent or guardian of a prospective user to execute a religious waiver through the use of a false or misleading statement to effect the sale of a hearing aid.

(u) performing an otoscopic observation or testing of hearing for medical diagnostic purposes.

3. Whenever a certificate of registration is revoked, such certificate of registration shall not be reinstated or reissued until after the expiration of a period of five years from the date of such revocation.

4. The secretary may issue an order directing the cessation of any activity for which registration is required by this article upon a finding that a person, including a partnership, limited liability company, corporation, trust or other business organization has engaged in or acted as a hearing aid dispenser or a hearing aid dispensing business within this state without a valid registration. The department shall, before making such determination and order, afford such person including a partnership, limited liability company, corporation, trust, association or business organization, an opportunity to be heard in person or by counsel in reference to an adjudicatory proceeding held pursuant to this article.

6. Upon the suspension or revocation of a certificate of registration by the secretary and the issuance of a notice thereof, the registrant shall within five business days deliver to the secretary the certificate of registration. If surrendered by mail, the certificate of registration shall be sent by registered or certified mail, postmarked no later than three business days following notice of suspension or revocation. Failure to return a certificate of registration which has been revoked or suspended pursuant to this section within the prescribed time shall constitute a violation punishable by the payment of a fine of up to five hundred dollars.

7. In the event that the registrant shall contest the charge of the violation, a hearing on the charge shall be conducted in accordance with the provisions of subdivisions one and two of section eight hundred of this article.

§ 800. Denial of registration; complaints; notice of hearing. 1. Denial of registration. The secretary shall, before making a final determination to deny an application for a registration, notify the

applicant in writing of the reasons for such denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to the denial of the application. Such notification shall be served personally or by mail or in any manner authorized by the civil practice law and rules for service of a summons. If a hearing is requested, such hearing shall be held at such time and place as the secretary shall prescribe. If the applicant fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification shall become the final determination of the secretary. If, after hearing, the registration is denied, written notice of such denial shall be served upon the registrant personally or by certified mail or in any manner authorized by the civil practice law and rules.

2. Revocation, suspension, reprimands, fines. The secretary shall, before revoking or suspending any registration or imposing any fine or reprimand on the holder of such registration, or before issuing any order directing the cessation of unregistered activity shall send notification of such action to the holder. Such notice shall be provided at least ten days prior to the date set for the hearing, notify the registrant or the person deemed to have engaged in such unregistered activities, of any charges made and shall afford the person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served upon the registrant in person or by mailing the notice by certified mail to the registrant to the last known business address of such person, or by any method authorized by the civil practice law and rules for the service of a summons. The hearing shall be at such time and place as the secretary shall prescribe. After the applicant is notified of such denial, in the event a certificate of registration or temporary certificate of registration or an application is denied, no such registration shall be issued to such former registrant or applicant for at least six months, nor thereafter, except at the discretion of the secretary. The applicant or registrant may be heard in person or by counsel. Such hearing shall be at such time and place as the secretary shall prescribe.

3. In any hearing held pursuant to the provisions of this article, the secretary acting by such officer or person in the department as he or

she may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, or document, record or relevant evidence, and administer an oath to and take the testimony of any such person or cause his or her deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 801. Judicial review. The action of the secretary pursuant to a hearing in refusing to grant or to renew a certificate of registration or a temporary certificate of registration, in revoking or suspending such registration or imposing a civil penalty, shall be subject to review by the supreme court in the manner provided in article seventy-eight of the civil practice law and rules.

§ 802. Special provisions; not-for-profit sales. 1. No otolaryngologist or other licensed physician who has conducted a medical evaluation of hearing loss shall engage in the business of dispensing hearing aids for a profit. No otolaryngologist or other licensed physician who has dispensed a hearing aid shall refuse or fail to perform repairs or service on any hearing aid that they have dispensed.

2. Every licensed physician who engages in the dispensing of hearing aids in compliance with the provisions of this section shall be required to comply with sections seven hundred ninety-one, seven hundred ninety-eight and eight hundred three of this article, in addition to compliance with this section.

§ 803. Powers of the secretary. 1. The secretary shall promulgate such rules and regulations as are deemed necessary to effectuate the purposes of this article, and shall provide written notification of the provisions of this article and a copy of the registration application within ninety days of the effective date of this article to all dealers as were registered under former article thirty-seven-a of this chapter prior to such effective date and to audiologists licensed pursuant to

article one hundred fifty-nine of the education law. Such notification shall inform all such dealers, their dispensing employees and audiologists of the obligation to register pursuant to subdivision nine of section seven hundred ninety of this article.

2. The secretary shall review implementation of the provisions of this article in consultation with the board and shall vigorously and proactively ensure the enforcement of its provisions through site visits, regular examination of compliance with this article, public outreach and education, promulgation of regulations, delivery of technical assistance, and such other forms as would increase awareness of and adherence to the protections and process prescribed in this article. The secretary shall examine compliance with this article for each business registered pursuant to subdivision one of section seven hundred ninety of this article at least once every four years.

3. In addition to the powers and duties specified elsewhere in this article, the secretary, upon the complaint of any individual or upon the secretary's initiative, shall have the power to make and to conduct such investigations as are deemed necessary to effectuate the purposes of this article. The secretary shall have the power to require the attendance of witnesses and issue subpoenas in accordance with the provisions of this section, in the conduct of such investigations.

4. In conjunction with the board, the secretary shall:

(a) develop procedures for promptly investigating all complaints regarding violations of this article;

(b) develop procedures for assisting consumers in resolving a dispute with those persons registered pursuant to this article and mediating on behalf of consumers when needed;

(c) establish a toll-free number at which consumers, including persons who are hard of hearing or deaf, can register a complaint; and

(d) develop other procedures as necessary to increase public awareness of how to properly purchase, fit, adjust and use a hearing aid, as well as the rights of hearing aid consumers pursuant to this article, which shall include the distribution of written information concerning this subject matter and the toll-free number to those subject to this

article, the media, and the general public.

5. The secretary, in conjunction with the board shall cause to be prepared and distributed printed educational information to registered hearing aid dispensers and others about the general use of hearing aids and assistive listening devices and on the advantages and disadvantages of hearing aids as well as rights and remedies available to the consumer pursuant to this article.

6. The secretary shall regularly communicate with the commissioner of education regarding the discipline and/or prosecution of violations of this article by audiologists licensed pursuant to article one hundred fifty-nine of the education law.

7. On or before January thirty-first of each year, the secretary shall develop and distribute a report to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the assembly, the minority leader of the senate, the chair of the assembly ways and means committee, and the chair of the senate finance committee, and make it available for public examination. Such report shall entail specific efforts made by the secretary, the board and hearing aid dispensers to comply with the provisions of this article, a compilation of actions taken in response to recommendations submitted to the secretary from the board, a summary of the results of compliance efforts and anticipated efforts to improve public education, compliance and enforcement during the subsequent year, as well as recommendations, if any, to amend this article.

§ 804. Penalties. Any person found to have engaged in the dispensing of hearing aides or in the business of dispensing hearing aids without being registered pursuant to this article shall be guilty of a class A misdemeanor.

§ 805. Separability. If any section or provision of this article shall be adjudged by any court of competent jurisdiction to be invalid or

inapplicable to any person or situation, such judgment shall not affect, impair or invalidate any other section or provision of this article or the applicability of such section or provision to other persons or other situations.

ARTICLE 38

VESSEL DEALER AGREEMENTS

Section 810. Definitions.

811. Repurchase of vessels and parts.

812. Termination or renewal of agreement.

813. Vessel preparation, warranty and warranty reimbursement.

814. Arbitration.

815. Penalties.

816. Waiver.

§ 810. Definitions. For the purposes of this article:

1. "Dealer" shall mean any person who (a) engages, in whole or in part, in the business of buying, selling, leasing, exchanging and/or repairing new and unused vessels and/or used vessels, or new and unused and/or used inboard engines, inboard/outdrives or outboard motors for vessels, and (b) has an established place of business for the sale, lease, trade, repair and/or display of vessels, inboard engines, inboard/outdrives or outboard motors.

2. "Distributor" shall mean any person who offers for sale, sells or distributes one or more brands of new vessels to any new vessel dealer, and who maintains a factory representative or who controls a person who offers for sale, sells or distributes one or more brands of new vessels to any new vessel dealer.

3. "Established place of business" shall mean a permanent commercial building at which the business of a new vessel dealer is conducted, including the display and repair of vessels.

4. "Factory representative" shall mean an agent or employee of a manufacturer or distributor who is retained or employed for the purpose of selling or promoting the sale of new vessels to new vessel dealers or prospective new vessel dealers.

5. "Manufacturer" shall mean any person engaged in the business of manufacturing or importing new and unused vessels, new and unused inboard engines, inboard/outdrives, outboard motors, or component parts and accessories therefor.

6. "Vessel" shall mean every description of watercraft, including an iceboat, used or capable of being used as a means of transportation on water or ice, and shall include the hull, motor/engine, component parts, spars, sails and accessories of such watercraft; provided, however, that personal watercraft and dealers of personal watercraft shall not be subject to the provisions of this article when such dealers are subject to the provisions of article seventeen-A of the vehicle and traffic law, as added by chapter eight hundred fifteen of the laws of nineteen hundred eighty-three.

§ 811. Repurchase of vessels and parts. Upon the termination, cancellation or non-renewal of any dealer agreement, except as otherwise provided in subdivision one of section eight hundred twelve of this article, by a manufacturer or distributor pursuant to this article the new vessel dealer shall be paid the dealer invoice price plus any shipping costs paid by such dealer for:

1. new current and previous model year vessels and motors in the dealer's inventory which were purchased from the manufacturer or distributor, within twelve months of the delivery date for each vessel and motor, and which are unused, and not materially damaged or altered while in the dealer's possession, and to which the dealer has clear title and is in position to convey such title to the manufacturer or distributor;

2. unused parts which were required from the manufacturer or

distributor and which are listed on the current parts price sheet available to the dealer;

3. equipment and furnishings required from the manufacturer, distributor, or one of the manufacturer's or distributor's approved services; and

4. special tools that are only usable on the specific brand of vessel or engine offered by the manufacturer or distributor terminating, canceling or nonrenewing a dealer agreement.

§ 812. Termination or renewal of agreement. 1. Termination for cause. A manufacturer or distributor may terminate an agreement with a dealer for cause upon not less than fifteen days written notice sent by certified mail or statutory overnight delivery, return receipt requested, to the dealer stating the specific grounds for such termination, only upon the occurrence of the following:

(a) the conviction of the dealer, or one of its principal owners, of a felony or a crime punishable by a term of imprisonment which substantially adversely affects the business of the manufacturer or distributor;

(b) the failure of the dealer to conduct its customary sales and service operations during the regularly open business period, as defined by such dealer, for a continuous period of seven days, except when any such failure is the result of an act of God or circumstances beyond the direct control of the dealer;

(c) upon the suspension or revocation of the vessel dealer's registration, pursuant to section twenty-two hundred fifty-seven-a of the vehicle and traffic law, for more than thirty days;

(d) the insolvency of the dealer, or filing of any petition by or against the dealer under any bankruptcy or receivership law;

(e) unauthorized sales of products defined in the dealer agreement;

(f) failure by the dealer to pay to the manufacturer or dealer for products purchased pursuant to the dealer agreement;

(g) the dealer has made a material misrepresentation in applying for or acting under the contractual agreement; or

(h) the dealer has engaged in fraud or unfair business practices.

If a dealer is terminated for cause pursuant to this subdivision, such dealer shall pay reasonable freight costs and the cost of an independent marine surveyor, for the purpose of valuation of inventory, if the manufacturer elects to repurchase such dealer's inventory.

2. Termination or non-renewal without cause. Whenever a dealer enters into a dealer agreement with a manufacturer or distributor wherein the dealer agrees to maintain an inventory of vessels or parts therefor, the manufacturer or distributor shall not, except as provided in subdivision one of this section, terminate, cancel or non-renew such dealer agreement until ninety days after written notice stating the specific grounds of such intention to terminate has been sent by certified mail or statutory overnight delivery, return receipt requested, to the dealer.

3. If a manufacturer or distributor terminates a dealer agreement as a result of any action, except as otherwise provided in subdivision one of this section, the manufacturer or distributor shall repurchase the inventory as provided in section eight hundred eleven of this article. The dealer may keep the inventory if it desires, and the manufacturer agrees in writing. If the dealer has any outstanding debts to the manufacturer or distributor, then the repurchase amount may be adjusted by the manufacturer to take into account such unpaid debts.

4. After written notice by the dealer to the manufacturer by registered or certified mail or statutory overnight delivery, return receipt requested, within thirty days of the termination of the dealer agreement, the manufacturer or distributor shall repurchase that inventory previously purchased from the manufacturer or distributor as provided in section eight hundred eleven of this article, except as otherwise provided in subdivision one of this section.

5. Upon payment within a reasonable time of the repurchase amount to the dealer, the title, if any, and the right of possession to the repurchased inventory shall transfer to the manufacturer or distributor.

6. A dealer agreement shall not be assigned or transferred by the dealer without prior written consent of the manufacturer or distributor. Any assignment of such an agreement without such consent, any change in the majority ownership of capital stock of the dealer or any other change in the majority ownership of a partnership shall immediately terminate the agreement except as follows:

(a) the manufacturer shall not refuse to transfer a dealer agreement to any immediate family member succeeding to the agreement of a deceased or incapacitated dealer if each of the following applies:

(i) the immediate family member successor provides the manufacturer with written notice within sixty days after the dealer's death or incapacity of the intent to succeed to the agreement,

(ii) the immediate family member successor agrees to be bound by all terms and conditions of existing agreements,

(iii) the immediate family member successor is entitled to inherit the deceased or incapacitated dealer's agreement pursuant to an agreement or a written request filed by the dealer with the manufacturer prior to the death or incapacity of the dealer, and

(iv) the immediate family member successor has demonstrated experience in the marine industry.

(b) manufacturers and distributors shall not refuse a transfer, sale or exchange of a dealer agreement between a dealer and another person if the person meets all the requirements in the existing dealer agreement, as well as all reasonable requirements and prerequisites the manufacturer or distributor utilizes when selecting new dealers for its products at the time of the transfer, including financial and business requirements, and agrees to be bound by all terms and conditions of the agreement and the dealer applies in writing to the manufacturer or distributor for such transfer not less than sixty days prior to the sale or transfer of the dealership. The failure to comply with the requirements of the manufacturer or distributor within sixty days after the manufacturer or distributor receives an application for sale or transfer of a dealership shall be grounds for denial of such application.

7. A dealer shall not terminate, cancel or non-renew a dealer

agreement with a manufacturer, until it has provided such manufacturer with written notice thereof not less than ninety days prior to such termination, cancellation or non-renewal.

§ 813. Vessel preparation, warranty and warranty reimbursement. 1. If a manufacturer or distributor requires or permits a dealer to provide parts or to perform labor to satisfy a warranty created by the manufacturer or distributor, the manufacturer or distributor shall:

(a) properly and promptly fulfill its warranty obligations;

(b) adequately and fairly compensate the dealer for any parts provided, the shipping costs for parts provided and labor performed by the dealer to satisfy the warranty on a vessel, including the hull, motor/engine, component parts, spars, sails and accessories; and

(c) have the right to audit the dealer's warranty claims for a period of eighteen months following the submission thereof, and to charge back to the dealer any amounts paid on false, fraudulent, incorrect or unsubstantiated claims.

2. Compensation by the manufacturer or distributor for parts provided, the shipping costs for parts provided and labor performed by the dealer shall be deemed adequate and fair if:

(a) the dealer is reimbursed for any parts provided and already in inventory and the shipping costs for such parts in an amount equal to the wholesale price, plus forty percent thereof, provided that in no case shall such reimbursement exceed the retail price, and shipping costs of the parts provided to the dealer; and

(b) the dealer is reimbursed for any labor performed at the following rates:

(i) with respect to the first year of new dealer agreements entered into on or after the effective date of this article, and with respect to the first year of the first renewals of a dealer agreement in effect prior to the effective date of this article, when such renewal is entered into on or after the effective date of this article, at a rate of not less than seventy-five percent of the retail labor rate customarily charged and posted therefor,

(ii) with respect to the second year of new dealer agreements entered

into on or after the effective date of this article, and with respect to the second year of a renewal of a dealer agreement in effect prior to the effective date of this article, when the first year of such renewal commenced on or after the effective date of this article, at a rate not less than ninety percent of the retail labor rate customarily charged and posted therefor; and

(iii) with respect to the third and any subsequent year of new dealer agreements entered into on or after the effective date of this article, and with respect to the third and any subsequent year of a renewal of a dealer agreement in effect prior to the effective date of this article, when the first year of such renewal commenced on or after the effective date of this article, at a rate not less than one hundred percent of the retail labor rate customarily charged and posted therefor.

Nothing in this paragraph shall be deemed to require or provide for the payment of a lower rate than is provided in a dealer agreement entered into prior to the effective date of this article or of a renewal of a dealer agreement, when such renewal is entered into prior to the effective date of this article.

3. To be entitled to compensation for labor at the dealer's retail rate, the dealer shall have posted, in a place conspicuous to service customers, the rate for labor for nonwarranty work.

4. Except as provided in this section, no manufacturer or distributor may by agreement make restrictions on reimbursement or otherwise restrict the nature or extent of parts provided or labor performed by a dealer if such restriction impairs the dealer's ability to satisfy the warranty of the manufacturer or distributor in accordance with the generally accepted standards. However, the manufacturer or distributor may provide printed repair manuals detailing standard labor time and parts required for a specific repair to establish set requirements if such manual is provided to the dealer upon entry into a new contract or renewal of a contract. Such standards shall reflect the labor time and parts' standards used by the manufacturer on a national level. Any repair or parts required by the manufacturer or distributor that are not in repair manuals will be paid in actual billable hours by the

manufacturer or distributor.

5. A claim by a dealer for compensation for parts provided, the shipping costs for parts provided and labor performed to satisfy a warranty, provided that the claim includes all the information reasonably necessary by the manufacturer to make a determination upon the validity of the claim, shall be approved or disapproved by the manufacturer or distributor in writing within thirty days of receipt of the claim by the manufacturer or distributor in writing, and if approved, shall be paid within thirty days of the approval thereof.

§ 814. Arbitration. A cause of action to enforce the provisions of this article may be commenced in any court having jurisdiction over such action or may be resolved through arbitration pursuant to arbitration standards recognized by the American Arbitration Association. Every arbitration conducted pursuant to this article shall be conducted in this state.

§ 815. Penalties. 1. Any manufacturer or distributor found to have violated any provision of section eight hundred thirteen of this article shall be liable to the dealer for all reimbursement required by such section and interest thereon at a rate of prime plus three percent per annum that such amount was due and owing pursuant to such section.

2. Every manufacturer or distributor found to have violated any provision of this article shall be liable to the dealer for any financial injury or other damage suffered by such dealer as a result of such violation, and court costs and reasonable attorney's fees.

3. Any dealer found to have violated any provision of this article shall be liable to the manufacturer or distributor for any financial injury or other damage suffered by such manufacturer or distributor as a result of the violation, and court costs and reasonable attorneys' fees.

4. The provisions of this article shall be in addition to any legal or

equitable right that any party has pursuant to any other provision of law or pursuant to any agreement between the parties.

§ 816. Waiver. No manufacturer or distributor shall, as a condition of entering into any agreement or contract with a dealer or in any dealer agreement, require any dealer to waive any provision or right granted pursuant to this article.

ARTICLE 38-A

SALE OF OUTDATED AND LABEL OBSTRUCTED OVER-THE-COUNTER DRUGS AND COSMETIC PRODUCTS

Section 820. Unlawful practices.

821. Enforcement and penalties.

§ 820. Unlawful practices. 1. It shall be unlawful for any retailer:

(a) to knowingly sell or offer for sale, any drug or cosmetic sold over-the-counter without the need of a prescription, later than the date, if any, marked upon the label as indicative of the date beyond which the contents cannot be expected beyond reasonable doubt to be safe and effective; provided, however, that when such drug or cosmetic is identified as an outdated drug or cosmetic by segregation from regular stock or by other means, the holding of such drug or cosmetic beyond its expiration date shall not be deemed a violation of this section. When the expiration date is expressed by month and year, the expiration date shall be the last day of the month indicated; or

(b) to knowingly alter, mutilate, destroy, obliterate, obstruct or remove by means of a price sticker or otherwise the whole or any part of the label or packaging, including, where applicable, the expiration date displayed thereon, of any over-the-counter drug or cosmetic.

2. For purposes of this section, the following terms shall have the following meanings:

(a) "label" shall mean the label required by the statutes applicable to and regulations issued by the federal food and drug administration;

and

(b) "cosmetic" shall mean articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, including but not limited to personal hygiene products such as deodorant, shampoo or conditioner.

§ 821. Enforcement and penalties. 1. Whenever there shall be a violation of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred the court may impose a civil penalty of not more than five hundred dollars for each violation. For the purposes of this section each group of identical items shall constitute a single violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

2. Before any violation of this article is sought to be enjoined, the attorney general shall be required to give the person against whom such proceeding is contemplated notice by certified mail and an opportunity to show in writing within five business days after receipt of notice why proceedings should not be instituted against him, unless the attorney general shall find, in any case in which he seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

3. In any such action it shall be a complete defense that the act or practice is, or if in interstate commerce would be, subject to and complies with the rules and regulations of, and the statutes administered by, the federal food and drug administration or any official department, division, commission or agency of the United States as such rules, regulations or statutes are interpreted by the federal food and drug administration or such department, division, commission or agency or the federal courts.

ARTICLE 38-B

PRODUCTS SOLD FOR HUMAN CONSUMPTION

Section 830. Sale of sodium nitrate and sodium nitrite.

831. Sale or promotional distribution of dietary supplements containing ephedra.

832. Restricted access to retail sale of ipecac.

833. Restricted access to retail sale of dextromethorphan, commonly known as "dxm".

834. Sale of whipped cream chargers.

§ 830. Sale of sodium nitrate and sodium nitrite. 1. No person, corporation, partnership, limited liability company, firm or any other business entity doing business within this state shall sell or offer for sale sodium nitrate or sodium nitrite to any person under the age of twenty-one. This restriction shall not apply to foods containing sodium nitrate or sodium nitrite in compliance with the requirements of 9 CFR Part 424 or 21 CFR Part 172.

2. Any person, corporation, partnership, limited liability company, firm, or any other business entity doing business within the state selling, offering for sale, or distributing sodium nitrate or sodium nitrite, except as permitted by subdivision one of this section, shall require proof of legal age prior to allowing an individual to purchase or receive a shipment of sodium nitrate or sodium nitrite. Such identification need not be required of any individual who reasonably appears to be at least thirty years of age, provided, however, that such

appearance shall not constitute a defense in any proceeding alleging the sale or distribution of sodium nitrate or sodium nitrite to an individual under twenty-one years of age.

3. Any person, corporation, partnership, limited liability company, firm or any other business entity that violates the provisions of this section shall be subject to a civil penalty of not more than two hundred fifty dollars for an initial offense and not more than five hundred dollars for the second and each subsequent offense, provided this section shall not be construed to limit any other criminal or civil liability such person, corporation, partnership, limited liability company, firm or other business entity may be subject to under law.

§ 831. Sale or promotional distribution of dietary supplements containing ephedra. 1. No person, firm, corporation, partnership, association, limited liability company, or other entity shall sell or offer to sell or give away, as either a retail or wholesale promotion, a dietary supplement containing any quantity of ephedra within New York state, except as authorized by subdivision three of this section.

2. For purposes of this section, the following terms have the following meanings:

(a) "dietary supplement" means (1) a product (other than tobacco) that is intended to supplement the diet and that bears or contains one or more of the following dietary ingredients: a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for the use by a person to supplement the diet by increasing the total daily intake, or a concentrate, metabolite, constituent, extract, or combinations of these ingredients; (2) intended for ingestion in pill, capsule, tablet, or liquid form; and (3) labeled as a "dietary supplement" pursuant to the federal Dietary Supplement Health and Education Act, 21 U.S.C. 321, as amended.

(b) "ephedra" means any natural or synthetic form of ephedrine and ephedrine alkaloids.

3. (a) Nothing in this section shall apply to nonprescription

over-the-counter drugs approved or regulated by the Food and Drug Administration.

(b) This section shall not apply to ma huang (*ephedra sinica*) sold or dispensed by any practitioner of oriental medicine, whose qualification to use ma huang and other herbs is explicitly established via evidence of an active certification issued to such individual from an entity accredited by the National Commission of Certifying Agencies (NCCA) and who is not otherwise required to be licensed by the state of New York, or any physician or any practitioner of acupuncture licensed by the state of New York as long as it is not sold or dispensed as a dietary supplement for weight loss, for body building, or as an "energy food".

4. Any person, firm, corporation, partnership, association, limited liability company, or other entity that violates the provisions of this section by selling, offering to sell, or giving away as either a retail or wholesale promotion, a dietary supplement containing any quantity of ephedrine alkaloids shall be subject to a civil penalty of not more than five hundred dollars per violation, recoverable in an action by any enforcement authority designated by any municipality or political subdivision.

5. It shall be a defense that any person, firm, corporation, partnership, association, limited liability company, or other entity that sold, offered for sale, or gave away as either a retail or wholesale promotion a dietary supplement, did not have knowledge that the supplement contained any quantity of ephedrine alkaloids, if such knowledge was not reasonably discoverable.

§ 832. Restricted access to retail sale of ipecac. 1. Any retail establishment that sells any product or products containing as the only active ingredient ipecac, shall limit access to such products in a manner designed to prevent the misuse or abuse of such products. Such limitations shall include removing such products from shelves and other locations that are directly accessible by customers, and placing such products behind a pharmacy counter so that a consumer must request such products in order to obtain such products from an employee working in

the pharmacy. If the retail establishment wishes to sell such products but does not maintain a pharmacy at that retail location, such products shall be made secure such that they may only be accessed by a manager, assistant manager, acting manager or other supervisory personnel at such location.

2. As used in this section "retail establishment" means every vendor that in the regular course of business sells products containing ipecac at retail directly to the public including, but not limited to, pharmacies, grocery stores, and other retail stores.

§ 833. Restricted access to retail sale of dextromethorphan, commonly known as "dxm". 1. No retail establishment offering for sale any product or products containing as an active ingredient dextromethorphan, shall permit the sale of such products to persons under the age of eighteen without a valid prescription. Retail establishments shall require proof of legal age for purchase of such products. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of any product or products containing as an active ingredient dextromethorphan to an individual under eighteen years of age. Any retail establishment which violates the provisions of this section shall be subject to a fine of two hundred fifty dollars for each such violation.

2. As used in this section "retail establishment" means every vendor that in the regular course of business sells products containing dextromethorphan at retail directly to the public including, but not limited to, pharmacies, grocery stores, and other retail stores.

3. This section shall supersede any local laws or ordinances regulating the sales of products containing dextromethorphan.

* NB There are 2 § 391-s's

§ 834. Sale of whipped cream chargers. 1. For purposes of this

section, the term "whipped cream charger" shall mean a steel cylinder or cartridge filled with nitrous oxide (N2O) that is used as a whipping agent in a whipped cream dispenser.

2. No person, corporation, partnership, limited liability company, firm or any other business entity doing business within this state shall sell or offer for sale a whipped cream charger to any person under the age of twenty-one.

3. Any person, corporation, partnership, limited liability company, firm, or other business entity doing business within the state selling, offering for sale, or distributing whipped cream chargers shall require proof of legal age prior to allowing an individual to purchase or receive a shipment of whipped cream chargers. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale or distribution of whipped cream chargers to an individual under twenty-one years of age.

4. Any person, corporation, partnership, limited liability company, firm or any other business entity that violates the provisions of this section shall be subject to a civil penalty of not more than two hundred fifty dollars for an initial offense and not more than five hundred dollars for the second and each subsequent offense.

ARTICLE 39

DRUG-RELATED PARAPHERNALIA

- | | | |
|---------|--------|--|
| Section | 850. | Definitions. |
| | 851. | Possession and sale of drug-related paraphernalia. |
| | 851-a. | Manufacture of drug-related paraphernalia. |
| | 852. | Power of municipality to revoke license or permit. |
| | 853. | Enforcement; limitation of scope. |

§ 850. Definitions. As used in this article, unless the context

clearly requires otherwise, the following words or terms shall have the following meanings:

1. "Controlled substance" shall have the same meaning as defined in section three thousand three hundred two of the public health law.

2. (a) "Drug-related paraphernalia" consists of the following objects used for the following purposes:

(i) Kits, used or designed for the purpose of planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(ii) Kits, used or designed for the purpose of manufacturing, compounding, converting, producing, or preparing controlled substances;

(iii) Isomerization devices, used or designed for the purpose of increasing the potency of any species of plant which is a controlled substance;

(iv) Scales and balances, used or designed for the purpose of weighing or measuring controlled substances;

(v) Diluents and adulterants, including but not limited to quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or designed for the purpose of cutting controlled substances;

(vi) and

(vii) Objects, used or designed for the purpose of ingesting, inhaling, or otherwise introducing cocaine into the human body.

(b) "Drug-related paraphernalia" shall not include hypodermic needles, hypodermic syringes and other objects used for the purpose of parenterally injecting controlled substances into the human body.

§ 851. Possession and sale of drug-related paraphernalia. It shall be a violation of this article for any person, firm or corporation to possess with intent to sell, offer for sale, or purchase drug-related paraphernalia under circumstances evincing knowledge that the paraphernalia is possessed, sold or purchased for one or more of the drug-related purposes stated in subdivision two of section eight hundred fifty of this article.

§ 851-a. Manufacture of drug-related paraphernalia. Any person, firm or corporation who manufactures drug-related paraphernalia intending, or under circumstances evincing knowledge, that such paraphernalia is to be used in connection with one or more of the drug-related purposes specified in subdivision two of section eight hundred fifty of this article shall be guilty of a class A misdemeanor.

§ 852. Power of municipality to revoke license or permit. 1. A county, town, city or village which issues a license or permit authorizing any person, firm or corporation to engage in the selling or offering for sale of any merchandise may revoke such license or permit upon a finding, pursuant to a hearing held thereon, that such person, firm or corporation has sold or offered for sale merchandise in violation of this article.

2. The possession with intent to sell or offering for sale of drug-related paraphernalia as defined herein is hereby declared to be a nuisance, and where any such drug-related paraphernalia shall be taken from the possession of any person, the same shall be surrendered and forfeited to the sheriff of the county wherein the same shall be taken, except that in a city having a population of seventy-five thousand or more, the same shall be surrendered and forfeited to the police commissioner or other head of the police force or department of said city and except that in the counties of Nassau and Suffolk, the same shall be surrendered and forfeited to the commissioner of the county police department.

§ 853. Enforcement; limitation of scope. 1. The attorney general or any state or local health officer, town, village or city attorney, or the chief executive officer of a municipality may institute an action in a court of competent jurisdiction to enjoin any activity prohibited pursuant to section eight hundred fifty-one of this chapter. If such court finds that any person, firm or corporation has sold or offered for

sale any drug-related paraphernalia, it shall assess civil penalties against such person, firm or corporation in an amount not less than one thousand dollars nor more than ten thousand dollars for each such violation.

2. This article shall not apply to any sale, furnishing or possession which is lawful under section 3381 of the public health law.

* 3. This article shall not apply to any sale, furnishing or possession which is for a lawful purpose under the cannabis law.

* NB Repealed July 5, 2028

ARTICLE 39-A

MERCHANTS OF TORAH SCROLLS

Section 855. Legislative findings.

856. Definitions.

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§ 855. Legislative findings. The legislature finds that, as a result of the high value of Torah scrolls, there has developed a market for stolen scrolls. Because scrolls are virtually identical and difficult to identify, it is necessary to provide a system by which buyers can satisfy themselves that the scroll they are purchasing was not stolen thereby protecting the integrity of the marketplace, and to thwart trafficking in stolen goods of this unique nature. Accordingly, the provisions of this article are enacted.

§ 856. Definitions. As used in this article:

(1) Merchant means a person who deals in the sale of Torah scrolls in the ordinary course of business.

(2) Torah scroll means an edition of the Pentateuch hand-written on parchment.

(3) Person means any individual, partnership, corporation, association, religious corporation, house of worship, however organized, or other entity.

(4) Written instrument means a written or printed agreement, bill of sale, invoice, certificate of authenticity or any other document describing, pursuant to section eight hundred fifty-nine of this article, the Torah scroll which is to be sold, exchanged, donated, consigned, or otherwise transferred, by a merchant.

§ 857. Disclosure required. (1) No merchant shall sell, exchange, consign, donate, or otherwise transfer a Torah scroll unless a written disclosure instrument is furnished to the purchaser, consignee, donee or other transferee prior to the sale, exchange, consignment, donation or other transfer, which sets forth as to each scroll the descriptive information required by section eight hundred fifty-nine of this article.

(2) A merchant shall inquire of any person offering a Torah scroll for sale information sufficient to supply the information described in subdivisions one through four, inclusive, of section eight hundred fifty-nine of this article and shall not purchase, or otherwise accept for purposes of sale, exchange, consignment, donation, or other transfer, a scroll from a person failing to provide such information.

§ 858. Posting of notice. In each place of business in this state where a merchant is regularly engaged in sale of Torah scrolls he shall post in a conspicuous place a sign which in legible format states: "Article 39-A of the New York General Business Law requires merchants to disclose in writing certain information concerning Torah scrolls. If you are a prospective recipient of a Torah scroll from a merchant that information must be given to you in accordance with and under penalty of that law."

§ 859. Information to be provided. The following information shall be supplied in a written instrument to each transferee of every Torah scroll and shall clearly, specifically, and distinctly include:

(1) The name of the merchant.

(2) The name of the person from whom the merchant obtained the scroll, as well as his address and telephone number and the date on which it was received from him.

(3) The manner in which the scroll was obtained by the person from whom the merchant obtained it.

(4) The authority of the person selling the scroll to the merchant.

(5) Any unique characteristics of the scroll which would be useful for identification purposes.

§ 860. Records. Each merchant subject to the requirements of this article shall maintain, in chronological order, a copy of all disclosure statements issued by him for a period of ten years.

§ 861. Penalty. Any merchant who fails to comply with the requirements of section eight hundred fifty-seven or eight hundred sixty or who knowingly provides false or misleading information otherwise required by this article shall be guilty of a violation punishable by a fine not to exceed two hundred fifty dollars.

§ 862. Recision and other penalties. If a merchant fails to comply with the disclosure provisions of section eight hundred fifty-seven of this article, the transferee may rescind the transaction. In addition, where the merchant has made knowingly false statements to a transferee, the transferee may recover actual damages, if any, and a penalty in the sum of two hundred fifty dollars. The remedies provided in this section are in addition to other remedies available by law.

§ 863. Enforcement. (1) Any violation of this article shall be deemed to be unlawful for purposes of sections three hundred forty-nine and three hundred fifty of article twenty-two-A of this chapter.

(2) Any person who engages in repeated violations of this article shall be deemed to have engaged in persistent fraud or illegality for purposes of subdivision twelve of section sixty-three of the executive law.

(3) The attorney general may bring an action pursuant to that article twenty-two-A or pursuant to that subdivision twelve to enjoin violations of this article and seek restitution for any person entitled thereto. In addition, the attorney general may recover, in addition to any other relief provided by law a civil penalty of five hundred dollars for each violation to be forfeited to the state of New York.

(4) In connection with any such action or proceeding the attorney general may take proof and issue subpoenas in accordance with civil practice law and rules.

§ 864. Severability. If any sentence, paragraph, section or part of this article shall be adjudged invalid by a court of competent jurisdiction such judgment shall not impair or invalidate the remainder thereof but shall be confined to that part.

ARTICLE 39-B IMITATION WEAPONS

Section 870. Legislative intent.

871. Definitions.

872. Prohibitions.

873. Enforcement.

§ 870. Legislative intent. The legislature finds and declares that there exists an unreasonable risk of injury and death associated with the sale of toy weapons which are replica of and cannot be easily distinguished from actual weapons; that in recent years the sale and possession of these imitation weapons has grown; that in nineteen

hundred eighty-seven, more than fourteen hundred toy imitation weapons involved in criminal incidents were confiscated by the police in New York city alone, nearly eighty percent more than four years earlier; that when such imitation weapons are perceived as actual weapons fear and dangerous defensive actions often result. The legislature further finds and declares that the purpose of this article is to safeguard the public from the unreasonable risk of death and injury that may result when imitation weapons are perceived as real, by banning the importation, manufacture, distribution and sale of such imitation weapons.

§ 871. Definitions. 1. "Firearm" as used in this section shall have the same meaning as that term is defined by subdivision three of section 265.00 of the penal law and shall include machine guns, rifles and shotguns as those terms are defined by subdivisions one, eleven and twelve, respectively, of section 265.00 of the penal law.

2. "Imitation weapon" means any device or object made of plastic, wood, metal or any other material which substantially duplicates or can reasonably be perceived to be an actual firearm, air rifle, pellet gun, or "B-B" gun; unless such imitation weapon:

(a) either (i) is colored white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink or bright purple on the entire exterior surface or as the predominant color in combination with other colors in any pattern; or

(ii) is constructed entirely of transparent or translucent materials which permits unmistakable observation of the imitation or toy firearm's complete contents; and

(b) has a barrel that is closed for a distance of not less than one-half inch from the front-end of its barrel with the same material of which the imitation weapon is made, unless it is a water gun; and

(c) has legibly stamped thereon, the name of the manufacturer or some trade name, mark or brand by which the manufacturer can be readily identified; and

(d) does not have attached thereto a laser pointer, defined for the purpose of this section as any device that emits light amplified by the

stimulated emission of radiation that is visible to the human eye.

"Imitation weapon" does not include any nonfiring replica of an antique firearm, the original of which was designed, manufactured and produced prior to eighteen hundred ninety-eight.

§ 872. Prohibitions. No person, firm, corporation or agent or employee thereof shall import, manufacture, sell, hold for sale or distribute within the state any imitation weapon unless such device is imported, manufactured, sold, held for sale and distributed:

1. solely for subsequent transportation in interstate commerce; or
2. solely for lawful use in a theatrical production, including a motion picture, television or stage production.

§ 873. Enforcement. Whenever the attorney general shall believe from evidence satisfactory to him that any person, firm, corporation or association or agent or employee thereof has violated any provision of this article, he may bring an action or special proceeding in the supreme court for a judgment enjoining the continuance of such violation and for a civil penalty of not more than one thousand dollars for each violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated any provision of this article, no proof shall be required that any person has been injured thereby nor that the defendant knowingly or intentionally violated such provision. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. In connection with any such proposed application, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules.

ARTICLE 39-BB

PREVENTING THE UNLAWFUL SALE OF FIREARMS, RIFLES, AND SHOTGUNS TO INDIVIDUALS WITH A CRIMINAL RECORD

Section 875-a. Definitions.

875-b. Security.

875-c. Access to firearms, rifles, and shotguns.

875-d. Location of firearm, rifle, and shotgun sales.

875-e. Employee training.

875-f. Maintenance of records.

875-g. Internal compliance, certification, and reporting.

875-h. Rules and regulations.

875-i. Violations.

§ 875-a. Definitions. For the purposes of this article:

1. "Dealer" means a gunsmith or dealers in firearms licensed pursuant to section 400.00 of the penal law.

2. "Dispose of" or "disposition of" means to give, give away, lease, lend, keep for sale, offer, offer for sale, sell, or transfer.

3. "Firearm" has the same meaning as that term is defined in subdivision three of section 265.00 of the penal law.

4. "Rifle" has the same meaning as that term is defined in subdivision eleven of section 265.00 of the penal law.

5. "Shotgun" has the same meaning as that term is defined in subdivision twelve of section 265.00 of the penal law.

6. "Straw purchase" means the purchase, or attempt to purchase, by a person of a firearm, rifle, shotgun or ammunition for, on behalf of, or for the use of another person known or unknown. The term shall not include a bona fide gift to a person who is not prohibited from possessing or receiving such a firearm. For purposes of this subdivision, a gift to a person shall not be a bona fide gift if the person has offered or given the purchaser a service or thing of value to acquire the firearm for the person.

7. "Superintendent" means the superintendent of state police.

§ 875-b. Security. 1. Every dealer shall implement a security plan for securing firearms, rifles and shotguns, including firearms, rifles and shotguns in shipment. The plan shall satisfy at least the following requirements:

(a) all firearms, rifles and shotguns shall be secured, other than during business hours, in a locked fireproof safe or vault on the dealer's business premises or in a secured and locked area on the dealer's business premises; and

(b) ammunition shall be stored separately from firearms, rifles and shotguns and out of reach of customers.

2. The dealer's business premises shall be secured by a security alarm system that is installed and maintained by a security alarm operator properly licensed pursuant to article six-D of this chapter. Standards for such security alarm systems shall be established by the superintendent in regulation. Such security alarm systems may be developed by a federal or state agency, a not-for-profit organization, or another entity specializing in security alarm standards approved by the superintendent for the purposes of this act. The security alarm system shall be capable of being monitored by a central station, and shall provide, at a minimum, complete protection and monitoring for all accessible openings, and partial motion and sound detection at certain other areas of the premises. The dealer location shall additionally be equipped with a video recording device at each point of sale and each entrance and exit to the premises, which shall be recorded from both the indoor and outdoor vantage point and shall maintain such recordings for a period of not less than two years.

§ 875-c. Access to firearms, rifles, and shotguns. Every retail dealer shall exclude all persons under eighteen years of age from those portions of its premises where firearms, rifles, shotguns, or ammunition are stocked or sold, unless such person is accompanied by a parent or guardian.

§ 875-d. Location of firearm, rifle, and shotgun sales. Every dealer shall sell or otherwise dispose of firearms, rifles, and shotguns only at the location listed on the dealer's federal firearms license or at gun shows.

§ 875-e. Employee training. 1. Every dealer shall provide the training developed by the superintendent pursuant to subdivision two of this section to all new employees within thirty days of employment, to all existing employees within ninety days of the effective date of this section, and to all employees annually thereafter.

2. The superintendent shall develop and make available to each dealer, a training course in the conduct of firearm, rifle, and shotgun transfers including at a minimum the following:

(a) Federal and state laws governing firearm, rifle, and shotgun transfers.

(b) How to recognize, identify, respond, and report straw purchases, illegal purchases, and fraudulent activity.

(c) How to recognize, identify, respond, and report an individual who intends to use a firearm, rifle, or shotgun for unlawful purposes, including self-harm.

(d) How to prevent, respond, and report theft or burglary of firearms, rifles, shotguns, and ammunition.

(e) How to educate customers on rules of gun safety, including but not limited to the safe handling and storage of firearms, rifles, shotguns and ammunition.

(f) Such other topics the superintendent deems necessary and appropriate.

3. No employee or agent of any retail dealer shall participate in the sale or disposition of firearms, rifles, or shotguns unless such person is at least twenty-one years of age and has first received the training required by this section. The superintendent shall promulgate regulations setting forth minimum requirements for the maintenance of

records of such training.

§ 875-f. Maintenance of records. Every dealer shall establish and maintain a book, or if the dealer should choose, an electronic-based record of purchase, sale, inventory, and other records at the dealer's place of business in such form and for such period as the superintendent shall require, and shall submit a copy of such records to the New York state police every April and October. Such records shall at a minimum include the following:

1. the make, model, caliber or gauge, manufacturer's name, and serial number of all firearms, rifles and shotguns that are acquired or disposed of not later than one business day after their acquisition or disposition. Monthly backups of these records kept in a book shall be maintained in a secure container designed to prevent loss by fire, theft, or flood. If the dealer chooses to maintain an electronic-based record system, those records shall be backed up on an external server or over the internet at the close of each business day;

2. all firearms, rifles and shotguns acquired but not yet disposed of shall be accounted for through an inventory check prepared once each month and maintained in a secure location;

3. firearm, rifle and shotgun disposition information, including the serial numbers of firearms, rifles and shotguns sold, dates of sale, and identity of purchasers, shall be maintained and made available at any time to government law enforcement agencies and to the manufacturer of the weapon or its designee; and

4. every dealer shall maintain records of criminal firearm, rifle and shotgun traces initiated by the federal bureau of alcohol, tobacco, firearms and explosives ("ATF"). All ATF Form 4473 transaction records shall be retained on the dealer's business premises in a secure container designed to prevent loss by fire, theft, or flood.

§ 875-g. Internal compliance, certification, and reporting. 1. Every dealer shall:

(a) implement and maintain sufficient internal compliance procedures to ensure compliance with the requirements of this article; and

(b) annually certify to the superintendent that such dealer has complied with all of the requirements of this article. The superintendent shall by regulation determine the form and content of such annual certification.

2. (a) The superintendent shall promulgate regulations requiring periodic inspections of not less than one inspection of every dealer every three years, during regular and usual business hours, by the division of state police of the premises of every dealer to determine compliance by such dealer with the requirements of this article. Every dealer shall provide the division of state police with full access to such dealer's premises for such inspections.

(b) The superintendent shall prepare an annual report providing information on the number of dealers inspected annually, the number of dealers in compliance with the requirements of this article, the number of dealers failing to comply with the requirements of this article, and other information that the superintendent deems necessary and appropriate. The first report shall be delivered to the governor, the majority leader of the senate and the speaker of the assembly, and shall be made available to the public on the division of state police website, on or before January first, two thousand twenty-four and annually thereafter.

§ 875-h. Rules and regulations. The superintendent may promulgate such additional rules and regulations as the superintendent shall deem necessary to prevent firearms, rifles, and shotguns from being diverted from the legal stream of commerce.

§ 875-i. Violations. Any person, firm, or corporation who knowingly violates any provision of this article shall be guilty of a class A misdemeanor punishable as provided for in the penal law.

ARTICLE 39-C

IMITATION HYPODERMIC INSTRUMENTS

Section 880. Definition.

881. Fabrication or packaging in the shape of hypodermic instruments.

882. Violations and penalties.

§ 880. Definition. For the purposes of this article, the term "hypodermic instruments" means syringes or needles.

§ 881. Fabrication or packaging in the shape of hypodermic instruments. No person, firm or corporation shall manufacture, distribute, import, or possess for the purpose of sale or resale, or sell or offer for sale in this state any toy, food, or other item which is fabricated, constructed or packaged to simulate hypodermic instruments.

This article shall not apply to items contained in toy medical kits, any goods being transported through this state solely for the purpose of interstate commerce or to any goods used solely for:

1. lawful medical or educational purposes; or
2. use in a theatrical production, including a motion picture, television or stage production.

§ 882. Violations and penalties.

1. The provisions of this article may be enforced by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel or other lawful designee of a municipality or local government, and all monies collected thereunder shall be retained by

such municipality or local government.

2. Whenever a court has determined that a violation of this article has occurred, the court may impose a civil penalty of not more than one hundred dollars for each violation, but in no event shall the total penalty exceed one thousand dollars. For a second or subsequent violation in any twelve month period a penalty of not more than two hundred dollars shall be imposed for each violation, but in no event shall the total penalty exceed one thousand dollars for each day.

a. Each item manufactured, imported, sold or offered for sale in violation of this article shall constitute a violation.

b. Each day a violation of this article is continued shall constitute a separate violation.

ARTICLE 39-D

AUTO EQUITY PROMOTERS

Section 890. Auto equity promotion prohibited.

891. Enforcement by attorney general.

892. Application of article.

893. Severability.

§ 890. Auto equity promotion prohibited. 1. No person shall engage in the business of auto equity promotion. A person engages in the business of auto equity promotion, as used in this article, provided all of the following conditions are met:

(A) The motor vehicle is subject to an outstanding lease contract, retail installment contract or security agreement the terms of which prohibit or prohibit without permission of the lessor, seller or secured party, the sublease, sale, transfer or assignment of any right or interest in the motor vehicle or any right or interest under the lease contract, retail installment contract, or security agreement by the lessee, buyer or debtor.

(B) The person is not a party to the lease contract, retail

installment contract or security agreement.

(C) The person subleases, sells, transfers or assigns, or purports to sublease, sell, transfer, or assign, any right or interest in the motor vehicle or under the lease contract, retail installment contract or security agreement, to any person who is not a party to the lease contract, retail installment contract or security agreement.

(D) The person does not obtain, prior to the sublease, sale, transfer or assignment described in paragraph (C) of this subdivision, written consent to the sublease, sale, transfer or assignment from the motor vehicle's lessor, seller or secured party.

(E) The person receives compensation or some other consideration for the sublease, sale, transfer or assignment as described in paragraph (C) of this subdivision.

2. A person also engages in the business of auto equity promotion when such person is not a party to the lease contract, retail installment contract or security agreement, and assists, facilitates, solicits, causes or arranges the actual or purported sublease, sale, transfer or assignment as described in subdivision one of this section.

3. For purposes of this section, the term "person" means any natural person, corporation, sole proprietorship, business, trust, partnership, incorporated or unincorporated association, estate, co-operative or any other legal entity.

§ 891. Enforcement by attorney general. Whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make

allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant fact and to issue subpoenas in accordance with the civil practice law and rules.

§ 892. Application of article. 1. The actual or purported transfer or assignment of any right or interest in a motor vehicle or under a lease contract, retail installment contract, or security agreement, by an individual who is a party to the original lease contract, retail installment contract, or security contract is not an act of auto equity promotion under this article.

2. This article shall not affect the enforceability of any provision of any lease contract, retail installment contract, or security agreement, by any party thereto.

§ 893. Severability. If any provision of this article or if any application thereof to any person or circumstances is held invalid, the remainder of this article and the application of the provision to other persons and circumstances shall not be affected thereby.

ARTICLE 39-DD

SALE OF FIREARMS, RIFLES OR SHOTGUNS AT GUN SHOWS

Section 895. Definitions.

896. Operation of a gun show.

897. Sale of a firearm, rifle or shotgun at a gun show.

§ 895. Definitions. For the purposes of this article:

1. "Gun show" means an event sponsored, whether for profit or not, by an individual, national, state or local organization, association or other entity devoted to the collection, competitive use, sporting use, or any other legal use of firearms, rifles or shotguns, or an event at which (a) twenty percent or more of the total number of exhibitors are firearm exhibitors or (b) ten or more firearm exhibitors are participating or (c) a total of twenty-five or more pistols or revolvers are offered for sale or transfer or (d) a total of fifty or more firearms, rifles or shotguns are offered for sale or transfer. The term gun show shall include any building, structure or facility where firearms, rifles or shotguns are offered for sale or transfer and any grounds used in connection with the event.

2. "Firearm exhibitor" means any person, firm, partnership, corporation or company that exhibits, sells, offers for sale, transfers, or exchanges firearms, rifles or shotguns at a gun show.

3. "Gun show operator" means any person, firm, partnership, corporation or company that organizes, produces, sponsors or operates a gun show.

4. "Firearm" has the same meaning as that term is defined in 18 U.S.C. 921(a)(3), but shall not include an "antique firearm" as that term is defined in 18 U.S.C. 921(a)(16).

5. "Rifle" has the same meaning as that term is defined in 18 U.S.C. 921(a)(7).

6. "Shotgun" has the same meaning as that term is defined in 18 U.S.C. 921(a)(5).

§ 896. Operation of a gun show. 1. A gun show operator shall:

(a) at all times during such show conspicuously post and maintain signs stating "A National Instant Criminal Background Check must be completed prior to all firearm sales or transfers, including sales or

transfers of rifles or shotguns". Signs must be posted at all entrances to the gun show, at all places where admission tickets to the gun show are sold and not less than four additional locations within the grounds of the gun show;

(b) notify all firearm exhibitors in writing that a national instant criminal background check must be completed prior to all firearm sales or transfers, including sales or transfers of rifles or shotguns; and

(c) coordinate with the division of state police to provide access at the gun show to perform a national instant criminal background check prior to any firearm sale or transfer. Any firearm dealer licensed under federal law who submits a request to the division of state police to perform a national instant criminal background check pursuant to this paragraph shall provide the seller or transferor of the firearm, rifle or shotgun with a copy of the United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms Form ATF F 4473 and such dealer shall maintain such form and make such form available for inspection by law enforcement agencies for a period of ten years thereafter.

2. Whenever the attorney general shall believe from evidence satisfactory to him or her that a gun show operator has violated any of the provisions of this section, the attorney general may bring an action or special proceeding in the supreme court for a judgment enjoining the continuance of such violation and for a civil penalty in an amount not to exceed ten thousand dollars. If it shall appear to the satisfaction of the court or justice that the defendant has violated any provisions of this section, no proof shall be required that any person has been injured thereby nor that the defendant intentionally violated such provision. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. In connection with any such proposed application, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules.

§ 897. Sale of a firearm, rifle or shotgun at a gun show. 1. A national instant criminal background check shall be conducted and no person shall sell or transfer a firearm, rifle or shotgun at a gun show,

except in accordance with the provisions of 18 U.S.C. 922(t), provided that before delivering a firearm, rifle or shotgun to any person, either (a) the National Instant Criminal Background Check System (NICS) or its successor has issued a "proceed" response to the seller or transferor, or (b) thirty calendar days shall have elapsed since the date the seller or transferor contacted NICS to initiate a national instant criminal background check and NICS has not notified the seller or transferor that the transfer of the firearm, rifle or shotgun to such person should be denied.

2. No person shall offer or agree to sell or transfer a firearm, rifle or shotgun to another person at a gun show and transfer or deliver such firearm, rifle or shotgun to such person or person acting on his or her behalf thereafter at a location other than the gun show for the purpose of evading or avoiding compliance with 18 U.S.C. 922(t).

3. Any person who knowingly violates any of the provisions of this section shall be guilty of a class A misdemeanor punishable as provided for in the penal law.

ARTICLE 39-DDD

PRIVATE SALE OR DISPOSAL OF FIREARMS, RIFLES AND SHOTGUNS

Section 898. Private sale or disposal of firearms, rifles and shotguns.

§ 898. Private sale or disposal of firearms, rifles and shotguns. 1. In addition to any other requirements pursuant to state and federal law, all sales, exchanges or disposals of firearms, rifles or shotguns shall be conducted in accordance with this section unless such sale, exchange or disposal is conducted by a licensed importer, licensed manufacturer or licensed dealer, as those terms are defined in 18 USC § 922, when such sale, exchange or disposal is conducted pursuant to that person's federal firearms license or such sale, exchange or disposal is between members of an immediate family. When a sale, exchange or disposal is conducted pursuant to a person's federal firearms license, before delivering a firearm, rifle or shotgun to any person, either (a) the

National Instant Criminal Background Check System (NICS) or its successor has issued a "proceed" response to the federal firearms licensee, or (b) thirty calendar days shall have elapsed since the date the federal firearms licensee contacted NICS to initiate a national instant criminal background check and NICS has not notified the federal firearms licensee that the transfer of the firearm, rifle or shotgun to such person should be denied. For purposes of this section, "immediate family" shall mean spouses, domestic partners, children and step-children.

2. Before any sale, exchange or disposal pursuant to this article, a national instant criminal background check must be completed by a dealer who shall submit a request to the division of state police pursuant to section two hundred twenty-eight of the executive law to conduct such check. Before a dealer who has submitted a request to the division of state police to conduct a national instant criminal background check delivers a firearm, rifle or shotgun to any person, either (a) NICS shall have issued a "proceed" response, or (b) thirty calendar days shall have elapsed since the date the dealer submitted a request to the division of state police to contact the NICS to initiate a national instant criminal background check and NICS has not notified the division of state police that the transfer of the firearm, rifle or shotgun to such person should be denied.

3. All dealers shall maintain a record of such transactions conducted pursuant to this section and such record shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer, acting pursuant to his or her special duties, or police officer.

4. A dealer may require that any sale or transfer conducted pursuant to this section be subject to a fee of not to exceed ten dollars per transaction.

5. Any record produced pursuant to this section and any transmission thereof to any government agency shall not be considered a public record for purposes of article six of the public officers law.

6. Any person who knowingly violates the provisions of this article shall be guilty of a class A misdemeanor punishable as provided for in the penal law.

ARTICLE 39-DDDD

SALE, MANUFACTURING, IMPORTING AND MARKETING OF FIREARMS

Section 898-a. Definitions.

898-b. Prohibited activities.

898-c. Public nuisance.

898-d. Enforcement.

898-e. Private right of action.

§ 898-a. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. "Unfair, deceptive, or abusive acts or practices" shall have the same meaning as defined in article twenty-two-A of this chapter.

2. "Reasonable controls and procedures" shall mean policies that include, but are not limited to: (a) instituting screening, security, inventory and other business practices to prevent thefts of qualified products as well as sales or distribution of qualified products to straw purchasers, traffickers, persons prohibited from possessing firearms under state or federal law, or persons at risk of injuring themselves or others; (b) preventing unfair, deceptive, or abusive acts and practices and false advertising and otherwise ensuring compliance with all provisions of article twenty-two-A of this chapter; and (c) taking reasonable steps to prevent the installation and use of a pistol converter, as defined in section 265.00 of the penal law, on qualified products.

3. "False advertising" shall have the same meaning as defined in article twenty-two-A of this chapter.

4. "Gun industry member" shall mean a person, firm, corporation, company, partnership, society, joint stock company or any other entity or association engaged in the sale, manufacturing, distribution, importing or marketing of firearms, ammunition, ammunition magazines, firearms accessories, firearm component parts, or digital firearm manufacturing code.

5. The terms "knowingly" and "recklessly" shall have the same meaning as defined in section 15.05 of the penal law.

6. "Qualified product" shall mean a firearm, as defined in subparagraph (A) or (B) of 18 U.S.C. section 921(a)(3), including any antique firearm, as defined in 18 U.S.C. section 921(a)(16), or ammunition, as defined in 18 U.S.C. section 921(a)(17)(A), a component part of a firearm or ammunition, or digital firearm manufacturing code.

7. "Digital firearm manufacturing code" shall have the same meaning as defined in subdivision thirty-nine of section 265.00 of the penal law.

§ 898-b. Prohibited activities. 1. No gun industry member, by conduct either unlawful in itself or unreasonable under all the circumstances, shall knowingly or recklessly create, maintain or contribute to a condition in New York state that endangers the safety or health of the public through the sale, manufacturing, importing, distribution, or marketing of a qualified product.

2. All gun industry members who manufacture, market, import, distribute, or offer for wholesale or retail sale any qualified product in New York state shall establish and utilize reasonable controls and procedures to prevent its qualified products from being possessed, used, marketed or sold unlawfully in New York state.

§ 898-c. Public nuisance. 1. A violation of subdivision one or two of section eight hundred ninety-eight-b of this article that results in harm to the public shall hereby be declared to be a public nuisance.

2. The existence of a public nuisance shall not depend on whether the gun industry member acted for the purpose of causing harm to the public.

§ 898-d. Enforcement. Whenever there shall be a violation of this article, the attorney general, in the name of the people of the state of New York, or a city corporation counsel on behalf of the locality, may bring an action in the supreme court or federal district court to enjoin and restrain such violations and to obtain restitution and damages. In addition, any gun industry member determined by a court to have violated this article shall be liable to the people of the state of New York for a civil penalty of five thousand dollars for each qualified product that is unlawfully sold, transferred, imported, distributed, manufactured, marketed, or offered for wholesale or retail sale in New York state.

§ 898-e. Private right of action. Any person, firm, corporation or association that has been damaged as a result of a gun industry member's acts or omissions in violation of this article shall be entitled to bring an action for recovery of damages or to enforce this article in the supreme court or federal district court.

ARTICLE 39-E

UNIFORM ATHLETE AGENTS ACT

Section 899. Short title.

899-a. Definitions.

899-b. Service of process; subpoenas.

899-c. Athlete agents; registration required; void contracts.

899-d. Registration as athlete agent; form; requirements.

899-e. Certificate of registration; issuance or denial; renewal.

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899-i. Notice to educational institution.

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- 899-k. Required records.
- 899-l. Prohibited conduct.
- 899-m. Criminal sanctions.
- 899-n. Civil remedies.
- 899-o. Administrative penalty.
- 899-p. Uniformity of application and construction.

§ 899. Short title. This article shall be known and may be cited as the "uniform athlete agents act".

§ 899-a. Definitions. As used in this article the following terms shall have the following meanings:

1. "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional sports-services contract or an endorsement contract.

2. "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. Such term includes an individual who represents to the public that the individual is an athlete agent. This term shall not include a spouse, parent, sibling, grandparent or guardian of the student-athlete, or an individual acting solely on behalf of a professional sports team or professional sports organization.

3. "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

4. "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the

student-athlete to enter into an agency contract.

5. "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following or fame obtained because of athletic ability or performance.

6. "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association which promotes or regulates such sport and is recognized by the educational institution that said student-athlete attends.

7. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

8. "Professional sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization or as a professional athlete.

9. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

10. "Registration" means registration as an athlete agent pursuant to this article.

11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

12. "Student-athlete" means an individual who engages in, is eligible

to engage in, may be eligible in the future to engage in or was eligible in the past thirty days to engage in any intercollegiate or interscholastic sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, such individual shall not be considered a student-athlete thirty days after losing his or her eligibility for purposes of that sport.

§ 899-b. Service of process; subpoenas. 1. By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

2. The secretary of state may issue subpoenas for any material that is relevant to the administration of this article.

§ 899-c. Athlete agents; registration required; void contracts. 1. Except as otherwise provided in subdivision two of this section, an individual shall not act as an athlete agent in this state without holding a certificate of registration issued pursuant to section eight hundred ninety-nine-e of this article.

2. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(a) a student-athlete or another person acting on behalf of the student-athlete initiates communication with such individual; and

(b) within seven days after an initial act as an athlete agent, such individual submits an application for registration as an athlete agent in this state.

3. An agency contract resulting from conduct in violation of this section shall be void. In the event a student-athlete voids an agency contract, the student-athlete shall not be required to pay any consideration under such contract or to return any consideration

received from the athlete agent to induce the student-athlete to enter into the contract, and the athlete agent shall be required to return any consideration received pursuant to such voided agency contract.

4. An agency contract shall be void and unenforceable unless it is in writing.

§ 899-d. Registration as athlete agent; form; requirements. 1. An applicant for registration shall submit an application therefor to the secretary of state in such form as shall be prescribed by the secretary of state. An application filed pursuant to this section shall be a public record. The application shall be in the name of an individual and, except as otherwise provided in subdivision two of this section, signed or otherwise authenticated by the applicant under penalty of perjury, and state or contain:

(a) the name of the applicant and the address of the applicant's principal place of business;

(b) the name of the applicant's business or employer, if applicable;

(c) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(d) a description of the applicant's: (i) formal training as an athlete agent; (ii) practical experience as an athlete agent; and (iii) educational background relating to the applicant's activities as an athlete agent;

(e) the names and addresses of three individuals not related to the applicant who are willing to serve as references;

(f) the name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(g) the names and addresses of all persons who are: (i) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates or profit-sharers having an interest of five percent or greater of the business; and (ii) with respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of five percent or greater;

(h) whether the applicant or any person named pursuant to paragraph (g) of this subdivision has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(i) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (g) of this subdivision has made a false, misleading, deceptive or fraudulent representation;

(j) any instance in which the conduct of the applicant or any person named pursuant to paragraph (g) of this subdivision resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(k) any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to paragraph (g) of this subdivision by a governmental or quasi-governmental licensing entity or adjudicatory process arising out of occupational or professional conduct; and

(l) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph (g) of this subdivision as an athlete agent in any state.

2. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subdivision one of this section. The secretary of state shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(b) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(c) was signed by the applicant under penalty of perjury.

§ 899-e. Certificate of registration; issuance or denial; renewal. 1.

Except as otherwise provided in subdivision two of this section, the secretary of state shall issue a certificate of registration to an individual who complies with subdivision one of section eight hundred ninety-nine-d of this article or whose application has been accepted under subdivision two of section eight hundred ninety-nine-d of this article.

2. The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:

(a) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(b) made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent;

(c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) engaged in conduct prohibited by section eight hundred ninety-nine-l of this article;

(e) had a registration or licensure as an athlete agent suspended, revoked or denied, or been refused renewal of registration or licensure as an athlete agent in any state;

(f) engaged in conduct the consequence of which was that a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(g) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.

3. In making a determination under subdivision two of this section, the secretary of state shall consider the factors set forth in article twenty-three of the correction law.

4. An athlete agent may apply to renew a registration by submitting an application for renewal in such form as shall be prescribed by the secretary of state. An application filed pursuant to this section shall be a public record. The application for renewal shall be signed by the applicant under penalty of perjury and shall contain current information on all matters required in an original registration.

5. An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subdivision four of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary of state shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(a) was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(b) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(c) was signed by the applicant under penalty of perjury.

6. A certificate of registration or a renewal of a registration shall be valid for two years.

§ 899-f. Suspension, revocation or refusal to renew registration. 1.

The secretary of state may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under subdivision two of section eight hundred ninety-nine-e of this article.

2. The secretary of state may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing as provided pursuant to provisions of the

state administrative procedure act.

§ 899-g. Registration and renewal fees. An application for registration or renewal of registration shall be accompanied by a fee in the following amount:

1. three hundred dollars for an initial application for registration;
or

2. one hundred fifty dollars for an application for renewal of registration.

§ 899-h. Required form of contract. 1. An agency contract shall be in a record, signed or otherwise authenticated by the parties.

2. An agency contract shall state or contain:

(a) the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) a description of any expenses that the student-athlete agrees to reimburse;

(d) a description of the services to be provided to the student-athlete;

(e) the duration of the contract; and

(f) the date of execution.

3. An agency contract shall contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 5 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

4. An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete shall not be required to pay any consideration under such contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

5. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

§ 899-i. Notice to educational institution. 1. Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

2. Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

§ 899-j. Student-athlete's right to cancel. 1. A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within five days after the contract is signed.

2. A student-athlete may not waive the right to cancel an agency contract.

3. If a student-athlete cancels an agency contract, the student-athlete shall not be required to pay any consideration under such contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

§ 899-k. Required records. 1. An athlete agent shall retain the following records for a period of five years:

(a) the name and address of each individual represented by the athlete agent;

(b) any agency contract entered into by the athlete agent; and

(c) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

2. The records required to be retained pursuant to subdivision one of this section shall be open to inspection by the secretary of state during normal business hours.

§ 899-l. Prohibited conduct. 1. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:

(a) give any materially false or misleading information or make a materially false promise or representation;

(b) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract;

(c) furnish anything of value to any other individual or another registered athlete agent before the student-athlete enters into the agency contract; or

(d) fail to notify the student-athlete before he or she signs or

otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate in that sport.

The prohibitions contained within this subdivision shall not prohibit an athlete agent from sponsoring or furnishing equipment to an amateur athletic team through a government or not-for-profit entity registered with the secretary of state pursuant to section one hundred seventy-two of the executive law or entities exempt from article seven-A of the executive law pursuant to section one hundred seventy-two-a of the executive law, provided that sponsorship or equipment will not result in a student-athlete being rendered ineligible to participate in intercollegiate athletics.

2. An athlete agent shall not willfully:

(a) initiate contact with a student-athlete unless registered pursuant to this article;

(b) refuse or fail to retain or permit inspection of the records required to be retained by section eight hundred ninety-nine-k of this article;

(c) fail to register when required by section eight hundred ninety-nine-c of this article;

(d) provide materially false or misleading information in an application for registration or renewal of registration; or

(e) predate or postdate an agency contract.

§ 899-m. Criminal sanctions. 1. Except as provided in subdivision two of this section, an athlete agent who violates the provisions of section eight hundred ninety-nine-l of this article shall be guilty of a class A misdemeanor.

2. An athlete agent who violates: (a) the provisions of section eight hundred ninety-nine-l of this article, while such athlete agent's certificate of registration is suspended, after the secretary of state has revoked or refused to renew such certificate of registration pursuant to section eight hundred ninety-nine-f of this article, or

after the secretary of state has refused to issue a certificate of registration pursuant to section eight hundred ninety-nine-e of this article shall be guilty of a class E felony; or (b) paragraph (c) of subdivision two of section eight hundred ninety-nine-l, when he or she has been previously convicted within the last five years of having violated such paragraph shall be guilty of a class E felony.

§ 899-n. Civil remedies. 1. An educational institution shall have a right of action against an athlete agent for damages caused by any violation of this article. In an action brought pursuant to this section, the court may award reasonable attorney's fees to a prevailing plaintiff.

2. The damages of an educational institution pursuant to subdivision one of this section shall include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this article or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

3. A right of action under this section shall not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

4. This article shall not be deemed to restrict rights, remedies or defenses of any person under law or equity.

§ 899-o. Administrative penalty. The secretary of state may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of section eight hundred ninety-nine-l of this article.

§ 899-p. Uniformity of application and construction. In applying and construing this article in this state, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

ARTICLE 39-F

NOTIFICATION OF UNAUTHORIZED ACQUISITION OF PRIVATE INFORMATION; DATA SECURITY PROTECTIONS

Section 899-aa. Notification; person without valid authorization has acquired private information.

899-bb. Data security protections.

§ 899-aa. Notification; person without valid authorization has acquired private information. 1. As used in this section, the following terms shall have the following meanings:

(a) "Personal information" shall mean any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person;

(b) "Private information" shall mean either: (i) personal information consisting of any information in combination with any one or more of the following data elements, when either the data element or the combination of personal information plus the data element is not encrypted, or is encrypted with an encryption key that has also been accessed or acquired:

(1) social security number;

(2) driver's license number or non-driver identification card number;

(3) account number, credit or debit card number, in combination with any required security code, access code, password or other information that would permit access to an individual's financial account;

(4) account number, credit or debit card number, if circumstances exist wherein such number could be used to access an individual's financial account without additional identifying information, security code, access code, or password; or

(5) biometric information, meaning data generated by electronic measurements of an individual's unique physical characteristics, such as a fingerprint, voice print, retina or iris image, or other unique physical representation or digital representation of biometric data which are used to authenticate or ascertain the individual's identity; or

(6) medical information, meaning any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or

(7) health insurance information, meaning an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual or any information in an individual's application and claims history, including but not limited to, appeals history; or

(ii) a user name or e-mail address in combination with a password or security question and answer that would permit access to an online account.

"Private information" does not include publicly available information which is lawfully made available to the general public from federal, state, or local government records.

(c) "Breach of the security of the system" shall mean unauthorized access to or acquisition of, or access to or acquisition without valid authorization, of computerized data that compromises the security, confidentiality, or integrity of private information maintained by a business. Good faith access to, or acquisition of, private information by an employee or agent of the business for the purposes of the business is not a breach of the security of the system, provided that the private information is not used or subject to unauthorized disclosure.

In determining whether information has been accessed, or is reasonably believed to have been accessed, by an unauthorized person or a person without valid authorization, such business may consider, among other factors, indications that the information was viewed, communicated with, used, or altered by a person without valid authorization or by an unauthorized person.

In determining whether information has been acquired, or is reasonably

believed to have been acquired, by an unauthorized person or a person without valid authorization, such business may consider the following factors, among others:

(1) indications that the information is in the physical possession and control of an unauthorized person, such as a lost or stolen computer or other device containing information; or

(2) indications that the information has been downloaded or copied; or

(3) indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported.

(d) "Consumer reporting agency" shall mean any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. A list of consumer reporting agencies shall be compiled by the state attorney general and furnished upon request to any person or business required to make a notification under subdivision two of this section.

2. Any person or business which owns or licenses computerized data which includes private information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the system to any resident of New York state whose private information was, or is reasonably believed to have been, accessed or acquired by a person without valid authorization. The disclosure shall be made in the most expedient time possible and without unreasonable delay, provided that such notification shall be made within thirty days after the breach has been discovered, except for the legitimate needs of law enforcement, as provided in subdivision four of this section.

(a) Notice to affected persons under this section is not required if the exposure of private information was an inadvertent disclosure by persons authorized to access private information, and the person or business reasonably determines such exposure will not likely result in misuse of such information, or financial harm to the affected persons or

emotional harm in the case of unknown disclosure of online credentials as found in subparagraph (ii) of paragraph (b) of subdivision one of this section. Such a determination must be documented in writing and maintained for at least five years. If the incident affects over five hundred residents of New York, the person or business shall provide the written determination to the state attorney general within ten days after the determination.

(b) If notice of the breach of the security of the system is made to affected persons pursuant to the breach notification requirements under any of the following laws, nothing in this section shall require any additional notice to those affected persons, but notice still shall be provided to the state attorney general, the department of state and the division of state police pursuant to paragraph (a) of subdivision eight of this section and to consumer reporting agencies pursuant to paragraph (b) of subdivision eight of this section:

(i) regulations promulgated pursuant to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. 6801 to 6809), as amended from time to time;

(ii) regulations implementing the Health Insurance Portability and Accountability Act of 1996 (45 C.F.R. parts 160 and 164), as amended from time to time, and the Health Information Technology for Economic and Clinical Health Act, as amended from time to time;

(iii) part five hundred of title twenty-three of the official compilation of codes, rules and regulations of the state of New York, as amended from time to time; or

(iv) any other data security rules and regulations of, and the statutes administered by, any official department, division, commission or agency of the federal or New York state government as such rules, regulations or statutes are interpreted by such department, division, commission or agency or by the federal or New York state courts.

3. Any person or business which maintains computerized data which includes private information which such person or business does not own shall notify the owner or licensee of the information of any breach of the security of the system immediately, provided that such notification shall be made within thirty days following discovery, if the private information was, or is reasonably believed to have been, accessed or

acquired by a person without valid authorization.

4. The notification required by this section may be delayed if a law enforcement agency determines that such notification impedes a criminal investigation. The notification required by this section shall be made after such law enforcement agency determines that such notification does not compromise such investigation.

5. The notice required by this section shall be directly provided to the affected persons by one of the following methods:

(a) written notice;

(b) electronic notice, provided that the person to whom notice is required has expressly consented to receiving said notice in electronic form and a log of each such notification is kept by the person or business who notifies affected persons in such form; provided further, however, that in no case shall any person or business require a person to consent to accepting said notice in said form as a condition of establishing any business relationship or engaging in any transaction.

(c) telephone notification provided that a log of each such notification is kept by the person or business who notifies affected persons; or

(d) substitute notice, if a business demonstrates to the state attorney general that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or such business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(1) e-mail notice when such business has an e-mail address for the subject persons, except if the breached information includes an e-mail address in combination with a password or security question and answer that would permit access to the online account, in which case the person or business shall instead provide clear and conspicuous notice delivered to the consumer online when the consumer is connected to the online account from an internet protocol address or from an online location which the person or business knows the consumer customarily uses to access the online account;

(2) conspicuous posting of the notice on such business's web site

page, if such business maintains one; and

(3) notification to major statewide media.

6. (a) whenever the attorney general shall believe from evidence satisfactory to him or her that there is a violation of this article he or she may bring an action in the name and on behalf of the people of the state of New York, in a court of justice having jurisdiction to issue an injunction, to enjoin and restrain the continuation of such violation. In such action, preliminary relief may be granted under article sixty-three of the civil practice law and rules. In such action the court may award damages for actual costs or losses incurred by a person entitled to notice pursuant to this article, if notification was not provided to such person pursuant to this article, including consequential financial losses. Whenever the court shall determine in such action that a person or business violated this article knowingly or recklessly, the court may impose a civil penalty of the greater of five thousand dollars or up to twenty dollars per instance of failed notification, provided that the latter amount shall not exceed two hundred fifty thousand dollars.

(b) the remedies provided by this section shall be in addition to any other lawful remedy available.

(c) no action may be brought under the provisions of this section unless such action is commenced within three years after either the date on which the attorney general became aware of the violation, or the date of notice sent pursuant to paragraph (a) of subdivision eight of this section, whichever occurs first. In no event shall an action be brought after six years from the date of discovery of the breach of private information by the company unless the company took steps to hide the breach.

7. Regardless of the method by which notice is provided, such notice shall include contact information for the person or business making the notification, the telephone numbers and websites of the relevant state and federal agencies that provide information regarding security breach response and identity theft prevention and protection information, and a description of the categories of information that were, or are reasonably believed to have been, accessed or acquired by a person

without valid authorization, including specification of which of the elements of personal information and private information were, or are reasonably believed to have been, so accessed or acquired.

8. (a) In the event that any New York residents are to be notified, the person or business shall notify the state attorney general, the department of state, the division of state police, and the department of financial services as to the timing, content and distribution of the notices and approximate number of affected persons and shall provide a copy of the template of the notice sent to affected persons; provided, however, that notice to the department of financial services shall only be required if the person or business is a covered entity, as defined in 23 NYCRR 500.1, and provided further that such notice shall be provided to the department of financial services in compliance with 23 NYCRR 500.17. Such notice shall be made without delaying notice to affected New York residents.

(b) In the event that more than five thousand New York residents are to be notified at one time, the person or business shall also notify consumer reporting agencies as to the timing, content and distribution of the notices and approximate number of affected persons. Such notice shall be made without delaying notice to affected New York residents.

9. Any covered entity required to provide notification of a breach, including breach of information that is not "private information" as defined in paragraph (b) of subdivision one of this section, to the secretary of health and human services pursuant to the Health Insurance Portability and Accountability Act of 1996 or the Health Information Technology for Economic and Clinical Health Act, as amended from time to time, shall provide such notification to the state attorney general within five business days of notifying the secretary.

10. The provisions of this section shall be exclusive and shall preempt any provisions of local law, ordinance or code, and no locality shall impose requirements that are inconsistent with or more restrictive than those set forth in this section.

§ 899-bb. Data security protections. 1. Definitions. (a) "Compliant regulated entity" shall mean any person or business that is subject to, and in compliance with, any of the following data security requirements:

(i) regulations promulgated pursuant to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. 6801 to 6809), as amended from time to time;

(ii) regulations implementing the Health Insurance Portability and Accountability Act of 1996 (45 C.F.R. parts 160 and 164), as amended from time to time, and the Health Information Technology for Economic and Clinical Health Act, as amended from time to time;

(iii) part five hundred of title twenty-three of the official compilation of codes, rules and regulations of the state of New York, as amended from time to time; or

(iv) any other data security rules and regulations of, and the statutes administered by, any official department, division, commission or agency of the federal or New York state government as such rules, regulations or statutes are interpreted by such department, division, commission or agency or by the federal or New York state courts.

(b) "Private information" shall have the same meaning as defined in section eight hundred ninety-nine-aa of this article.

(c) "Small business" shall mean any person or business with (i) fewer than fifty employees; (ii) less than three million dollars in gross annual revenue in each of the last three fiscal years; or (iii) less than five million dollars in year-end total assets, calculated in accordance with generally accepted accounting principles.

2. Reasonable security requirement. (a) Any person or business that owns or licenses computerized data which includes private information of a resident of New York shall develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the private information including, but not limited to, disposal of data.

(b) A person or business shall be deemed to be in compliance with paragraph (a) of this subdivision if it either:

(i) is a compliant regulated entity as defined in subdivision one of this section; or

(ii) implements a data security program that includes the following:

(A) reasonable administrative safeguards such as the following, in

which the person or business:

- (1) designates one or more employees to coordinate the security program;
- (2) identifies reasonably foreseeable internal and external risks;
- (3) assesses the sufficiency of safeguards in place to control the identified risks;
- (4) trains and manages employees in the security program practices and procedures;
- (5) selects service providers capable of maintaining appropriate safeguards, and requires those safeguards by contract; and
- (6) adjusts the security program in light of business changes or new circumstances; and

(B) reasonable technical safeguards such as the following, in which the person or business:

- (1) assesses risks in network and software design;
- (2) assesses risks in information processing, transmission and storage;
- (3) detects, prevents and responds to attacks or system failures; and
- (4) regularly tests and monitors the effectiveness of key controls, systems and procedures; and

(C) reasonable physical safeguards such as the following, in which the person or business:

- (1) assesses risks of information storage and disposal;
- (2) detects, prevents and responds to intrusions;
- (3) protects against unauthorized access to or use of private information during or after the collection, transportation and destruction or disposal of the information; and
- (4) disposes of private information within a reasonable amount of time after it is no longer needed for business purposes by erasing electronic media so that the information cannot be read or reconstructed.

(c) A small business as defined in paragraph (c) of subdivision one of this section complies with subparagraph (ii) of paragraph (b) of subdivision two of this section if the small business's security program contains reasonable administrative, technical and physical safeguards that are appropriate for the size and complexity of the small business, the nature and scope of the small business's activities, and the sensitivity of the personal information the small business collects from

or about consumers.

(d) Any person or business that fails to comply with this subdivision shall be deemed to have violated section three hundred forty-nine of this chapter, and the attorney general may bring an action in the name and on behalf of the people of the state of New York to enjoin such violations and to obtain civil penalties under section three hundred fifty-d of this chapter.

(e) Nothing in this section shall create a private right of action.

ARTICLE 39-FF

NEW YORK CHILD DATA PROTECTION ACT

Section 899-ee. Definitions.

899-ff. Privacy protection by default.

899-gg. Processors.

899-hh. Ongoing coverage.

899-ii. Respecting user-provided age flags.

899-jj. Protections for third-party operators.

899-kk. Rulemaking authority.

899-ll. Scope.

899-mm. Remedies.

§ 899-ee. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. "Covered user" shall mean a user of a website, online service, online application, mobile application, or connected device, or portion thereof, in the state of New York who is:

(a) actually known by the operator of such website, online service, online application, mobile application, or connected device to be a minor; or

(b) using a website, online service, online application, mobile application, or connected device primarily directed to minors.

2. "Minor" shall mean a natural person under the age of eighteen.

3. "Operator" shall mean any person who operates or provides a website on the internet, online service, online application, mobile application, or connected device, and who, alone or jointly with others, controls the purposes and means of processing personal data. A person that acts as both an operator and processor shall comply with the applicable obligations of an operator and the obligations of a processor, depending on its role with respect to each specific processing of personal data.

4. "Personal data" shall mean any data that identifies or could reasonably be linked, directly or indirectly, with a specific natural person or device.

5. "Process" or "processing" shall mean an operation or set of operations performed on personal data, including but not limited to the collection, use, access, sharing, sale, monetization, analysis, retention, creation, generation, derivation, recording, organization, structuring, storage, disclosure, transmission, disposal, licensing, destruction, deletion, modification, or deidentification of personal data.

6. "Primarily directed to minors" shall mean a website, online service, online application, mobile application, or connected device, or a portion thereof, that is targeted to minors. A website, online service, online application, mobile application, or connected device, or portion thereof, shall not be deemed directed primarily to minors solely because such website, online service, online application, mobile application, or connected device, or portion thereof refers or links to any other website, online service, online application, mobile application, or connected device directed to minors by using information location tools, including a directory, index, reference, pointer, or hypertext link. A website, online service, online application, mobile application, or connected device, or portion thereof, shall be deemed directed to minors when it has actual knowledge that it is collecting personal data of users directly from users of another website, online service, online application, mobile application, or connected device primarily directed to minors.

7. "Sell" shall mean to share personal data for monetary or other valuable consideration. "Selling" shall not include the sharing of personal data for monetary or other valuable consideration to another person as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which that person assumes control of all or part of the operator's assets or the sharing of personal data with a processor.

8. "Processor" shall mean any person who processes data on behalf of the operator. A person that acts as both an operator and processor shall comply with the applicable obligations of an operator and the obligations of a processor, depending on its role with respect to each specific processing of personal data.

9. "Third-party operator" shall mean an operator who is not the operator:

- (a) with whom the user intentionally and directly interacts; or
- (b) that collects personal data from the direct and current interactions with the user.

§ 899-ff. Privacy protection by default. 1. Except as provided for in subdivision six of this section and section eight hundred ninety-nine-jj of this article, an operator shall not process, or allow a processor to process, the personal data of a covered user collected through the use of a website, online service, online application, mobile application, or connected device, or allow a third-party operator to collect the personal data of a covered user collected through the operator's website, online service, online application, mobile application, or connected device unless and to the extent:

- (a) the covered user is twelve years of age or younger and processing is permitted under 15 U.S.C. § 6502 and its implementing regulations; or
- (b) the covered user is thirteen years of age or older and processing is strictly necessary for an activity set forth in subdivision two of this section, or informed consent has been obtained as set forth in subdivision three of this section.

2. For the purposes of paragraph (b) of subdivision one of this

section, the processing of personal data of a covered user is permissible where it is strictly necessary for the following permissible purposes:

- (a) providing or maintaining a specific product or service requested by the covered user;

- (b) conducting the operator's internal business operations. For purposes of this paragraph, such internal business operations shall not include any activities related to marketing, advertising, research and development, providing products or services to third parties, or prompting covered users to use the website, online service, online application, mobile application, or connected device when it is not in use;

- (c) identifying and repairing technical errors that impair existing or intended functionality;

- (d) protecting against malicious, fraudulent, or illegal activity;

- (e) investigating, establishing, exercising, preparing for, or defending legal claims;

- (f) complying with federal, state, or local laws, rules, or regulations;

- (g) complying with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, local, or other governmental authorities;

- (h) detecting, responding to, or preventing security incidents or threats; or

- (i) protecting the vital interests of a natural person.

3. (a) For the purposes of paragraph (b) of subdivision one of this section, to process personal data of a covered user where such processing is not strictly necessary under subdivision two of this section, informed consent must be obtained from the covered user either through a device communication or signal pursuant to the provisions of subdivision two of section eight hundred ninety-nine-ii of this article or through a request. Requests for such informed consent shall:

- (i) be made separately from any other transaction or part of a transaction;

- (ii) be made in the absence of any mechanism that has the purpose or substantial effect of obscuring, subverting, or impairing a covered

user's decision-making regarding authorization for the processing;

(iii) clearly and conspicuously state that the processing for which the consent is requested is not strictly necessary, and that the covered user may decline without preventing continued use of the website, online service, online application, mobile application, or connected device; and

(iv) clearly present an option to refuse to provide consent as the most prominent option.

(b) Such informed consent, once given, shall be freely revocable at any time, and shall be at least as easy to revoke as it was to provide.

(c) If a covered user declines to provide or revokes informed consent for processing, another request may not be made for such processing for the following calendar year, however an operator may make available a mechanism that a covered user can use unprompted and at the user's discretion to provide informed consent.

(d) If a covered user's device communicates or signals that the covered user declines to provide informed consent for processing pursuant to the provisions of subdivision two of section eight hundred ninety-nine-ii of this article, an operator shall not request informed consent for such processing, however an operator may make available a mechanism that a covered user can use unprompted and at the user's discretion to provide informed consent.

4. Except where processing is strictly necessary to provide a product, service, or feature, an operator may not withhold, degrade, lower the quality, or increase the price of any product, service, or feature to a covered user due to the operator not obtaining verifiable parental consent under 15 U.S.C. § 6502 and its implementing regulations or informed consent under subdivision three of this section.

5. Except as provided for in section eight hundred ninety-nine-jj of this article, an operator shall not purchase or sell, or allow a processor or third-party operator to purchase or sell, the personal data of a covered user.

6. Within thirty days of determining or being informed that a user is a covered user, an operator shall:

(a) dispose of, destroy, or delete and direct all of its processors to dispose of, destroy, or delete all personal data of such covered user that it maintains, unless processing such personal data is permitted under 15 U.S.C. § 6502 and its implementing regulations, is strictly necessary for an activity listed in subdivision two of this section, or informed consent is obtained as set forth in subdivision three of this section; and

(b) notify any third-party operators to whom it knows it disclosed personal data of that covered user, and any third-party operators it knows it allowed to process the personal data that may include the personal data of that user, that the user is a covered user.

7. Except as provided for in section eight hundred ninety-nine-jj of this article, prior to disclosing personal data to a third-party operator, or permitting a third-party operator to collect personal data from the operator's website, online service, online application, mobile application, connected device, or portion thereof, the operator shall disclose to the third-party operator:

(a) when their website, online service, online application, mobile application, connected device, or portion thereof, is primarily directed to minors; or

(b) when the personal data concerns a covered user.

§ 899-gg. Processors. 1. Except as provided for in section eight hundred ninety-nine-jj of this article, no operator or processor shall disclose the personal data of a covered user to a third party, or allow the processing of the personal data of a covered user by a third party, without a written, binding agreement governing such disclosure or processing. Such agreement shall clearly set forth instructions for the nature and purpose of the processor's processing of the personal data, instructions for using or further disclosing the personal data, and the rights and obligations of both parties.

2. Processors shall process the personal data of covered users only when permitted by the terms of the agreement pursuant to subdivision one of this section, unless otherwise required by federal, state, or local

laws, rules, or regulations.

3. A processor shall, at the direction of the operator, dispose of, destroy, or delete personal data, and notify any other processor to which it disclosed the personal data of the operator's direction, unless retention of the personal data is required by federal, state, or local laws, rules, or regulations. The processor shall provide evidence of such deletion to the operator within thirty days of the deletion request.

4. A processor shall delete or return to the operator all personal data of covered users at the end of its provision of services, unless retention of the personal data is required by federal, state, or local laws, rules, or regulations. The processor shall provide evidence of such deletion to the operator within thirty days of the deletion request.

5. An agreement pursuant to subdivision one of this section shall require that the processor:

(a) process the personal data of covered users only pursuant to the instructions of the operator, unless otherwise required by federal, state, or local laws, rules, or regulations;

(b) assist the operator in meeting the operator's obligations under this article. The processor shall, taking into account the nature of processing and the information available to them, assist the operator by taking appropriate technical and organizational measures, to the extent practicable, for the fulfillment of the operator's obligation to delete personal data pursuant to section eight hundred ninety-nine-ff of this article;

(c) upon reasonable request of the operator, make available to the operator all information in its possession necessary to demonstrate the processor's compliance with the obligations in this section;

(d) allow, and cooperate with, reasonable assessments by the operator or the operator's designated assessor for purposes of evaluating compliance with the obligations of this article. Alternatively, the processor may arrange for a qualified and independent assessor to conduct an assessment of the processor's policies and technical and

organizational measures in support of the obligations under this article using an appropriate and accepted control standard or framework and assessment procedure for such assessments. The processor shall provide a report of such assessment to the operator upon request; and

(e) notify the operator a reasonable time in advance before disclosing or transferring the personal data of covered users to any further processors, which may be in the form of a regularly updated list of further processors that may access personal data of covered users.

§ 899-hh. Ongoing coverage. 1. Upon learning that a user is no longer a covered user, an operator:

(a) shall not process the personal data of the covered user that would otherwise be subject to the provisions of this article until it receives informed consent pursuant to subdivision three of section eight hundred ninety-nine-ff of this article, and

(b) shall provide notice to such user that they may no longer be entitled to all of the protections and rights provided under this article.

2. Upon learning that a user is no longer a covered user, an operator shall provide notice to such user that such user is no longer covered by the protections and rights provided under this article.

§ 899-ii. Respecting user-provided age flags. 1. For the purposes of this article, an operator shall treat a user as a covered user if the user's device communicates or signals that the user is or shall be treated as a minor, including through a browser plug-in or privacy setting, device setting, or other mechanism that complies with regulations promulgated by the attorney general.

2. For the purposes of subdivision three of section eight hundred ninety-nine-ff of this article, an operator shall adhere to any clear and unambiguous communications or signals from a covered user's device, including through a browser plug-in or privacy setting, device setting, or other mechanism, concerning processing that the covered user consents

to or declines to consent to. An operator shall not adhere to unclear or ambiguous communications or signals from a covered user's device, and shall instead request informed consent pursuant to the provisions of paragraph a of subdivision three of section eight hundred ninety-nine-ff of this article.

§ 899-jj. Protections for third-party operators. Sections eight hundred ninety-nine-ff and eight hundred ninety-nine-gg of this article shall not apply where a third-party operator is processing the personal data of a covered user of another website, online service, online application, mobile application, or connected device, or portion thereof, provided that the third-party operator received reasonable written representations that the covered user provided informed consent for such processing, or:

1. the operator does not have actual knowledge that the covered user is a minor; and
2. the operator does not have actual knowledge that the other website, online service, online application, mobile application, or connected device, or portion thereof, is primarily directed to minors.

§ 899-kk. Rulemaking authority. The attorney general may promulgate such rules and regulations as are necessary to effectuate and enforce the provisions of this article.

§ 899-ll. Scope. 1. This article shall apply to conduct that occurs in whole or in part in the state of New York. For purposes of this article, commercial conduct takes place wholly outside of the state of New York if the business collected such information while the covered user was outside of the state of New York, no part of the use of the covered user's personal data occurred in the state of New York, and no personal data collected while the covered user was in the state of New York is used.

2. Nothing in this article shall be construed to prohibit an operator from storing a covered user's personal data that was collected pursuant to section eight hundred ninety-nine-ff of this article when such covered user is in the state.

3. Nothing in this article shall be construed to impose liability for commercial activities or actions by operators subject to 15 U.S.C. 6501 that is inconsistent with the treatment of such activities or actions under 15 U.S.C. 6502.

§ 899-mm. Remedies. Whenever it appears to the attorney general, either upon complaint or otherwise, that any person, within or outside the state, has engaged in or is about to engage in any of the acts or practices stated to be unlawful in this article, the attorney general may bring an action or special proceeding in the name and on behalf of the people of the state of New York to enjoin any violation of this article, to obtain restitution of any moneys or property obtained directly or indirectly by any such violation, to obtain disgorgement of any profits or gains obtained directly or indirectly by any such violation, including but not limited to the destruction of unlawfully obtained data, to obtain damages caused directly or indirectly by any such violation, to obtain civil penalties of up to five thousand dollars per violation, and to obtain any such other and further relief as the court may deem proper, including preliminary relief.

ARTICLE 39-G

DOCUMENT DESTRUCTION CONTRACTORS

Section 899-aaa. Definitions.

899-bbb. Document destruction contractors.

§ 899-aaa. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Certificate" means a certificate of registration issued under this article.

2. "Department" means the New York state department of state.

3. "Document" means any record kept, held, filed, produced or reproduced by, with or for a person or business entity, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, or computer tapes or discs.

4. "Document destruction" means the burning, pulverizing, or shredding of a record, or any action taken to render the personal identifying information contained on a record unreadable and incapable of reconstruction.

5. "Document destruction contractor" means a person, firm or corporation that owns or operates a business, the principal purpose of which is to destroy records containing personal identifying information for a fee, and for whom the total cash price of all of his, her or its document destruction contracts exceeds five hundred dollars during any period of twelve consecutive months.

6. "Personal information" means any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.

7. "Personal identifying information" means personal information consisting of any information in combination with any one or more of the following data elements, when either the personal information or the data element is not encrypted, or encrypted with an encryption key that is included in the same record as the encrypted personal information or data element:

(a) social security number;

(b) driver's registration number or non-driver identification card number; or

(c) mother's maiden name, financial services account number or code, savings account number or code, checking account number or code, debit card number or code, automated teller machine number or code, electronic serial number or personal identification number.

8. "Personal identification number" means any number or code which may be used alone or in conjunction with any other information to assume the identity of another person or access financial resources or credit of another person.

9. "Record" means any information kept, held, filed, produced or reproduced by, with or for a person or business entity, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, or computer tapes or discs.

§ 899-bbb. Document destruction contractors. 1. On or after October first, two thousand eight, no person, firm or corporation shall hold himself, herself or itself out to be a document destruction contractor in New York state without first registering with the department as provided in this section.

2. Any person, firm or corporation seeking a certificate of registration as a document destruction contractor shall file with the department an application for registration in such form and detail as the department shall prescribe, including the following:

- (a) the name and residence address of the applicant;
- (b) the business name, if other than applicant;
- (c) the place, including the city, town or village, with the street and number, where the business is to be located;
- (d) the business telephone of the applicant;
- (e) the length of time that the applicant has been a document destruction contractor;
- (f) a statement indicating whether the applicant has:
 - (i) been convicted of any crime or is a debtor on any unpaid civil

judgment relating to work as a document destruction contractor; and

(ii) at any time in the past been issued a registration pursuant to this section, and if so, whether such registration was ever revoked or suspended;

(g) satisfactory evidence of good moral character;

(h) a statement indicating the methods of document destruction utilized by the applicant;

(i) a sworn statement by the applicant that the information set forth in the application is current and accurate; and

(j) a complete set of two fingerprint cards for each principal and officer of the applicant on a standard fingerprint card approved by the division of criminal justice services. Such cards shall be retained by the department and used solely for the purpose of conducting an investigation pursuant to subdivision twelve of this section. If additional copies of fingerprints are required the applicant shall furnish them upon request.

3. In determining whether to issue or renew a registration, the secretary of state may consider the character, competency and integrity of the applicant.

4. The secretary of state may refuse to issue a registration to any person, firm or corporation whom he or she finds has been convicted of any crime, or failed to pay any final civil judgment, relating to work as a document destruction contractor, if such refusal will, in the judgment of the secretary of state, best promote the interests of the people of this state.

5. (a) A registration issued or renewed under the provisions of this section shall entitle a person to act as a registered document destruction contractor in the state of New York for a period of two years from the effective date of the registration. Any registration granted under this section may be renewed by the department upon application and payment of the fee for such renewal by the holder thereof, in such form as the department may prescribe.

(b) The secretary of state shall have the authority to assign staggered expiration dates for registrations at the time of renewal. If

the assigned date results in a term that exceeds twenty-four months, the applicant shall pay an additional pro-rated adjustment together with the regular renewal fee.

(c) The secretary of state shall issue each document destruction contractor a unique registration number.

6. (a) Each original application or application for renewal for registration as a document destruction contractor shall be accompanied by a fee of fifty dollars for each biennial registration period.

(b) Notice in writing in the manner and form prescribed by the department shall be given to the department at its offices in Albany within ten days of changes of name or address by registered document destruction contractors. The fee for filing each change of name or address notice shall be ten dollars.

(c) In the case of loss, destruction or damage, the department may, upon submission of a request in such form and manner as the department may prescribe, issue a duplicate registration upon payment of a fee of ten dollars.

7. The fees established by this section shall not be refundable.

8. Each document destruction contractor engaged in making document destruction contracts shall exhibit his or her certificate upon the request of any interested party.

9. Every document destruction contract subject to the provisions of this article, and all amendments thereto, shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain the contractor's registration number issued by the secretary of state pursuant to this article.

10. No person, firm or corporation shall:

(a) present, or attempt to present, as his, her or its own, the registration of another;

(b) knowingly give false evidence of a material nature to the department for the purpose of procuring a registration;

(c) falsely represent themselves to be a registered document

destruction contractor;

(d) use or attempt to use a registration which has expired;

(e) offer to perform or perform any document destruction without having a current registration as is required under this section; or

(f) represent in any manner that his, her or its registration constitutes an endorsement of the quality of workmanship or competency of the contractor.

11. Registrations issued to document destruction contractors shall not be transferable or assignable.

12. (a) The secretary of state shall promulgate such rules and regulations as are deemed necessary to effectuate the purposes of this article, and shall provide written notification of the provisions of this article to all document destruction contractors registered pursuant to this article.

(b) The secretary of state shall have the power to enforce the provisions of this article and upon complaint of any person, or upon the secretary's initiative, to investigate any violation thereof or to investigate the business, business practices and business methods of any person, firm, limited liability company, partnership or corporation applying for or holding a registration as a document destruction contractor, if in the opinion of the secretary of state such investigation is warranted. Each such applicant or registrant shall be obliged, on request of the secretary of state, to supply such information, books, papers or records as may be required concerning his, her or its business, business practices or business methods, or proposed business practices or methods. Failure to comply with a lawful request of the secretary shall be a ground for denying an application for a registration, or for revoking, suspending, or failing to renew a registration issued under this article.

(c) The department shall have the power to revoke or suspend any registration, or in lieu thereof to impose a fine not exceeding one thousand dollars payable to the department, or reprimand any registrant or deny an application for a registration or renewal thereof upon proof:

(i) that the applicant or registrant has violated any of the provisions of this article or the rules and regulations promulgated

pursuant to this article;

(ii) that the applicant or registrant has practiced fraud, deceit or misrepresentation;

(iii) that the applicant or registrant has made a material misstatement in the application for or renewal of his or her registration;

(iv) that the applicant or registrant has demonstrated incompetence or untrustworthiness in his or her actions.

13. The department shall, before denying an application for a registration or before revoking or suspending any registration, or imposing any fine or reprimand, and at least fifteen days prior to the date set for the hearing, and upon due notice to the complainant or objector, notify in writing the applicant for, or the holder of such registration of any charge made and shall afford such applicant or registrant an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant or registrant, or by mailing same by registered mail to the last known business address of such applicant or registrant.

14. The hearing on such charges shall be at such time and place as the department shall prescribe and shall be conducted by such officer or person in the department as the secretary of state may designate, who shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his or her deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. Such officer or person in the department designated to take such testimony shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

15. In the event that the department shall deny the application for, or revoke or suspend any such registration, or impose any fine or reprimand, its determination shall be in writing and officially signed. The original of such determinations, when so signed, shall be filed in

the office of the department and copies thereof shall be mailed to the applicant or registrant and to the complainant within two days after such filing.

16. The department, acting by the office or person designated to conduct the hearing pursuant to subdivision fourteen of this section or by such other officer or person in the department as the secretary of state may designate, shall have the power to suspend the registration of any registrant who has been convicted in this state or any other state or territory of a felony or of any misdemeanor for a period not exceeding thirty days pending a hearing and a determination of charges made against him or her. If such hearing is adjourned at the request of the registrant, or by reason of any act or omission by him or her or on his or her behalf, such suspension may be continued for the additional period of such adjournment.

17. The action of the department in granting or refusing to grant or to renew a registration under this article or in revoking or suspending or refusing to revoke or suspend such a registration or imposing any fine or reprimand shall be subject to review by a proceeding instituted under article seventy-eight of the civil practice law and rules at the instance of the applicant for such registration, the holder of a registration so revoked, suspended, fined or reprimanded or the person aggrieved.

18. The department shall maintain and publish a registry of all registered document destruction contractors, which shall list and identify on a county by county basis, all registered document destruction contractors doing business in this state. The department shall make the registry available on its website. Copies of the roster shall be made available upon request and payment of a fee to be determined by the secretary of state and approved by the director of the division of the budget.

19. (a) Any person, firm or corporation that operates as a document destruction contractor without being registered shall be required to pay a civil penalty in the sum of one thousand dollars per document

destruction contract entered into in violation of this section. However, any such person, firm or corporation against whom such penalty has been assessed may avoid all but five hundred dollars of such penalty by obtaining a registration as required by this section, provided that application for such registration is made not more than ten days after the imposition of such penalty and the document destruction contractor has never received a prior fine for failure to register in New York or in any other state that requires registration.

(b) A document destruction contractor may not maintain a civil action to recover payment for work under a document destruction contract performed if such contractor is not registered as required under this section.

20. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin or restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

* ARTICLE 39-H

THIRD PARTY LITIGATION FINANCING

Section 899-ccc. Definitions.

899-ddd. Contract requirements; right of rescission.

899-eee. Prohibitions and charge limitations.

899-fff. Repayment.
899-ggg. Disclosures.
899-hhh. Violations.
899-iii. Assignability; liens.
899-jjj. Effect of communication on privileges.
899-kkk. Registration.
899-lll. Reporting.
899-mmm. Severability.

* NB Effective and Repealed June 17, 2026

* **§ 899-ccc. Definitions.** As used in this article, the following terms shall have the following meanings:

1. "Advertise" means publishing or disseminating any written, oral, electronic or printed communication or any communication by means of recorded telephone messages or transmitted or broadcast on radio, television, the internet or similar communications media, including audio recordings, film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a consumer litigation funding.
2. "Charges" means the amount of money to be paid to the consumer litigation funding company by or on behalf of the consumer, above the funded amount provided by or on behalf of the company to a New York consumer pursuant to this article. Charges include all administrative, origination, underwriting or other fees, including interest, no matter how denominated.
3. "Consumer litigation funding" means a non-recourse transaction in which a consumer litigation funding company purchases and a consumer assigns to the company a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim.
4. "Consumer litigation funding company" or "company" means a person

or entity that enters into a consumer litigation funding contract of no more than five hundred thousand dollars with a consumer. This term shall not include:

- (a) an immediate family member of the consumer;
- (b) a bank, lender, financing entity, or other special purpose entity:
 - (i) that provides financing to a consumer litigation funding company;
- or
- (ii) to which a consumer litigation funding company grants a security interest or transfers any rights or interest in a consumer litigation funding; or
- (c) an attorney or accountant who provides services to a consumer.

5. "Consumer" means a natural person who has a pending legal claim and who resides or is domiciled in New York.

6. "Funded amount" means the amount of monies provided to, or on behalf of, the consumer in the consumer litigation funding. "Funded amount" excludes charges.

7. "Funding date" means the date on which the funded amount is transferred to the consumer by the consumer litigation funding company either by personal delivery or via wire, ACH or other electronic means or mailed by insured, certified or registered United States mail.

8. "Immediate family member" means a parent; sibling; child by blood, adoption, or marriage; spouse; grandparent; or grandchild.

9. "Legal claim" means a bona fide civil claim or cause of action.

10. "Resolution date" means the date the funded amount, plus the agreed upon charges, are delivered to the consumer litigation funding company by the consumer, the consumer's attorney or otherwise.

* NB Effective and Repealed June 17, 2026

*** § 899-ddd. Contract requirements; right of rescission.** 1. All consumer litigation funding contracts shall meet the following

requirements:

(a) a contract shall be written in a clear and coherent manner using words with common, everyday meanings to enable the average consumer who makes a reasonable effort under ordinary circumstances to read and understand the terms of the contract without having to obtain the assistance of a professional;

(b) the contract shall be completely filled in when presented to the consumer for signature;

(c) the contract shall contain, in twelve point bold type font, a right of rescission, allowing the consumer to cancel the contract without penalty or further obligation if, within ten business days after the funding date, the consumer returns to the consumer litigation funding company the full amount of the disbursed funds;

(d) the contract shall contain the initials of the consumer on each page;

(e) a statement that there are no fees or charges to be paid by the consumer other than what is disclosed on the disclosure form;

(f) in the event the consumer seeks more than one litigation funding contract from the same company, a disclosure providing the cumulative amount due from the consumer for all transactions, including charges under all contracts, if repayment is made any time after the contracts are executed;

(g) a statement of the maximum amount the consumer may be obligated to pay under the contract other than in a case of material breach, fraud or misrepresentation by or on behalf of the consumer; and

(h) clear and conspicuous detail of how charges, including any applicable fees, are incurred or accrued.

2. The contract shall contain a written acknowledgement by the attorney retained by the consumer in the legal claim that attests to the following:

(a) the attorney has reviewed the mandatory disclosures in section eight hundred ninety-nine-ggg of this article with the consumer;

(b) the attorney is being paid on a contingency basis pursuant to a written fee agreement;

(c) all proceeds of the legal claim will be disbursed via either the trust account of the attorney or a settlement fund established to

receive the proceeds of the legal claim on behalf of the consumer;

(d) the attorney is obligated to disburse funds from the legal claim and take any other steps to ensure that the terms of the litigation funding contract are fulfilled;

(e) the attorney has not received a referral fee or other consideration from the consumer litigation funding company in connection with the consumer litigation funding, nor will the attorney receive such fee or other consideration in the future; and

(f) the attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction.

3. In the event that the acknowledgement required pursuant to paragraph (c) of subdivision two of this section is not completed by the attorney or firm retained by the consumer in the legal claim, the contract shall be null and void. The contract shall remain valid and enforceable in the event the consumer terminates the initial attorney and/or retains a new attorney with respect to the legal claim.

4. Notwithstanding paragraph b of subdivision three of section 5-501 of the general obligations law, no prepayment penalties or fees shall be charged or collected on consumer litigation funding. A prepayment penalty on consumer litigation funding shall be unenforceable.

* NB Effective and Repealed June 17, 2026

*** § 899-eee. Prohibitions and charge limitations.** 1. Consumer litigation funding companies shall be prohibited from:

(a) paying or offering to pay commissions, referral fees, or other forms of consideration to any attorney, law firm, medical provider, chiropractor or physical therapist or any of their employees for referring a consumer to the company;

(b) accepting any commissions, referral fees, rebates or other forms of consideration from an attorney, law firm, medical provider, chiropractor or physical therapist or any of their employees;

(c) intentionally advertising materially false or misleading information regarding its products or services;

(d) referring, in furtherance of an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor or physical therapist or any of their employees; provided, however, if a customer needs legal representation, the company may refer the customer to a local or state bar association referral service;

(e) knowingly providing funding to a consumer who has previously assigned and/or sold a portion of the consumer's right to proceeds from their legal claim without first making payment to and/or purchasing a prior unsatisfied consumer litigation funding company's entire funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing by the consumer litigation funding companies, except that multiple companies may agree to contemporaneously provide funding to a consumer provided that the consumer and the consumer's attorney consent to the arrangement in writing;

(f) receiving any right to, or making, any decisions with respect to the conduct of the underlying legal claim or any settlement or resolution thereof. The right to make such decisions shall remain solely with the consumer and the attorney in the legal claim;

(g) attempting to obtain a waiver of any remedy or right by the consumer, including but not limited to the right to trial by jury; and

(h) knowingly paying or offering to pay for court costs, filing fees or attorney's fees either during or after the resolution of the legal claim, using funds from the consumer litigation funding transaction.

2. An attorney or law firm retained by the consumer in the legal claim shall not have a financial interest in the consumer litigation funding company offering consumer litigation funding to that consumer.

3. Any attorney who has referred the consumer to their retained attorney shall not have a financial interest in the consumer litigation funding company offering consumer litigation funding to that consumer.

4. The attorney may only disclose privileged information to the consumer litigation funding company with the written consent of the consumer.

5. Provided the consumer's attorney or the consumer provides the consumer litigation funding company with an attestation disclosing the final amount of the gross proceeds from the claim, the maximum allowable charges shall not exceed twenty-five percent of the gross proceeds from the applicable legal claim, regardless of the funded amount provided for the relevant claim.

* NB Effective and Repealed June 17, 2026

* **§ 899-fff. Repayment.** The repayment of the funded amount plus charges to be paid to the consumer litigation funding company by the consumer shall be a predetermined amount based upon intervals of time from the funding date through the resolution date, and shall not be determined as a percentage of the recovery from the legal claim.

* NB Effective and Repealed June 17, 2026

* **§ 899-ggg. Disclosures.** All consumer litigation funding contracts shall contain the disclosures specified in this section, which shall constitute material terms of the contract. Unless otherwise specified, such disclosures shall be typed in at least twelve point bold type font and be placed clearly and conspicuously within the contract, as follows:

1. On the front page under appropriate headings, language specifying:

- (a) the funded amount to be paid to the consumer by the consumer litigation funding company;
- (b) an itemization of one-time charges;
- (c) the maximum total amount to be assigned by the consumer to the company, including the funded amount and all charges; and
- (d) a payment schedule to include the funded amount and charges, listing all dates and the amount due at the end of each one hundred eighty day period from the funding date, until the date the maximum amount due to the company pursuant to the contract is paid.

2. Pursuant to the provisions set forth in this section, within the body of the contract: "Consumer's right to cancellation: you may cancel this contract without penalty or further obligation within ten business

days after the funding date if you return to the consumer litigation funding company the full amount of the disbursed funds."

3. The consumer litigation funding company shall have no role in deciding whether, when and how much the legal claim is settled for, however, the consumer and consumer's attorney must notify the company of the outcome of the legal claim by settlement or adjudication prior to the resolution date. The company may seek updated information about the status of the legal claim but in no event shall the company interfere with the independent professional judgement of the attorney in the handling of the legal claim or any settlement thereof.

4. Within the body of the contract, in all capital letters in at least twelve point bold type font contained within a box: "THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE CONSUMER LITIGATION FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (INSERT NAME OF CONSUMER LITIGATION FUNDING COMPANY)."

5. Located immediately above the place on the contract where the consumer's signature is required, in twelve point bold type font: "Do not sign this contract before you read it completely. Do not sign this contract if it contains any blank spaces. You are entitled to a completely filled-in copy of the contract before you sign this contract. You should obtain the advice of any attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction. You further acknowledge that your attorney has explained the terms and conditions of the consumer litigation funding contract."

6. A copy of the executed contract shall promptly be delivered to the attorney for the consumer.

7. The following shall be printed within the body of the contract in all capital letters in at least twelve point bold type font: "PURSUANT TO THE LAWS OF THE STATE OF NEW YORK, THE MAXIMUM CHARGES RELATED TO THE FUNDED AMOUNT CANNOT EXCEED 25% OF THE GROSS RECOVERED AMOUNT RECEIVED FOR THE CLAIM, PROVIDED THE ATTORNEY AND/OR THE CONSUMER HAS DELIVERED TO THE CONSUMER LITIGATION FUNDING COMPANY AN ATTESTATION DISCLOSING THE GROSS PROCEEDS FOR THE CLAIM."

* NB Effective and Repealed June 17, 2026

*** § 899-hhh. Violations.** 1. Any consumer litigation funding company found in willful violation of any provision of this article in a specific funding case: (a) waives its right to recover both the funded amount and any and all charges, as defined in subdivision two of section eight hundred ninety-nine-ccc of this article, in that particular case; and (b) shall be liable for a civil penalty of not more than five thousand dollars for each violation, which shall accrue to the state of New York and may be recovered in a civil action brought by the attorney general.

2. Nothing in this article shall be construed to restrict the exercise of powers or the performance of the duties of the New York state attorney general, which such attorney general is authorized to exercise or perform by law.

* NB Effective and Repealed June 17, 2026

*** § 899-iii. Assignability; liens.** 1. The contingent right to receive an amount of the potential proceeds of a legal claim is assignable by a consumer.

2. Only attorney's liens related to the legal claim which is the subject of the consumer litigation funding or medicare or other statutory liens related to the legal claim shall take priority over any lien of the consumer litigation funding company. All other liens shall take priority by normal operation of law.

* NB Effective and Repealed June 17, 2026

* **§ 899-jjj. Effect of communication on privileges.** All communication between the consumer's attorney in the legal claim and the consumer legal funding company as it pertains to the consumer legal funding shall fall within the scope of the attorney client privilege, including, without limitation, the work-product doctrine.

* NB Effective and Repealed June 17, 2026

* **§ 899-kkk. Registration.** 1. Unless a consumer litigation funding company has first registered with the state of New York pursuant to this article, the company may not engage in the business of consumer litigation funding in this state.

2. An applicant's registration must be filed in the manner prescribed by the secretary of state and must contain all the information required by the department of state to make an evaluation of the character and fitness of the applicant company. The initial application must be accompanied by a five hundred dollar fee. A renewal registration must include a two hundred dollar fee. A registration must be renewed every two years and expires on the thirtieth of September.

3. A certificate of registration may not be issued unless the department of state, upon investigation, finds that the character and fitness of the applicant company, and of the officers and directors thereof, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

4. Every registrant shall also, at the time of filing such application, file with the department of state, if the department of state so requires, a bond satisfactory to the department of state in an amount not to exceed fifty thousand dollars. In lieu of the bond at the option of the registrant, the registrant may post an irrevocable letter of credit. The terms of the bond must run concurrent with the period of time during which the registration will be in effect. The bond must

provide that the registrant will faithfully conform to and abide by the provisions of this article and to all rules lawfully made by the administrator under this act and to any such person or persons any and all amounts of money that may become due or owing to the state or to such person or persons from the registrant under and by virtue of this article during the period for which the bond is given.

5. Upon written request, the applicant shall be entitled to a hearing on the question of the applicant's qualifications for registration if:

(a) the department of state has notified the applicant in writing that the application has been denied, or

(b) the department of state has not issued a registration within sixty days after the application for the registration was filed.

6. A request for a hearing may not be made more than fifteen days after the department has mailed a written notice to the applicant that the application has been denied and stating in substance the department of state's findings supporting denial of the application.

7. Notwithstanding the prior approval requirement of subdivision one of this section, a consumer litigation funding company that registered with the department of state between the effective date of this article or when the department of state has made applications available to the public, whichever is later, and one hundred eighty days thereafter may engage in consumer litigation funding while the company's registration is pending approval with the department of state. All funding agreements entered into prior to the effective date of this article are not subject to the terms of this article.

8. No consumer litigation funding company may use any form of consumer litigation funding contract in this state unless it has been filed with the department of state in accordance with the filing procedures set forth by the secretary of state.

9. The secretary of state is hereby authorized to adopt rules and regulations to implement the provisions of this section as needed.

* NB Effective and Repealed June 17, 2026

* **§ 899-lll. Reporting.** 1. Each consumer litigation funding company that engages in business in the state shall submit a report to the department of state no later than the thirty-first of January of each year specifying:

- (a) number of consumer litigation fundings by the company;
- (b) summation of funded amounts in dollar figure; and
- (c) annual percentage charged to each consumer where repayment was made.

2. The department of state shall make such information available to the public, in a manner which maintains the confidentiality of the name of each company and consumer, no later than ninety days after the reports are submitted.

* NB Effective and Repealed June 17, 2026

* **§ 899-mmm. Severability.** If any provision of this article is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this article, which remaining portions shall continue in full force and effect.

* NB Effective and Repealed June 17, 2026

ARTICLE 40

PEER-TO-PEER CAR SHARING PROGRAMS

Section 900. Definitions.

901. Requirements for doing business.

902. Program liability.

903. Lien implications; notification.

904. Insurable interest.

905. Disclosures.

906. Driver's license verification; data retention.

907. Data privacy protections.

- 908. Responsibility for equipment.
- 909. Safety recalls.
- 910. Discrimination based on age prohibited.
- 911. Discrimination on the basis of credit card ownership prohibited.
- 912. Discrimination in peer-to-peer car sharing prohibited.
- 913. Optional vehicle protection; requirements.
- 914. Geographical discrimination prohibited.
- 915. Global positioning systems.
- 916. Notice.
- 917. Electronic notice authorized.
- 918. Airport transactions.
- 919. Enforcement.

§ 900. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Peer-to-peer car sharing" shall mean the authorized use of a shared vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program.

2. "Peer-to-peer car sharing program" or "program" means a program that facilitates the use or operation of a shared vehicle by a shared vehicle driver.

3. "Peer-to-peer car sharing program administrator" or "administrator" shall mean the corporation, partnership, firm, institution, sole proprietorship or other entity or person that is responsible for operating, facilitating or administering the means, digital or otherwise, by which a business platform facilitates a peer-to-peer car sharing program for financial consideration, but shall not include a person or entity engaged in the business of renting or leasing rental vehicles to be operated upon the public highways for carrying passengers or non-profit or charitable organizations that facilitate peer-to-peer car sharing in exchange for payment of a fee or for financial consideration.

4. "Peer-to-peer car sharing program agreement" or "agreement" shall mean the terms and conditions that govern the use of a shared vehicle through a peer-to-peer car sharing program.

5. "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car sharing program that is both:

(a) used nonexclusively for peer-to-peer car sharing activity pursuant to a peer-to-peer car sharing program agreement; and

(b) not otherwise made available by the shared vehicle owner for use as a rental vehicle as defined in section one hundred thirty-seven-a of the vehicle and traffic law.

6. "Shared vehicle driver" shall mean a driver, as such term is defined by section one hundred thirteen of the vehicle and traffic law, of a shared vehicle during the sharing period who has been authorized to use such shared vehicle pursuant to a peer-to-peer car sharing program agreement.

7. "Shared vehicle owner" shall mean an owner, as defined in section one hundred twenty-eight of the vehicle and traffic law, of a registered shared vehicle made available for use by shared vehicle drivers through a peer-to-peer car sharing program.

8. "Peer-to-peer car sharing delivery period" shall mean the period of time during which a shared vehicle is being delivered to the location of the peer-to-peer car sharing start time, if applicable, as documented by the governing peer-to-peer car sharing program agreement.

9. "Peer-to-peer car sharing start time" shall mean the time when the shared vehicle becomes subject to possession or the control of the shared vehicle driver at, or after, the time the peer-to-peer car sharing period is scheduled to begin as documented in the records of a peer-to-peer car sharing program administrator.

10. "Peer-to-peer car sharing period" or "car sharing period" shall mean the period of time that shall commence with the peer-to-peer car

sharing delivery period or, if there is no peer-to-peer car sharing delivery period, the period of time that shall commence with the peer-to-peer car sharing start time and, in either case, shall end at the peer-to-peer car sharing termination time.

11. "Peer-to-peer car sharing termination time" shall mean the earliest of the following events:

(a) the expiration of the agreed upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car sharing program agreement;

(b) returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program; or

(c) when the shared vehicle owner or the shared vehicle owner's authorized designee takes possession or control of the shared vehicle.

12. "Group policy" means an insurance policy issued pursuant to section three thousand four hundred fifty-eight of the insurance law.

13. "Motor vehicle" shall:

(a) have the meaning set forth in section one hundred twenty-five of the vehicle and traffic law; and

(b) have a gross weight rating of ten thousand pounds or less.

14. "Optional vehicle protection" shall:

(a) mean a peer-to-peer car sharing program administrator's agreement to contractually assume liability or risk of loss due to physical damage for all or part of any damage or loss to the shared vehicle, any loss of use of the shared vehicle, or any storage, impound, towing or administrative charges for which a shared vehicle driver, or shared vehicle owner may be liable; and

(b) encompass within its meaning other similar terms that may be used in the vehicle renting or sharing industry such as, but not limited to, "collision damage waiver", "CDW", "damage waiver", "loss damage waiver", "LDW", and "physical damage waiver".

§ 901. Requirements for doing business. 1. No shared vehicle shall be classified as a commercial vehicle, for-hire vehicle, transportation network company or TNC vehicle as defined in article forty-four-B of the vehicle and traffic law, taxi-cab, rental vehicle as defined in section one hundred thirty-seven-a of the vehicle and traffic law, or livery vehicle solely because the shared vehicle owner allows such vehicle to be used for peer-to-peer car sharing, or as such for the duration of the car sharing period, provided that: (a) the peer-to-peer car sharing is compliant with a peer-to-peer car sharing program as provided in this article; (b) if the car sharing program does not prohibit shared vehicle drivers from using shared vehicles for commercial uses, the insurance maintained by the car sharing program does not exclude coverage for such commercial uses; and (c) the car sharing program does not knowingly place the shared vehicle into use as a commercial vehicle or as a vehicle for-hire or as a transportation network company vehicle by a shared vehicle driver while engaged in peer-to-peer car sharing, unless the shared vehicle driver or owner, as applicable, is in compliance with other laws applied to the commercial use or to use as a vehicle for-hire or as a transportation network company vehicle.

2. A peer-to-peer car sharing program administrator, during each peer-to-peer car sharing period for each shared vehicle that it facilitates the use and operation of, shall maintain insurance that provides financial responsibility coverage as follows:

(a) provide insurance coverage that is three times the financial responsibility requirements set forth in the definition of "owners' policy of liability insurance" in subdivision four of section three hundred eleven of the vehicle and traffic law;

(b) provide insurance coverage that satisfies the financial responsibility requirements set forth in section three thousand four hundred twenty of the insurance law, article fifty-one of the insurance law and such other requirements, rules or regulations that may apply for the purposes of satisfying the financial responsibility requirements with respect to the use or operation of a motor vehicle;

(c) the insurance required under this subdivision need not be coterminous with the registration period of the shared vehicle insured;

and

(d) For purposes of article fifty-one of the insurance law, 11 NYCRR Part 65 and general liability claims, notice to the shared vehicle owner, shared vehicle driver, peer-to-peer car sharing program administrator, or any insurer of the shared vehicle owner, shared vehicle driver, or peer-to-peer car sharing program administrator of any claim shall be deemed notice to all appropriate parties and insurers. Any shared vehicle owner, shared vehicle driver, peer-to-peer car sharing program administrator, or any insurer of the shared vehicle owner, shared vehicle driver, or peer-to-peer car sharing program administrator receiving such notice shall provide such notice to all appropriate parties.

3. The insurance requirements provided in subdivision two of this section may be satisfied by insurance provided through a group policy maintained by the peer-to-peer car sharing program administrator on the shared vehicle, shared vehicle owner, and shared vehicle driver pursuant to this article. Provided that the peer-to-peer car sharing program administrator's group liability insurance policy shall be primary during each car sharing period, pursuant to section nine hundred two of this article, nothing shall be deemed to preclude an insurer from providing excess or umbrella coverage for the shared vehicle owner or shared vehicle driver if such shared vehicle owner or shared vehicle driver chooses to do so by contract or endorsement.

4. A peer-to-peer car sharing program administrator shall, during each peer-to-peer car sharing period for each shared vehicle that it facilitates the use and operation of, perform the following:

(a) provide shared vehicle owners with proof of insurance coverage satisfying subdivision two of this section and such shared vehicle owner or shared vehicle driver shall carry such proof of coverage with him or her at all times during his or her operation of a shared vehicle during a peer-to-peer car sharing period. Such proof of coverage shall be in such form as the commissioner of motor vehicles shall prescribe, which may be in the form of an insurance identification card as defined in section three hundred eleven of the vehicle and traffic law. Any insurance identification card issued pursuant to the provisions of this

article shall be in addition to the insurance identification card required pursuant to article six of the vehicle and traffic law, and nothing contained in this article shall be deemed to supersede the provisions of article six of the vehicle and traffic law. Whenever the production of an insurance identification card is required by law, a shared vehicle owner or shared vehicle driver shall: (i) produce the insurance identification card pursuant to article six of the vehicle and traffic law; and (ii) if such shared vehicle owner or shared vehicle driver was operating such vehicle during a peer-to-peer car sharing period, such shared vehicle owner or shared vehicle driver shall also produce the insurance identification card required pursuant to this article. A shared vehicle owner or shared vehicle driver who, while operating a shared vehicle during a peer-to-peer car sharing period, has in effect the insurance required pursuant to this article, shall not be deemed to be in violation of insurance requirements under article six of the vehicle and traffic law during such time as he or she was operating such vehicle during such period.

(b) provide the following for each shared vehicle driver, for each peer-to-peer car sharing period:

(i) an insurance identification card as defined in subdivision ten of section three hundred eleven of the vehicle and traffic law, or other documentation, whether printed or electronic, which the shared vehicle driver shall carry and have available in the vehicle at all times during the peer-to-peer car sharing period and clearly demonstrates that the security insurance referred to in subdivision two of this section is in full force and effect; and

(ii) a toll-free number, electronic mail, or other such form of communication by which a law enforcement police officer, representative of the department of motor vehicles, or other officer of this state or any political subdivision thereof with relevant job responsibilities may confirm that the insurance provided for in subdivision two of this section is in full force and effect.

(c) collect, maintain, and make available to the shared vehicle owner, the shared vehicle owner's primary motor vehicle liability insurer in connection with a claimed loss, the shared vehicle driver's primary motor vehicle liability insurer in connection with a claimed loss, any excess or umbrella insurers in connection with a claimed loss, third

parties directly involved in motor vehicle incidents with a shared vehicle in connection with a claimed loss, and any government agency as required by law, within ten business days of a request, or as reasonably practicable thereafter the following information pertaining to incidents which occurred during the peer-to-peer car sharing period:

(i) available records of the peer-to-peer car sharing period for each shared vehicle involved, and to the extent available, verifiable electronic records of the time, initial and final locations of the vehicle, and, to the extent mileage is collected, miles driven;

(ii) in instances where an insurance claim has been filed with a group insurer, all information relevant to the claim, to the extent such information is available, including but not limited to, payments by the program concerning accidents, damages and injuries; and

(iii) For purposes of article fifty-one of the insurance law, 11 NYCRR Part 65 and general liability claims, notice to the shared vehicle owner, shared vehicle driver, peer-to-peer car sharing program administrator, or any insurer of the shared vehicle owner, shared vehicle driver, or peer-to-peer car sharing program administrator of any claim shall be deemed notice to all appropriate parties and insurers. Any shared vehicle owner, shared vehicle driver, peer-to-peer car sharing program administrator, or any insurer of the shared vehicle owner, shared vehicle driver, or peer-to-peer car sharing program administrator receiving such notice shall provide such notice to all appropriate parties.

(d) ensure that the shared vehicle owner and shared vehicle driver are given reasonable notice prior to the first use or operation of a shared vehicle pursuant to a peer-to-peer car sharing program agreement that:

(i) during the peer-to-peer car sharing period, the shared vehicle owner's policy of liability insurance or other motor vehicle insurance may exclude any and all coverage afforded under the policy, provided the shared vehicle owner's insurer notified its insured that it shall have no duty to indemnify or defend any person or entity for liability for any loss, death, or injury that occurs during the peer-to-peer car sharing period; and

(ii) any insurance or physical damage protection offered pursuant to paragraph (b) of subdivision two of this section or section three thousand four hundred fifty-eight of the insurance law, shall not be

valid or collectible for damages, losses, deaths, or injuries that occur outside of the peer-to-peer car sharing period.

(e) ensure that the shared vehicle owner acknowledges upon or before enrollment in a peer-to-peer car sharing program, and is notified in plain conspicuous language before each car sharing period, that state law may impose liability for injuries to person or property resulting from the negligence in the use or operation of the shared vehicle by shared vehicle drivers for judgments exceeding the coverage limits of insurance in effect during the car sharing period. The subsequent notice required under this subsection may be provided electronically, including by electronic mail and hyperlink to a website explaining insurance coverages and vicarious liability or other substantially similar means of notice.

5. At the time a vehicle is enrolled in the peer-to-peer car sharing program, the peer-to-peer car sharing program administrator shall file with the commissioner of motor vehicles, in such form and manner as such commissioner may require, a statement identifying the shared vehicle and proof of a group policy applicable to such shared vehicle pursuant to section three thousand four hundred seven of the insurance law. The commissioner of motor vehicles shall identify the vehicle as enrolled in the peer-to-peer car sharing program and provide proof of a group policy applicable to such shared vehicle pursuant to the insurance law in such vehicle or registration record in a manner accessible to the public. Failure of a peer-to-peer car sharing program administrator to comply with the provisions of this article may result in penalties.

6. (a) Except as provided in paragraph (b) of this subdivision, a group policy maintained by a program shall be placed with an insurer authorized to write insurance in this state.

(b) If a program is unable to purchase a group policy because such insurance is unavailable from authorized insurers, the program may acquire such group insurance with an excess line broker pursuant to section two thousand one hundred eighteen of the insurance law;

(c) The obligation to determine whether the insurance required by this section is unavailable from insurers authorized to write insurance in this state shall be made prior to the initial placement and at each

renewal of a policy.

(d) Compliance with the excess line statutes and regulations of this state shall be performed with respect to the group as a whole and not with respect to individual group members.

(e) A group policy provided for in this section shall not include a mandatory arbitration clause in a policy issued pursuant to this section. Nothing in this section supersedes the mandatory arbitration requirements contained in section five thousand one hundred five of the insurance law.

7. A peer-to-peer car sharing program administrator shall, upon entering into a peer-to-peer car sharing agreement with a shared vehicle owner and prior to the shared vehicle owner making a shared vehicle available for sharing in the program, provide notice in plain conspicuous language to the shared vehicle owner that he or she may need additional insurance coverage including motor vehicle physical damage coverage as described in paragraph nineteen of subsection (a) of section one thousand one hundred thirteen of the insurance law if the shared vehicle is subject to a lease or loan. A program shall also post this notice on its website in a prominent place and provide contact information for the department of financial services.

8. For each peer-to-peer car sharing period, a peer-to-peer car sharing program administrator shall:

(a) either provide the shared vehicle owner with additional liability insurance or provide the shared vehicle owner with the opportunity to purchase additional liability insurance pursuant to subparagraph (A) of paragraph one of subsection (d) of section two thousand one hundred thirty-one of the insurance law; and

(b) either provide the shared vehicle driver with additional liability insurance or provide the shared vehicle driver with the opportunity to purchase additional liability insurance pursuant to subparagraph (A) of paragraph one of subsection (d) of section two thousand one hundred thirty-one of the insurance law.

9. For each peer-to-peer car sharing period, a peer-to-peer car sharing administrator may offer the shared vehicle owner or the shared

driver the opportunity to purchase additional insurance coverages described in subparagraph (B), (C) or (D) of paragraph one of subsection (d) of section two thousand one hundred thirty-one of the insurance law.

§ 902. Program liability. 1. Notwithstanding any other provision of law, or any provision in a shared vehicle owner's policy of motor vehicle liability insurance, in the event of a loss, death, or injury that shall occur during the peer-to-peer car sharing period, the peer-to-peer car sharing program insurers providing coverages under section nine hundred one of this article shall provide financial responsibility for any bodily injury, death, or damage to property in amounts not to exceed those stated in the peer-to-peer car sharing program agreement and not less than those amounts required in section nine hundred one of this article, and the peer-to-peer car sharing administrator shall retain such liability irrespective of a lapse in the group policy or any other insurance policy or financial security maintained by the administrator.

2. The insurer or insurers providing group liability insurance to the peer-to-peer car sharing program pursuant to section nine hundred one of this article shall be primary during each car sharing period. Provided however, where: (a) a good faith dispute exists regarding who was in control of the vehicle when the loss, death, or injury occurred giving rise to such claim or whether the loss, death, or injury occurred outside of the car sharing period; and (b) the peer-to-peer car sharing program administrator does not have available, did not retain, or is otherwise unable to provide information demonstrating who was in possession or control at the time of the loss, death, or injury or whether the loss, death, or injury occurred outside of the car sharing period, the shared vehicle owner's private motor vehicle insurer shall indemnify insurer or insurers providing group liability insurance, to the extent of its obligation under the applicable insurance policy, if it is determined that the loss, death, or injury occurred outside of the peer-to-peer car sharing period. The peer-to-peer car sharing program administrator shall notify the shared vehicle owner's insurer of any such dispute within fifteen days of becoming aware that such a dispute

exists.

3. In the event that the shared vehicle owner or the shared vehicle owner's personal motor vehicle insurer is named as a defendant in a civil action for a loss, death, or injury that occurs during any time within the peer-to-peer car sharing period, or otherwise under the direct and immediate control of a peer-to-peer car sharing program, the peer-to-peer car sharing program administrator shall have the duty to defend and indemnify the shared vehicle owner and the shared vehicle owner's insurer subject to the provisions of this section, section nine hundred one of this article and section three thousand four hundred fifty-eight of the insurance law.

4. A motor vehicle liability insurer who defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy shall have the right to seek contribution against the peer-to-peer car sharing program administrator's insurer, if the claim is made against the shared vehicle owner, the shared vehicle driver or authorized driver for loss, death, or injury which occurs during the car sharing period.

5. A peer-to-peer car sharing program administrator may contractually assume the risk of loss due to physical damage to shared vehicles during the time that such shared vehicles are in the custody of the shared vehicle driver or peer-to-peer car sharing program, and that such assumption of risk:

(a) shall not be deemed to be physical damage insurance;

(b) that the terms of such contractual assumption may provide that the program assumes the risk of physical damage loss to the vehicle in excess of a sum certain; and

(c) if the terms of such contractual assumption include a separately itemized fee charged to the shared vehicle driver solely for the contractual assumption of the risk of loss due to physical damage, then it shall be provided under the terms set forth in this article.

6. To the extent not otherwise prohibited by state or federal law, in a claims coverage investigation, a peer-to-peer car sharing program

administrator shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of a shared vehicle owner's or shared vehicle driver's participation in a peer-to-peer car sharing program.

7. In addition to other remedies available at law, the attorney general shall have authority to enforce this article as authorized by law, including injunctive and other legal and equitable relief for non-compliance by a car sharing program administrator or any other party through civil proceedings.

8. Any provision in a peer-to-peer car sharing agreement designated by the courts of another jurisdiction as the exclusive forum for resolving disputes shall be deemed void as against public policy with respect to the use of a peer-to-peer car sharing program or shared vehicle in this state.

9. A peer-to-peer car sharing program administrator shall be deemed to have received notice of injuries to or death of persons or losses of property covered under the insurance and financial security requirements of this article at the earlier of notice received by the peer-to-peer car sharing program administrator or notice received by the shared vehicle owner. A shared vehicle owner shall promptly give actual notice to the peer-to-peer car sharing program administrator and its insurers, including notice in the form and manner as required in the peer-to-peer car sharing agreement, of any injuries to or death of persons or losses of property potentially covered by insurance maintained by the peer-to-peer car sharing program administrator. A peer-to-peer car sharing program administrator or its insurers shall be deemed to have received actual notice when a shared vehicle owner notifies the peer-to-peer car sharing program administrator or its insurers when the shared vehicle owner provided notice in the form and manner required in the peer-to-peer car sharing agreement.

10. For purposes of article fifty-one of the insurance law, 11 NYCRR Part 65 and general liability claims, notice to the shared vehicle owner, shared vehicle driver, peer-to-peer car sharing program

administrator or any insurer of the shared vehicle owner, shared vehicle driver, or peer-to-peer car sharing program administrator of any claim shall be deemed notice to all appropriate parties and insurers. Any shared vehicle owner, shared vehicle driver, peer-to-peer car sharing program administrator or any insurer of the shared vehicle owner, shared vehicle driver, or peer-to-peer car sharing program administrator receiving such notice shall provide such notice to all appropriate parties.

§ 903. Lien implications; notification. When a vehicle owner first registers as a shared vehicle owner in a peer-to-peer car sharing program and prior to such time as when the shared vehicle owner makes a shared vehicle available for peer-to-peer car sharing in the peer-to-peer car sharing program, the peer-to-peer car sharing program administrator shall notify in plain conspicuous language the shared vehicle owner that, if the shared vehicle shall have a lien against it, the use of the shared vehicle through a peer-to-peer car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

§ 904. Insurable interest. 1. Notwithstanding any other provision of law to the contrary, a peer-to-peer car sharing program administrator shall have an insurable interest in a shared vehicle during the peer-to-peer car sharing period.

2. Nothing in this section shall create an obligation for a peer-to-peer car sharing program administrator to provide insurance beyond the requirement to ensure financial security pursuant to the provisions of subdivision two of section nine hundred one of this article.

§ 905. Disclosures. 1. Each peer-to-peer car sharing program agreement made in this state shall disclose and separately state or itemize to the shared vehicle owner and the shared vehicle driver:

(a) the daily rate, fees, and, if applicable, any insurance or protection package costs that shall be charged to the shared vehicle owner or the shared vehicle driver;

(b) an emergency telephone number to contact personnel capable of providing roadside assistance and handling other customer service inquiries;

(c) the coverage, limits, and exclusions that the group policy provides;

(d) a description of the additional insurance coverages that the peer-to-peer car sharing program administrator provides or offers pursuant to section two thousand one hundred thirty-one of the insurance law;

(e) a statement that for each peer-to-peer car sharing period, a peer-to-peer car sharing program administrator must either provide additional liability insurance or offer the shared vehicle owner and shared vehicle driver with the opportunity to purchase additional liability insurance pursuant to subparagraph (A) of paragraph one of subsection (d) of section two thousand one hundred thirty-one of the insurance law; and

(f) a statement describing any additional insurance that a peer-to-peer car sharing administrator may provide a shared vehicle owner or a shared vehicle driver with the opportunity to purchase pursuant to section two thousand one hundred thirty-one of the insurance law.

2. No peer-to-peer car sharing program administrator shall accept a reservation unless the shared vehicle driver has received a final quoted rate that includes all charges which the shared vehicle driver shall pay to obtain access to the vehicle, provided, however, that a peer-to-peer car sharing program administrator may separately state itemized optional items and/or services or any mileage below the final quoted rate in the same font and on the same page or webpage on which the rate quote is provided.

§ 906. Driver's license verification; data retention. 1. A peer-to-peer car sharing program administrator shall not enter into a

peer-to-peer car sharing program agreement with a driver unless the driver who will operate the shared vehicle furnishes proof, by electronic means or otherwise, of:

(a) a valid New York driver's license which authorizes the driver to operate vehicles of the class of the shared vehicle;

(b) a valid driver's license issued by the state or country of the driver's residence which authorizes the driver in such state or country to drive vehicles of the class of the shared vehicle and is the age required of a New York resident to operate that class of vehicle; or

(c) being otherwise specifically authorized by a valid license to operate vehicles of the class of the shared vehicle.

2. A peer-to-peer car sharing program administrator shall keep a record of:

(a) the name and address of the shared vehicle driver;

(b) the identification number of the driver's license of the shared vehicle driver and each other person, if any, who shall operate the shared vehicle; and

(c) the date and place of issuance of the driver's license for each such vehicle operator.

§ 907. Data privacy protections. Notwithstanding any other provision of the law to the contrary, all trip data, personal information, images, videos, and other recorded images collected by any peer-to-peer car sharing program administrator that is authorized to operate pursuant to this article shall be for the exclusive use of such peer-to-peer car sharing program and shall not be sold, distributed, or otherwise made accessible except:

1. to the person who is the subject of such data information or record, or to enable or facilitate such person's use of the car sharing program in accordance with the peer-to-peer car sharing agreement;

2. to respond to, process, facilitate, adjust, or defend an insurance claim; or

3. if necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to article three of the United States Constitution, or subpoena for individual data, information or records properly issued pursuant to the criminal procedure law or the civil practice law and rules.

Provided, however, that nothing contained in this paragraph shall be deemed to preclude the exchange of anonymized trip data, information, or recorded images solely for the purpose of administering such authorized car sharing program, and provided further that aggregated anonymized trip data may be shared with this state or any of its political subdivisions for non-commercial transportation research or traffic management purposes. Any such exchanges or sharing shall exclude personal information, images, videos, and other recorded images collected by any peer-to-peer car sharing program administrator. For the purposes of this section, "personal information" shall mean information that identifies an individual, including but not limited to name, address, telephone number, and the type and form of payment including credit card number, debit card number, or other payment method.

§ 908. Responsibility for equipment. A peer-to-peer car sharing program administrator shall have sole responsibility for any equipment, such as a global positioning system, or GPS, or other special equipment which is put in or on such shared vehicle to monitor or facilitate the peer-to-peer car sharing transaction, and shall agree to indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the peer-to-peer car sharing period not caused by such shared vehicle owner. There shall be a rebuttable presumption that damage claimed during the peer-to-peer car sharing period was not caused by the shared vehicle owner. The peer-to-peer car sharing program administrator shall have the right to seek indemnity from the shared vehicle driver for any loss or damage to such equipment that shall occur during the peer-to-peer car sharing period.

§ 909. Safety recalls. 1. At the time when a shared vehicle owner

registers a shared vehicle in a peer-to-peer car sharing program, and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing in the peer-to-peer car sharing program, and no less than annually thereafter, the peer-to-peer car sharing program administrator shall:

(a) verify that the shared vehicle is not subject to any open safety recalls appearing on the National Highway Traffic Safety Administration recall database created under 49 C.F.R. 573.15 for which the recall repair has not been made and shall not permit a shared vehicle to be shared in a peer-to-peer car sharing program unless the vehicle recall repair has been made; and

(b) notify such shared vehicle owner of the requirements under subdivision two of this section.

2. (a) If the shared vehicle owner has received notice of a safety recall on a shared vehicle, before it is enrolled in a peer-to-peer car sharing program such shared vehicle owner shall not make such vehicle available as a shared vehicle in a peer-to-peer car sharing program until the necessary safety recall repair has been made.

(b) If a shared vehicle owner has received notice of a safety recall on a shared vehicle while the shared vehicle is available on a peer-to-peer car sharing program, the shared vehicle owner shall remove the shared vehicle from such peer-to-peer car sharing program, as soon as practicable, and in no case longer than seventy-two hours after receipt of such notice, and it shall not be made available thereafter until the necessary repairs under the safety recall shall have been completed.

(c) If a shared vehicle owner has received notice of a safety recall on a shared vehicle while such shared vehicle is in the possession of a shared vehicle driver, the shared vehicle owner shall notify the peer-to-peer car sharing program administrator about the safety recall as soon as practicable, and in no case longer than forty-eight hours after receipt of such notice, so that the shared vehicle driver can be notified and the shared vehicle can be removed from the peer-to-peer car sharing program until the necessary safety recall repair has been made.

(d) A shared vehicle owner shall not enroll a vehicle in a peer-to-peer car sharing program unless such vehicle has been issued a

valid safety inspection in compliance with article five of the vehicle and traffic law. A peer-to-peer car sharing program administrator shall not permit a vehicle to be shared unless the shared vehicle owner has furnished proof to the program of such safety inspection in compliance with article five of the vehicle and traffic law within the preceding twelve months.

§ 910. Discrimination based on age prohibited. 1. It shall be unlawful for any corporation, partnership, firm, institution, sole proprietorship or other entity or person engaged in the business of peer-to-peer car sharing to refuse to make a shared vehicle available to any person twenty-one years of age or older solely on the basis of age, provided that insurance coverage for persons of such age is available. Any actual cost for insurance related to the age of the shared driver may be passed on to such person.

2. A knowing violation of this section shall be punishable by a fine not to exceed five hundred dollars.

§ 911. Discrimination on the basis of credit card ownership prohibited. 1. It shall be unlawful for any person, firm, partnership, institution, sole proprietorship, corporation or other entity engaged in the business of peer-to-peer car sharing to refuse to make a shared vehicle available to any person solely on the requirement of ownership of a credit card.

2. For the purposes of this section, "credit card" shall mean any credit card, credit plate, charge plate or other identification card or device which is issued by a person to another person as the holder thereof, and may be used by such holder to obtain a cash advance, loan, or credit, or to purchase or rent property or services on the credit of the person issuing the credit card or the holder.

3. A knowing violation of this section shall be punishable by a fine not to exceed one thousand dollars.

§ 912. Discrimination in peer-to-peer car sharing prohibited. 1. No corporation, partnership, firm, institution, sole proprietorship or other entity or person engaged in the business of peer-to-peer car sharing shall refuse to make a shared vehicle available to any person otherwise qualified because of race, color, ethnic origin, religion, disability, or sex.

2. Any person, firm, partnership, association or corporation engaged in peer-to-peer car sharing found by a court of competent jurisdiction to have violated a provision of this section shall be subject to a penalty of not less than one thousand nor more than twenty-five hundred dollars for each violation.

3. (a) If a peer-to-peer car sharing program administrator shall engage in a persistent or repeated business activity or conduct which discriminates against any individual based on such individual's race, color, ethnic origin, religion, disability, residence or geographic location, income, sexual orientation, genetic predisposition or sex or membership in an otherwise protected class pursuant to state or federal law, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on five days' notice, for an order enjoining the continuance of such business activity and directing restitution and damages. In any such proceeding, the attorney general may seek a civil penalty not to exceed five thousand dollars per violation and may recover costs pursuant to paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules.

(b) The term "persistent" as used in this subdivision shall include the continuance or carrying on of any such business activity or conduct.

(c) The term "repeated" as used in this subdivision shall include repetition of any separate and distinct business activity or conduct which shall affect more than one person.

(d) The term "business activity" as used in this subdivision shall include policies and/or standard practices of the peer-to-peer car sharing program administrator.

(e) In connection with any such application, the attorney general is authorized to take proof, make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. If the attorney general shall bring an action or proceeding under this section, such authorization shall not terminate due to such action or proceeding being brought.

(f) (i) A peer-to-peer car sharing program administrator shall implement a zero-tolerance policy regarding a shared vehicle driver's or shared vehicle owner's activities while accessing the peer-to-peer car sharing program's digital network.

(ii) A peer-to-peer car sharing program shall adopt a policy of non-discrimination on the basis of residence or geographic location, race, color, national origin, religious belief, practice or affiliation, sex, disability, age, sexual orientation, or genetic predisposition with respect to shared vehicle owners and shared vehicle drivers, and notify peer-to-peer car sharing program shared vehicle owners and shared vehicle drivers of such policy.

(iii) Peer-to-peer car sharing program shared vehicle owners and shared vehicle drivers shall comply with all applicable laws regarding non-discrimination against shared vehicle drivers or potential shared vehicle drivers on the basis of destination, race, color, national origin, religious belief, practice or affiliation, sex, disability, age, sexual orientation, or genetic predisposition with respect to shared vehicle owners and shared vehicle drivers and notify shared vehicle drivers and shared vehicle owners of such policy.

(iv) Peer-to-peer car sharing program administrators shall inform shared vehicle owners of their obligation to comply with all applicable laws relating to accommodation of service animals.

(v) A peer-to-peer car sharing program administrator shall implement and maintain a policy and an oversight process of providing accessibility to shared vehicle drivers with a disability and accommodation of service animals as such term is defined in section one hundred twenty-three-b of the agriculture and markets law. A peer-to-peer car sharing program administrator shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

(vi) The New York state division of human rights shall be authorized

to accept, review and investigate any potential or actual violations with respect to compliance with nondiscrimination laws and accessibility laws in a form and manner consistent with authority under article fifteen of the executive law.

§ 913. Optional vehicle protection; requirements. 1. (a) (i) A peer-to-peer car sharing program administrator shall not charge a separately itemized fee solely for optional vehicle protection, except as follows:

(A) the fee charged by a peer-to-peer car sharing program administrator shall represent the administrator's good-faith estimate of a daily charge, as calculated by the administrator, to recover the actual, total annual expenses, incurred by the administrator, together with a commercially reasonable allowance for the contractual risks assumed by the administrator, for the administrator's agreement with shared vehicle drivers to contractually assume liability for all or part of any damage or loss to the shared vehicle during the car sharing period;

(B) if the total amount of optional vehicle protection fees collected by a peer-to-peer car sharing program administrator under this section in any calendar year exceeds the administrator's actual costs, the administrator shall:

(1) retain the excess amount; and

(2) adjust the estimated, average per day optional vehicle protection fee for the following calendar year by a corresponding amount.

(ii) Nothing in this section shall prevent a peer-to-peer car sharing program administrator from making adjustment to the optional vehicle protection fee during the calendar year.

(b) A peer-to-peer car sharing program administrator shall not sell optional vehicle protection unless the shared vehicle driver or shared vehicle owner agrees to the purchase of such protection in writing at or prior to the time the peer-to-peer car sharing agreement is executed.

(c) A peer-to-peer car sharing program administrator shall not void optional vehicle protection contractually assumed from the shared vehicle owner except for one or more of the following reasons:

(i) the damage or loss is caused intentionally or as a result of

willful, wanton, or reckless conduct of the shared vehicle driver;

(ii) the damage or loss arises out of the shared vehicle driver's use or operation of the shared vehicle while intoxicated or unlawfully impaired by the use of alcohol or drugs;

(iii) the peer-to-peer car sharing program administrator entered into the peer-to-peer car sharing agreement based on fraudulent or materially false information supplied by the shared vehicle driver;

(iv) the damage or loss arises out of the use or operation of the shared vehicle while engaged in the commission of a crime other than a traffic infraction;

(v) the damage or loss arises out of the use or operation of the shared vehicle to carry persons or property for hire, as a transportation network company or TNC vehicle as defined in article forty-four-B of the vehicle and traffic law, to push or tow anything, while engaged in a speed contest, operating off-road, or for driver's training;

(vi) the damage or loss arises out of the use or operation of the shared vehicle by a person other than: (1) the shared vehicle driver; (2) the shared vehicle driver's spouse, child over the age of eighteen or a parent or parent-in-law of the shared vehicle driver, provided such spouse, child, parent or parent-in-law is properly licensed to operate a motor vehicle and resides in the same household as the shared vehicle driver; (3) a parking valet or parking garage attendant for compensation and in the normal course of employment; (4) any person who uses or operates the motor vehicle through a program during an emergency situation to a medical facility; or (5) any person licensed to drive who expressly is authorized to use or operate the motor vehicle by both the shared vehicle owner and the peer-to-peer car sharing agreement;

(vii) the damage or loss arises out of the use or operation of the shared vehicle outside of the United States when that use or operation is not specifically authorized by the peer-to-peer car sharing agreement; or

(viii) the shared vehicle driver or his or her spouse, child over the age of eighteen or a parent or parent-in-law of the shared vehicle driver have failed to comply with the requirements for reporting damage or loss as set forth in subdivision four of this section;

(ix) the shared vehicle owner knowingly provided erroneous or

inaccurate information to the peer-to-peer car sharing program administrator in connection with any reservation for which the shared vehicle owner has agreed that the peer-to-peer car sharing program will contractually assume the risk of loss for physical damage to the shared vehicle;

(x) the shared vehicle owner fails to submit a claim for physical damage in accordance with the terms and conditions of the peer-to-peer car sharing program agreement; or

(xi) where the shared vehicle owner fails to make the shared vehicle available for inspection when a shared vehicle driver or the shared vehicle driver's insurer requests to inspect the shared vehicle in accordance with this article.

(d) A shared vehicle driver may void optional vehicle protection prior to the beginning of the car sharing period within twenty-four hours of purchase provided that the shared vehicle driver: (i) has entered into a peer-to-peer car sharing agreement with a term of two or more days; (ii) appears in person before the shared vehicle owner together with the shared vehicle that shall be subject to inspection; and (iii) signs a cancellation form provided by the peer-to-peer car sharing program administrator.

(e) After twenty-four hours of purchase, a shared vehicle driver may prospectively terminate optional vehicle protection prior to the beginning of the car sharing period, provided the shared vehicle driver: (i) appears in person before the shared vehicle owner together with the shared vehicle that shall be subject to inspection; (ii) voids the optional vehicle protection in writing; and (iii) pays the optional vehicle protection charge for any full or partial day or portion of a day during which the optional vehicle protection was in effect.

2. Subject to the provisions of subdivisions six, seven, and eight of this section, a peer-to-peer car sharing program administrator may hold a shared vehicle driver liable for actual damage to, or loss of, a shared vehicle, provided that:

(a) any claim for such damage shall be based on a physical inspection and shall be made upon the return of such shared vehicle; and

(b) any charge for repair of such damage shall be limited to actual and reasonable costs and shall be assessed and billed separately and

apart from the peer-to-peer car sharing agreement.

3. (a) Any peer-to-peer car sharing program administrator that states or permits to be stated the costs of a shared vehicle in any advertisement shall state conspicuously, in plain language and in conjunction with the advertised cost of the shared vehicle and the daily rate of the applicable optional vehicle protection, that the rate constitutes an additional daily charge to the shared vehicle driver, that the purchase of such protection is optional, if such rate can be ascertained at the time of purchase and that prospective shared vehicle drivers should examine their credit card protections and motor vehicle insurance policies for coverage.

(b) Where a written advertisement, including all print media, contains the statement of the cost of the shared vehicle, the disclosure required by this section shall be printed in type no less than size twelve-point font.

(c) When the website of a peer-to-peer car sharing program administrator or the video presentation of a television or internet advertisement by such peer-to-peer car sharing program administrator contains the written statement of the cost of a shared vehicle, the depiction of such cost of the optional vehicle protection shall be clear and conspicuous.

(d) When a radio advertisement or the audio presentation of a television advertisement contains the statement of the cost of a shared vehicle, the oral statement of such cost shall immediately be accompanied by an oral statement of the cost of the optional vehicle protection if offered as a separately itemized product.

(e) When a telephone, internet or other inquiry for the cost of a shared vehicle is made to a peer-to-peer car sharing program administrator that involves an interaction with a representative of a peer-to-peer car sharing program administrator, the representative of such peer-to-peer car sharing program administrator shall, in response to the inquiry, advise that additional optional products that may be offered by such peer-to-peer car sharing program administrator shall not be included in the daily rate. If an inquiry is made regarding optional vehicle protection, the representative shall provide the cost of the optional vehicle protection and state that the purchase of such

protection is optional and that the shared vehicle driver's personal motor vehicle insurance or credit card may provide coverage.

(f) Any peer-to-peer car sharing program administrator that offers optional vehicle protection to a shared vehicle driver shall disclose to such driver the following information on its website:

"NOTICE: THE FOLLOWING IS A GENERAL SUMMARY OF SHARED DRIVERS' RIGHTS AND OBLIGATIONS. FOR COMPLETE DETAILS, REFER TO THE PEER-TO-PEER CAR SHARING AGREEMENT. OPTIONAL VEHICLE PROTECTION (OVP): This contract offers, for an additional charge, OVP to cover your financial responsibility for damage or loss to the shared vehicle. OVP is also commonly referred to as a "collision damage waiver". The purchase of OVP is optional and may be declined. Before deciding whether to purchase OVP, you may wish to determine whether your credit card, or the motor vehicle insurance maintained by yourself or someone in your household, affords you any coverage for damage to the shared vehicle, and the amount of deductible under any such coverage. OVP - WHEN VOID: OVP is void and shall not apply to the following situations:

1. If the damage or loss is caused as a result of the shared vehicle driver's intentional acts; willful, wanton, or reckless conduct of the driver; or the use or operation of the shared vehicle while intoxicated or unlawfully impaired by the use of alcohol or drugs;

2. The peer-to-peer car sharing program administrator entered into the peer-to-peer sharing agreement based on fraudulent or materially false information supplied by the shared vehicle driver;

3. The damage or loss arises out of the use or operation of the shared vehicle:

- (a) while engaged in the commission of a crime, other than a traffic infraction;

- (b) to carry persons or property for hire, as a transportation network company or TNC vehicle as defined in article forty-four-B of the vehicle and traffic law, to push or tow anything, while engaged in a speed contest, operating off road, or for driver's training;

- (c) by a person other than: (1) the shared vehicle driver; (2) the shared vehicle driver's spouse, child over the age of eighteen or a

parent or parent-in-law of the shared vehicle driver, provided such spouse, child, parent or parent-in-law is properly licensed to operate a motor vehicle and resides in the same household as the shared vehicle driver; (3) a parking valet or parking garage attendant for compensation and in the normal course of employment; (4) any person who uses or operates the motor vehicle through a program during an emergency situation to a medical facility; or (5) any person licensed to drive who expressly is authorized to use or operate the motor vehicle by both the shared vehicle owner and the peer-to-peer car sharing agreement;

(d) outside of the United States when not specifically authorized by the peer-to-peer car sharing agreement;

(e) where the shared vehicle driver, or his or her spouse, child over the age of eighteen or a parent or parent-in-law of such shared vehicle driver failed to comply with the requirements for reporting damage or loss as set forth in law. OVP - DAMAGE REPORTING REQUIREMENTS: If the shared vehicle sustains damage or loss, the shared vehicle driver is required to complete and return an incident report notice to the peer-to-peer car sharing program administrator. OVP - RIGHT TO INSPECT VEHICLE DAMAGES: The shared vehicle driver and his or her insurer have the right to request an inspection of the shared vehicle damages within seventy-two hours of the return of the vehicle. Failure of the shared vehicle driver or his or her insurer to request such inspection within seventy-two hours of return shall be deemed a waiver of such person or entity's right to inspect the damaged vehicle. THEFT OF THE SHARED VEHICLE: If the shared vehicle is stolen during the term of a peer-to-peer car sharing agreement, a shared vehicle driver must report the theft of the shared vehicle to the peer-to-peer car sharing program administrator and a law enforcement agency within twelve hours of learning of such theft."

(f) The following disclosure notice shall be made on the face of the peer-to-peer car sharing agreement either by stamp, label or as part of the written contract or on any other written document provided to the shared vehicle driver upon execution of such contract, and shall be set apart in boldface type and in no smaller print than twelve-point font: "NOTICE: This agreement offers, for an additional charge, optional vehicle protection to cover your financial responsibility for damage or loss to the shared vehicle. The purchase of optional vehicle protection

is optional and may be declined. You are advised to carefully consider whether to purchase this protection if you have coverage provided by your credit card or motor vehicle insurance policy that will cover the shared vehicle. Before deciding whether to purchase optional vehicle protection, you may wish to determine whether your credit card or your motor vehicle insurance affords you coverage for damage to the shared vehicle and the amount of deductible under such coverage."

(g) The peer-to-peer car sharing agreement shall also include in boldface type and in no smaller print than twelve-point font and, in plain language, the conditions and exclusions set forth in paragraph (c) of subdivision one of this section. Upon identification by the shared vehicle owner or the peer-to-peer car sharing program administrator of damage to the shared vehicle, such peer-to-peer car sharing program administrator shall inform such shared vehicle driver of his or her right to inspect the vehicle, and the procedures and time-frames for doing so, pursuant to paragraphs (b) and (c) of subdivision five of this section.

4. (a) Upon identification of damage by the shared vehicle owner or peer-to-peer car sharing program administrator at the time of return of the shared vehicle, termination of the peer-to-peer car sharing agreement, or within ten days if an inspection for damage is precluded because the shared vehicle is returned by automation, returned after-hours, or recovered by the shared vehicle owner or peer-to-peer car sharing program administrator, the peer-to-peer car sharing program administrator shall furnish an incident report form and a notice, pursuant to this subdivision, of the obligation of the shared vehicle driver to execute and return to the peer-to-peer car sharing program administrator a complete and accurate incident report describing any physical and/or mechanical damage. If the shared vehicle is returned by automation, returned after-hours, or recovered by the shared vehicle owner or peer-to-peer car sharing program administrator, such incident report form and notice shall be mailed by overnight delivery service or certified mail, return receipt requested, and another copy of such notification shall be sent by regular mail. The peer-to-peer car sharing program administrator shall retain a copy of such notice and the certified mail return receipt for a period of six years.

(b) Within seventy-two hours of receipt of the incident report form and notice, either the shared vehicle driver or his or her insurer shall notify or send notice to the peer-to-peer car sharing program administrator that either he, she, or the insurer wishes to inspect the damaged vehicle. If the shared vehicle driver or his or her insurer does not notify or send a request for this inspection within the seventy-two-hour period, he, she, or the insurer shall be deemed to have waived such right.

(c) If the shared vehicle driver shall decline or fail to complete and return the incident report required pursuant to paragraph (a) of this subdivision, the peer-to-peer car sharing program administrator shall, no sooner than ten days after the mailing of notification pursuant to such paragraph (a), mail another copy of the incident report together with a letter stating that the shared vehicle driver has declined or otherwise failed to complete and return the incident report. Such mailing shall be by overnight delivery service or certified mail, return receipt requested, and another copy of such notification by regular mail, with proof of mailing by production of a certificate of mailing from the post office. When a request to inspect the vehicle shall have been timely made by the shared vehicle driver or his or her insurer, the inspection shall be completed within seven days of such request. If the peer-to-peer car sharing program administrator determines the damaged vehicle to be a total loss and subject to salvage, such seventy-two hour period for notification or waiver of the wish to inspect the damaged vehicle shall not apply, and the shared vehicle driver or his or her insurer shall have ten business days from the shared vehicle driver's receipt of notification from the peer-to-peer car sharing program administrator pursuant to paragraph (a) of this subdivision to inspect the damaged vehicle, which shall be made available by the shared vehicle owner. Within the limits provided in this paragraph, the peer-to-peer car sharing program administrator shall identify the repairer of, and provide access to, the damaged vehicle, in order to verify the nature and extent of damages, repairs and repair costs, and/or repair estimates.

(d) All notices shall be mailed to the address of the shared vehicle driver as stated on his or her license, or other address as designated by him or her in the peer-to-peer car sharing agreement.

(e) The shared vehicle driver shall complete and return the incident report required by paragraph (a) of this subdivision within ten days of the receipt of the notice required by such paragraph.

(f) The notice required by this subdivision shall be in at least twelve-point bold face type and shall contain the statement: "Failure to completely and accurately fill out and return an incident report within ten days of receipt of this notice may make the shared vehicle driver liable for damages sustained to the shared vehicle. Except where the damaged vehicle is determined to be a total loss and subject to salvage, the shared vehicle driver or his or her insurer has seventy-two hours from the return or recovery of the vehicle to notify the peer-to-peer car sharing program administrator that he or she wishes to inspect the damaged vehicle. The inspection shall be completed within seven business days of the request to inspect the shared vehicle. If the peer-to-peer car sharing program administrator does not receive notification from the shared vehicle driver or his or her insurer requesting such inspection within the seventy-two-hour period, the shared vehicle driver and his or her insurer will be deemed to have waived this right. If the peer-to-peer car sharing program administrator determines the damaged vehicle to be a total loss and subject to salvage, such seventy-two-hour period for notification or waiver of the wish to inspect the damaged vehicle shall not apply, and such right to inspect the damaged vehicle shall expire ten business days from the shared vehicle driver's receipt of this notice from the peer-to-peer car sharing company program administrator. Upon request of the shared vehicle driver or his or her insurer, we will provide a copy of the professional estimate of the costs of repairing the damaged motor vehicle." Information that is provided in response to a request by a peer-to-peer car sharing program administrator, but that is not provided on an incident report form, shall satisfy any reporting obligation of a shared vehicle driver if such response substantially complies with the applicable requirements of this section. If additional information is reasonably required by the peer-to-peer car sharing program administrator in order to adjust any claim of loss, same shall be requested of the shared vehicle driver as soon as reasonably practicable, who shall respond to same as soon as reasonably practicable.

(g) (i) For purposes of this subdivision, each of the following shall

constitute an "incident report form":

(A) a motor vehicle accident report pursuant to section six hundred five of the vehicle and traffic law; or

(B) any similar appropriate form furnished by the peer-to-peer car sharing program administrator.

(ii) An incident report form described in clause (B) of subparagraph (i) of this paragraph:

(A) shall be sent or given to a shared vehicle driver with a request that he or she provide information pursuant to this section concerning damage to a vehicle possessed by a shared vehicle driver; and

(B) such form may also be made available as a fill-in form on the peer-to-peer car sharing program administrator's website, and the shared vehicle driver shall be advised of the availability of such web-based fill-in form when a request for incident information is made pursuant to this subdivision.

(h) If the shared vehicle driver is physically incapable of completing the report, the requirements of this subdivision shall lapse until after he or she is able to complete the report and is notified that he or she shall complete and return the report as required by paragraph (b) of this subdivision.

(i) The peer-to-peer car sharing program administrator shall, at least twenty days prior to commencing an action against the shared vehicle driver, provide him or her an additional opportunity to complete and submit the incident report by providing a second notice, along with another incident report form, by certified mail, return receipt requested, and another copy of such notice and report form by regular mail, with proof of mailing by production of a certificate of mailing. If such shared vehicle driver sends the peer-to-peer car sharing program administrator a completed incident report within fifteen days of the receipt of the notice, the provisions of this subdivision shall be deemed satisfied.

5. (a) A peer-to-peer car sharing program administrator may hold a shared vehicle driver liable to the extent permitted under this section for physical or mechanical damage to the shared vehicle that occurs during the time the shared vehicle is used or operated under the peer-to-peer car sharing agreement; provided, however, that a shared

vehicle driver shall not be liable for any normal wear and tear or mechanical damage that could reasonably be expected from normal use or operation of the vehicle. For the purposes of this subdivision, the term "normal wear and tear" shall mean the deterioration of the condition of the vehicle or its component parts due to repetitive use and does not include damage that materially diminishes the value of the vehicle and arises from a specific occurrence or accident during the time the shared vehicle is subject to the peer-to-peer car sharing agreement; and the term "actual and reasonable costs" shall mean the cost to repair the shared vehicle including all discounts and price adjustments available to the peer-to-peer car sharing program administrator and shall include costs for towing, storage, and impound fees where applicable.

(b) The total liability of a shared vehicle driver under paragraph (a) of this subdivision for damage to a shared vehicle shall not exceed the lesser of:

(i) the actual and reasonable costs that the peer-to-peer car sharing program administrator incurred to repair the motor vehicle or that the peer-to-peer car sharing program administrator would have incurred if the motor vehicle had been repaired, which shall reflect any discounts, price reductions, or adjustments available to the peer-to-peer car sharing program administrator; or

(ii) the fair market value of the shared vehicle immediately before the damage occurred, as determined in the applicable market for the retail sale of the shared vehicle, less any net disposal proceeds.

(c) The total liability of a shared vehicle driver under paragraph (a) of this subdivision for loss of a shared vehicle shall not exceed reasonable costs incurred by the peer-to-peer car sharing program administrator for such loss due to theft of such shared vehicle up to its fair market value, as determined by the applicable market for the retail sale of such vehicle if it is established that such shared vehicle driver committed, or aided or abetted in the commission of, the theft of such shared vehicle.

(d) Damages incurred for the loss of use or operation of a shared vehicle and related administrative fees shall not be recovered from any shared vehicle driver or his or her insurer.

(e) A peer-to-peer car sharing program administrator shall not hold a shared vehicle driver liable for any amounts that the peer-to-peer car

sharing program administrator recovers from any other party.

(f) A peer-to-peer car sharing program administrator shall not collect or attempt to collect the amount described in paragraph (b) of this subdivision unless the peer-to-peer car sharing program administrator:

(i) obtains an estimate from a repair company or an appraiser in the business of providing such appraisals regarding the cost of repairing such shared vehicle;

(ii) provides a copy of such estimate and photographic evidence upon request to such shared vehicle driver, as applicable who shall be liable under paragraph (a) of this subdivision, and the insurer of such shared vehicle driver; and

(iii) submits a copy of such estimate with any claim to collect the amount described in paragraph (b) of this subdivision.

(g) A claim against a shared vehicle driver resulting from damage or loss to a shared vehicle shall be reasonable and reflect the value of the actual damage or loss incurred. A peer-to-peer car sharing program administrator shall mitigate damages where possible and shall not assert or collect any claim for physical damage which exceeds the amount authorized under paragraph (b) of this subdivision.

(h) If insurance coverage exists under an applicable insurance policy of the shared vehicle driver, such driver may require that the peer-to-peer car sharing program administrator submit any claims to such driver's insurance carrier. Upon the request of a shared vehicle driver, the peer-to-peer car sharing program administrator shall submit any claims to such driver's insurance carrier and shall not make any written or oral representations to the contrary, nor shall it make any written or oral representations that it shall not negotiate with such driver's insurance carrier.

6. (a) No peer-to-peer car sharing program administrator shall collect or charge any security deposit by credit card, debit card or otherwise, for damages to a shared vehicle or report the debt to any consumer reporting agency, as defined in subdivision (e) of section three hundred eighty-a of this chapter, during the term of the peer-to-peer car sharing program agreement, pending resolution of any dispute, or prior to obtaining judgment in a court of competent jurisdiction.

(b) No peer-to-peer car sharing program administrator shall require a

deposit or an advance charge against the credit card or debit card of a shared vehicle driver, in any form, for damages to a shared vehicle which is in the shared vehicle driver's possession or control.

(c) No peer-to-peer car sharing program administrator shall collect or charge any payment from a shared vehicle driver for damage to a shared vehicle upon return or recovery of such vehicle in a damaged condition, until after the cost of the damage to such vehicle and liability therefor is agreed to between such peer-to-peer car sharing program administrator and a shared vehicle driver or his or her insurer, or is determined pursuant to law or peer-to-peer car sharing program agreement provisions consistent with law and the rights and obligations set forth in this section, unless there is proof corroborating that the damage did not exist prior to the reservation and the damage is appraised by an independent third-party appraiser; provided, however, that a peer-to-peer car sharing program administrator is not precluded from presenting a claim to a shared vehicle driver and his or her insurer pursuant to other provisions of this section.

(d) Causes of action concerning the existence of, liability for, and extent and cost of damage to such vehicle shall, where appropriate, be commenced by a peer-to-peer car sharing program administrator in a court of competent jurisdiction, in accordance with the limitations and jurisdiction of the appropriate court act, provided the claimant has first mailed a demand letter. A demand letter sent by the peer-to-peer car sharing program administrator pursuant to this paragraph shall contain: (i) the name and post office address of such peer-to-peer car sharing program administrator, and of its attorney, if any; (ii) the nature of such claim; (iii) the time when, the place where and the manner in which such claim arose, if known, or if not known, the time when and place where the damage was discovered by the shared vehicle owner or peer-to-peer car sharing program administrator; and (iv) the items of damage or injuries claimed to have been sustained, accompanied by supporting documentation, such as repair bills, invoices and estimates in the possession of or available to such peer-to-peer car sharing program administrator. Such demand letter shall be served upon such shared vehicle driver and his or her insurer in a manner reasonably designed to give actual notice, via regular and certified mail, return receipt requested. Nothing contained herein shall prohibit a

peer-to-peer car sharing program administrator and a shared vehicle driver or his or her insurer from entering into an agreement after a claim of loss to submit the matter to arbitration or mediation.

7. No peer-to-peer car sharing program administrator shall hold any shared vehicle driver liable for any damage to, or loss of, a shared vehicle, as provided by this section, unless such peer-to-peer car sharing program prominently discloses, in the peer-to-peer car sharing agreement, in at least twelve point bold face display, the nature and extent of such liability and such driver's rights and responsibilities pursuant to paragraph (c) of subdivision one of this section and paragraph (f) of subdivision three of this section.

8. A shared vehicle driver shall provide notice to the peer-to-peer car sharing program administrator and appropriate law enforcement agency immediately upon learning of the theft of a shared vehicle.

§ 914. Geographical discrimination prohibited. It shall be unlawful for any peer-to-peer car sharing program administrator to engage in any of the following practices solely on the basis of the geographical location of the residence of a New York state resident attempting to enter into a peer-to-peer car sharing agreement:

1. refusing to allow participation in such peer-to-peer car sharing program provided, however, that a peer-to-peer car sharing program administrator may designate geographical boundaries where a car sharing start time or termination time occurs;

2. imposing any additional charge for peer-to-peer car sharing of a shared vehicle; or

3. imposing any additional terms, conditions or privileges upon such peer-to-peer car sharing of a shared vehicle.

§ 915. Global positioning systems. A peer-to-peer car sharing program

administrator shall not use information from any global positioning system technology to determine or impose any costs, fees, charges, or penalties on a shared vehicle driver for such driver's use of a shared vehicle. The use of global positioning technology shall not limit the right of such peer-to-peer car sharing program administrator to impose costs, fees, charges, or penalties to recover a vehicle that is lost, misplaced, or stolen. The provisions of this subdivision shall not be construed to modify or supersede any other provision of law.

§ 916. Notice. In accordance with any applicable federal law or rule, every peer-to-peer car sharing program shall display the following notice prominently and in a clear and conspicuous location on its website, with lettering that is legible: "NOTICE: New York State Law prohibits the following practices by peer-to-peer car sharing program administrators based upon race, color, ethnic origin, religion, disability, sex, marital status, residence or geographic location, income, sexual orientation, genetic predisposition or age: (1) refusal to allow participation in a peer-to-peer car sharing program; and (2) the imposition of any additional charge (except in certain instances where the shared vehicle driver is under the age of 25). In addition, it is unlawful for any peer-to-peer car sharing program administrator to refuse to allow participation in the program to any person solely on the requirement of ownership of a credit card."

§ 917. Electronic notice authorized. 1. Notwithstanding any other provision of this article, and the peer-to-peer car sharing act, including, without limitation, sections two thousand three hundred five, three thousand four hundred fifty-nine, three thousand four hundred sixty, and five thousand one hundred six of the insurance law, any notice, statement, certificate, or disclosure of general applicability required to be provided, delivered, posted, or otherwise made available by a peer-to-peer car sharing program administrator pursuant to any provision of this article, and the peer-to-peer car sharing act, including, without limitation, sections two thousand three hundred five, three thousand four hundred fifty-nine, three thousand four hundred

sixty, and five thousand one hundred six of the insurance law, shall also be deemed timely and effectively made where such notice, statement, certificate or disclosure is provided or delivered electronically to the shared vehicle owner and/or driver at or before the time required, provided that such shared vehicle owner and/or driver has given his or her express consent to receive such notice or disclosure in such a manner.

2. Electronic or written acceptance shall hereby be deemed a valid form of acceptance of any such notice, statement, certificate, or disclosure, and acceptance shall remain effective until such time as acceptance is affirmatively withdrawn by such shared vehicle driver. Notices, statements, certificates, and disclosures made electronically pursuant to this subdivision shall be exempt from any placement or stylistic display requirements, including but not limited to location, font size, typeset, or other specifically stated description; provided such disclosure is made in a clear and conspicuous manner.

§ 918. Airport transactions. If an airport operator, including but not limited to the public authority responsible for regulating commerce at such airport within this state, requests that a peer-to-peer car sharing program administrator enter into an airport concession agreement, such peer-to-peer car sharing program shall enter into a written agreement, where the peer-to-peer car sharing program administrator or shared vehicle owner uses the program to:

1. list vehicles parked on airport property or at airport facilities;
2. contract for transportation to or from airport property or airport facilities;
3. facilitate the use of a shared vehicle to transport airport passengers on or off airport property; or
4. promote or market a shared vehicle to transport airport passengers on or off airport property.

§ 919. Enforcement. 1. Except where a different penalty is specifically imposed pursuant to any provision of this article, any peer-to-peer car sharing program found by a court of competent jurisdiction to have violated a provision of this article shall be subject to a penalty of not less than five hundred dollars nor more than one thousand dollars for each violation.

2. (a) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court of competent jurisdiction by a special proceeding for the imposition of a fine or the issuance of an injunction against any violation of this section, upon notice to such peer-to-peer car sharing program of not less than five days, to enjoin and restrain the continuance of such violations.

(b) If the court finds that the defendant has, in fact, violated this section, an injunction may be issued by such court, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby.

(c) In any proceeding authorized pursuant to this subdivision, the court may direct restitution and make allowances to the attorney general as provided in section sixty-three of the executive law.

(d) In support of any application pursuant to this subdivision, the attorney general is authorized to take proof, determine relevant fact and issue subpoenas in accordance with the civil practice law and rules.

3. Any clause or provision of a peer-to-peer car sharing agreement inconsistent with the provisions of this article shall be deemed void as against public policy.

ARTICLE 41

COMBATIVE SPORTS

Section 1000. Definitions.

1001. Combative sports authorized.

1002. Combative sports prohibited.

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§ 1000. Definitions. As used in this article: 1. "Amateur" means any participant in a combative sport authorized pursuant to this article who is not receiving or competing for, and who has never received or competed for, any purse, money, prize, pecuniary gain, or other thing of value exceeding seventy-five dollars or the allowable amount established by the authorized amateur sanctioning entity overseeing the competition.

2. "Authorized sanctioning entity" means an entity allowed to oversee and conduct combative sports pursuant to regulations promulgated by the commission.

3. "Combative sport" means any unarmed bout, contest, competition, match, or exhibition undertaken to entertain an audience, wherein the participants primarily grapple or wrestle, or deliver blows of any kind to, or use force in any way to manipulate, the body of another

participant, and wherein the outcome and score depend entirely on such activities.

4. "Commission" means the state athletic commission as provided for in section one thousand three of this article, or an agent or employee of the state athletic commission acting on its behalf.

5. "Mixed martial arts" means a combative sport wherein the rules of engagement do not limit the participants to a single, systematic, fighting discipline.

6. "Professional" means any participant in a combative sport authorized pursuant to this article, other than an amateur, who is receiving or competing for, or who has ever received or competed for, any purse, money, prize, pecuniary gain, or other thing exceeding seventy-five dollars in value.

§ 1001. Combative sports authorized. Combative sports conducted under the supervision of the commission, under the supervision of an authorized sanctioning entity, or as provided for in section one thousand twenty-one of this article, are hereby authorized. Authorized combative sports include, amateur and professional boxing, wrestling, sparring, kick boxing, single discipline martial arts and mixed martial arts, pursuant to the provisions of this article.

§ 1002. Combative sports prohibited. 1. The conduct of combative sports outside the supervision of the commission or an authorized sanctioning entity is prohibited.

2. A person advances a prohibited combative sport when, acting other than as a spectator, he or she engages in conduct which materially aids any unauthorized combative sport. Such conduct includes but is not limited to conduct directed toward the creation, establishment or performance of a prohibited combative sport, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor,

toward the solicitation or inducement of persons to attend or participate therein, toward the actual conduct of the performance thereof, toward the arrangement of any of its financial or promotional phases, or toward any other phase of a prohibited combative sport. One advances a prohibited combative sport when, having substantial proprietary or other authoritative control over premises being used with his or her knowledge for purposes of a prohibited combative sport, he or she permits such to occur or continue or makes no effort to prevent its occurrence or continuation.

3. A person profits from a prohibited combative sport when he or she accepts or receives money or other property with intent to participate in the proceeds of a prohibited combative sport, or pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of a prohibited combative sport.

§ 1003. State athletic commission. 1. The state athletic commission, as named by chapter nine hundred twelve of the laws of nineteen hundred twenty, as amended by chapter six hundred three of the laws of nineteen hundred eighty-one, is continued as a division of the department of state. The commission shall act in the best interests of combative sports. The commission is enacted to protect the health, safety and general welfare of all participants in combative sports and spectators thereof, to preserve the integrity of combative sports through the means of licensing, oversight, enforcement and the authorization of sanctioning entities, and to facilitate the development and responsible conduct of combative sports throughout the entire state. The commission shall consist of five members who shall be appointed by the governor by and with the advice and consent of the senate. The governor shall designate one of the members as chairperson of the commission. The members of the commission shall be appointed for terms of three years. Any vacancy in the membership of the commission caused otherwise than by expiration of term shall be filled only for the balance of the term of the member in whose position the vacancy occurs.

2. The commissioners shall be paid their actual and necessary traveling and other expenses incurred by them in the performance of their official duties. The members of the commission shall adopt a seal for the commission, and make such rules for the administration of their office, not inconsistent herewith, as they may deem expedient; and they may amend or abrogate such rules. Three of the members of the commission shall constitute a quorum to do business; and the concurrence of a majority of the commissioners present shall be necessary to render a determination by the commission. The commission is vested with the authority to adopt such rules and regulations as necessary to effectuate the provisions of this article.

§ 1004. Jurisdiction of the commission. The commission shall have and is hereby vested with the sole direction, management, control and jurisdiction over:

1. all authorized combative sports;
2. all licenses or permits granted by the commission to any and all persons or entities who participate in authorized combative sports;
3. all determinations regarding the authorization of amateur and professional sanctioning entities;
4. all gyms, clubs, training camps and other organizations that maintain training facilities to prepare persons for participation in authorized professional combative sports;
5. the promotion of professional wrestling exhibitions to the extent provided for in this article; and
6. all contracts directly related to the conduct of authorized professional combative sports in the state of New York.
7. All disclosures to the commission shall be deemed confidential.

§ 1005. Officers and employees of the commission. The secretary of state may appoint, and at his or her pleasure remove, an executive director, deputies, officers, inspectors, physicians and any such other employees as may be necessary to administer the provisions of this article and fix their salaries within the amount appropriated therefor.

§ 1006. Sanctioning entities. 1. The commission shall promulgate regulations establishing a process by which entities may be recognized and approved by the commission as authorized sanctioning entities for a period of time to be established by the commission, during which the entity will be allowed to oversee and conduct combative sports within the state of New York. The commission may, in its reasonable discretion, limit the scope of any recognition and approval of a sanctioning entity to the oversight and conduct of one or more specific combat disciplines, amateur or professional combative sports, or to any combination of the foregoing based on the qualifications, integrity and history of the entity seeking authorization as a sanctioning entity.

2. The commission shall evaluate factors including but not limited to:

(a) the entity's stated mission and primary purpose;

(b) whether the entity requires participants in combative sports to use hand, foot and groin protection;

(c) whether the entity has an established set of rules that requires the immediate termination of any combative sport when any participant has endured severe punishment or is in danger of suffering serious physical injury; and

(d) whether the entity has established protocols to effectuate the appropriate and timely medical treatment of injured persons.

§ 1007. Licenses; general provisions. 1. Except as otherwise provided in sections one thousand six, one thousand eleven, and one thousand seventeen of this article, with respect to all authorized professional combative sports in this state, all corporations, entities, persons, referees, judges, match-makers, timekeepers, professionals, and their

managers, trainers, and seconds shall be licensed by the commission. No such corporation, entity or person shall be permitted to participate, either directly or indirectly, in any authorized professional combative sport, or the holding thereof, or the operation of any training facility providing contact sparring maintained either exclusively or in part for the use of professional boxers or professional mixed martial arts participants, unless such corporation or persons shall have first procured a license from the commission. The commission shall establish by rule and regulation licensing standards for all licensees.

2. Every application for a license shall be in a form prescribed by the commission, shall be addressed to the commission, shall be subscribed by the applicant, and affirmed by him or her as true under the penalties of perjury, and shall set forth such facts as the provisions hereof and the rules and regulations of the commission may require.

3. (a) The commission shall establish reasonable fees, terms and renewal terms for licenses, permits and other authorizations issued pursuant to this article, provided, however, that all terms, renewal terms and fees in effect pursuant to chapter nine hundred twelve of the laws of nineteen hundred twenty, and any subsequent amendments thereto, immediately prior to the enactment of this article, shall remain fixed at their prior statutory levels for a period of two years from enactment of this article. The commission shall publish all fees, including the aforementioned, in a single location on its website. All fees set by the commission pursuant to this section shall be subject to the approval of the director of the budget.

(b) With respect to the fees established by the commission pursuant to paragraph (a) of this subdivision, when such fees are payable in relation to authorized combative sports constituting mixed martial arts, the following shall apply:

(i) by promoters, for contests held where the seating capacity is not more than two thousand five hundred, the promoter shall pay not more than five hundred dollars;

(ii) by promoters, for contests held where the seating capacity is greater than two thousand five hundred, but not more than five thousand,

the promoter shall pay not more than one thousand dollars;

(iii) by promoters, for contests held where the seating capacity is greater than five thousand, but not more than fifteen thousand, the promoter shall pay not more than one thousand five hundred dollars;

(iv) by promoters, for contests held where the seating capacity is greater than fifteen thousand, but not more than twenty-five thousand, the promoter shall pay not more than two thousand five hundred dollars;

(v) by promoters, for contests held where the seating capacity is greater than twenty-five thousand, the promoter shall pay not more than three thousand dollars;

(vi) for referees and judges, not more than one hundred dollars;

(vii) for professional participants, managers and trainers not more than fifty dollars; and

(viii) for chief seconds, not more than forty dollars.

4. Any license, temporary work permit or other authorization issued under the provisions of this article may be revoked or suspended by the commission when the licensee, permittee or authorized entity has, in the judgment of the commission, violated any provision of this article, rule or order of the commission, demonstrated conduct detrimental to the interests of authorized combative sports generally or to the public interest, or when the commission deems it to be in the best interests of the health and safety of the licensee.

(a) Any licensee who suffered a knockout or technical knockout in a combative sport may, upon the recommendation of the attending commission physician, be suspended by the commission, for a period determined by the commission, and shall forfeit his or her license to the commission during such period. Such license shall not be returned to the licensee until he or she has met all requirements, medical and otherwise, for reinstatement of such license. All such suspensions shall be recorded in his or her license by a commission official.

(b) Notwithstanding any other provision of law, if any other state shall revoke a licensee's license to compete in combative sports in that state, then the commission may act to revoke any license issued to such licensee pursuant to the provisions of this article.

§ 1008. Licenses; judges. 1. Except as otherwise provided in sections one thousand six and one thousand seventeen of this article, only a person licensed by the commission, as a combative sports judge, may judge an authorized professional combative sport within the state. Judges for any authorized professional combative sport under the jurisdiction of the commission shall be selected by the commission from a list of qualified licensed judges maintained by the commission.

2. Any participant in a professional combative sport or his or her manager may protest the assignment of a judge to a contest and the participant or manager may be heard by the commission or its designee if such protest is timely. If the protest is untimely it shall be summarily rejected.

3. Each person seeking to be licensed as a judge by the commission shall be required to submit to or provide proof of an eye examination and annually thereafter on the anniversary of the issuance of the license. The commission shall establish continuing education programs and requirements to be completed by licensed judges. Each judge must be certified as having completed a training program as approved by the commission and shall pass an examination approved by the commission.

4. Each person seeking a license to judge authorized professional combative sports in the state shall be required to fill out a financial questionnaire certifying under penalty of perjury full disclosure of the judge's financial situation on a questionnaire to be promulgated by the commission. Such questionnaire shall be in a form and manner approved by the commission and shall provide information as to areas of actual or potential conflict of interest as well as appearances of such conflicts, including financial responsibility. Within forty-eight hours of any match, each judge of a professional combative sport shall file with the commission a financial disclosure statement in such form and manner as shall be acceptable to the commission.

§ 1009. Licenses; entities. 1. (a) Except as otherwise provided in sections one thousand six and one thousand seventeen of this article,

only entities licensed by the commission may conduct an authorized professional combative sport within the state. The commission may, in its discretion, issue a license to conduct or hold authorized professional combative sports, subject to the provisions hereof, to any person or corporation duly incorporated, or limited liability company authorized, under the laws of the state of New York.

(b) A prospective licensee must submit to the commission proof that it can furnish suitable premises, as determined by the commission, in which such combative sport is to be held.

(c) Upon written application the commission may grant to any entity holding a license issued hereunder, the privilege of holding such a match or exhibition on a specified date in other premises, or in another location, than the premises or location previously approved by the commission, subject however to approval of the commission and the rules and regulations of the commission.

2. (a) The commission may, in its discretion and in accordance with regulations adopted by the commission to protect the health and safety of professionals in training, issue a license to operate a training facility providing contact sparring maintained either exclusively or in part for the use of professional combative sports participants. At a minimum, any such regulation shall require:

(i) first aid materials to be stored in an accessible location on the premises and for the presence on the premises of a person trained and certified in the use of such materials and procedures for cardio-pulmonary resuscitation at all times during which the facility is open for training purposes;

(ii) clean and sanitary bathrooms, shower rooms, and locker rooms;

(iii) adequate ventilation and lighting of accessible areas of the training facility;

(iv) establishment of a policy concerning the restriction of smoking in training areas, including provisions for its enforcement by the facility operator;

(v) compliance with state and local fire ordinances;

(vi) inspection and approval of surfaces on which training for combative sports will be held; and

(vii) establishment of a policy for posting all commission license

suspensions and license revocations received from the commission including provisions for enforcement of such suspensions and revocations by the facility operator.

(b) A prospective entity licensee shall submit to the commission proof that it can furnish suitable facilities in which the training is to be conducted, including the making of such training facilities available for inspection by the commission at any time during which training is in progress.

§ 1010. Licenses; professionals. 1. Except as otherwise provided in sections one thousand six, one thousand eleven and one thousand seventeen of this article, only persons licensed by the commission shall compete in authorized professional combative sports.

2. Any professional applying for a license or renewal of a license to participate in combative sports under this article shall undergo a comprehensive physical examination including clinical neurological examinations by a physician approved by the commission. If, at the time of such examination, there is any indication of brain injury, or for any other reason the physician deems it appropriate, the professional shall be required to undergo further neurological examinations by a neurologist including magnetic resonance imaging or other medically equivalent procedures. The commission shall not issue a license to a professional until such examinations are completed and reviewed by the commission. The results of all such examinations herein required shall become a part of the professional's permanent medical record as maintained by the commission. The costs of all such examinations shall be assumed by the applicant or promoter with which the professional is affiliated, regardless of provider.

3. Any professional licensed under this article shall, as a condition of licensure, waive right of confidentiality of medical records relating to treatment of any physical condition which relates to his or her ability to fight. All medical reports submitted to, and all medical records of the medical advisory board or the commission relative to the physical examination or condition of professionals shall be considered

confidential, and shall be open to examination only to the commission or its authorized representative, to the licensed professional or manager upon written application to examine said records, or upon the order of a court of competent jurisdiction in an appropriate case.

§ 1011. Temporary working permits. The commission may issue temporary working permits to professionals, their managers, trainers and seconds. A temporary working permit shall authorize the employment of the holder of such permit to engage in a single authorized professional combative sport at a specified time and place. The commission may require that professionals applying for temporary working permits undergo a physical examination and neurological test or procedure, including magnetic resonance imaging or medically equivalent procedure. Temporary working permits shall expire upon the completion of the single authorized professional combative sport and any subsequent evaluations or inspections required by the commission. The fee for such temporary working permit shall be established by the commission pursuant to rule.

§ 1012. Temporary training facilities. The commission in its judgment may exempt from licensing under this article any training facility providing contact sparring established and maintained on a temporary basis for the purpose of preparing professionals for a specific authorized combative sport to be conducted, held or given within the state of New York.

§ 1013. Medical advisory board. 1. The medical advisory board created pursuant to chapter nine hundred twelve of the laws of nineteen hundred twenty, and subsequent amendments thereto is hereby continued without interruption. It shall remain a division of the state athletic commission, and shall consist of nine members to be appointed by the governor. The governor shall designate one of such members as chairperson of the advisory board. The term of a member thereafter appointed, except to fill a vacancy, shall be three years from the expiration of the term of his predecessor. Upon the appointment of a

successor to the chairperson of the advisory board, the governor shall designate such successor or other member of the advisory board as chairperson. A vacancy occurring otherwise than by expiration of term, shall be filled by appointment by the governor for the remainder only of the term. Each member of the advisory board shall be duly licensed to practice medicine in the state of New York, and at the time of his or her appointment have had at least five years' experience in the practice of his or her profession. The members of the advisory board shall receive such compensation as may be fixed by the commission within the amount provided by appropriation, and shall be allowed and paid necessary traveling and other expenses incurred by them, respectively, in the performance of their duties hereunder.

2. The advisory board shall have power and it shall be the duty of the board to prepare and submit to the commission for approval regulations and standards for the physical examination of professionals including, without limitation, pre-fight and post-fight examinations and periodic comprehensive examinations. The board shall continue to serve in an advisory capacity to the commission and from time to time prepare and submit to the commission for approval, such additional regulations and standards of examination as in their judgment will safeguard the physical welfare of professionals licensed by the commission. The advisory board shall recommend to the commission from time to time such qualified physicians, who may be designated and employed by the commission for the purpose of conducting physical examinations of professionals and other services as the rules of the commission shall provide. Such physicians, if so employed, shall receive compensation as fixed by the commission within amounts appropriated therefor. The provisions of section seventeen of the public officers law shall apply to any physician who:

- (a) is designated and employed by the commission; and
- (b) is rendering professional services on behalf of the commission to professionals.

3. The advisory board shall develop or recommend appropriate medical education programs for all commission personnel involved in the conduct of authorized combative sports so that such personnel can recognize and

act upon evidence of potential or actual adverse medical indications in a participant prior to, during or after the course of a match.

4. The advisory board shall review the credentials and performance of each commission physician on an annual basis.

5. The advisory board shall advise the commission on any study of equipment, procedures or personnel which will, in their opinion, promote the safety of professionals.

§ 1014. Regulation of authorized professional combative sports. The commission shall promulgate regulations governing the conduct of authorized professional combative sports that:

1. establish parameters and limitations on weights and classes of professionals;

2. establish parameters and limitations on the number and duration of rounds;

3. establish the requirements for the presence of medical equipment, medical personnel, an ambulance, other emergency apparatus and an emergency medical plan;

4. establish responsibilities of all licensees before, during and after an event;

5. define unsportsmanlike practices;

6. establish conditions for the forfeiture of any prize, remuneration or purse, or any part thereof based on the conduct of professionals, their managers and seconds;

7. establish parameters and standards for required and allowed equipment items utilized by professionals;

8. establish parameters and standards for rings, combat surfaces and appurtenances thereto; and

9. establish such other rules and conditions as are necessary to effectuate the commission's purpose.

§ 1015. Conduct of authorized professional combative sports. 1. All buildings or structures used or intended to be used for conducting authorized professional combative sports shall be properly ventilated and provided with fire exits and fire escapes, and in all manner conform to the laws, ordinances and regulations pertaining to buildings in the city, town or village where situated.

2. No person under the age of eighteen years shall participate in any authorized professional combative sports, and no person under sixteen years of age shall be permitted to attend thereat as a spectator, provided, however, that a person under the age of sixteen may be permitted to attend as a spectator if accompanied by a parent or guardian.

3. Except as otherwise provided in sections one thousand six and one thousand seventeen of this article, at each authorized professional combative sport, except where conducted solely for training purposes, there shall be in attendance a duly licensed referee who shall direct and control the same. There shall also be in attendance, except where conducted solely for training purposes, three duly licensed judges who shall at the termination of each such authorized professional combative sport render their decision. The winner shall be determined in accordance with a scoring system prescribed by the commission.

4. Except as otherwise provided in sections one thousand six and one thousand seventeen of this article, the commission shall direct an employee of the commission to be present at each place where authorized professional combative sports are to be conducted. Such employee of the commission shall ascertain the exact conditions surrounding such authorized professional combative sport and make a written report of the

same in the manner and form prescribed by the commission. Where authorized professional combative sports are approved to be held in a state or city owned armory, the provision of the military law in respect thereto must be complied with.

5. Except as otherwise provided in sections one thousand six and one thousand seventeen of this article, any ring or combat surface must be inspected and approved by the commission prior to the commencement of any authorized professional combative sport.

6. Except as otherwise provided in sections one thousand six and one thousand seventeen of this article, all professionals must be examined by a physician designated by the commission before entering the ring or combat surface and each such physician shall immediately file with the commission a written report of such examination. The cost of any such examination, as prescribed by a schedule of fees established by the commission, shall be paid by the corporation conducting the authorized professional combative sport to the commission. It shall be the duty of every person or corporation licensed to conduct an authorized professional combative sport, to have in attendance at every authorized professional combative sport, at least one physician designated by the commission as the rules shall provide. The commission may establish a schedule of fees to be paid by the licensee to cover the cost of such attendance.

7. The physician shall terminate any authorized professional combative sport if in the opinion of such physician any professional has received severe punishment or is in danger of serious physical injury. In the event of any serious physical injury, such physician shall immediately render any emergency treatment necessary, recommend further treatment or hospitalization if required, and fully report the entire matter to the commission within twenty-four hours and if necessary, subsequently thereafter. Such physician may also require that the injured professional and his or her manager remain in the ring or on the premises or report to a hospital after the contest for such period of time as such physician deems advisable. Any professional licensed under this article rendered unconscious or suffering head trauma as determined

by the attending physician shall be immediately examined by the attending commission physician and shall be required to undergo neurological examinations by a neurologist including but not limited to magnetic resonance imaging or medically equivalent procedure.

8. Such physician may enter the ring at any time during an authorized professional combative sport and may terminate the match if in his or her opinion the same is necessary to prevent severe punishment or serious physical injury to a professional.

9. Before a license shall be granted to a person or corporation to conduct an authorized professional combative sport, the applicant shall execute and file with the secretary of state a bond in an amount to be determined by the commission, to be approved as to form and sufficiency of sureties thereon by the secretary of state, conditioned for the faithful performance by said corporation of the provisions of this article and the rules and regulations of the commission, and upon the filing and approval of said bond the secretary of state shall issue to said applicant a certificate of such filing and approval, which shall be, by said applicant, filed in the office of the commission with its application for license, and no such license shall be issued until such certificate shall be filed. In case of default in such performance, the commission may impose upon the delinquent a penalty in the sum of not more than one thousand dollars for each offense, which may be recovered by the attorney-general in the name of the people of the state of New York in the same manner as other penalties are recovered by law; any amount so recovered shall be paid into the treasury.

10. In addition to the bond required by subdivision nine of this section, each applicant for a license to conduct an authorized professional combative sport shall execute and file with the secretary of state a bond in an amount to be determined by the commission to be approved as to form and sufficiency of sureties thereon by the secretary of state, conditioned for and guaranteeing the payment of professionals' and professional wrestlers' purses, salaries of club employees licensed by the commission, and the legitimate expenses of printing tickets and all advertising material.

11. All persons, parties or corporations having licenses as promoters or who are licensed in accordance with section one thousand seventeen of this article shall continuously provide accident insurance or such other form of financial guarantee deemed acceptable by the commission, for the protection of licensed professionals and professional wrestlers, appearing in authorized professional combative sports or wrestling exhibitions. Such accident insurance or financial guarantee shall provide coverage to the licensed professional for: medical, surgical and hospital care, with a minimum limit of fifty thousand dollars for injuries sustained while participating in any program operated under the control of such licensed promoter and for a payment of fifty thousand dollars to the estate of any deceased athlete where such death is occasioned by injuries received in this state during the course of a program in which such licensed professional or professional wrestler participated under the promotion or control of any licensed promoter; and, medical, surgical and hospital care with a minimum limit of one million dollars for the treatment of a life-threatening brain injury sustained in a program operated under the control of such licensed promoter, where an identifiable, causal link exists between the professional licensee's participation in such program and the life-threatening brain injury. Where applicable, professional licensees shall be afforded the option to supplement the premiums for the accident insurance or financial guarantee to increase the coverage beyond the minimum limits required by this subdivision. The commission may from time to time, promulgate regulations to adjust the amount of such minimum limits. The failure to provide such insurance as is required by this subdivision shall be cause for the suspension or the revocation of the license of such defaulting entity.

12. (a) Every individual, corporation, association or club holding any professional or amateur combative sport, including any professional wrestling match or exhibition, for which an admission fee is charged or received, shall notify the athletic commission at least ten days in advance of the holding of such contest. All tickets of admission to any such professional or amateur combative sport or professional wrestling match or exhibition shall be procured from a printer duly authorized by

the state athletic commission to print such tickets and shall bear clearly upon the face thereof the purchase price and location of same.

(b) Pursuant to direction by the commissioner of taxation and finance, employees or officers of the commission shall act as agents of the commissioner of taxation and finance to collect the tax imposed by article nineteen of the tax law. The athletic commission shall provide the commissioner of taxation and finance with such information and technical assistance as may be necessary for the proper administration of such tax.

§ 1016. Required filings. 1. The organization that promotes, sanctions or otherwise participates in the proposition, selection, or arrangement of one or more professionals for a contest must file with the commission a written statement executed under penalty of perjury stating (a) all charges, expenses, fees, and costs that will be assessed against any professional participating in the event; (b) all payments, benefits, complimentary benefits and fees the organization or entity will receive for its affiliation with the event; (c) the name of the promoter; (d) sponsor of the event; and (e) all other sources, and such other and additional information as required by the commission. Such written statement shall be filed in a form and manner acceptable to the commission.

2. The promoter, organizer, producer or another that participates in the proposition, selection, or arrangement of one or more professionals for a contest must file with the commission a written statement under penalty of perjury detailing all charges, fees, costs and expenses by or through the promoter on the professional pertaining to the event, including any portion of the professional's purse that the promoter will receive and training expenses and all payments, gifts or benefits the promoter is providing to any sanctioning organization affiliated with the event. Such written statement shall be filed in a form and manner acceptable to the commission.

3. The promoter, organizer, producer or another that participates in the proposition, selection, or arrangement of one or more professionals

for a contest must file with the commission a copy of any agreement in writing to which the promoter is a party with any professional participating in the match.

4. All contracts calling for the services of a professional in an authorized professional combative sport and entered into by licensed promoters, professionals or managers as one or more of the parties in such contracts, including those contracts which relate to the rights to distribute, televise or otherwise transmit any authorized professional combative sport over the airwaves or by cable shall be subject to the approval of the commission and copies thereof shall be filed with the commission by such corporation, professional or manager within forty-eight hours after the execution of such contract and at least ten business days prior to any bouts, or the first of any series of bouts, to which they relate. The commission may waive such filing deadline for good cause shown.

§ 1017. Professional wrestling; promoters. 1. For the purposes of this article, "professional wrestling" shall mean an activity in which participants struggle hand-in-hand primarily for the purpose of providing entertainment to spectators and which does not comprise a bona fide athletic contest or competition.

2. Every person, partnership or corporation promoting one or more professional wrestling exhibitions in this state shall be required to obtain from the commission an annual license to conduct such exhibitions subject to terms and conditions promulgated by the commission pursuant to rule and consistent with the applicable provisions of this article. Each applicant shall pay an annual fee established by the commission pursuant to rule.

3. A licensed promoter of a professional wrestling exhibition in the state shall notify the athletic commission at least ten days in advance of the holding of the exhibition. Each such promoter shall execute and file with the comptroller a bond in an amount not less than twenty thousand dollars to be approved as to form and sufficiency of sureties

thereon by the comptroller, conditioned for and guaranteeing the payment of professional wrestler's purses, salaries of club employees licensed by the commission, the legitimate expenses of printing tickets and all advertising material, payments to sponsoring organizations, and the applicable state and local sales and compensating use tax.

4. A licensed promoter of a professional wrestling exhibition shall provide for a licensed physician to be present at each exhibition, and such physician shall examine each wrestler prior to each performance, and each such pre-performance examination shall be conducted in accordance with regulations prescribed by the commission.

5. Every licensed promoter of professional wrestling who promotes six or more exhibitions in the state in a calendar year must have in place an anti-drug plan and file with the commission a written copy of the plan. Each such plan shall address the use of a controlled substance defined in article thirty-three of the public health law, and such plan shall at minimum provide for the following:

(a) dissemination of educational materials to professional wrestlers who perform for any such promoter including a list of prohibited drugs and available rehabilitation services; and

(b) a referral procedure to permit any such professional wrestler to obtain rehabilitation services.

§ 1018. Prohibited conduct. 1. No corporation or person shall have, either directly or indirectly, any financial interest in a professional boxer competing on premises owned or leased by the corporation or person, or in which such corporation or person is otherwise interested except pursuant to the specific written authorization of the commission.

2. No contestant in a boxing or sparring match or exhibition shall be paid for services before the contest, and should it be determined by the commission that such contestant did not give an honest exhibition of his or her skill, such services shall not be paid for.

3. Any person, including any corporation and the officers thereof, any

physician, referee, judge, timekeeper, professional, manager, trainer or second, who shall promote, conduct, give or participate in any sham or collusive authorized professional combative sports, shall be deprived of his or her license by the commission and any other appropriate legal remedies.

4. No licensed promoter or matchmaker shall knowingly engage in a course of conduct in which fights are arranged where one professional has skills or experience significantly in excess of the other professional so that a mismatch results with the potential of physical harm to the professional.

§ 1019. Penalties. 1. A person who knowingly advances or profits from a prohibited combative sport shall be guilty of a class A misdemeanor, and shall be guilty of a class E felony if he or she has been convicted in the previous five years of violating this subdivision.

2. Any person who knowingly advances or profits from a prohibited combative sport shall also be subject to a civil penalty not to exceed for the first violation ten thousand dollars or twice the amount of gain derived therefrom whichever is greater, or for a subsequent violation twenty-five thousand dollars or twice the amount of gain derived therefrom whichever is greater. The attorney general is hereby empowered to commence judicial proceedings to recover such penalties and to obtain injunctive relief to enforce the provisions of this section.

3. Any person or corporation who directly or indirectly conducts any combative sport without first having procured an appropriate license, or having been designated an authorized sanctioning entity as prescribed in this article shall be guilty of a misdemeanor. Any person who participates in a combative sport as a referee, judge, match-maker, timekeeper, professional, manager, trainer, or second without first having procured an appropriate license as prescribed in this article, or where such combative sport is prohibited under this article shall be guilty of a misdemeanor. Any person, partnership or corporation who promotes a professional wrestling match or exhibition in the state

without first having procured an appropriate license in accordance with section one thousand seventeen of this article, shall be guilty of a misdemeanor.

4. Any corporation, entity, person or persons, licensed, permitted or otherwise authorized under the provisions of this article, that shall knowingly violate any rule or order of the commission or any provision of this article, in addition to any other penalty by law prescribed, shall be liable to a civil penalty not to exceed ten thousand dollars for the first offense and not to exceed twenty-five thousand dollars for the second and each subsequent offense, to be imposed by the commission, to be sued for by the attorney-general in the name of the people of the state of New York if directed by the commission. The commission, for cause shown, may extend the time for the payment of such penalty and, by compromise, may accept less than the amount of such penalty as imposed in settlement thereof. For the purposes of this section, each transaction or statutory violation shall constitute a separate offense, except that a second or subsequent offense shall not be deemed to exist unless a decision has been rendered in a prior, separate and independent proceeding.

5. On the first infraction of rules or regulations promulgated pursuant to subdivision two of section one thousand nine of this article, which infraction may include more than one individual violation, the commission may impose a civil fine of up to two hundred fifty dollars for each health and safety violation and may suspend the training facility's license until the violation or violations are corrected. On the second such infraction, the commission may impose a civil fine of up to five hundred dollars for each health and safety violation and may suspend the training facility's license until the violation or violations are corrected. On the third such infraction or for subsequent infractions, the commission may impose a civil fine of up to seven hundred fifty dollars for each health and safety violation and may revoke the training facility's license.

6. Any individual, corporation, association or club failing to fully comply with paragraph (a) of subdivision twelve of section one thousand

fifteen of this article shall be subject to a penalty of five hundred dollars to be collected by and paid to the department of state. Any individual, corporation, association or club is prohibited from operating any shows or exhibitions until all penalties due pursuant to this section and taxes, interest and penalties due pursuant to article nineteen of the tax law have been paid.

7. All penalties imposed and collected by the commission from any corporation, entity, person or persons licensed under the provisions of this article, which fines and penalties are imposed and collected under authority hereby vested shall within thirty days after the receipt thereof by the commission be paid by them into the state treasury.

§ 1020. Subpoenas by commission; oaths. The commission shall have authority to issue, under the hand of its chairperson, and the seal of the commission, subpoenas for the attendance of witnesses before the commission. A subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 1021. Exceptions. The provisions of this article except as provided in subdivision twelve of section one thousand fifteen of this article shall not be construed to apply to any sparring or boxing contest or exhibition conducted under the supervision or the control of the New York state national guard or naval militia where all of the contestants are members of the active militia; nor to any such contest or exhibition where the contestants are all amateurs, sponsored by and under the supervision of any university, college, school or other institution of learning, recognized by the regents of the state of New York; nor to any business entity incorporated for the purposes of providing instruction and evaluation in a combative sport to customers for the purposes of health and fitness, personal development, self-defense or participation in amateur events conducted by an authorized sanctioning entity; nor to any such contest or exhibitions where the contestants are all amateurs sponsored by and under the supervision of the American Olympic Association or, in the case of boxing, the U.S. Amateur Boxing

Federation or its local affiliates or the American Olympic Association; nor except as to the extent provided otherwise in this article, to any professional wrestling contest or exhibition as defined in this article. Any individual, association, corporation or club, except elementary or high schools or equivalent institutions of learning recognized by the regents of the state of New York, who or which conducts an amateur contest pursuant to this section must register with the U. S. Amateur Boxing Federation or its local affiliates and abide by its rules and regulations.

§ 1022. Disposition of receipts. All receipts of the commission shall be paid into the state treasury, provided, however, that receipts from the tax imposed by article nineteen of the tax law shall be deposited as provided by section one hundred seventy-one-a of the tax law.

ARTICLE 42

SOCIAL MEDIA TERMS OF SERVICE

Section 1100. Definitions.

1101. Required disclosure of terms of service.

1102. Terms of service report.

1103. Violations and remedies.

1104. Application.

§ 1100. Definitions. For purposes of this article, the following definitions apply:

1. "Actioned" means a social media company, that due to a suspected or confirmed violation of the terms of service, has taken some form of action, including, but not limited to, removal, demonetization, deprioritization, or banning, against the relevant user or relevant item of content.

2. "Content" means statements or comments made by users and media that are created, posted, livestreamed, shared, or otherwise interacted with

by users on an internet-based service or application. "Content" does not include media put on a service or application exclusively for the purpose of cloud storage, transmitting files, or file collaboration.

3. "Public or semipublic internet-based service or application" excludes a service or application used to facilitate communication within a business or enterprise among employees or affiliates of the business or enterprise, provided that access to the service or application is restricted to employees or affiliates of the business or enterprise using the service or application.

4. "Social media company" means a person or entity that owns or operates one or more social media platforms.

5. "Social media platform" means a public or semipublic internet-based service or application that has users in New York and that meets both of the following criteria:

(a) A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application. A service or application that provides email or direct messaging services shall not be considered to meet this criterion on the basis of that function alone.

(b) The service or application allows users to do all of the following:

(i) construct a public or semipublic profile for purposes of signing into and using the service or application;

(ii) populate a list of other users with whom an individual shares a social connection within the system; and

(iii) create or post content viewable or audible by other users, including, but not limited to, livestreams, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users.

6. "Terms of service" means a policy or set of policies adopted by a social media company that specifies, at least, the user behavior and activities that are permitted on the internet-based service owned or operated by the social media company, and the user behavior and

activities that may subject the user or an item of content to being actioned.

§ 1101. Required disclosure of terms of service. 1. A social media company shall post terms of service for each social media platform owned or operated by the company in a manner reasonably designed to inform all users of the social media platform of the existence and contents of the terms of service.

2. The terms of service posted pursuant to subdivision one of this section shall include all of the following:

(a) contact information for the purpose of allowing users to ask the social media company questions about the terms of service;

(b) a description of the process that users must follow to flag content, groups, or other users that they believe violate the terms of service, and the social media company's commitments on response and resolution time; and

(c) a list of potential actions the social media company may take against an item of content or a user, including, but not limited to, removal, demonetization, deprioritization, or banning.

3. The terms of service posted pursuant to subdivision one of this section shall be available in the twelve most common non-English languages spoken by limited-English proficient individuals in the state, as outlined in section two hundred two-a of the executive law, in which the social media platform offers product features, including, but not limited to, menus and prompts.

§ 1102. Terms of service report. 1. On a semiannual basis in accordance with subdivision two of this section, a social media company shall submit to the attorney general a terms of service report. The terms of service report shall include, for each social media platform owned or operated by the company, all of the following:

(a) The current version of the terms of service of the social media platform.

(b) If a social media company has filed its first report, a complete and detailed description of any changes to the terms of service since the previous report.

(c) A statement of whether the current version of the terms of service defines each of the following categories of content, and, if so, the definitions of those categories, including any subcategories:

- (i) hate speech or racism;
- (ii) extremism or radicalization;
- (iii) disinformation or misinformation;
- (iv) harassment; and/or
- (v) foreign political interference.

(d) A detailed description of content moderation practices used by the social media company for that platform, including, but not limited to, all of the following:

(i) any existing policies intended to address the categories of content described in paragraph (c) of this subdivision;

(ii) how automated content moderation systems enforce terms of service of the social media platform and when these systems involve human review;

(iii) how the social media company responds to user reports of violations of the terms of service;

(iv) how the social media company would remove individual pieces of content, users, or groups that violate the terms of service, or take broader action against individual users or against groups of users that violate the terms of service; and

(v) the languages in which the social media platform does not make terms of service available, but does offer product features, including, but not limited to, menus and prompts.

(e) (i) Information on content that was flagged by the social media company as content belonging to any of the categories described in paragraph (c) of this subdivision, including all of the following:

- (A) the total number of flagged items of content;
- (B) the total number of actioned items of content;

(C) the total number of actioned items of content that resulted in action taken by the social media company against the user or group of users responsible for the content;

- (D) the total number of actioned items of content that were removed,

demonetized, or deprioritized by the social media company;

(E) the number of times actioned items of content were viewed or heard by users;

(F) the number of times actioned items of content were shared, and the number of users that viewed or heard the content before it was actioned; and

(G) the number of times users appealed social media company actions taken on that platform and the number of reversals of social media company actions on appeal disaggregated by each type of action.

(ii) All information required by subparagraph (i) of this paragraph shall be disaggregated into the following categories:

(A) the category of content, including any relevant categories described in paragraph (c) of this subdivision;

(B) the type of content, including, but not limited to, posts, livestreams, comments, messages, profiles of users, or groups of users;

(C) the type of media of the content, including, but not limited to, text, images, livestreams, and videos;

(D) how the content was flagged, including, but not limited to, flagged by company employees or contractors, flagged by artificial intelligence software, flagged by community moderators, flagged by civil society partners, and flagged by users; and

(E) how the content was actioned, including, but not limited to, actioned by company employees or contractors, actioned by artificial intelligence software, actioned by community moderators, actioned by civil society partners, and actioned by users.

2. (a) A social media company shall electronically submit a semiannual terms of service report pursuant to subdivision one of this section, covering activity within the third and fourth quarters of the preceding calendar year, to the attorney general no later than April first of each year, and shall electronically submit a semiannual terms of service report pursuant to subdivision one of this section, covering activity within the first and second quarters of the current calendar year, to the attorney general no later than October first of each year.

(b) Notwithstanding paragraph (a) of this subdivision, a social media company shall electronically submit its first terms of service report pursuant to subdivision one of this section, covering activity within

the third quarter of two thousand twenty-five, to the attorney general no later than January first, two thousand twenty-six, and shall electronically submit its second terms of service report pursuant to subdivision one of this section, covering activity within the fourth quarter of two thousand twenty-five, to the attorney general no later than April first, two thousand twenty-six. A social media platform shall submit its third report no later than October first, two thousand twenty-six, in accordance with paragraph (a) of this subdivision.

3. The attorney general shall make all terms of service reports submitted pursuant to this section available to the public in a searchable repository on its official internet website.

§ 1103. Violations and remedies. 1. (a) A social media company that violates the provisions of this article shall be liable for a civil penalty not to exceed fifteen thousand dollars per violation per day, and may be enjoined in any court of competent jurisdiction.

(b) A social media company shall be considered in violation of the provisions of this article for each day the social media company does any of the following:

(i) fails to post terms of service in accordance with section eleven hundred two of this article;

(ii) fails to timely submit to the attorney general a report required pursuant to section eleven hundred two of this article; or

(iii) materially omits or misrepresents required information in a report submitted pursuant to section eleven hundred two of this article.

(c) In assessing the amount of a civil penalty pursuant to paragraph (a) of this subdivision, the court shall consider whether the social media company has made a reasonable, good faith attempt to comply with the provisions of this article.

2. Actions for relief pursuant to this article shall be prosecuted exclusively in a court of competent jurisdiction by the attorney general in the name of the people of the state of New York.

3. Any social media company determined to have violated the provisions

set forth in this article shall be granted a cure period of thirty calendar days from the date of notification of such violation. During this cure period, the company must take all necessary actions to rectify the identified violation or violations and achieve full compliance with the requirements delineated in this article. No civil penalty may be imposed against the company provided the violation is verifiably cured within the thirty-day timeframe to the satisfaction of the enforcing authority.

§ 1104. Application. This article shall not apply to a social media company that generated less than one hundred million dollars in gross revenue during the preceding calendar year or to an internet-based service or application for which interactions between users are limited to direct messages, commercial transactions, consumer reviews of products, sellers, services, events, or places, or any combination thereof.

ARTICLE 43

NEW YORK STATE SECURE CHOICE SAVINGS PROGRAM

Section 1300. Definitions.

1301. Program established.

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§ 1300. Definitions. All terms shall have the same meaning as when used in a comparable context in the Internal Revenue Code. As used in this article, the following terms shall have the following meanings:

1. "Board" shall mean the New York secure choice savings program board established under this article.

2. "Superintendent" shall mean the superintendent of the department of financial services.

2-a. "Commissioner" shall mean the commissioner of taxation and finance.

2-b. "Comptroller" shall mean the comptroller of the state.

3. "Employee" shall mean any individual who is eighteen years of age or older, who is employed by an employer, and who earned wages working for an employer in New York state during a calendar year.

4. "Employer" shall mean a person or entity engaged in a business, industry, profession, trade, or other enterprise in New York state, whether for profit or not for profit, that (i) has at all times during the previous calendar year employed at least ten employees in the state, (ii) has been in business at least two years, and (iii) has not offered a qualified retirement plan, including, but not limited to, a plan qualified under sections 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal Revenue Code of 1986 in the preceding two years.

5. "Enrollee" shall mean any employee or individual who is enrolled in the program.

6. "Internal Revenue Code" shall mean the Internal Revenue Code of

1986, or any successor law, in effect for the calendar year.

7. "IRA" shall mean a Roth IRA (individual retirement account).

8. "Participating employer" shall mean an employer that facilitates access to the program's payroll deduction IRA as provided for by this article for its employees who are enrollees in the program.

9. "Payroll deduction IRA" shall mean an arrangement by which a participating employer facilitates access for enrollees to remit payroll deduction contributions to the program.

10. "Program" shall mean the New York state secure choice savings program.

11. "Wages" means any compensation within the meaning of section 219(f)(1) of the Internal Revenue Code that is received by an enrollee from a participating employer during the calendar year.

§ 1301. Program established. There is hereby established a retirement savings program in the form of an automatic enrollment payroll deduction IRA, known as the New York state secure choice savings program. The general administration and responsibility for the proper operation of the program shall be administered by the board for the purpose of promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner. The board may delegate such authority and responsibility for the development and implementation of the program to the department of taxation and finance as the board deems proper.

§ 1302. Composition of the board. There is hereby created the New York state secure choice savings program board.

1. The board shall consist of the following seven members:

(a) the commissioner, or his or her designee, who shall serve as

chair;

(b) the state comptroller, or his or her designee;

(c) the superintendent, or his or her designee;

(d) two public representatives with expertise in retirement savings plan administration or investment, or both, one of whom shall be appointed by the speaker of the assembly and one of whom shall be appointed by the temporary president of the senate;

(e) a representative of participating employers, appointed by the governor; and

(f) a representative of enrollees, appointed by the governor.

2. Members of the board shall serve without compensation but may be reimbursed for necessary travel expenses incurred in connection with their board duties from funds appropriated for the purpose.

3. The initial appointments shall be as follows: the public representatives for four years; the representative of participating employers for three years; and the representative of enrollees for three years. Thereafter, all the governor's appointees shall be for terms of four years.

4. A vacancy in the term of an appointed board member shall be filled for the balance of the unexpired term in the same manner as the original appointment.

§ 1303. Fiduciary duty. The board, the individual members of the board, the trustees, any other agents appointed or engaged by the board, and all persons serving as program staff shall discharge their duties with respect to the program solely in the interest of the program's enrollees and beneficiaries as follows:

1. for the exclusive purposes of providing benefits to enrollees and beneficiaries and defraying reasonable expenses of administering the program;

2. by investing with the care, skill, prudence, and diligence under

the prevailing circumstances that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims; and

3. by using any contributions paid by employees, and employers remitting employees' own contributions into the fund exclusively for the purpose of paying benefits to the enrollees of the program, for the cost of administration of the program, and for investments made for the benefit of the program.

§ 1304. Duties of the board. In addition to the other duties and responsibilities stated in this article, the board shall, itself or through the use of appropriate financial organizations as managers:

1. Cause the program to be designed, established and operated in a manner that:

(a) accords with best practices for retirement savings vehicles;

(b) maximizes participation, savings, and sound investment practices including considering the use of automatic enrollment as allowed under federal law;

(c) maximizes simplicity, including ease of administration for participating employers and enrollees;

(d) provides an efficient product to enrollees by pooling investment funds;

(e) ensures the portability of benefits; and

(f) provides for the deaccumulation of enrollee assets in a manner that provides a financial benefit in retirement.

2. Explore and establish or authorize investment options, subject to this article, that offer enrollees returns on contributions and the conversion of individual retirement savings account balances to secure retirement income without incurring debt or liabilities to the state.

3. Establish or authorize the process by which interest, investment earnings, and investment losses are allocated to individual program accounts on a pro rata basis and are computed at the interest rate on

the balance of an individual's account.

4. Make and enter into contracts necessary for the administration of the program and fund, including, but not limited to, retaining and contracting with investment managers, financial organizations, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, and other professionals as necessary.

5. Conduct a periodic review of the performance of any financial organizations, including, but not limited to, a review of returns, fees, and customer service. A copy of reviews shall be posted to the program's Internet website.

6. Cause moneys in the program to be held and invested as pooled investments or otherwise, with a view to achieving cost savings through efficiencies and economies of scale.

7. Evaluate and establish or authorize the process for:

(a) an employee to contribute a portion of his or her wages to the program via payroll deduction; and

(b) the enrollment of participating employers in the program.

7-a. Evaluate and establish or authorize a process by which an individual or an employee of a nonparticipating employer may enroll in, make contributions to and otherwise participate in the program.

8. The board may contract with financial organizations and third-party administrators with the capability to receive and process employee information and contributions for payroll deduction IRA or similar arrangements.

9. Evaluate and establish or authorize the process for enrollment including the process by which an employee may opt not to participate in the program, select a contribution level, select an investment option, and terminate participation in the program.

10. Evaluate, or cause to be evaluated, the need for, and procure as needed, insurance against any and all loss in connection with the property, assets, or activities of the program, and indemnify as needed each member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board.

11. Make provisions for the payment of administrative costs and expenses for the creation, management, and operation of the program. Subject to appropriation, the state may pay administrative costs associated with the creation and management of the program until sufficient assets are available in the program for that purpose. Thereafter, all administrative costs of the program, including repayment of any start-up funds provided by the state, shall be paid only out of moneys on deposit therein. However, private funds or federal funding received in order to implement the program until it is self-sustaining shall not be repaid unless those funds were offered contingent upon the promise of such repayment. The board shall keep its annual administrative expenses as low as possible.

12. Allocate administrative fees to individual retirement accounts in the program on a pro rata basis.

13. Set or authorize minimum and maximum contribution levels in accordance with limits established for IRAs by the Internal Revenue Code.

14. Facilitate education and outreach to employers and employees.

15. Facilitate compliance by the program with all applicable requirements for the program under the Internal Revenue Code, including tax qualification requirements or any other applicable legal, financial reporting and accounting requirements.

16. Carry out the duties and obligations of the program in an effective, efficient, and low-cost manner.

17. Exercise any and all other powers reasonably necessary for the

effectuation of the purposes, objectives, and provisions of this article.

18. Determine or authorize withdrawal provisions, such as economic hardships, portability and leakage.

19. Determine employee rights and enforcement of penalties.

20. Delegate such authority and responsibility for the development and implementation of the program to the department of taxation and finance as the board deems proper.

§ 1305. Risk management. The board shall annually prepare, or cause to be prepared, and adopt a written statement of investment policy that includes a risk management and oversight program. This investment policy shall prohibit the board and the program from borrowing for investment purposes. The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the program, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall risk management, and to assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards. The board shall consider the statement of investment policy and any changes in the investment policy at a public hearing.

§ 1306. Financial organizations. 1. The board shall engage, after an open bid process, a financial organization or organizations to invest assets of the program. In selecting the financial organization or organizations, the board shall take into consideration and give weight to the financial organization's fees and charges in order to reduce the program's administrative expenses.

2. The financial organizations shall comply with applicable federal and state laws, rules, and regulations, as well as rules, policies, and

guidelines promulgated by the board with respect to the program, including, but not limited to, the investment policy.

3. The financial organization or organizations shall provide such reports as the board deems necessary for the board to oversee each financial organization's performance and the performance of the program.

§ 1307. Investment options. 1. The board shall establish or authorize a default investment option for enrollees who fail to elect an investment option. In making such determination, the board shall consider the cost, risk profile, benefit level and ease of enrollment. The board may change the default option if the board determines that such change is in the best interests of the enrollees.

2. The board may establish or authorize any additional investment options that the board deems appropriate including but not limited to:

(a) a conservative principal protection fund;

(b) a growth fund;

(c) a secure return fund whose primary objective is the preservation of the safety of principal and the provision of a stable and low-risk rate of return; if the board elects to establish a secure return fund, the board may procure any insurance, annuity, or other product to insure the value of enrollees' accounts and guarantee a rate of return; the cost of such funding mechanism shall be paid out of the fund; under no circumstances shall the board, program, fund, the state, or any participating employer assume any liability for investment or actuarial risk; the board shall determine whether to establish or authorize such investment options based upon an analysis of their cost, risk profile, benefit level, feasibility, and ease of implementation;

(d) an annuity fund;

(e) a growth and income fund; or

(f) a life cycle fund with a target date based upon factors determined by the board.

§ 1308. Benefits. Interest, investment earnings, and investment losses

shall be allocated to individual program accounts as authorized by the board pursuant to this article. An individual's retirement savings benefit under the program shall be an amount equal to the balance in the individual's program account on the date the retirement savings benefit becomes payable. The state shall have no liability for the payment of any benefit to any enrollee in the program.

§ 1309. Employer and employee informational materials and disclosure forms. 1. Prior to the opening of the program for enrollment, the board shall design and disseminate, or cause to be designed and disseminated, to all employers employer informational materials and employee informational materials, which shall include background information on the program, and necessary disclosures as required by law for employees.

2. The employee informational materials shall be made available in English, Spanish, Haitian Creole, Chinese, Korean, Russian, Arabic, and any other language the board deems necessary.

3. The employee informational materials shall include a disclosure form. The disclosure form shall explain, but not be limited to, all of the following:

(a) the benefits and risks associated with making contributions to the program;

(b) the process for making contributions to the program;

(c) how to opt out of the program;

(d) the process by which an employee can participate in the program with a level of employee contributions other than three percent;

(e) that they are not required to participate or contribute more than three percent;

(f) the process for withdrawal of retirement savings;

(g) the process for selecting beneficiaries of their retirement savings;

(h) how to obtain additional information about the program;

(i) that employees seeking financial advice should contact financial advisors, that participating employers are not in a position to provide financial advice, and that participating employers are not liable for

decisions employees make pursuant to this article;

(j) information on how to access any available financial literacy programs;

(k) that the program fund is not guaranteed by the state; and

(l) that they can opt out after they have been enrolled.

4. The employee informational materials shall also include a form for an employee to note his or her decision to opt out of participation in the program or elect to participate with a level of employee contributions other than three percent.

5. Participating employers shall supply the employee informational materials to existing employees at least one month prior to the participating employers' facilitation of access to the program. Participating employers shall supply the employee informational materials to new employees at the time of hiring and new employees may opt out of participation in the program.

§ 1310. Program implementation and enrollment. Except as otherwise provided in this article, the program shall be implemented, and enrollment of employees shall begin no later than December thirty-first, two thousand twenty-one. The provisions of this section shall be in force after the board opens the program for enrollment.

1. (a) Each participating employer shall have a payroll deposit retirement savings arrangement to allow each employee to participate in the program at most nine months after the board opens the program for enrollment.

(b) Participating employers shall automatically enroll in the program each of their employees who has not opted out of participation in the program using the form described in this article and shall provide payroll deduction retirement savings arrangements for such employees and deposit, on behalf of such employees, these funds into the program.

2. Enrollees shall have the ability to select a contribution level into the program. This level may be expressed as a percentage of wages

or as a dollar amount up to the deductible amount for the enrollee's taxable year under section 219(b)(1)(A) of the Internal Revenue Code. Enrollees may change their contribution level at any time, subject to rules promulgated by the board. If an enrollee fails to select a contribution level using the form described in this article, then he or she shall contribute three percent of his or her wages to the program, provided that such contributions shall not cause the enrollee's total contributions to IRAs for the year to exceed the deductible amount for the enrollee's taxable year under section 219(b)(1)(A) of the Internal Revenue Code. The deduction of contributions from an employee's wages shall not begin until the thirtieth day after such employee has been enrolled in the program.

3. Enrollees may select an investment option offered under the program. Enrollees may change their investment option at any time, subject to rules promulgated by the board. In the event that an enrollee fails to select an investment option, that enrollee shall be placed in the investment option selected or authorized by the board as the default under this article.

4. Following initial implementation of the program pursuant to this section, at least once every year, the program shall designate an open enrollment period during which employees who previously opted out of the program may enroll in the program.

5. An employee who opts out of the program and who subsequently wants to participate may only enroll during the program's designated open enrollment period or if permitted by the program at an earlier time.

6. Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan.

7. An enrollee may terminate his or her enrollment in the program at any time in a manner prescribed by the board.

8. (a) The board shall establish or authorize a website regarding the secure choice savings program.

(b) The board shall establish and maintain or authorize the establishment and maintenance of a secure website wherein enrollees may log in and acquire information regarding contributions and investment income allocated to, withdrawals from, and balances in their program accounts for the reporting period. Such website must also include information for the enrollees regarding other options available to the employee and how they can transfer their accounts to other programs should they wish to do so. Such website may include any other information regarding the program as the board may determine.

9. A person or entity engaged in a business, industry, profession, trade, or other enterprise in New York state, whether for profit or not for profit, that offers a qualified retirement plan, including, but not limited to, a plan qualified under sections 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or 457(b) of the Internal Revenue Code of 1986 shall not terminate such plan for the purposes of participating in the program.

§ 1311. Payments. Employee contributions deducted by the participating employer through payroll deduction shall be remitted by the participating employer to the program using one or more payroll deduction IRAs established or authorized by the board under this article, either:

1. on or before the last day of the month following the month in which the compensation otherwise would have been payable to the employee in cash; or

2. before such later deadline prescribed by the board for making such payments, but not later than the due date for the deposit of tax required to be deducted and withheld relating to collection of income tax at source on wages or for the deposit of tax required to be paid under the unemployment insurance system for the payroll period to which such payments relate.

§ 1312. Duty and liability of the state. 1. The state shall have no duty or liability to any party for the payment of any retirement savings benefits accrued by any enrollee under the program. Any financial liability for the payment of retirement savings benefits in excess of funds available under the program shall be borne solely by the entities with whom the board contracts to provide insurance to protect the value of the program.

2. No state board, commission, or agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from particular investments selected under this article, except for any liability that arises out of a breach of fiduciary duty.

§ 1313. Duty and liability of participating employers. 1. Participating employers shall not have any liability for an employee's decision regarding whether to participate in, or opt out of, the program or for the investment decisions of the board or of any enrollee.

2. A participating employer is not establishing or maintaining the program's payroll deduction IRA. A participating employer shall not be a fiduciary, or considered to be a fiduciary, over the program. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the program. A participating employer shall not be liable with regard to investment returns, program design, and benefits paid to program participants.

§ 1314. Audit and reports. 1. The board shall annually submit:

- (a) an audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the program during each calendar year by July first of the following year to the governor, the commissioner, the speaker of the assembly, the temporary president of the senate, the chair of the assembly ways and means committee, the chair of the senate finance committee, the chair of the assembly labor committee, the chair of the senate labor committee; and
- (b) a report prepared or authorized by the board, which shall include,

but is not limited to, a summary of the benefits provided by the program, including the number of enrollees in the program, the percentage and amounts of investment options and rates of return, and such other information that is relevant to make a full, fair, and effective disclosure of the operations of the program. The annual report shall be made by an independent certified public accountant and shall include, but is not limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees for the administration of the program.

2. In addition to any other statements or reports required by law, the board shall provide or cause to be provided periodic reports at least annually to enrollees, reporting contributions and investment income allocated to, withdrawals from, and balances in their program accounts for the reporting period. Such reports may include any other information regarding the program as the board may determine.

§ 1315. Delayed implementation. The board may delay the implementation of the program an additional twelve months beyond the date established in section thirteen hundred ten of this article if the board determines that further delay is necessary to address legal, financial or other programmatic concerns impacting the viability of the program. The board shall provide reasonable notice of such delay to the governor, the commissioner, the speaker of the assembly, the temporary president of the senate, the chair of the assembly ways and means committee, the chair of the senate finance committee, the chair of the assembly labor committee, and the chair of the senate labor committee.

§ 1316. Regulations. The commissioner may issue such rules and regulations as he or she deems necessary to implement the terms of this article.

**REGULATION OF SURROGACY PROGRAMS AND ASSISTED
REPRODUCTION SERVICE PROVIDERS**

Section 1400. Definitions.

1401. Surrogacy programs regulated under this article.

1402. Assisted reproduction service providers regulated under this article.

1403. Conflicts of interest; prohibition on payments; funds in escrow; licensure; notice of surrogates' bill of rights.

1404. Regulations.

§ 1400. Definitions. As used in this section:

(a) The definitions in section 581-102 of the family court act shall apply.

(b) "Payment" means any type of monetary compensation or other valuable consideration including but not limited to a rebate, refund, commission, unearned discount, or profit by means of credit or other valuable consideration.

(c) "Surrogacy program" does not include any party to a surrogacy agreement or any person licensed to practice law and representing a party to the surrogacy agreement, but does include and is not limited to any agency, agent, business, or individual engaged in, arranging, or facilitating transactions contemplated by a surrogacy agreement, regardless of whether such agreement ultimately comports with the requirements of part four of article five-C of the family court act.

§ 1401. Surrogacy programs regulated under this article. The provisions of this article apply to surrogacy programs arranging or facilitating transactions contemplated by a surrogacy agreement, regardless of whether such agreement ultimately comports with the requirements under part four of article five-C of the family court act if:

(a) The surrogacy program does business in New York state; or

(b) A person acting as surrogate who is party to a surrogacy agreement resides in New York state at the time the surrogacy agreement is executed.

§ 1402. Assisted reproduction service providers regulated under this article. The provisions of this article apply to agents, gamete banks, fertility clinics, and other entities if:

1. The agent, gamete bank, fertility clinic, or other entity does business in this state; or
2. Any health care services performed, provided or otherwise arranged by the entity are performed in this state.

§ 1403. Conflicts of interest; prohibition on payments; funds in escrow; licensure; notice of surrogates' bill of rights. A surrogacy program to which this article applies:

- (a) Shall keep all funds paid by or on behalf of the intended parent or parents other than funds paid to the surrogacy program for its fees, in an escrow account separate from its operating accounts; and
- (b) May not be owned or managed, in any part, directly or indirectly, by any attorney representing a party to the surrogacy agreement; and
- (c) May not pay or receive payment, directly or indirectly, to or from any person licensed to practice law and representing a party to the surrogacy agreement in connection with the referral of any person or party for the purpose of a surrogacy agreement; and
- (d) May not pay or receive payment, directly or indirectly, to or from any health care provider providing any health services, including assisted reproduction, to a party to the surrogacy agreement; and
- (e) May not be owned or managed, in any part, directly or indirectly, by any health care provider providing any health services, including assisted reproduction, to a party to the surrogacy agreement; and
- (f) Shall be licensed to operate in New York state pursuant to regulations promulgated by the department of health in consultation with the department of financial services; and
- (g) Shall ensure that all potential parties to a surrogacy agreement, at the time of consultation with such surrogacy program, are provided with written notice of the surrogates' bill of rights enumerated in part

six of article five-C of the family court act.

§ 1404. Regulations. 1. The department of health, in consultation with the department of financial services, shall promulgate rules and regulations to implement the requirements of this article regarding surrogacy programs and assisted reproduction service providers in a manner that ensures the safety and health of gamete providers and persons serving as surrogates. Such regulations shall, at a minimum:

(a) Require surrogacy programs to monitor compliance with eligibility criteria for the intended parents and persons acting as surrogates pursuant to section 581-402 of the family court act; and

(b) Require the assisted reproduction service providers to administer informed consent procedures that comply with regulations promulgated by the department of health under section twenty-five hundred ninety-nine-cc of the public health law.

2. The department of health shall annually report to the legislature regarding the practices of surrogacy programs and assisted reproduction service providers and all business transactions related to surrogacy and gamete provision in New York state, with recommendations for any necessary amendments to this article.

ARTICLE 44-A

FREELANCE ISN'T FREE ACT

Section 1410. Definitions.

1411. Contracted compensation payments.

1412. Written contracts.

1413. Discrimination Prohibited.

1414. Violations.

1415. Additional rights.

§ 1410. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Construction contractor" means any person, sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity who by oneself or through others offers to undertake, or holds oneself out as being able to undertake, or does undertake a construction project.

2. "Construction project" means the providing of any labor or services, and the use of any materials or equipment in order to alter, build, excavate, add to, subtract from, improve, repair, maintain, renovate, move, wreck or demolish any bridge, building, highway, road, railroad, land, tunnel, sewer, drainage or other structure, project, development, or improvement, or the doing of any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

3. "Freelance worker" means any natural person or organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for an amount equal to or greater than eight hundred dollars, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding one hundred twenty days, but does not include:

(a) any person who, pursuant to the contract at issue, is a sales representative as defined in section one hundred ninety-one-a of the labor law;

(b) any person engaged in the practice of law pursuant to the contract at issue and who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or the District of Columbia and who is not under any order of court suspending, enjoining, restraining, disbarring or otherwise restricting such person in the practices of law;

(c) any person who is a licensed medical professional; or

(d) any person who is a construction contractor.

4. "Hiring party" means any person who retains a freelance worker to provide any service, other than:

- (a) the United States government;
- (b) the state of New York, including any office, department, agency, authority or other body of the state including the legislature and the judiciary;
- (c) a municipality, including any office, department, agency or other body of a municipality; or
- (d) any foreign government.

§ 1411. Contracted compensation payments. 1. Except as otherwise provided by law, the contracted compensation shall be paid to a freelance worker either:

- (a) on or before the date such compensation is due under the terms of the contract; or
- (b) if the contract does not specify when the hiring party must pay the contracted compensation or the mechanism by which such date will be determined, no later than thirty days after the completion of the freelance worker's services under the contract.

2. Once a freelance worker has commenced performance of the services under the contract, the hiring party shall not require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation.

§ 1412. Written contracts. 1. Whenever a hiring party retains the services of a freelance worker, as such terms are defined in this article, the contract between such party and worker shall be reduced to writing. The hiring party must furnish a copy of such written contract, either physically or electronically, to the freelance worker and each party to the written contract shall retain a copy thereof.

2. The written contract shall include, at a minimum, the following information:

- (a) the name and mailing address of both the hiring party and the freelance worker;
- (b) an itemization of all services to be provided by the freelance

worker, the value of the services to be provided pursuant to the contract, and the rate and method of compensation;

(c) the date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined; and

(d) the date by which a freelance worker must submit a list of services rendered under such contract to the hiring party in order to meet any internal processing deadlines of such hiring party for the purposes of compensation being timely rendered by the agreed-upon date as stipulated in paragraph (c) of this subdivision.

3. Such hiring party shall be required to keep such contract for a period of no less than six years and shall make such contract available to the attorney general upon request. The failure of a hiring party to maintain such contracts or produce such contracts to the attorney general shall give rise to a presumption that the terms that the freelance worker has presented are the agreed upon terms.

4. The commissioner of labor shall make available model contracts on the website of the department of labor for use by the general public at no cost. Such model contracts shall be made available in English and in the twelve languages most commonly spoken by limited English proficient individuals in the state.

§ 1413. Discrimination prohibited. No hiring party, as defined in this article, shall threaten, intimidate, discipline, harass, deny a work opportunity to, or discriminate against a freelance worker, or take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, exercising or attempting to exercise any right guaranteed under this article, or from obtaining any future work opportunity because the freelance worker has done so.

§ 1414. Violations. 1. The attorney general shall be authorized to investigate complaints regarding a violation of this article and provide appropriate remedies. Whenever the attorney general shall believe from evidence satisfactory to them that any hiring party has engaged in or is

about to engage in any of the acts or practices stated to be unlawful they may bring an action in the name and on behalf of the people of the state of New York to enjoin such unlawful acts or practices and to obtain restitution for one or more freelance workers of any moneys or property obtained directly or indirectly by any such unlawful acts or practices. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. In such action a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation or three thousand dollars for a third or subsequent violation may be sought by the attorney general.

2. (a) A freelance worker alleging a violation of this article may bring an action in any court of competent jurisdiction for damages.

(b) Any action alleging a violation of section fourteen hundred twelve of this article shall be brought within two years after the acts alleged to have violated this article occurred.

(c) Any action alleging a violation of section fourteen hundred eleven of this article or section fourteen hundred thirteen of this article shall be brought within six years after the acts alleged to have violated this article occurred.

(d) Within ten days after having commenced a civil action pursuant to this subdivision, a plaintiff shall serve a copy of the complaint upon an authorized representative of the attorney general. Failure to so serve a complaint does not adversely affect any plaintiff's cause of action.

(e) A plaintiff who solely alleges a violation of section fourteen hundred twelve of this article must prove that such plaintiff requested a written contract before the contracted work began.

3. (a) A plaintiff who prevails on a claim alleging a violation of section fourteen hundred eleven of this article shall be awarded damages as described in this section and an award of reasonable attorneys' fees and costs.

(b) (i) A plaintiff who prevails on a claim alleging a violation of section fourteen hundred twelve of this article shall be awarded statutory damages of two hundred fifty dollars.

(ii) A plaintiff who prevails on a claim alleging a violation of one or more claims under provisions of this article shall be awarded statutory damages equal to the value of the underlying contract for the violation in addition to the remedies specified in this article for such other violations.

(c) In addition to other damages awarded pursuant to this article, a plaintiff who prevails on a claim alleging a violation of section fourteen hundred eleven of this article is entitled to an award of double damages, injunctive relief, and other such remedies as may be appropriate.

(d) In addition to any other damages awarded pursuant to this article, a plaintiff who prevails on a claim alleging a violation of section fourteen hundred thirteen of this article is entitled to statutory damages equal to the value of the underlying contract for each violation arising under such section.

4. Nothing in this section prohibits:

(a) a person alleging a violation of this article from filing a civil action based on the same facts as a civil action commenced by the attorney general pursuant to this section; or

(b) the attorney general from sending a notice of complaint, unless otherwise barred from doing so.

5. In any civil action commenced pursuant to this section, the trier of fact may impose a civil penalty of not more than twenty-five thousand dollars for a finding that a hiring party has engaged in a pattern or practice of violations of this article. Any civil penalty so recovered shall be paid into the general fund.

§ 1415. Additional rights. 1. Except as otherwise provided by law, any provision of a contract purporting to waive rights under this article is void as against public policy.

2. The provisions of this article supplement, and do not diminish or replace, any other basis of liability or requirement established by statute or common law.

3. Failure to comply with the provisions of this article does not render any contract between a hiring party and a freelance worker void or voidable or otherwise impair any obligation, claim or right related to such contract or constitute a defense to any action or proceeding to enforce, or for breach of, such contract.

4. No provision of this article relating to freelance workers shall be construed as providing a determination about the legal classification of any such worker as an employee or independent contractor.

5. The provisions of this article shall not be construed or interpreted to override or supplant any of the provisions of chapter ten of title twenty of the administrative code of the city of New York.

* ARTICLE 44-B

RESPONSIBLE AI SAFETY AND EDUCATION (RAISE) ACT

Section 1420. Definitions.

1421. Transparency requirements.

1422. Reporting.

1423. Loss of equity.

1424. Duties and obligations.

1425. Scope.

1426. Exceptions.

1427. Violations.

1428. Large frontier developer disclosure.

1429. Rulemaking authority.

* NB Effective January 1, 2027

* **§ 1420. Definitions.** As used in this article, the following terms shall have the following meanings:

1. "Affiliate" means a person controlling, controlled by, or under common control with a specified person, directly or indirectly, through one or more intermediaries.

2. "Artificial intelligence model" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

3. (a) "Catastrophic risk" means a foreseeable and material risk that a frontier developer's development, storage, use, or deployment of a frontier model will materially contribute to the death of, or serious injury to, more than fifty people or more than one billion dollars in damage to, or loss of, property arising from a single incident involving a frontier model doing any of the following:

(i) providing expert-level assistance in the creation or release of a chemical, biological, radiological, or nuclear weapon;

(ii) engaging in conduct with no meaningful human oversight, intervention, or supervision that is either a cyberattack or, if the conduct had been committed by a human, would constitute the crime of murder, assault, extortion, or theft, including theft by false pretense; or

(iii) evading the control of its frontier developer or user.

(b) "Catastrophic risk" does not include a foreseeable and material risk from any of the following:

(i) information that a frontier model outputs if the information is otherwise publicly accessible in a substantially similar form from a source other than a foundation model;

(ii) lawful activity of the federal government; or

(iii) harm caused by a frontier model in combination with other software if the frontier model did not materially contribute to the harm.

4. "Critical safety incident" means any of the following:

(a) unauthorized access to, modification of, or exfiltration of, the model weights of a frontier model that results in death or bodily injury;

(b) harm resulting from the materialization of a catastrophic risk;

(c) loss of control of a frontier model causing death or bodily

injury; or

(d) a frontier model that uses deceptive techniques against the frontier developer to subvert the controls or monitoring of its frontier developer outside of the context of an evaluation designed to elicit this behavior and in a manner that demonstrates materially increased catastrophic risk.

5. (a) "Deploy" means to make a frontier model available to a third party for use, modification, copying, or combination with other software.

(b) "Deploy" does not include making a frontier model available to a third party for the primary purpose of developing or evaluating the frontier model.

6. "Foundation model" means an artificial intelligence model that is all of the following:

- (a) trained on a broad data set;
- (b) designed for generality of output; and
- (c) adaptable to a wide range of distinctive tasks.

7. "Frontier AI framework" means documented technical and organizational protocols to manage, assess, and mitigate catastrophic risks.

8. "Frontier developer" means a person who has trained, or initiated the training of, a frontier model, with respect to which the person has used, or intends to use, at least as much computing power to train the frontier model as would meet the technical specifications found in subdivision nine of this section.

9. (a) "Frontier model" means a foundation model that was trained using a quantity of computing power greater than 10^{26} integer or floating-point operations.

(b) The quantity of computing power described in paragraph (a) of this subdivision shall include computing for the original training run and for any subsequent fine-tuning, reinforcement learning, or other material modifications the developer applies to a preceding foundation

model.

10. "Large frontier developer" means a frontier developer that together with its affiliates collectively had annual gross revenues in excess of five hundred million dollars in the preceding calendar year.

11. "Model weight" means a numerical parameter in a frontier model that is adjusted through training and that helps determine how inputs are transformed into outputs.

12. "Department" means the department of financial services.

13. "Property" means tangible or intangible property.

14. "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, or any other nongovernmental organization or group of persons acting in concert.

15. "Superintendent" means the superintendent of financial services.

16. "Office" means an office within the department of financial services, which shall report to the superintendent of financial services and is tasked with implementation of this article.

* NB Effective January 1, 2027

*** § 1421. Transparency requirements.** 1. A large frontier developer shall write, implement, comply with, and clearly and conspicuously publish on its internet website a frontier AI framework that applies to the large frontier developer's frontier models and describes in detail how the large frontier developer handles all of the following:

(a) incorporating national standards, international standards, and industry consensus best practices into its frontier AI framework;

(b) defining and assessing thresholds used by the large frontier developer to identify and assess whether a frontier model has capabilities that could pose a catastrophic risk, which may include

multiple-tiered thresholds;

(c) applying mitigations to address the potential for catastrophic risks based on the results of assessments undertaken pursuant to paragraph (b) of this subdivision;

(d) reviewing assessments and adequacy of mitigations as part of the decision to deploy a frontier model or use it extensively internally;

(e) using third parties to assess the potential for catastrophic risks and the effectiveness of mitigations of catastrophic risks;

(f) revisiting and updating the frontier AI framework, including any criteria that trigger updates and how the large frontier developer determines when its frontier models are substantially modified enough to require disclosures pursuant to subdivision three of this section;

(g) cybersecurity practices to secure unreleased model weights from unauthorized modification or transfer by internal or external parties;

(h) identifying and responding to critical safety incidents;

(i) instituting internal governance practices to ensure implementation of these processes; and

(j) assessing and managing catastrophic risk resulting from the internal use of its frontier models, including risks resulting from a frontier model circumventing oversight mechanisms.

2. (a) A large frontier developer shall review and, as appropriate, update its frontier AI framework at least once per year.

(b) If a large frontier developer makes a material modification to its frontier AI framework, the large frontier developer shall clearly and conspicuously publish the modified frontier AI framework and a justification for that modification within thirty days.

3. (a) Before, or concurrently with, deploying a new frontier model or a substantially modified version of an existing frontier model, a frontier developer shall clearly and conspicuously publish on its internet website a transparency report containing all of the following:

(i) the internet website of the frontier developer;

(ii) a mechanism that enables a natural person to communicate with the frontier developer;

(iii) the release date of the frontier model;

(iv) the languages supported by the frontier model;

- (v) the modalities of output supported by the frontier model;
- (vi) the intended uses of the frontier model; and
- (vii) any generally applicable restrictions or conditions on uses of the frontier model.

(b) Before, or concurrently with, deploying a new frontier model or a substantially modified version of an existing frontier model, a large frontier developer shall include in the transparency report required by paragraph (a) of this subdivision, summaries of all of the following:

- (i) assessments of catastrophic risks from the frontier model conducted pursuant to the large frontier developer's frontier AI framework;

- (ii) the results of the assessments under subparagraph (i) of this paragraph;

- (iii) the extent to which third-party evaluators were involved; and

- (iv) other steps taken to fulfill the requirements of the frontier AI framework with respect to the frontier model.

(c) A frontier developer that publishes the information described in paragraph (a) or (b) of this subdivision as part of a larger document, including a system card or model card, shall be deemed in compliance with the applicable paragraph.

4. (a) (i) A frontier developer shall not make a materially false or misleading statement about catastrophic risk from its frontier models or its management of catastrophic risk.

(ii) A large frontier developer shall not make a materially false or misleading statement about its implementation of, or compliance with, its frontier AI framework.

(b) This subdivision shall not apply to a statement that was made in good faith and was reasonable under the circumstances.

5. (a) When a frontier developer publishes documents to comply with this section, such frontier developer may make redactions to such documents that are necessary to protect such frontier developer's trade secrets, such frontier developer's cybersecurity, public safety, or the national security of the United States or to comply with any federal or state law.

(b) If a frontier developer redacts information in a document pursuant

to this subdivision, such frontier developer shall describe the character and justification of such redaction in any published version of such document to the extent permitted by the concerns that justify redaction and shall retain the unredacted information for five years.

* NB Effective January 1, 2027

* **§ 1422. Reporting.** 1. The office shall establish a mechanism to be used by a frontier developer or a member of the public to report a critical safety incident that includes all of the following:

- (a) the date of the critical safety incident;
- (b) the reasons the incident qualifies as a critical safety incident;
- (c) a short and plain statement describing the critical safety incident; and
- (d) whether the incident was associated with internal use of a frontier model.

2. (a) A large frontier developer shall transmit to the office a summary of any assessment of catastrophic risk resulting from internal use of its frontier models every three months or pursuant to another reasonable schedule requested by the large frontier developer, communicated in writing to the office with written updates, as appropriate, and agreed upon by the office. The office shall establish a mechanism to be used by a large frontier developer to confidentially submit summaries of any assessments of the potential for catastrophic risk resulting from internal use of its frontier models.

(b) The office shall take all reasonable precautions to limit access to any reports related to internal use of frontier models to only personnel authorized to know the information and to protect the reports from unauthorized access.

3. (a) Subject to paragraph (b) of this subdivision, a frontier developer shall report any critical safety incident pertaining to one or more of its frontier models to the office within seventy-two hours from a determination that a critical safety incident has occurred or within seventy-two hours of the frontier developer learning facts sufficient to establish a reasonable belief that a critical safety incident has

occurred.

(b) If a frontier developer discovers that a critical safety incident poses an imminent risk of death or serious physical injury, the frontier developer shall disclose that incident within twenty-four hours to an authority, including any law enforcement agency or public safety agency with jurisdiction, that is appropriate based on the nature of that incident and as required by law.

(c) A frontier developer that discovers information about a critical safety incident after filing the initial report required by this subdivision may file an amended report.

4. The office shall review critical safety incident reports submitted by frontier developers and may review reports submitted by members of the public.

5. (a) The office may transmit reports of critical safety incidents or summaries of any assessments of catastrophic risk from internal use of frontier models to other governmental entities at their discretion, considering for example and without limitation the following: the severity of any such incident, potential ongoing risks, legal or regulatory obligations, the need for coordinating with other governmental agencies or other entities and the availability of information. The office shall consider transmitting such reports or summaries to the office of the attorney general, as appropriate. Any report transmitted from the office to another governmental entity shall be exempt from disclosure under article six of the public officers law.

(b) The office may consider, at its discretion, any risks related to trade secrets, public safety, cybersecurity of a frontier developer, or national security when transmitting reports.

6. A report of a critical safety incident submitted to the office pursuant to this section and a report of assessments of catastrophic risk from internal use pursuant to section fourteen hundred twenty-one of this article, are exempt from disclosure under article six of the public officers law.

7. (a) Beginning January first, two thousand twenty-eight, and

annually thereafter, the office shall produce a report, that includes the following:

- (i) anonymized and aggregated information about critical safety incidents that have been reviewed by the office since the preceding report;

- (ii) any information that the office deems relevant to frontier model safety;

- (iii) recommended updates to this article, if any; and

- (iv) any developments relevant to the purposes of this article.

(b) The office shall not include information in a report pursuant to this subdivision that would compromise the trade secrets or cybersecurity of a frontier developer, public safety, or the national security of the United States or that would be prohibited by any federal or state law.

(c) The office shall transmit a report pursuant to this subdivision to the governor, the temporary president and minority leader of the senate, the speaker and minority leader of the assembly, the chair and ranking member of the senate committee on internet and technology, and the chair and ranking member of the assembly committee on science and technology.

8. The office may adopt regulations designating one or more federal laws, regulations, or guidance documents that meet all of the following conditions for the purposes of subdivision nine of this section:

- (a) (i) the law, regulation, or guidance document imposes or states standards or requirements for critical safety incident reporting that are substantially equivalent to, or stricter than, those required by subdivision three of this section; and

- (ii) the law, regulation, or guidance document described in subparagraph (i) of this paragraph does not need to require critical safety incident reporting to the state of New York; and

- (b) the law, regulation, or guidance document is intended to assess, detect, or mitigate the catastrophic risk.

9. (a) A frontier developer that intends to comply with subdivision three of this section by complying with the requirements of, or meeting the standards stated by, a federal law, regulation, or guidance document designated pursuant to subdivision eight of this section shall declare

its intent to do so to the office.

(b) After a frontier developer has declared its intent pursuant to paragraph (a) of this subdivision, the following shall apply:

(i) the frontier developer shall be deemed in compliance with subdivision three of this section to the extent that the frontier developer meets the standards of, or complies with the requirements imposed or stated by, the designated federal law, regulation, or guidance document until the frontier developer declares the revocation of that intent to the office or the office revokes a relevant regulation pursuant to subdivision ten of this section;

(ii) the failure by a frontier developer to meet the standards of, or comply with the requirements stated by, the federal law, regulation, or guidance document designated pursuant to subdivision eight of this section shall constitute a violation of this article; and

(iii) frontier developers who comply with subdivision three of this section by meeting such federal standards shall send copies of any critical safety incident reports required by such federal standards to the office concurrently with sending them to federal authorities.

10. The office shall revoke a regulation adopted under subdivision eight of this section if the requirements of subdivision eight of this section are no longer met.

* NB Effective January 1, 2027

* **§ 1423. Loss of equity.** The loss of value of equity shall not count as damage to or loss of property for the purposes of this article.

* NB Effective January 1, 2027

* **§ 1424. Duties and obligations.** The duties and obligations imposed by this article are cumulative with any other duties or obligations imposed under other law and shall not be construed to relieve any party from any other duties or obligations imposed under other law and do not limit any rights or remedies under existing law.

* NB Effective January 1, 2027

* **§ 1425. Scope.** This article shall only apply to frontier models that are developed, deployed, or operating in whole or in part in New York state.

* NB Effective January 1, 2027

* **§ 1426. Exceptions.** Nothing in this article shall apply to:

1. accredited colleges and universities in New York state, to the extent such colleges and universities are engaging in academic research regarding artificial intelligence models; or

2. the Empire AI consortium or the institute, as such terms are defined by section three hundred sixty-one of the economic development law.

* NB Effective January 1, 2027

* **§ 1427. Violations.** 1. The attorney general may bring a civil action to recover a civil penalty in an amount not to exceed one million dollars for a first violation and in an amount not to exceed three million dollars per subsequent violation, determined based on the severity of the violation where a large frontier developer fails to publish or transmit a compliant document required to be published or transmitted under this article, makes a statement in violation of subdivision four of section fourteen hundred twenty-one of this article, fails to report an incident as required by section fourteen hundred twenty-two of this article, or fails to comply with its own frontier AI framework.

2. Nothing in this article shall be construed to establish, authorize or create a private right of action associated with violations of this article.

3. Nothing in this article shall be construed to prevent a large frontier developer from asserting that another person, entity, or

factor, may be responsible for any alleged harm, injury or damage resulting from a catastrophic risk or critical safety incident.

* NB Effective January 1, 2027

*** § 1428. Large frontier developer disclosure.** 1. Except as otherwise provided in this section, no large frontier developer may develop, deploy, or operate a frontier model, in whole or in part in New York state, without having a current disclosure statement filed with the office and paying the required share.

2. The disclosure statement shall be filed in the form and the manner prescribed by the office and shall contain all the information required by the office. It shall be renewed every two years, whenever ownership of the frontier model is transferred or whenever there is a material change to the information reported in the previously filed disclosure statement, whichever occurs earlier.

3. Such disclosure statement shall identify:

(a) the identity of the large frontier developer and all names under which such large frontier developer conducts business;

(b) the address of the principal place of business and the address of each office it maintains in New York state;

(c) in the event such large frontier developer or the ultimate parent of such large frontier developer is a privately or closely held company, a list of all persons or entities that beneficially own a five percent or greater interest in such large frontier developer at the time of the filing of the disclosure statement and a list of persons who formerly beneficially owned a five percent or greater interest in such owner or its predecessors in the preceding five years. In the event such owner or the ultimate parent is a publicly traded company, such owner shall file a list of all persons or entities that beneficially own a fifty percent or greater interest in the large frontier developer at the time of registration; and

(d) the name and contact information of a point of contact, secondary contact, and tertiary contact for such large frontier developer. Such point of contact shall be responsible for receiving inquiries relating

to this article from the office or other governmental entities.

4. Large frontier developers shall be assessed in pro rata shares by the department to defray the operating expenses, including all direct and indirect costs, of administering the obligations imposed by this article.

5. If any person develops, deploys, or operates a large frontier model in part in New York state without a current disclosure filed with the office as required by this section, submits false information in its disclosure or fails to timely pay any assessment required by this article, in addition to any other penalty or liability that may be imposed under this article, the office may, after notice and hearing, levy civil penalties, fees, and costs as follows:

(a) a civil penalty of one thousand dollars for each day the entity fails to file a disclosure as required by this section or fails to correct false information; and

(b) an amount equal to the assessments owed.

6. The office shall maintain and publish a list of large frontier developers who have filed disclosure statements, however such publication shall not include the contact information set forth in paragraph (d) of subdivision three of this section.

* NB Effective January 1, 2027

* **§ 1429. Rulemaking authority.** The office is hereby authorized to adopt rules and regulations to implement the provisions of this article as needed. To the extent the office determines that doing so will facilitate safety and transparency consistent with the underlying purpose of this article, the office may consider additional reporting or publication requirements for information to facilitate safety and transparency, including but not limited to, post-critical safety incident information, sharing plans and protocols, and the transmission of frontier AI frameworks to the office.

* NB Effective January 1, 2027

* ARTICLE 45
SAFE FOR KIDS ACT

Section 1500. Definitions.

- 1501. Prohibition of addictive feeds.
- 1502. Overnight notifications.
- 1503. Parental control.
- 1504. Nondiscrimination.
- 1505. Rulemaking authority.
- 1506. Language access.
- 1507. Scope.
- 1508. Remedies.

* NB Effective January 25, 2027

*** § 1500. Definitions.** For the purposes of this article, the following terms shall have the following meanings:

1. "Addictive feed" shall mean a website, online service, online application, or mobile application, or a portion thereof, in which multiple pieces of media generated or shared by users of a website, online service, online application, or mobile application, either concurrently or sequentially, are recommended, selected, or prioritized for display to a user based, in whole or in part, on information associated with the user or the user's device, unless any of the following conditions are met, alone or in combination with one another:

(a) the recommendation, prioritization, or selection is based on information that is not persistently associated with the user or user's device, and does not concern the user's previous interactions with media generated or shared by other users;

(b) the recommendation, prioritization, or selection is based on user-selected privacy or accessibility settings, or technical information concerning the user's device;

(c) the user expressly and unambiguously requested the specific media, media by the author, creator, or poster of media the user has subscribed to, or media shared by users to a page or group the user has subscribed to, provided that the media is not recommended, selected, or prioritized

for display based, in whole or in part, on other information associated with the user or the user's device that is not otherwise permissible under this subdivision;

(d) the user expressly and unambiguously requested that specific media, media by a specified author, creator, or poster of media the user has subscribed to, or media shared by users to a page or group the user has subscribed to pursuant to paragraph (c) of this subdivision, be blocked, prioritized or deprioritized for display, provided that the media is not recommended, selected, or prioritized for display based, in whole or in part, on other information associated with the user or the user's device that is not otherwise permissible under this subdivision;

(e) the media are direct and private communications;

(f) the media are recommended, selected, or prioritized only in response to a specific search inquiry by the user;

(g) the media recommended, selected, or prioritized for display is exclusively next in a pre-existing sequence from the same author, creator, poster, or source; or

(h) the recommendation, prioritization, or selection is necessary to comply with the provisions of this article and any regulations promulgated pursuant to this article.

2. "Addictive social media platform" shall mean a website, online service, online application, or mobile application, that offers or provides users an addictive feed as a significant part of the services provided by such website, online service, online application, or mobile application.

3. "Covered minor" shall mean a user of a website, online service, online application, or mobile application in New York when the operator has actual knowledge the user is a minor.

4. "Covered user" shall mean a user of a website, online service, online application, or mobile application in New York, not acting as an operator, or agent or affiliate of the operator, of such website, online service, online application, or mobile application, or any portion thereof.

5. "Media" shall mean text, an image, or a video.

6. "Minor" shall mean an individual under the age of eighteen.

7. "Covered operator" shall mean any person, business, or other legal entity, who operates or provides an addictive social media platform.

8. "Parent" shall mean parent or legal guardian.

* NB Effective January 25, 2027

*** § 1501. Prohibition of addictive feeds.** 1. It shall be unlawful for a covered operator to provide an addictive feed to a covered user unless:

(a) the covered operator has used commercially reasonable and technically feasible methods to determine that the covered user is not a covered minor; or

(b) the covered operator has obtained verifiable parental consent to provide an addictive feed to a covered minor.

2. (a) The attorney general shall promulgate regulations identifying commercially reasonable and technically feasible methods for covered operators to determine if a covered user is a covered minor required pursuant to subdivision one of this section, and any exceptions thereto.

(b) In promulgating such regulations, the attorney general shall consider the size, financial resources, and technical capabilities of the addictive social media platform, the costs and effectiveness of available age determination techniques for users of the addictive social media platform, the audience of the addictive social media platform, prevalent practices of the industry of the covered operator, and the impact of the age determination techniques on the covered users' safety, utility, and experience.

(c) Such regulations shall also identify the appropriate levels of accuracy that would be commercially reasonable and technically feasible for covered operators to achieve in determining whether a covered user is a covered minor. Such regulations shall set forth multiple commercially reasonable and technically feasible methods for a covered

operator to determine if a covered user is a covered minor, including at least one method that either does not rely solely on government issued identification or that allows a covered user to maintain anonymity as to the covered operator of the addictive social media platform.

(d) Where a covered operator has used commercially reasonable and technically feasible age determination methods in compliance with such regulations and has not determined that a covered user is a covered minor, the covered operator shall operate under the presumption that the covered user is not a covered minor for the purposes of this article, unless it obtains actual knowledge that the covered user is a covered minor.

3. Information collected for the purpose of determining a covered user's age under paragraph (a) of subdivision one of this section shall not be used for any purpose other than age determination and shall be deleted immediately after an attempt to determine a covered user's age, except where necessary for compliance with any applicable provisions of New York state or federal law or regulation.

4. The attorney general shall promulgate regulations identifying methods of obtaining verifiable parental consent pursuant to paragraph (b) of subdivision one of this section and section fifteen hundred two of this article.

5. Information collected for the purpose of obtaining such verifiable parental consent shall not be used for any purpose other than obtaining verifiable parental consent and shall be deleted immediately after an attempt to obtain verifiable parental consent, except where necessary for compliance with any applicable provisions of New York state or federal law or regulation.

6. Nothing in this section shall be construed as requiring any operator to give a parent who grants verifiable parental consent any additional or special access to or control over the data or accounts of their child.

7. Nothing in this section shall be construed as preventing any action

taken in good faith to restrict access to or availability of media that the covered operator considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.

* NB Effective January 25, 2027

* **§ 1502. Overnight notifications.** It shall be unlawful for the covered operator of an addictive social media platform to, between the hours of 12 AM Eastern and 6 AM Eastern, send notifications concerning an addictive feed to a covered minor unless the operator has obtained verifiable parental consent to send such nighttime notifications.

* NB Effective January 25, 2027

* **§ 1503. Parental control.** Nothing in this article shall be construed as requiring the operator of an addictive social media platform to give a parent any additional or special access to or control over the data or accounts of their child.

* NB Effective January 25, 2027

* **§ 1504. Nondiscrimination.** A covered operator shall not withhold, degrade, lower the quality, or increase the price of any product, service, or feature, other than as necessary for compliance with the provisions of this article or any rules or regulations promulgated pursuant to this article, to a covered user due to the covered operator not being permitted to provide an addictive feed to such covered user under subdivision one of section fifteen hundred one of this article.

* NB Effective January 25, 2027

* **§ 1505. Rulemaking authority.** The attorney general shall promulgate such rules and regulations as are necessary to effectuate and enforce the provisions of this article.

* NB Effective January 25, 2027

*** § 1506. Language access.** 1. Instructions to parents on how to provide verifiable parental consent under paragraph (b) of subdivision one of section fifteen hundred one of this article shall be made available in no fewer than the twelve most commonly spoken languages in New York state consistent with section two hundred two-a of the executive law and as further defined by regulations promulgated by the attorney general.

2. The attorney general shall ensure that any public information or guidance that it may provide concerning this chapter is available in the twelve most commonly spoken languages in New York state consistent with section two hundred two-a of the executive law and as further defined by regulations promulgated by the attorney general.

* NB Effective January 25, 2027

*** § 1507. Scope.** 1. This article shall apply to conduct that occurs in whole or in part in New York. For purposes of this article, conduct takes place wholly outside of New York if the addictive social media platform is accessed by a user who is physically located outside of New York.

2. Nothing in this article shall be construed to impose liability for commercial activities or actions by operators subject to 15 U.S.C. § 6501 that is inconsistent with the treatment of such activities or actions under 15 U.S.C. § 6502.

* NB Effective January 25, 2027

*** § 1508. Remedies.** 1. No earlier than one hundred eighty days after the effective date of this article, whenever it appears to the attorney general, either upon complaint or otherwise, that any person, within or outside the state, has engaged in or is about to engage in any of the acts or practices stated to be unlawful in this article, the attorney general may bring an action or special proceeding in the name and on behalf of the people of the state of New York to enjoin any violation of

this article, to obtain restitution of any moneys or property obtained directly or indirectly by any such violation, to obtain disgorgement of any profits or gains obtained directly or indirectly by any such violation, including but not limited to the destruction of unlawfully obtained data, to obtain damages caused directly or indirectly by any such violation, to obtain civil penalties of up to five thousand dollars per violation, and to obtain any such other and further relief as the court may deem proper, including preliminary relief.

2. The attorney general shall maintain a website to receive complaints, information or referrals from members of the public concerning a covered operator's or social media platform's alleged compliance or non-compliance with the provisions of this article.

* NB Effective January 25, 2027

* ARTICLE 45-A

WARNING LABELS FOR ADDICTIVE FEATURE PLATFORMS

Section 1520. Definitions.

1521. Requirement for warning labels.

1522. Display requirements and restrictions.

1523. Nondiscrimination.

1524. Rulemaking authority.

1525. Scope.

1526. Remedies.

* NB Effective January 1, 2027

* **§ 1520. Definitions.** For the purposes of this article, the following terms shall have the following meanings:

1. "Addictive feed" shall mean as defined in subdivision one of section fifteen hundred of this chapter.

2. "Addictive feature" shall mean an addictive feed, autoplay, and/or infinite scroll.

3. "Addictive feature platform" shall mean a social media platform which offers or provides covered users an addictive feed, autoplay, and/or infinite scroll as a significant part of the services provided by such social media platform.

4. "Autoplay" shall mean when content is automatically played without any manual input from a covered user.

5. "Content" shall have the same meaning as subdivision two of section eleven hundred of this chapter.

6. "Covered operator" shall mean any person, business, or other legal entity and its agents and affiliates who operate or provide an addictive feature platform.

7. "Covered user" shall mean a user of an addictive feature platform in New York, not acting as an operator, or agent or affiliate of the operator of such addictive feature platform or any portion thereof.

8. "Infinite scroll" shall mean when a feed or landing page, whether or not such feed is addictive as defined in subdivision one of this section, automatically loads and displays additional content at the bottom or other visible end of such feed or landing page from the prospective of the user without any manual input, other than scrolling, from a user.

9. "Social media platform" shall have the same meaning as subdivision five of section eleven hundred of this chapter.

* NB Effective January 1, 2027

* **§ 1521. Requirement for warning labels.** It shall be unlawful for a covered operator to provide an addictive feature to a covered user unless such operator displays a warning label in accordance with section fifteen hundred twenty-two of this article when such user accesses or uses such operator's addictive feature. Such warning label shall contain the following text:

"The Surgeon General has warned that while social media may have benefits for some young users, excessive use may be associated with significant mental health harms."

* NB Effective January 1, 2027

*** § 1522. Display requirements and restrictions.** 1. For each calendar day in which a covered user accesses an addictive feature platform providing an addictive feature to the covered user, the covered operator shall display the warning label described in section fifteen hundred twenty-one of this article to the covered user when such user initially accesses the platform and an addictive feature is provided. The warning label shall be displayed clearly, conspicuously and continuously for at least ten seconds, without providing the ability to bypass or click through the warning. Such warning label shall be displayed in a manner that occupies at least twenty-five percent of the screen or window that the covered user is using to access the addictive feature platform.

2. For each calendar day in which a covered user uses an addictive feature platform that provides an addictive feature to the covered user, the covered operator shall display the warning label described in section fifteen hundred twenty-one of this article to the covered user after three hours of cumulative active use and thereafter at least once per hour of cumulative active use. The warning label shall be displayed clearly, conspicuously and continuously for a duration of at least thirty seconds, without providing the ability to bypass or click through the warning, in a manner that occupies at least seventy-five percent of the screen the covered user is using to access the addictive feature platform.

3. A covered operator shall be prohibited from:

- (a) Including a warning label exclusively in the terms of service of an addictive feature platform;
- (b) Obscuring the visibility or prominence of a warning label; and
- (c) Deploying any other design feature or mechanism which intentionally serves to inhibit or subvert the purpose of this article.

* NB Effective January 1, 2027

*** § 1523. Nondiscrimination.** A covered operator shall not withhold, degrade, lower the quality, or increase the price of any product, service, or feature, other than as necessary for compliance with the provisions of this article or any rules or regulations promulgated pursuant to this article, to a covered user due to the covered operator's display of a warning label under sections fifteen hundred twenty-one and fifteen hundred twenty-two of this article.

* NB Effective January 1, 2027

*** § 1524. Rulemaking authority.** The attorney general is authorized to promulgate such rules and regulations as are necessary to effectuate and enforce the provisions of this article.

* NB Effective January 1, 2027

*** § 1525. Scope.** 1. This article shall apply to conduct that occurs in whole or in part in New York. For the purposes of this article, conduct takes place wholly outside of New York if the addictive feature platform is accessed by a user who is physically located outside of New York.

2. Nothing in this article shall be construed to impose liability for commercial activities or actions by operators subject to 15 U.S.C. § 6501 that is inconsistent with the treatment of such activities or actions under 15 U.S.C. § 6502.

3. Nothing in this article shall be construed or interpreted to override, supplant or conflict with any of the provisions of the SAFE for Kids Act contained in article forty-five of this chapter or its related regulations.

4. The provision of the warning label required by this article does not waive, release, otherwise limit, or serve as a defense to, any claim, including claims premised on failure to warn, other than a claim premised on a violation of this article.

5. A covered operator shall not be required to display the warning label required by this article to a covered user if it has reasonably determined that the user is over seventeen years of age.

* NB Effective January 1, 2027

* **§ 1526. Remedies.** 1. Whenever it appears to the attorney general, either upon complaint or otherwise, that any person, within or outside the state, has engaged in or is about to engage in any of the acts or practices stated to be unlawful in this article, the attorney general may bring an action or special proceeding in the name and on behalf of the people of the state of New York to enjoin any violation of this article, to obtain restitution of any moneys or property obtained directly or indirectly by any such violation, to obtain disgorgement of any profits or gains obtained directly or indirectly by any such violation, to obtain damages caused directly or indirectly by any such violation, to obtain civil penalties of up to five thousand dollars per violation, and to obtain any such other and further relief as the court may deem proper, including preliminary relief.

2. The attorney general shall maintain a website to receive complaints, information, or referrals from members of the public concerning a covered operator's or addictive feature platform's alleged compliance or noncompliance with the provisions of this article.

* NB Effective January 1, 2027

* ARTICLE 45-B

SAFE BY DESIGN ACT

Section 1539. Definitions.

1540. Privacy by default and parental approvals.

1541. Prohibition on features that subvert the purposes of this article.

1542. Nondiscrimination.

1543. Scope.

1544. Rulemaking authority.

1545. Construction of article.

1546. Language access.

1547. Remedies.

* NB Effective January 1, 2027

* **§ 1539. Definitions.** For the purposes of this article, the following terms shall have the following meanings:

1. "Connected" and variations thereof shall mean that two users using the covered platform or two accounts on the covered platform are connected to each other by:

(a) sending a request to connect to another user or account holder and having the request to connect accepted by the other user or account holder; or

(b) receiving a request to connect from another user or account holder and accepting the request to connect.

2. "Covered minor" shall mean any user in New York who has been reasonably determined by an operator, via age assurance, as set forth in this article, to be under the age of eighteen.

3. "Operator" shall mean any person, business, or other legal entity who operates or provides a covered platform.

4. "Parent" shall mean a parent or legal guardian.

5. "Tag" shall mean when a user clearly identifies a second user in posted media.

6. "User" shall mean a user of a covered platform not acting as an operator, or agent or affiliate of such operator, of such platform or any portion thereof.

7. "Covered user" shall mean a user of a covered platform in New York not acting as an operator, agent or affiliate of such operator, of such platform or of any portion thereof.

8. "Money" shall mean a medium of exchange currently authorized or adopted by a domestic or foreign government.

9. "Digital currency" shall mean a digital representation of value, recognized only on the covered platform, that is supplied, exchanged and managed pursuant to the policies or rules of such covered platform, and is not accepted or considered a medium of exchange currently authorized or adopted by a domestic or foreign government.

10. "AI companion" shall have the same meaning as subdivision four of section seventeen hundred of this chapter; provided, however, that an "AI companion" shall not include an artificial intelligence system or non-player character that operates exclusively within a game or immersive digital environment, provided that such system's interactions are strictly constrained to the fictional context of such game or environment and do not initiate, encourage, or sustain dialogue concerning the user's real-world life, emotional state, or personal affairs.

11. "Integrated AI companion" shall mean an AI companion that is an accessible or usable feature of a covered platform.

12. "Covered platform" shall mean a public or semi-public website, online service, online application, or mobile application that:

(a) is used by a covered minor in this state;

(b) allows users to construct a public or semi-public profile for the purposes of using such website, service, or application; and

(c) offers or provides the following features:

(i) a mechanism to allow users to communicate privately with each other within the website, service or application or through platform integration with a separate website, service, or application; and

(ii) (A) a mechanism to create or post media that is viewable by other users and a mechanism to respond to such media, including but not limited to, through a landing page or feed that presents the user with media created or posted by other users; or

(B) a mechanism: (1) to create games or immersive digital environments

for other users or to play online games; and (2) to make in game purchases using money or to exchange money for digital currency as well as to exchange digital currency for money.

13. "Media" shall mean text, an image or a video. Games and immersive digital environments are not media.

14. "Age assurance" shall mean reasonable and technically feasible methods to determine the age of a user, made consistent with subdivision one of section fifteen hundred forty of this article.

15. "Syncing" shall mean when a user imports existing connections or contact information pertaining to other users into a covered platform.

16. "Platform integration" shall mean any form of linking a user's account on a covered platform with the user's account on one or more different covered platforms.

* NB Effective January 1, 2027

*** § 1540. Privacy by default and parental approvals.** 1. (a) The attorney general may promulgate rules and regulations identifying methods for reasonable and technically feasible age assurance, which may consider the size, financial resources, and technical capabilities of covered platforms, the costs and effectiveness of available age determination techniques for users of such platforms, the audience of such platforms, and prevalent practices of the industry of the operator. Such rules or regulations may also identify the appropriate levels of accuracy that would be considered reasonable for operators to achieve in determining whether a user is a covered minor. Such rules or regulations may specify that information collected under this article shall not be used for any purpose other than age assurance and shall be deleted immediately after an attempt to determine a user's age, except where necessary for compliance with any applicable provisions of New York state or federal law or rule or regulation.

(b) Until such time as the rules or regulations referenced in paragraph (a) of this subdivision may have been promulgated and are in

effect, an operator shall use age assurance methods that meet the requirements of article forty-five of this chapter and its implementing rules or regulations, as amended, except that for purposes of this article, an operator may not use self-declaration of age or minor status to determine whether a covered user is a covered minor.

(c) To the extent rules or regulations referenced in paragraph (a) of this subdivision are not in effect and rules or regulations referenced in paragraph (b) of this subdivision regarding age assurance methods promulgated pursuant to article forty-five of this chapter are not in effect, an operator shall rely on a determination of a covered user's age made using a reasonable age assurance method that meets the following requirements:

(i) such age assurance method shall reasonably guard against circumvention and reasonably minimize the retention of information collected for age assurance purposes;

(ii) an operator may not use self-declaration of age or minor status to determine whether a covered user is a covered minor; and

(iii) an operator must make available more than one age assurance method to covered users, including at least one method that either does not rely on government issued identification or that allows a covered user to maintain anonymity as to the operator.

2. An operator may not offer or make available to a covered user the feature of communicating privately with a user within the covered platform or through platform integration, viewing the full profile of a user, responding to or downloading media created or posted by a user, tagging a user in posted media or viewing the geographic location information of a user, unless the operator has conducted age assurance to determine whether a covered user is a covered minor.

3. For all users determined by an operator to be a covered minor, such operator shall utilize the following settings by default for covered minors, which shall ensure that no user age eighteen or older who is not already connected to a covered minor may:

(a) communicate privately with such covered minor within the covered platform or through platform integration;

(b) view the full profile of such covered minor;

(c) respond to or download media created or posted by such covered minor;

(d) tag such covered minor in posted media; or

(e) view the geographic location information, where such information is derived from or captured by device or network signals, including but not limited to global position system, IP address or Wi-Fi positioning, of such covered minor.

4. If an operator provides a mechanism on the covered platform to suggest or recommend the profile of a user to another user to connect with, an operator may not suggest or recommend the profile of a covered minor to another user age eighteen or older who is not already connected to such covered minor. This subdivision shall not apply to profile suggestions or recommendations that are made as a result of a covered minor or other user syncing contacts with a covered platform.

4-a. Nothing in this subdivision is intended to prohibit actions reasonably necessary for platform safety, abuse prevention, customer support, legal compliance or emergency response, as may be further defined in rules or regulations promulgated by the attorney general.

5. (a) A parent of a covered minor may override the default privacy settings provided in subdivisions three and four of this section at such parent's discretion. An operator shall allow a parent to override or maintain each setting provided in subdivision three of this section separately.

(b) An operator shall notify a parent of a covered minor whenever such covered minor requests that the operator obtain approval from a covered minor's parent to consent to change a default setting provided in subdivision three or four of this section. Such notice shall include a statement that informs the parent that they are changing a default setting required under New York law. The parent may then either provide or withhold such consent to the request to change the settings for such minor, provided there is separate consent provided for each request by a covered minor.

6. A request by a user to connect with a covered minor may be sent

simultaneously with a request by such user to communicate privately with such covered minor and a request by a covered minor to connect with a user may be sent simultaneously with a request by such covered minor to communicate privately with such user, provided, however, that no such private communication may be returned or responded to, until the connection has been approved and/or any parental consent required by subdivision eight of this section has been provided.

7. (a) An operator may not offer or make available to a covered user the use or access of an integrated AI companion, unless the operator has conducted age assurance to determine whether a covered user is a covered minor.

(b) An operator shall, by default, disable the access or use of any integrated AI companion for any covered minor.

(c) A parent of a covered minor may override the default disabled access or use of an integrated AI companion, provided in paragraph (b) of this subdivision, at such parent's discretion. An operator shall allow a parent to override or maintain the setting provided for in paragraph (b) of this subdivision separately from any other mechanisms to override other default settings.

(d) An operator shall notify a parent of a covered minor whenever such minor requests that the operator obtain consent from such covered minor's parent to change the default setting provided in paragraph (b) of this subdivision. Such notice shall include a statement that informs the parent that the parent is being asked to provide consent to change a default setting required under New York law. The parent may thereafter provide or withhold such consent.

8. (a) For any covered minor under the age of thirteen, an operator shall require the parent of such covered minor to provide consent before the account of such covered minor and the account of another user may be connected. For any covered minor under the age of thirteen, an operator shall also establish a mechanism by which a parent of such minor may easily view the list of all users or accounts currently connected with the account of the minor.

(b) For any covered minor, an operator shall establish a mechanism by which a parent of such minor may easily view a list of any covered

platforms that have been linked to or requested to be linked to the account of the minor, if the covered platform offers a mechanism for platform integration.

9. (a) An operator of a covered platform that offers or provides the feature described in item two of clause (B) of subparagraph (ii) of paragraph (c) of subdivision twelve of section fifteen hundred thirty-nine of this article, may not offer or make available such feature to a covered user unless the operator has conducted age assurance to determine whether a covered user is a covered minor.

(b) For all users determined by such operator to be a covered minor, such operator shall establish a mechanism that either: (i) enables the parent of such covered minor to set a monthly limit on the spending of money, whether by charging a credit card or other means, in connection with the direct or indirect purchase or acquisition of anything on or via the covered platform, including but not limited to digital currency, relating to such covered minor's account and where the amount of such limit is set at the parent's discretion; or

(ii) enables the parent of such covered minor to opt out of setting such limits.

(c) Such an operator may establish a mechanism to enable the covered minor to request that the operator obtain consent from the parent of such covered minor for the further expenditure of money, such as charging the credit card associated with such covered minor's account, once the limit set forth in subparagraph (i) of paragraph (b) of this subdivision is reached. In such an instance, the operator shall obtain such consent from such parent before any such charges may be processed by the operator.

(d) Such operator shall further establish a mechanism by which a parent of a covered minor may easily view a history of all financial transactions relating to such covered minor's account at any time, which at a minimum, identifies the users involved in each such transaction, in addition to the covered minor, as well as the amounts of money or digital currency associated with each transaction.

* NB Effective January 1, 2027

*** § 1541. Prohibition on features that subvert the purposes of this article.** It shall be unlawful for an operator to deploy on a covered platform any mechanism or design feature which has the effect of inhibiting the purpose of this article, subverts covered minor and/or parent choice or autonomy or renders it more difficult for a covered minor and/or parent to exercise any of the options provided in this article.

* NB Effective January 1, 2027

*** § 1542. Nondiscrimination.** An operator shall not withhold, degrade, lower the quality of, or increase the price of any product, service, or feature of a covered platform, other than as necessary for compliance with the provisions of this article or any rules or regulations promulgated pursuant to this article, to a user due to such operator being required to comply with this article.

* NB Effective January 1, 2027

*** § 1543. Scope.** 1. This article shall apply to conduct that occurs in whole or in part in New York.

2. Nothing in this article shall be construed to impose liability for commercial activities or actions by operators subject to 15 U.S.C. § 6501 that is inconsistent with the treatment of such activities or actions under 15 U.S.C. § 6502.

* NB Effective January 1, 2027

*** § 1544. Rulemaking authority.** The attorney general may promulgate any other such rules and regulations as are necessary to effectuate and enforce the provisions of this article.

* NB Effective January 1, 2027

*** § 1545. Construction of article.** Nothing in this article shall be construed to prohibit an operator from implementing a default privacy

setting for covered minors and/or other users that is more protective than that required by this article.

* NB Effective January 1, 2027

*** § 1546. Language access.** 1. Instructions to parents on how to provide parental consent and to exercise parental controls, overrides, settings, and other permissions required by this article shall clearly and conspicuously be made available in no fewer than the twelve most commonly spoken languages in New York state consistent with section two hundred two-a of the executive law and as further defined by regulations that may be promulgated by the attorney general.

2. The attorney general shall ensure that any public information or guidance that it may provide concerning this article is available in the twelve most commonly spoken languages in New York state consistent with section two hundred two-a of the executive law.

* NB Effective January 1, 2027

*** § 1547. Remedies.** 1. On or after the effective date of this article, whenever it appears to the attorney general, upon complaint or otherwise, that any person, within or outside the state, has violated the provisions of this article, the attorney general may bring an action or special proceeding in the name and on behalf of the people of the state of New York to enjoin any such violation, to obtain restitution of any moneys or property obtained directly or indirectly by any such violation, to obtain disgorgement of any profits or gains obtained directly or indirectly by any such violation, to obtain damages caused directly or indirectly by any such violation, to obtain civil penalties of up to five thousand dollars per violation, and to obtain any such other and further relief as the court may deem proper, including preliminary relief.

2. The attorney general shall maintain a website to receive complaints, information, and/or referrals from members of the public concerning an operator's or covered platform's alleged compliance or

noncompliance with the provisions of this article.

* NB Effective January 1, 2027

ARTICLE 46

LAWS REPEALED; WHEN TO TAKE EFFECT

Section 1600. Laws repealed.

1601. When to take effect.

§ 1600. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 1601. When to take effect. This chapter shall take effect immediately.

ARTICLE 47

ARTIFICIAL INTELLIGENCE COMPANION MODELS

Section. 1700. Definitions.

1701. Prohibitions and requirements.

1702. Notifications.

1703. Enforcement.

1704. Severability.

§ 1700. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Artificial intelligence", "artificial intelligence technology", or "AI" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments, and that uses machine- and human-based inputs to perceive real and virtual environments, abstract such perceptions into models through analysis in an automated manner, and use model inference to formulate options for

information or action.

2. "Generative artificial intelligence" means a class of AI models that emulate the structure and characteristics of input data to generate derived synthetic content, including, but not limited to, images, videos, audio, text, and other digital content.

3. "AI model" means a component of an information system that implements artificial intelligence technology and uses computational, statistical, or machine-learning techniques to produce outputs from a given set of inputs.

4. (a) "AI companion" means a system using artificial intelligence, generative artificial intelligence, and/or emotional recognition algorithms designed to simulate a sustained human or human-like relationship with a user by:

(i) retaining information on prior interactions or user sessions and user preferences to personalize the interaction and facilitate ongoing engagement with the AI companion;

(ii) asking unprompted or unsolicited emotion-based questions that go beyond a direct response to a user prompt; and

(iii) sustaining an ongoing dialogue concerning matters personal to the user.

(b) Human relationships include, but shall not be limited to, intimate, romantic or platonic interactions or companionship.

(c) "AI companion" shall not include:

(i) any system used by a business entity solely for customer service or to strictly provide users with information about available commercial services or products provided by such entity, customer service account information, or other information strictly related to its customer service;

(ii) any system that is primarily designed and marketed for providing efficiency improvements or, research or technical assistance; or

(iii) any system used by a business entity solely for internal purposes or employee productivity.

5. "Operator" means any person, partnership, association, firm, or

business entity, or any member, affiliate, subsidiary or beneficial owner of any partnership, association, firm, or business entity who operates for or provides an AI companion to a user.

6. "Person" means any natural person.

7. "Emotional recognition algorithms" means artificial intelligence that detects and interprets human emotional signals in text (using natural language processing and sentiment analysis), audio (using voice emotion AI), video (using facial movement analysis, gait analysis, or physiological signals), or a combination thereof.

8. "User" means any person who uses an AI companion for personal use within the state and who is not an operator or agent or affiliate of the operator of the AI companion.

9. "Self-harm" means intentional self-injury with or without the intent to cause death.

§ 1701. Prohibitions and requirements. It shall be unlawful for any operator to operate for or provide an AI companion to a user unless such AI companion contains a protocol to take reasonable efforts for detecting and addressing suicidal ideation or expressions of self-harm expressed by a user to the AI companion, that includes but is not limited to, detection of user expressions of suicidal ideation or self-harm, and a notification to the user that refers them to crisis service providers such as the 9-8-8 suicide prevention and behavioral health crisis hotline under section 36.03 of the mental hygiene law, a crisis text line, or other appropriate crisis services upon detection of such user's expressions of suicidal ideation or self-harm.

§ 1702. Notifications. An operator shall provide a clear and conspicuous notification to a user at the beginning of any AI companion interaction which need not exceed once per day and at least every three hours for continuing AI companion interactions which states either

verbally or in writing that the user is not communicating with a human.

§ 1703. Enforcement. 1. Whenever the attorney general shall believe from evidence satisfactory to them that an operator has engaged in or is about to engage in any of the acts or practices stated to be unlawful in this article or in violation of section seventeen hundred one or seventeen hundred two of this article, they may bring an action in the name and on behalf of the people of the state of New York to enjoin an operator from continuing such unlawful acts or practices, and may seek civil penalties of up to fifteen thousand dollars per day for a violation under section seventeen hundred one or seventeen hundred two of this article, and may seek such other remedies as the court may deem appropriate.

2. All fees, fines and penalties collected under this article shall be deposited into the suicide prevention fund as established pursuant to section ninety-nine-ss of the state finance law.

§ 1704. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.