

Chapter 5: Unfair Trade Practices

Subchapter A: Consumer Protection Law

Part 1: General Provisions

§ 5-01 Definitions.

Consumer. "Consumer" means an individual who buys or leases consumer goods or services, and that individual's co-obligor or surety.

Consumer goods and services. "Consumer goods and services" means goods or services (including credit) that are primarily for personal, household, or family purposes.

Item. "Item" means goods and services.

Legal name. "Legal name" means:

- (1) the true corporate name of a corporation; or
- (2) the name of at least one partner of a partnership; or
- (3) the name of at least one owner of a business that is not a corporation or a partnership.

Seller. "Seller" means any individual or business that offers to sell or lease consumer goods or services. "Seller" includes manufacturers, wholesalers, and others who are responsible for any act or practice regulated by this code.

Part 2: Advertising and Promotion

§ 5-06 The Word "Free" and Similar Representations.

(a) *Scope.* This section governs the use of the words "free," "gift," "given without charge," "bonus," "1¢ additional," and any other terms which imply that an item, as defined in 6 RCNY § 5-01, is free or offered at a nominal cost in the sale or offering for sale of any consumer goods or services. It governs signs inside stores, storefront advertising, handbills and all other types of written advertisement, but not advertising on packages placed thereon by a person or entity other than the retailer. In this section, the word "free" refers to any word or phrase of similar meaning. A "free offer" is an offer involving the use of any such word or phrase.

(b) *Disclosure of conditions on free offers.* A seller who imposes a condition on a free offer must describe the condition clearly and conspicuously. The description of every condition on a free offer must be placed near the word "free." An asterisk or other symbol near the word "free," which refers the customer to a footnote containing conditions, does not satisfy this section. This condition must be in print at least half as large as the print used for the word "free."

(c) *Free offers conditioned upon another purchase.*

- (1) The "regular price" is the price at which an item has been actively and openly sold by the seller for a substantial period of time in the recent past.
- (2) A seller who makes a free offer contingent upon another purchase may not:
 - (i) charge more than the regular price for the item; or
 - (ii) reduce the item's quantity or quality; or
 - (iii) continuously make such offer or repeat it so frequently that the two items are being sold in combination at one price; or
 - (iv) make such offer in connection with the sale of an item that is usually sold at a price negotiated with consumers.

(d) *Combination offers.* This section permits non-deceptive "combination" offers, in which two or more items (for example, toothpaste and a toothbrush) are offered for sale as a single unit at a single stated price.

§ 5-07 Number Size in Advertised Prices.

(a) Sellers who advertise a price over one dollar must state the number of cents in figures at least one-half as tall and broad as the figures used to state the number of dollars.

(b) This section does not apply when the advertised price is stated in whole dollar amounts. For example, if the price is \$6.00, the zeros may be less than half the size of the six.

§ 5-08 Sales Promotions.

Sellers must comply with the provisions of § 369-ee of the New York State General Business Law ("Prize award schemes").

§ 5-09 Limitations on Offers.

(a) Sellers offering consumer goods or services in print advertising and promotional literature must disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications or conditions. A disclosure made in print at least one-third as large as the largest print used in the advertisement or promotional literature satisfies this section. *Examples:* If the following facts are true, they must be disclosed:

- (1) In an advertisement for an item sold from more than one location:
 - (i) locations which do not have certain items mentioned and
 - (ii) locations which charge rates higher than those mentioned in the advertisement. Where such locations are not known and cannot be reasonably ascertained, a seller must include the following statement in the advertisement: "Not available at all locations." The seller shall also include a statement in the advertisement that indicates how a consumer may obtain information about the availability of an item at a specific location such as: "Check with your local store for availability."
- (2) That advertised prices are available only during certain days or times.
- (3) That advertised prices are available only if complete sets are purchased.
- (4) That minimum or maximum amounts must be purchased for advertised prices to apply.

- (5) That there are trade-in requirements.
- (6) That there are additional charges for delivery or for mail orders.
- (b) Offers in radio or television advertising must include oral statements of any material exclusions, limitations, modifications or conditions.
- (c) This section does not apply when another law or regulation specifically provides a different rule for the disclosure of exclusions, reservations, limitations, modifications or conditions.

§ 5-10 Deceptive Classified Ads.

(a) Dealers, brokers, or business entities advertising in the classified section of a newspaper, magazine or other printed media must disclose that they are businesses.

(b) An advertiser can disclose that it is a business by use of the word "dealer," "broker," or other similar terms.

(c) *Examples:* A dealer's classified ad which reads: "Dodge '68 \$795, Call OF7-1452" would not satisfy the requirements of this Regulation because it does not disclose that the advertiser is a business. A classified ad which reads: "3 room apt., \$160, call Acme Rental, Inc." sufficiently discloses that the advertiser is a business.

§ 5-11 Limited Editions.

(a) Items offered for sale to consumers may not be described as limited unless their edition, printing, minting, crafting, or production is restricted to either:

(1) A predetermined maximum quantity; or

(2) The actual quantity ordered or subscribed to within a specified, reasonably short time. All terms that indicate that production of a product is limited are covered by this section.

(b) Any claim that a product is limited must state the maximum quantity or the specific time period or date by which the product must be ordered. This statement must be made clearly and conspicuously and close to the claim or limitation.

§ 5-12 Prices in Multi-Product and Multi-Service Advertisements.

(a) In any advertisement for two or more similar items or services, when a range of prices is stated, or the existence of a range is implied, the highest price must be stated in figures at least as tall and broad as the figures in the lowest price stated. The existence of a range is implied where words such as, but not limited to, "from," "as low as," "beginning at," "starting at," or "_____ and up" are used in an advertisement. This subdivision (a) applies even where an advertisement discloses the price of all items and services.

(b) Any prices stated must relate to specific items or services.

(c) If the price of items or services is unascertainable, any price or prices stated must include the average price for which the goods or services were sold by the advertiser during the previous year or selling season. Such a price must be described as the "average price."

§ 5-13 Advertisements Claiming to Boost the Immune System.

(a) It is a deceptive trade practice to make a claim or to imply in an advertisement that the use of a product or treatment will boost, enhance, stimulate, assist, cure, strengthen or improve the body's immune system unless such advertisement discloses either:

(1) the effect of the treatment or use of the product on an HIV-positive person or a person with AIDS (Acquired Immune Deficiency Syndrome) or;

(2) that use of the products or treatment has not been proven to prevent primary infection with HIV, nor is to be a cure for AIDS, nor to extend the life or improve the health of an HIV-positive person or a person infected with AIDS.

(b) Any claimed effects of the treatment or use of the product on an HIV-positive person or a person with AIDS in an advertisement shall be deemed a deceptive practice unless such claims are capable of being substantiated by scientific documentation including, but not limited to, medical clinical trials, small scale and informal clinical trials, compilations of clinical data from patients or other clinical information. Such documentation must support any claimed effects of the treatment or use of the product on an HIV-positive person or a person with AIDS. All documentation must be made available at the request of a consumer.

(c) All disclosures and words of limitation or qualification as required by this section shall be written or printed in letters at least one third as high and one third as broad as the largest words or numbers appearing in the advertisement, but in no event in less than ten point type. In radio announcements, the disclosure or words of limitation or qualification shall be clearly spoken, and in television announcements they shall be part of the audio track and not merely part of the picture.

Part 3: Consumer Credit

§ 5-21 Compliance with Federal, State and Local Laws Regarding the Extension of Credit.

(a) *Scope.* This section applies to all persons and businesses engaging in activities relating to consumer credit. In this section, such persons and businesses are called creditors.

(b) Creditors must comply with all applicable federal, state and local laws relating to consumer credit.

§ 5-22 [Reserved.]

§ 5-23 Layaway Plans.

Merchants who accept payment from a consumer that will be applied to the purchase of merchandise on a "layaway plan," as such term is defined in § 396-t of the New York General Business Law, must comply with all the requirements of that section.

§ 5-24 Credit Card Limitations.

(a) A seller who accepts credit cards must conspicuously disclose every limitation the seller imposes on their use.

(b) Disclosures required by this section must appear at or near every entrance to the seller's business premises and in all advertising that indicates credit cards are accepted.

Part 4: Contracts and General Business Practices

§ 5-31 Future Services Contracts.

(a) *Definition.* A contract for consumer services that will be provided on a continuing basis is a "contract for future consumer services." However, this section does not apply to:

- (1) boarding accommodations;
- (2) travel arrangements made less than a year in advance;
- (3) the sale of goods which include warranties of service and repair;
- (4) services by non-profit educational institutions.

(b) *Liability for cancellation.* A consumer who cancels a contract for future services cannot be charged more than the full contract price. However, up to the amount of the full contract price, the consumer may be charged the total of the following amounts:

- (1) 5 percent of the cash price, or \$50, whichever is less;

(2) the cost to the seller for any goods the consumer used or the consumer is keeping; (3) the portion of the full contract price representing services received by the consumer (if a consumer cancels a contract for lessons by missing consecutive lessons that represent at least 25 percent of the lessons in the entire course, those missed lessons up to 25 percent can be treated as services received by the consumer).

(c) *Prompt refunds.* If a buyer has paid a seller more money than this section allows a seller to keep, the seller must refund the extra payment, or make a refund available, within ten days of cancellation.

(d) *Cancellation.* Cancellation occurs when:

- (1) the consumer mails the seller notice of intent to cancel; or
- (2) the seller actually knows the consumer intends to cancel; or
- (3) the consumer misses consecutive lessons that represent at least 25 percent of an entire course, and the consumer does not inform the seller in writing that he or she intends to remain enrolled.

(e) *Notice.* The seller's contract form must conspicuously disclose the seller's refund policy, and must contain the following notice in a prominent place: IF YOU CANCEL THIS CONTRACT (THE SELLER) MAY KEEP ONLY 5% OF THE CASH PRICE UP TO A MAXIMUM OF \$50, PLUS A PORTION OF THE CONTRACT PRICE BASED UPON THE LESSONS OR SERVICES YOU HAVE USED. YOU MAY NOTIFY (THE SELLER) OF YOUR INTENT TO CANCEL BY MAIL, ADDRESSED TO (THE SELLER) AT (SELLER'S ADDRESS).

§ 5-32 Documentation of Transactions.

(a) *Definitions.*

Audio equipment. "Audio equipment" means any apparatus or equipment that is used for sound reproduction, including but not limited to amplifiers, phonographs, radios, receivers, speakers, tape players, tape recorders and turntables. Audio equipment does not include prerecorded or blank audio recording tape or records.

Photographic equipment. "Photographic equipment" means any apparatus or equipment used for the taking of photographs, including but not limited to cameras, camera cases, lenses and tripods. "Photographic equipment" does not include film, photograph albums or apparatus or equipment used to develop or enlarge photographs.

Video equipment. "Video equipment" means televisions and any apparatus or equipment that is used in the process of producing images on a television set, including but not limited to video disk players, video game units and cartridges, video tape players and video tape recorders. "Video equipment" does not include prerecorded video discs and tapes or blank video tapes.

(b) *Receipts.* A seller must:

- (1) offer a consumer a receipt for any retail purchase if the amount of the purchase is twenty dollars or more; and
- (2) provide a consumer with a receipt upon request for any retail purchase if the amount of the purchase is between five and twenty dollars.

(c) *Contents of receipts.* The receipt must contain:

- (1) the amount of money paid for each item;
- (2) the total amount of money paid including a separate statement of tax;
- (3) the date of the purchase;
- (4) the legal name and address of the seller in accordance with Section "Legal Name" (5) where the cost of any item of "audio equipment," "photographic equipment" or "video equipment" exceeds one hundred dollars, any make and model number.

(d) *Exemptions.* This section applies to the retail sale of all consumer goods and services except:

- (1) food or drink intended for on-premises consumption; or
- (2) oil, gasoline or parking fees paid for in cash. Sellers of these goods and services must provide consumers with receipts upon request if the amount of a purchase is more than five dollars.

(e) *Register tapes.* A seller of food or drink for off-premises consumption may give the consumer a register tape containing the seller's name, the date, and the individual prices of items bought instead of giving a receipt.

(f) *Other documents.* Upon request, a seller must provide a consumer with a copy of any document related to the sale which was signed by the consumer.

§ 5-33 Transactions Negotiated in Spanish.

(a) *Scope.* This section applies to the purchase or lease of consumer goods and services by means of an agreement to pay in installments.

(b) When essential parts of a consumer agreement are negotiated in Spanish, the consumer must be given a Spanish translation of any documents related to the agreement. This requirement includes:

- (1) any document which the consumer signs;
- (2) any document containing the merchant's policy on refunds, cancellations or exchanges;

- (3) any document containing terms and conditions of the agreement;
- (4) any guarantees or warranties given by the merchant;
- (5) any exclusion or modification of express or implied warranties. The consumer need not be given a Spanish translation of any document which the consumer will receive at a later date, such as monthly bills and sales slips for charge account purchases.

§ 5-34 Contract Cancellations.

(a) A contract for consumer goods or services may not be described as non-cancellable, unless the seller has performed all its obligations at the time the consumer signs the contract.

(b) A contract that complies with 6 RCNY § 5-34(a) may describe the fee or penalty that will be imposed if the consumer cancels, or may state that the consumer who does not perform his or her obligations under the contract will be responsible to the seller for damages.

§ 5-35 Pricing of Items with Manufacturer's Suggested Prices.

(a) *Definition.*

Manufacturer's suggested retail price. "Manufacturer's suggested retail price" means the list price, catalog price or any other retail price recommended by the manufacturer.

(b) A seller who sells or offers to sell any new item for more than the manufacturer's suggested retail price must:

- (1) disclose the selling price;
- (2) disclose the manufacturer's suggested retail price; and
- (3) identify the manufacturer's suggested retail price as the price recommended by the manufacturer.

(c) The required information must be printed clearly and conspicuously on the item's price tag or label, and in any advertisement that states the item's selling price.

§ 5-36 Sale of Used Items.

(a) A seller of a used item must disclose clearly that the item is used, in any advertisement or sales transaction concerning the used item.

(b) Words such as "used," "antique," "demonstrator," "floor model," "rebuilt," "renovated," "restyled," or "remodeled" may be used to indicate that an item is used.

§ 5-37 Disclosure of Refund Policy.

Sellers of consumer goods and services must comply with all provisions of New York General Business Law § 218-a. This regulation does not limit a consumer's right to receive a refund, credit, exchange, or anything else permitted by law.

§ 5-38 Goods Temporarily in Short Supply.

(a) *Scope.* This section governs the sale of items which are temporarily in short supply because of extraordinary circumstances. Extraordinary circumstances can include fuel shortages, weather conditions, power failures, and strikes which result in limited deliveries of items to New York City consumers.

(b) *Declaration of temporary shortage.* The Commissioner of the Department of Consumer Affairs shall make declarations about items temporarily in short supply by:

- (1) filing a declaration as soon as possible with the City Clerk; and
- (2) publishing the declaration as soon as possible in The City Record; and

(3) sending the declaration to the media specified in Section 1043 of the Charter. A declaration of temporary shortage shall expire in 30 days, unless it is terminated sooner by declaration. The Commissioner may issue a renewed declaration of temporary shortage upon expiration of the original declaration.

(c) *Unconscionable sales practices.* A seller of items the Commissioner has declared in short supply may not:

- (1) increase prices in excess of an amount reflecting normal market fluctuations, except in accordance with the exemption rules in 6 RCNY § 5-38(e);
- (2) require consumers to purchase another item in order to get the item in short supply, if no additional purchase was required before the shortage;
- (3) require the purchase of a minimum quantity of the item in short supply;
- (4) fail to give all consumers an equal opportunity to purchase the item in short supply (to the extent that such opportunity existed before the temporary shortage). A seller may, however, give preference to a category of consumers having a special health- or safety-related need for the item in short supply.

(d) *Deceptive sales practices prohibited.* A seller of items the Commissioner has declared temporarily in short supply:

- (1) may not represent falsely that an item is not available;
- (2) must disclose any limitation or condition on sale of an item conspicuously in a sign at the point of sale.

(e) *Exemption.*

(1) A seller of items the Commissioner has declared temporarily in short supply may increase prices in excess of an amount reflecting normal market fluctuations if he or she can show that additional costs have been incurred in providing the item, through no fault of the seller or as a result of the seller's attempt to give consumers additional opportunities to purchase the item (for example, by increasing the hours during which an item can be purchased). This exemption only applies to the increased cost incurred by the seller.

(2) This exemption does not apply when another law or regulation prohibits a price increase.

(3) A seller using this exemption must keep records, for one year, of the increased costs incurred. The records shall be made available upon demand to the Department of Consumer Affairs.

(f) Failure to comply with this section within two days of an original declaration will not result in any penalty if the seller proves that he or she did not

know of the declaration.

§ 5-39 Cancellation of Home Appointments.

(a) *Cancellation of home appointments.*

(1) When a seller makes an appointment with a consumer to pick up, deliver, inspect or repair goods at the consumer's home, the seller must keep the appointment or give the consumer written or verbal notice of cancellation. The notice must be received before the end of the business day before the day of the appointment. If it is impossible for the seller to give notice by the end of the day before the appointment day, the seller must give notice as soon as possible.

(2) When verbal notice is given, the seller must mail a notice of the cancellation the next day. This need not be done, however, if the seller and consumer reschedule the appointment for a date within three days of the date the seller cancelled.

(3) A seller may cancel an appointment without notice only if the cancellation is caused by the consumer, by natural disaster, or by strike. Employee illness and mechanical breakdown do not relieve the seller of the obligation to give notice.

(b) *Record keeping.* A seller who cancels an appointment must prepare, and keep for one year, a record with the following information:

- (1) seller's name;
- (2) consumer's name and address;
- (3) description of the goods;
- (4) date of appointment which was cancelled;
- (5) date appointment has been postponed to, if any;
- (6) date that notice of cancellation was given.

§ 5-40 Liability for Negligence.

A seller may not state that it is not liable for damages caused by negligence, if such a statement is invalid according to a statute, regulation or ordinance. For example:

- (a) lessors may not disclaim liability for negligent operation or maintenance of leased premises;
- (b) caterers may not disclaim liability for negligence at catered affairs;
- (c) contractors may not disclaim liability for negligent construction, maintenance or repair;
- (d) architects, engineers and surveyors may not disclaim liability for negligence;
- (e) garagekeepers, parkers, or servicers of motor vehicles may not disclaim liability for negligence;
- (f) operators of pools, gymnasiums and places of public amusement or recreation may not disclaim liability for negligence.

§ 5-41 Unlawful Sales Tax.

It is a deceptive trade practice for any seller to collect sales tax on the sale of any good or service that is not subject to such tax under Article 28 of the New York State Tax Law or the rules and regulations promulgated thereunder.

(Added City Record 7/7/2016, eff. 8/6/2016)

§ 5-42 Unlawful Price Gouging.

(a) *Definitions.*

"Covered goods or services." The term "covered goods or services" means goods or services that are essential to health, safety or welfare, or are marketed or advertised as such, including but not limited to staple consumer food items such as milk, eggs and bread, goods or services used for emergency cleanup, or emergency supplies such as water, flashlights, radios, batteries, candles, blankets, soaps, diapers, toiletries, medical supplies such as medications, bandages, gauze, isopropyl alcohol, medical masks, and antibacterial products, or gasoline or other motor fuels.

"Excessive price." The term "excessive price" means 10 percent or more above the price at which the same or similar good or service could have been obtained by a buyer in the City of New York 30 - 60 days prior to the declaration of a state of emergency.

"Merchant." The term "merchant" means a seller, lessor, or creditor or any other person who makes available either directly or indirectly, goods, services or credit, to consumers. "Merchant" includes manufacturers, wholesalers and others who are responsible for any act or practice prohibited by this subchapter.

(b) (1) It is an unconscionable trade practice for a merchant to sell or offer for sale covered goods or services at an excessive price during a declared state of emergency in the City of New York.

(2) *Exceptions.* A merchant is permitted to sell or offer for sale covered goods or services at an excessive price if such merchant:

(i) has increased its price of such goods or services to an excessive price as a direct result of costs imposed on such merchant by the supplier of such goods or services, or such increase in the price of such goods or services is directly attributable to additional costs for labor or materials used to provide the goods or services, provided that the increase charged to the buyer is comparable to the increase incurred by the merchant; or

(ii) sold or offered for sale such covered goods or services to buyers in the City of New York at an excessive price 30 days prior to the declaration of a state of emergency and such merchant has not increased the price of such goods or services during the state of emergency, or in the 30 days prior to such declaration, except in accordance with subdivision (i).

(3) Each sale or offer for sale in violation of this rule constitutes a separate violation.

(Added City Record 3/18/2020, eff. 3/18/2020 and City Record 6/26/2020, eff. 6/26/2020)

Part 5: Specific Business and Industry Regulations

§ 5-46 Car Rental.

(a) *Reservations.* A motor vehicle rental business which reserves vehicles for consumers must make available either the vehicles reserved, or one which seats at least as many passengers as the one reserved and is suitable for the consumer's purposes, within one-half hour of the reserved time,

either at the reserved location or at another location to which the consumer is transported without charge. This subdivision (a) does not apply if the consumer is told when the reservation is made that the reservation is not guaranteed. The business must fulfill all other terms of the reservation.

(b) *Deceptive advertising.* A motor vehicle rental business which rents to consumers may not advertise or represent that reservations can be made, unless it maintains procedures to comply with this Regulation.

(c) *Records.* A business which reserves vehicles for consumers must maintain procedures reasonably calculated to fulfill those reservations. This includes maintaining records of all reservations, and of the scheduled return times of all rented vehicles. These records must be preserved for at least 6 months, and shall be made available for inspection and copying by the Department of Consumer Affairs.

(d) *Required sign.* A motor vehicle rental business which rents vehicles to consumers must conspicuously display on the business premises a sign or notice entitled "Department of Consumer Affairs Consumer Protection Law Rule." The sign shall be not less than twelve (12) inches by eighteen (18) inches in dimension, with letters thereon to be not less than one (1) inch high. The sign must inform consumers of their rights under 6 RCNY § 5-46(a) and it must contain the following words: "To report complaints, contact the New York City Department of Consumer Affairs, (Insert the Department's current address), Complaint Phone: (Insert the Department's current complaint telephone number)." The following statement complies with this requirement:

If you have made a reservation for a car (or truck), that reservation must be honored at the price originally promised, within one-half hour of the time originally promised, unless you are told when you make the reservation that it is not guaranteed. To report complaints, contact the New York City Department of Consumer Affairs, (Insert the Department's current address), Complaint Phone: (Insert the Department's current complaint telephone number).

§ 5-47 Jewelry Sellers and Appraisers.

(a) *Definitions.*

Jewelry. "Jewelry" means unset rare gems, precious stones and semi-precious stones, and articles for personal wear which contain rare gems, precious stones or semi-precious stones.

Standard of monetary value. "Standard of monetary value" means the basis for measurement such as retail replacement value, wholesale value, or resale value.

(b) *Jewelry appraisals – requirements.*

(1) Every written appraisal must state the standard of monetary value used, clearly and on the same side of the paper that contains the appraised value. If the standard used is the retail replacement value, the appraisal form must contain a notice which states clearly and conspicuously:

- (i) that the appraisal value is the approximate price at which retail jewelry stores would sell the item;
- (ii) that the consumer should not expect to be able to sell the item at the appraised value;
- (iii) that appraisers' opinions as to the value of jewelry vary by as much as 25 percent; and

(iv) that the appraiser does not guarantee that it will buy the item from the consumer if the consumer desires to resell it in the future. (If the appraiser is willing to make such a guarantee, then it must state the price at which it will buy the item.) This disclosure need not be made if the appraiser never buys jewelry from members of the public.

(2) Example: The following notice would satisfy the requirements of 6 RCNY § 5-47(b), in the case of an appraiser who also buys from the public and who is not willing to make any guarantees concerning purchase:

Notice – This appraisal tells you the approximate price at which you could replace this article with comparable merchandise at a retail jewelry store which normally sells jewelry of like quality. You should not expect to be able to sell the article for this amount. The opinions of appraisers concerning value vary by up to 25 percent. This company does not promise to buy the article from you at the appraised value or at any fraction of the appraised value.

(c) *Jewelry sales – requirements.* A seller who offers to sell an article of jewelry for more than \$75.00 must give to the buyer, at or before the time of sale, a written sales slip which conspicuously contains:

(1) the price;

(2) in the case of a diamond or any article containing a diamond, the weight of the diamond(s) stated in the manner and within the limits of tolerance established by the Federal Trade Commission; and

(3) a description of the article, stating all materials of which it is composed. [;If a synthetic gem's composition is a trade secret, its trade name may be disclosed instead of its actual composition; in such a case, the words "imitation" or "synthetic" must be placed immediately before or after the trade name.];

(d) *Sales and appraisals – prohibited practices.* A seller may not mislead the consumer about any characteristic of the jewelry, including its type, kind, name, grade, quality, quantity, size, weight, cut, color, character, substance, durability, origin, prior ownership, price or value.

§ 5-48 Mail Orders.

(a) Mail order sellers who conduct business in New York City or who advertise a New York City mailing address must, within 30 days of receiving an order:

(1) deliver or mail the ordered merchandise; or

(2) make a full refund; or

(3) inform the consumer in writing of the time delivery is anticipated, and offer to send a refund within one week if the consumer wishes to cancel the order; or

(4) inform the consumer in writing of the intent to substitute an equal or better item if the consumer wishes to cancel the order (the seller must describe in detail how the substituted item differs from the one ordered); or

(5) send the consumer a substitute item of equal or better quality together with:

(i) a written notice offering, without condition, to accept the return of the item, at the seller's expense, within 14 days of delivery; and

(ii) a business reply label, and an explanation that the consumer may return the item by resealing it, affixing the label, and mailing it to the seller without postage; and

(iii) a postage-paid letter or card on which the consumer may indicate whether the consumer wishes the purchase price to be refunded or credited

to his account. The consumer's request entered on this card or letter must be honored within two weeks of the time the seller receives the items.

(b) In this section, substitute items of "equal or better" quality means items that are substantially similar to the items ordered, that fit the purposes for which the ordered items were intended; and that are not normally offered by the seller at a lower price than the price of the ordered items.

(c) 6 RCNY § 5-48(a) does not apply to:

(1) items ordered under an open-end credit plan (as defined in the federal Truth-in-Lending law) or under any other credit plan which was opened prior to the mail order in question and which permits the consumer to make future purchases; or

(2) items, such as quarterly magazines, which by their nature are not produced until a future date, and so cannot be stocked at the time of the order; or

(3) installments, other than the first, of items ordered for serial delivery, such as magazine subscriptions. The 30-day period of 6 RCNY § 5-48(a) does not apply when all advertising for the item conspicuously specifies a different time period by which delivery may be expected. One week after this specified time elapses, the requirements of 6 RCNY § 5-48(a) must be met.

(d) Any mail order seller using a Post Office Box address or Private Mail Service Box in its advertisements or promotional material (including order blanks and forms) must conspicuously disclose both the legal name of the company in accordance with 6 RCNY § 5-01 "Legal Name" and the complete street address from which the business is actually conducted on all advertisements and promotional material.

§ 5-49 Door-to-Door Sales.

"Door-to-door sales" means the offering for sale, lease or rental of consumer goods or services at a location other than the seller's place of business. A seller engaging or planning to engage in a door-to-door sale must, during the initial contact, including telephone contact, with a prospective buyer, clearly state that the purpose of the seller's visit will be to make a sale.

§ 5-50 Delivery of Furniture and Major Appliances.

(a) *Scope.* This section applies to the sale of furniture and major appliances for use in a home. Furniture includes chairs, tables, cabinets, desks, sofas, carpets, beds and chests. This section does not apply to furniture which is in substantial part custom-made. Major appliances include air conditioners, audio and video equipment, clothes dryers and washing machines, dishwashers, freezers, refrigerators, stoves, ranges, ovens, sewing machines, and televisions. This section does not apply to sales of major appliances which have a purchase price of two hundred dollars or less.

(b) *Disclosure.*

(1) When a consumer orders furniture or a major appliance, the seller must disclose an estimated delivery date or range of delivery dates, conspicuously on the consumer's copy of the order.

(2) When a seller will not be able to deliver furniture or a major appliance by the latest estimated delivery date disclosed on the order, the seller must immediately notify the consumer in writing of:

(i) the delay;

(ii) a new estimated delivery date or range of delivery dates; and

(iii) the consumer's options, as set forth in 6 RCNY § 5-50(d), if delivery is not made by the latest estimated delivery date on the order. The seller does not need to notify the consumer of a delay in delivery if the delay is caused entirely by the consumer.

(c) *Seller's extension of time due to strike.* When a delay in a delivery is caused by a strike, the seller is entitled to an additional amount of time equal to the duration of the strike to make the delivery.

(d) *Consumer options if a seller fails to deliver.*

(1) When a seller does not deliver furniture or a major appliance by the latest estimated delivery date on the order, unless the seller's time has been extended because of a strike, the consumer can:

(i) cancel the order and request a refund; or

(ii) cancel the order and request a credit for the full amount paid; or

(iii) negotiate a new delivery date; or

(iv) select new furniture or another major appliance.

(2) If the consumer cancels the order and requests a full refund or a credit for the full amount paid, the seller must give the consumer the full refund or credit for the full amount paid within two weeks of the consumer's request.

(3) If the consumer negotiates a new delivery date, the new date chosen shall replace the latest delivery date stated on the original order. The consumer shall have the same rights with respect to the new date as if it were the latest delivery date disclosed on the original order.

(4) This subdivision (d) does not apply if the delay or failure to deliver is caused entirely by the consumer.

§ 5-51 Retail Sale of Gasoline.

A retail seller of motor vehicle gasoline:

(a) must afford all persons the opportunity to purchase gasoline on the same terms and conditions, except as otherwise provided by law;

(b) may not represent falsely that gasoline is unavailable for sale;

(c) may not require the purchase of any other service or product as a condition to the purchase of gasoline;

(d) may not require membership in any group as a condition to the purchase of gasoline; and

(e) may not sell gasoline only to prior customers, or represent that sales are so restricted.

§ 5-52 [Reserved.]

§ 5-53 Advertisements of Food Items Available in Limited Quantities.

Retail food stores shall obey the Federal Trade Commission Trade Regulations entitled "Retail Food Store Advertising and Marketing Practices."

§ 5-54 Repair of Consumer Goods.

(a) *Scope.* This section applies to all repairs of consumer goods except for repairs:

- (1) performed at no charge; or
- (2) made under an agreement with a fixed fee and specified time of at least one year that entitles a consumer to have all repairs made without additional charge; or
- (3) performed by persons required to be licensed as television, radio or audio equipment repairers under the Administrative Code of the City of New York.

(b) *Repairs under \$15.* When a repairer says repairs will cost \$15 or less (including all charges), the repairer's final bill may not exceed that estimate by more than 20 percent. 6 RCNY §§ 5-54(c) and 5-54(d) do not apply to these repairs.

(c) *Repairs made outside the home.*

(1) *Requirements upon taking possession.*

(i) A repairer who takes possession of a consumer's property must immediately give the consumer a receipt and a written estimate. The receipt must contain:

- (A) the legal name and the address of the repairer, disclosed in accordance with 6 RCNY § 5-01 "Legal Name"
- (B) the name and signature of the person who actually takes the item;
- (C) a description of the item, including make and model number, or such other features as will reasonably identify the item.

(ii) The written estimate must be signed by the repairer and must contain:

- (A) a list of each part to be replaced and its replacement cost;
- (B) a general description of the labor required for the repair and its cost;
- (C) a statement of every additional charge such as charges for estimates or service calls;
- (D) the promised date of completion (this need not be given if the repair is made the same day the item is first examined);

(E) a statement that the final cost, excluding tax, will not exceed the estimate by more than 20 percent. This statement need not appear if the repairer guarantees that the final cost will not be more than the estimate.

(iii) If it is impossible for the repairer to know what the repair problem is, the repairer may postpone giving the estimate, but must then add to the receipt the statement of:

- (A) the charge (if any) for giving an estimate;
- (B) the charge (if any) for pick-up and delivery; and
- (C) every charge which will be imposed if the consumer does not authorize repairs.

(2) *Requirements after taking possession.*

(i) Before commencing repair work outside the home, a repairer must:

- (A) give the consumer a written estimate (if one has not already been given); and
- (B) get the consumer's signed authorization to do the repairs at the estimated price.

(ii) The written estimate must be as described in the preceding paragraph (1) of this subdivision (c). Time or distance problems may make it impractical to deliver a written estimate and to get a signed authorization before the date agreed upon for repair work to begin. If this is the case, the repairer may begin work after:

- (A) giving the consumer an oral estimate of the cost of repairs; and
- (B) getting the consumer's oral authorization to proceed; and
- (C) putting a written estimate to the consumer in the mail.

(iii) *Return of parts.* After repair work is done, the repairer must give the consumer every part replaced, except for parts which were visibly defective when the consumer first sought the repair, such as torn auto upholstery, shattered auto glass or a broken watch crystal. A waiver of the right to receive replaced parts shall be effective if it is in the consumer's own handwriting, and states clearly that the consumer is entitled to the parts but does not want them. For parts in any of the following categories, the repairer may simply show and offer them to the consumer:

- (A) parts too large to be easily moved;
- (B) parts which must be returned to the manufacturer if the consumer wishes to take advantage of a warranty; and
- (C) parts which the repairer buys from the consumer to rebuild.

(iv) *Completion date.* The repaired item shall be available on the promised completion date. If a delay is expected, the consumer must be notified and given a new completion date. When complete repairs are delayed for an unreasonable period of time, the consumer has the right to immediate return of the property.

(v) *Final bill.* When the consumer gets the repaired item back, the repairer must give the consumer a written final bill which:

- (A) itemizes each part replaced, clearly identifying it (for example, by make, model, or serial number) and indicating the price of its replacement;
- (B) indicates the labor required for repair, and the charge for that labor;
- (C) clearly itemizes any other charges;
- (D) is signed by the repair person. The final bill may not exceed the written estimate by more than 20 percent.

(d) *Repairs made in the home.*

(1) When repairs are done in the consumer's home, the repairer must give the consumer an estimate (in writing if the consumer wishes) and get his or her permission to proceed, before starting repairs. The estimate must include parts, labor and all other charges which the consumer will have to pay.

(2) The repairer must give the consumer a written final bill that itemizes all charges, in the manner prescribed in 6 RCNY § 5-54(c)(2)(v), and discloses the legal name of the repairer in accordance with 6 RCNY § 5-01 "Legal Name". In addition, the bill must legibly state the name of the person who actually did the repair. The bill may not exceed the estimate by more than 20 percent.

(3) The repairer must give to the consumer all replaced parts, except the repairer may simply show and offer to the consumer parts in the following categories:

- (i) parts which must be returned to the manufacturer if the consumer wishes to take advantage of a warranty;
- (ii) parts which the repairer buys from the consumer to rebuild.

§ 5-55 Meat and Poultry Advertising.

(a) A seller who advertises meat or poultry by using a private brand designation or any language which implies that the meat or poultry is of a particular grade or quality must disclose the U.S. Department of Agriculture grade for the food. If the meat or poultry sold by private brand designation has not been graded by the U.S. Department of Agriculture, that fact must be disclosed. Examples of grade or quality representations are "A-1," "Best Yet," "All Rite," "Oven Rite," "Top Grade," "U.S. Finest," "Top Quality," "Super Fine," and "Buyer's Choice."

(b) Disclosures shall be next to and in print the same size as the seller's grade or quality representation.

(c) This section does not apply to:

- (1) meat or poultry for which the U.S. Department of Agriculture does not provide a retail grading service;
- (2) labels attached to meat or poultry packages.

§ 5-56 Window Gates.

(a) If a window gate, grille, bar or similar device has not been approved by the Board of Standards and Appeals of the City of New York for use on fire escape windows the seller must place a tag or label on it, stating that:

- (1) it is illegal to use the device on a fire escape window;
- (2) use of the device on a fire escape window is a serious safety hazard;
- (3) use of the device on a fire escape window may subject the user to a fine by the Department of Buildings.

(b) The tag or label required by this section must bear the word "WARNING" in boldface upper-case type at least one-quarter inch tall. The following warning complies with this regulation:

WARNING

It is illegal to use this gate on a fire escape window. Use of this gate on a fire escape window is a serious safety hazard and may also subject the user to a fine by the Department of Buildings.

§ 5-57 Utility Bill Payments.

(a) A person or business that accepts a consumer's utility bill payment without authorization from the utility must:

- (1) stamp the consumer's bill upon presentation with the current date; and
- (2) give the consumer a signed receipt containing the date, the amount paid, the name and address of the individual accepting the payment and the name and address of the person or entity for whom the individual accepted the payment, if different; and
- (3) send the payment by regular mail to the utility within 24 hours of its receipt.

(b) If a payment was not received by an authorized office of the utility within five days of the date stamped on the bill, it shall be presumed that the payment has been held for more than 24 hours.

§ 5-58 Food in Damaged Containers.

(a) *Definitions.*

Container. "Container" means an item which contains food or a food product, including cans, bottles, cartons, bags, boxes, wrappers and tubes.

Food or food product. "Food or food product" means food, drink, confectionery or condiment, used or intended for use by humans or animals, including all substances or ingredients to be added to food for any purpose.

(b) No food product may be offered for sale if contained in:

- (1) a can with a body seam dent, a top or bottom rim dent, or a sharp body dent;
- (2) a can with any bulge other than small bulges due solely to small, smooth body dents;
- (3) a can which has leaked or is rusted;
- (4) a vacuum-sealed container of any sort on which the vacuum has been broken;
- (5) a container whose outer surface is punctured in any manner, whether or not the puncture has been repaired (except where the food or food product is contained in an inner, sealed container or containers, and the innermost container has not in any way been punctured or the food contents been in any other way exposed to the air).

§ 5-59 Restaurant Surcharges.

(a) A seller serving food or beverages for consumption on the premises may not add surcharges to listed prices. For example, a restaurant may not state at the bottom of its menu that a 10 percent charge or a \$1.00 charge will be added to all menu prices.

(b) A seller may impose a bona fide service charge (such as an added charge for two persons splitting one meal, or a per person minimum charge), if the charge is conspicuously disclosed to the consumer before the food is ordered.

(c) In this section, the term "surcharge" does not include tax.

§ 5-60 Franchises.

(a) *Definitions.*

Franchise. "Franchise" means a right to use the franchisor's trademark, tradename, brand name, or other mark of identity to suggest a substantial association with the franchisor.

Franchisee. "Franchisee" means a person receiving a franchise.

Franchisor. "Franchisor" means a person giving a franchise.

Subfranchisee. "Subfranchisee" means a person to whom a franchisee gives the right to use a franchise.

(b) *Required disclosures.*

(1) A franchisee or subfranchisee must conspicuously disclose on a sign and on each sales slip, receipt and contract for more than \$50:

(i) that the franchisor, franchisee or subfranchisee are separate business entities; and

(ii) the legal name and address of the party given* the franchise, and the legal name of the franchisee and subfranchisee, if any, disclosed in accordance with 6 RCNY § 5-01 "Legal Name." These disclosures need not be made on credit card receipts if there is a sign conspicuously disclosing them at all cash registers or at the place where credit card transactions occur.

(2) A franchisor, franchisee or subfranchisee must conspicuously disclose:

(i) that advertised sales, discounts, or other special offers are available only at participating franchise outlets, if such is the case;

(ii) wherever a warranty or guarantee appears, that the terms of the guarantee or warranty apply only to certain franchise outlets, if such is the case;

(iii) that there has been a change in ownership of the franchise outlet, if such is the case, unless upon the change of ownership the name of the franchise was substantially altered. The disclosure required by 6 RCNY § 5-60(b)(2)(iii) need only be made during the first ninety days after the transfer of ownership.

(c) *Partial exemption.* A franchisee or subfranchisee need not make the disclosures otherwise required by 6 RCNY §§ 5-60(b)(1) and 5-60(b)(2)(iii) if the franchisor is liable to customers of the franchisee or subfranchisee for items sold by the franchisee or subfranchisee.

§ 5-61 Public Performance Seats.

(a) Sellers of seats to performances at any place of public amusement or sport must conspicuously display a diagram of reserved seat locations by row and seat number, or must conspicuously display a sign stating that such a diagram is available upon request. The diagram must also show every area designated on any ticket.

(b) The ticket for any seat which does not allow complete view of all action must state that the view is obstructed or impaired.

(c) The following requirements apply to places of public amusement or sport with seating capacities of between 900 and 2,000 ("Theatres"):

(1) The seating level located immediately above the orchestra level may be designated "mezzanine." However, if no crossover or structural division exists in such level, then no part of it may be designated as "front mezzanine" or "rear mezzanine"

(2) If a crossover or structural division exists in such level, then either:

(i) the area in front of the crossover or structural division shall be designated "front mezzanine" and the area behind the crossover or structural division shall be designated "rear mezzanine"

(ii) the entire level shall be designated "mezzanine."

(3) The lettering of rows in each seating area designated as "mezzanine," "front mezzanine" or "rear mezzanine" shall be alphabetically consecutive, beginning with row "A."

(4) A Theatre shall cause the seating diagram referred to in subdivision (a) of this section to be conspicuously posted at all locations where tickets to a performance at such theatre are offered for sale, including but not limited to the Times Square Theatre Centre and The Lower Manhattan Theatre Centre.

(5) Before a sale of tickets over the telephone is completed, a Theatre shall cause the following information to be orally communicated to the consumer;

(i) the number of seating levels in the theatre; and

(ii) the seating level on which the ticket(s) offered are located.

§ 5-62 Home Heating Oil Credit. [Repealed]

(Repealed City Record 6/7/2018, eff. 7/7/2018)

§ 5-63 Catering Contracts.

(a) *Definition.*

Caterer. "Caterer" means any person or business engaged in serving food or beverages for private functions in New York City.

(b) *Cancellation.*

(1) If a consumer cancels a catering contract and the caterer can re-book the date, the caterer's cancellation fee may not exceed 5 percent of the total contract price or \$100, whichever is less, plus actual expenses reasonably incurred.

(2) If a consumer cancels a catering contract and the caterer cannot re-book the date, the caterer's cancellation fee may not exceed the difference between the total contract price and the cost of performance, plus actual expenses reasonably incurred. The caterer must be able to show diligent efforts to re-book and must fairly calculate the cost of performance.

(3) It will be presumed that a caterer who receives notice of cancellation six months or more before the scheduled date of the function will be able to re-book.

(4) Cancellation occurs:

- (i) when the consumer mails the caterer a notice of intent to cancel; or
- (ii) when the caterer has actual notice of the consumer's intent to cancel.

(c) *Refunds.* As soon as reasonably practicable after cancellation (and never later than 30 days after re-booking) the caterer must return to the consumer any sum received which exceeds the permissible cancellation fee.

(d) *Contract forms.* Contract forms must conspicuously disclose the caterer's cancellation fee.

(e) *Delegation of performance.* A caterer may not delegate performance of any contract to another caterer without the consumer's consent. This consent may be obtained only after the caterer advises the consumer of its inability to perform under the contract.

§ 5-64 Vocational Training.

(a) If a vocational school or a paid provider of vocational instruction advertises or states that people in particular jobs have certain incomes, or that people who are instructed will earn a stated salary or income "up to" a stated amount:

(1) either the salary or income must be equal to or less than the average salary or income of persons employed less than five years in the indicated position in the New York metropolitan area, and the representation must state the basis for calculation of the average salary or income; or the representation must state the basis for calculation of the salary stated and disclose the average salary or income of persons employed less than five years in the indicated position in New York metropolitan area; and

(2) the representation must state any conditions or other requirements such as union membership or service of an apprenticeship, which must be met to earn the stated salary or income; and

(3) the representation must state that no guarantee is made that a person will earn the stated salary or income, unless the seller makes such a guarantee.

(b) In a written or printed advertisement, the information required by 6 RCNY §§ 5-64(a)(1), (2) and (3) must be disclosed in lettering as large as the numerals of the stated salary or income.

(c) The words "EARN \$" or "EARN UP TO \$" or words of similar meaning represent that a person who attends the training course will earn the stated salary or income within the meaning of 6 RCNY § 5-64(a).

(d) If a vocational school or a paid provider of vocational instruction advertises or states that a training course includes job placement service:

(1) the job placement service must be available to all persons who pay a fee, regardless of whether they complete the course, unless the advertisement or representation states that it is available only to those who successfully complete the course and discloses any other conditions or limitations on the placement service; and

(2) the advertisement or representation must state whether job placement is guaranteed and, where no guarantee is given, the advertiser must make bona fide attempts to seek potential employers for its students.

(e) In a written or printed advertisement, the information required by 6 RCNY § 5-64(d)(1) and (2) must be disclosed in lettering as large as the lettering indicating the existence of the placement service.

(f) Any advertisement or representation that a school or course has been approved by any government agency must indicate the terms of that approval, particularly as the approval applies to the quality of instruction and the truth of the statements contained in the advertisement or representation. For example, an advertisement or representation shall not state "V.A. Approved," but must state, if such is the case: "V.A. education loans may be used for tuition. V.A. does not review nor guarantee the quality of instruction, nor does it guarantee the truth of the statements in this advertisement."

(g) For purposes of this section, "vocational training school" includes any business entity offering vocational instruction through a home study or correspondence plan.

§ 5-65 Out-of-Context Quotes.

(a) This section applies to all consumer goods and services which are reviewed or commented upon, such as movies, books, and theater performances.

(b) A seller who uses language from the review or comments of a critic in an advertisement, including those on theater marquees and billboards, may not rearrange or abstract the quoted language in a way that alters the critic's meaning. The seller must disclose that the word or phrase refers only to a limited aspect of the work, if such is the case.

Examples: "Beautiful scenery" or "John Jones performs outstandingly" comply with this section as these statements indicate clearly that they refer to limited aspects of the reviews. The word "beautiful" taken from a review which says "the scenery is beautiful" would not comply with this section.

§ 5-66 Tax Preparation.

(a) *Definitions.*

Certified public accountant and public accountant. "Certified Public Accountant" and "Public Accountant" mean any individual who fits within the definitions set forth in Article 149 of the Education Law.

Income tax return or tax return. "Income tax return" or "tax return" means a federal, state or city tax return of a natural person, including joint returns and all related schedules.

Tax preparer. "Tax Preparer" means any individual or business that prepares any income tax return, for a fee, to obtain or retain clients, or in connection with the sale of items or services. It does not include an individual employed to prepare tax returns by another individual or business entity if that individual makes clear that he or she is only an employee and that his or her employer will sign the taxpayer's return.

(b) *Prohibited practices.* Tax preparers may not:

- (1) ask a taxpayer to sign a blank or incomplete tax return;
- (2) misrepresent their qualifications;

(3) reveal any information appearing on a tax return or any information gathered for its preparation, including the fact of preparation and the content of solicitation lists, to any person or business other than:

- (i) the taxpayer;

- (ii) a person designated in writing by the taxpayer; or
- (iii) anyone authorized to receive such information by court order or by law;
- (4) make any deceptive statement designed to persuade taxpayers to use, or not to use, a tax preparer;
- (5) induce or attempt to induce a taxpayer to violate any governmental law, rule or regulation;
- (6) use the word "accountant" in any advertisement unless at least one Certified Public Accountant or Public Accountant is present at each tax preparing location during all business hours, or unless the tax preparer immediately follows the word "accountant" with a conspicuous and prominent disclaimer that the tax preparer is not licensed by the state as a Certified Public Accountant or Public Accountant. If a tax preparer uses the word "accountant" without the disclaimer, then a Certified Public Accountant or Public Accountant employed at the tax preparing location must exercise control over all tax returns prepared at that location;
- (7) use the term "expert," "master," "consultant," "specialist" or any similar terms in an advertisement unless the tax preparer's relevant education or experience is also disclosed in the advertisement. There must be a reasonable basis for any claims of expertise;
- (8) alter a tax return after it has been signed by the taxpayer, without the taxpayer's written consent;
- (9) charge a fee based upon the amount of tax owed or refund due.

(c) *Required practices.*

(1) Tax preparers that advertise their tax preparation services in a manner designed to reach the general public must post, in English, prominently and conspicuously at the public entrance to the tax preparer's business premises or in the immediate area where consumers arrive and are met for business by the tax preparer:

- (i) a price list sign stating exactly how their fees are computed. The price list must contain:
 - (a) a list of services offered by the tax preparer;
 - (b) the minimum fee charged for each service, including but not limited to the fee charged for each type of Federal or New York State return;
 - (c) factors which may cause the fee to be higher than the minimum fee and, for each factor listed, the additional fee and/or the range of possible additional fees charged when the factor applies.
- (ii) a disclosure sign or signs stating that:
 - (a) the taxpayer is entitled to receive a written estimate of all fees before receiving services for which the tax preparer is charging a fee;
 - (b) the taxpayer is entitled to receive a copy of every tax return prepared, at the time the original is given to the taxpayer for filing;
 - (c) that both the tax preparer and the taxpayer must sign every tax return;
 - (d) that the tax preparer is not licensed by the State Board for Public Accounting, or is not a member of the Bar of the State of New York, or both, if such is true;
 - (e) that the tax preparer or an agent will not represent the taxpayer at any audit, if such is true. ("Represent" means to appear before any government tax administering authority as attorney, Certified Public Accountant or enrolled agent. Failure to make this disclosure shall mean that the tax preparer, if lawfully authorized, agrees to represent the taxpayer or to provide representation.)

(2) The price list sign required by subparagraph (i) of paragraph (1) of this subdivision shall also be posted prominently and conspicuously at each point at which orders are placed and/or payment is made, including at each counter or desk, except where a tax preparer is doing business at a consumer's home or business, in which case the tax preparer must give each consumer a hard copy of the price list prior to any discussion with the consumer. Compliance by a tax preparer with this requirement shall be deemed to satisfy the requirements of § 20-750(a) of the Administrative Code and 6 RCNY § 5-70(a).

(3) Tax preparers must:

- (i) sign every tax return prepared;
- (ii) give a copy of every tax return prepared to the taxpayer, at the time the original tax return is given to the taxpayer for filing;
- (iii) provide the taxpayer with a statement of the charges for each tax return or schedule prepared;
- (iv) return any of the taxpayer's personal papers upon request, when the original tax return is given to the taxpayer for filing, unless specifically permitted to retain such papers under State law.

(d) *Refunds.* Tax preparers may not:

- (1) guarantee a tax refund, or guarantee that the taxpayer will not be audited by any government tax agency;
- (2) request a taxpayer to assign to the preparer any portion of the refund due;
- (3) use their addresses on a tax return as the place to which a refund should be mailed, unless the taxpayer has signed a power of attorney containing such authorization. A fiduciary with authority to handle a taxpayer's financial matters is not required to obtain this power of attorney;
- (4) claim to give taxpayers an "instant tax refund" that is actually an interest-bearing loan unless that fact is disclosed to the taxpayer in accordance with Federal and State law.

(e) *Records.* Each tax preparer shall retain a copy of every tax return prepared for a period of at least three years from the preparation date or the due date of the return, whichever is later.

(f) *Disclosure in foreign languages.*

(1) In addition to English, all disclosures required by this section must be made in any other language which the tax preparer uses to attract customers.

(2) For purposes of this section, failure to post each separately enumerated notice requirement constitutes a separate violation for which a penalty will be assessed.

(g) *Exemption.* Any individual or business which prepares income tax returns as an adjunct service to year-round fiduciary activities provided in the regular course of business for its customers is exempt from this section. If the business also offers individual tax return preparation services which are not related to such fiduciary activities, this section applies to those services.

Example: A bank trust department offers its services for a fee as trustee on personal trust accounts. The bank advertises that preparation of the beneficiaries' personal income tax returns is available to the beneficiaries of any trust for which it is trustee. This section does not apply to this tax preparation service. If, however, the bank has an agreement with a tax preparation service, under which the service would supply tax preparation services to the public at various branches of the bank, the bank is subject to this section. If the bank provides the service by its own employees, it is subject to this section.

(Amended City Record 12/14/2017, eff. 1/13/2018; amended City Record 7/5/2019, eff. 8/4/2019)

§ 5-67 Item Pricing in Food Stores.

Food stores included within the scope of New York Agriculture and Markets Law Section 214-i must comply with all the provisions of that law.

§ 5-68 Dealers at Flea Markets.

(a) *Definition.*

Dealer at a flea market. A "dealer at a flea market" means a person or business entity that sells or offers for sale or displays new or used merchandise at a flea market, craft show, antique show, fair, bazaar or any like exhibition that is open to the general public.

(b) *Receipts.* A dealer at a flea market must provide consumers with serialized receipts. These receipts must contain:

- (1) the amount of money paid for each item;
- (2) the total amount of money paid including a separate statement of tax;
- (3) the date of the purchase;
- (4) the legal name and address of the seller in accordance with 6 RCNY § 5-01 "Legal Name."

(c) *Recordkeeping.* A dealer at a flea market must retain exact copies of all receipts issued to consumers for a period of three years after the time a receipt was issued. Copies of such receipts issued during the previous calendar month and during the current calendar month must be made available to the Commissioner or his authorized representative upon request. All other receipts required to be retained by this subdivision (c) must be produced upon ten days notice.

§ 5-69 Blood Pressure Reading Services.

(a) In addition to the general vendors license required by § 20-453 of the Administrative Code of the City of New York for persons who sell services in a public space, any person who charges a fee or accepts donations and, while in a public space or within a retail mercantile establishment, ascertains, or attempts to ascertain, the blood pressure reading of another, must conspicuously display a sign containing the following language:

BLOOD PRESSURE READINGS VARY, DEPENDING UPON THE SKILL AND EXPERIENCE OF THE OPERATOR, THE CONDITIONS UNDER WHICH THE READING IS OBTAINED, ANY MEDICATION TAKEN BY THE INDIVIDUAL, AND OTHER FACTORS SUCH AS AGE, WEIGHT, AND PHYSICAL CONDITION.

I AM NOT A LICENSED OR CERTIFIED HEALTH PROFESSIONAL TRAINED TO TAKE BLOOD PRESSURE READINGS. IF YOU HAVE ANY QUESTIONS ABOUT YOUR BLOOD PRESSURE, SEE YOUR DOCTOR.

(b) The sign must be at least 12" x 18", and each of the letters must be at least 1" high, and 1/4" wide. Each letter of the second and third sentences must be in upper case lettering.

(c) Public space means all publicly owned property between the property lines on a street as such property lines are shown on the city records, including but not limited to a park, plaza, roadway, shoulder, tree space, sidewalk or parking space between such property lines. It shall also include, but not be limited to, publicly owned or leased lands, buildings, piers, wharfs, stadiums, and terminals.

(d) Retail mercantile establishment means any building, or portion thereof, in which one or more merchants offers goods or services for sale to consumers.

(e) The disclosures required by this section shall not apply to the following persons:

(1) Any person who holds a current license issued by any agency of the State of New York or by the City of New York, if instruction as to the operation of a sphygmomanometer is part of the training required by such state or city agency as a condition of the issuance of such license;

(2) Any person who holds a current certificate issued by a corporation incorporated as a not-for-profit corporation and exempt from federal taxation pursuant to § 501(c)(3) of the Internal Revenue Code, if a condition for the granting of such certificate is instruction in the operation of a sphygmomanometer;

(3) Any person who is either employed by an in-patient hospital facility, or employed by a person currently licensed to practice medicine in the state of New York, and who is acting within the course of his or her employment.

(f) Any persons claiming an exemption under 6 RCNY § 5-69(e) must possess on their persons documentation supporting their claimed exemption at all times while offering blood pressure reading services.

§ 5-70 Retail Service Establishments.

(a) A retail service establishment shall display a price list conspicuously in a place readily visible to customers at the point at which orders are placed and/or payment is made. The price list shall include the following information:

- (1) a list of the types of services performed;
- (2) the minimum price charged for each service;
- (3) a description of the conditions or variations of service that alter the minimum price charged;
- (4) the range of additional charges caused by such variations;
- (5) if the price is directly derived from an hourly labor rate then the labor rate must appear in a ratio of dollars per hour.

(b) Information required by this rule or by §§ 20-749 through 20-753 of the Administrative Code must be prominently placed and conspicuously written in comparison with all other words, statements, or designs displayed by the retail service establishment, and stated in such terms as to render the information likely to be read and understood by the ordinary individual under customary conditions of purchase.

§ 5-71 Food Store Cash Register; Item Cost Indicator.

(a) A Food store shall not have on its premises any cash register without an item cost indicator unless a seal, issued by the department indicating that

such cash register was purchased prior to December 20, 1989, the effective date of Local Law 94 of 1989, which added §§ 20-691 through 20-693 of the Administrative Code, appears on the machine.

§ 5-72 Commercial Weight Loss Center Practices.

(a) A "weight loss provider" is defined as any person or business entity who or which is primarily engaged in the business of offering services to consumers to assist them in losing weight.

(b) It is a deceptive trade practice for a weight loss provider to quote to a consumer a fixed or estimated cost for a weight loss program that is being recommended for the particular consumer without separately stating any additional charges the consumer may have to pay to purchase products, services, supplements or laboratory tests which are part of such program.

(c) It is a deceptive trade practice for a weight loss provider to recommend a weight loss program to a particular consumer without also disclosing the actual or estimated duration of the program.

(d) It is a deceptive trade practice for a weight loss provider to make any oral or written statement, visual description or other representation of any kind, including in any advertisement, which statement, description or representation has the capacity, tendency or effect of leading consumers to believe that the use of a product or treatment, or participation in a program, will result in weight loss unless the weight loss provider conspicuously posts the following statement in each of its weight loss establishments:

(1) WARNING: Rapid weight loss may cause serious health problems. (Rapid weight loss is weight loss of more than 1 1/2 pounds to 2 pounds per week or weight loss of more than 1% of body weight per week after the second week of participation in a weight loss program.)

(2) Consult your personal physician before starting any weight loss program.

(3) Only permanent lifestyle changes – such as making healthful food choices and increasing physical activity – promote long-term weight loss.

(4) Qualifications of this provider's staff are available on request.

(5) You have a right to:

(i) ask questions about the potential health risks of this program, 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 that is being recommended for you.

(e) The above statement must be posted in a notice to the public at every temporary or permanent location of the weight loss provider. The notice must be conspicuously posted in every room in which a presentation is made, or in which a product or treatment is offered for sale, by the weight loss provider. The notice must be printed in letters at least as large as 36 point bold face type on a sign at least 22 1/2 inches wide by 17 1/2 inches long. The sign shall be entitled "Weight Loss Consumer Bill of Rights" which shall be printed in letters of 60 point bold face type.

(f) All the educational and professional experience of the weight loss provider's staff must be made available upon the request of any person.

(g) Every weight loss provider shall produce and distribute to all consumers who inquire about its weight loss program, a palm-sized card entitled "Weight Loss Consumer Bill of Rights", which shall contain the same information contained in the poster described in subdivision (d) above.

(h) Every weight loss provider shall post the sign described in subdivision (d) which shall be provided by the Department of Consumer Affairs, and shall reproduce and distribute the palm-sized card described in subdivision (g), in every location in which its program or product is promoted, presented or sold, and the weight loss provider must cause the posting of such sign and the distribution of such card by every agent, representative, franchisee and independent contractor at every location in which such agent, representative, franchisee or independent contractor promotes, presents or sells the weight loss provider's program or product.

(i) The sign described in subdivision d of this section and the palm-sized card described in subdivision g of this section must contain the name, address and telephone number of the Department of Consumer Affairs and the name of the Commissioner. The weight loss provider may include on the sign and the palm-sized card its name, address and telephone number, provided such information is printed in letters which are no larger than the smallest letters on the rest of the sign or palm-sized card, respectively. The sign shall not contain any information other than the information required or permitted by the provisions of this section.

§ 5-73 Sale of Box Cutters.

(a) *Definitions.*

Box cutter. "Box cutter" means any knife consisting of a razor blade, retractable, nonretractable, or detachable in segments, attached to or contained within a plastic or metal housing, including utility knives, snap-off knives, and box cart cutters.

(b) It is an unconscionable practice for any person to engage in the illegal conduct of:

(1) selling or offering to sell, or causing any person to sell or offer to sell, a box cutter to any individual under eighteen years of age; or

(2) placing box cutters which are being sold or offered for sale on open display so that such implements are accessible to the public without the assistance of the seller, or his or her employee or other agent; provided, however, that the restrictions of this paragraph shall not apply to those box cutters on open display (i) which are clearly and fully visible from a place of payment for goods or services or customer information at which such seller or an employee or other agent of the seller is usually present during hours when the public is invited, or (ii) which are in a package, box or other container provided by the manufacturer, importer or packager that is larger than 41 square inches.

§ 5-74 Illegal Sale to Minors.

It shall be an unconscionable trade practice for any person to sell or offer to sell any goods or services to minors which by law are prohibited from being sold to minors.

§ 5-75 Used Car Buyer's Guide.

It shall be a deceptive trade practice for purposes of section 20-701 of the administrative code for any seller to sell or offer to sell any used automobile without posting a Buyer's Guide as required under section 455.2 of title 16 of the code of federal regulations.

(Added City Record 6/12/2015, eff. 7/12/2015)

Part 6: Debt Collection

§ 5-76 Debt Collection.

Definitions. As used in this part:

Communication. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

Consumer. The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

Creditor. The term "creditor" means any person, firm, corporation or organization to whom a debt is owed or due or alleged to be owed or due or any assignee for value of said person, firm, corporation or organization.

Debt. The term "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.

Debt collection procedures. The term "debt collection procedures" means any attempt by a debt collector to collect a debt after:

(1) with respect to accounts for which creditors are required to send periodic statements, the creditor has ceased sending those statements, or taken or threatened to take legal action against the consumer;

(2) with respect to 30-day accounts for which periodic statements are not required, the creditor has ceased sending bills for the debt or taken or threatened to take legal action against the consumer; and

(3) with respect to all other types of credit, the creditor has accelerated the unpaid balance of the debt or demanded the full balance due.

Debt collector. The term "debt collector" means an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due. The term does not include:

(1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of his or her official duties;

(2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;

(3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; or

(4) any individual employed by a utility regulated under the provisions of the Public Service Law, to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part. Where a provision of this part limits the number of times an action may be taken by the debt collector, or establishes as a prerequisite to taking an action that the debt collector has received or done something, or prohibits an action if the debt collector has knowledge of or reason to know something, the term "debt collector" includes any debt collector employed by the same employer.

Location information. The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

Periodic statement. The term "periodic statement" means the statement of account certain creditors are required by 12 C.F.R. § 226.7(b) [Regulation Z] to send at the end of each billing cycle for which there is an outstanding disputed debit or credit balance in excess of \$1 in the account or with respect to which a finance charge is imposed.

Reasonable period of time. The term "reasonable period of time" means in the absence of knowledge of circumstances to the contrary, ten business days.

30-day account. The term "30-day account" means an account on which the outstanding balance at the end of a billing period is to be paid in full within a stated period of time without imposition of any finance charge.

§ 5-77 Unconscionable and Deceptive Trade Practices.

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

(a) *Acquisition of location information.* Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer in order to collect a debt, after the institution of debt collection procedures shall:

(1) identify himself or herself, state that he or she is confirming or correcting location information about the consumer and identify his or her employer when that identification connotes debt collection only if expressly requested;

(2) not state or imply that such consumer owes any debt;

(3) not communicate more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information; for the purposes of this paragraph (3), the debt collector need not count as a communication returned unopened mail or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the name of the debt collector and a request that the person sought telephone the debt collector;

(4) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; provided that a debt collector may use his or her business name or the name of a department within his or her organization as long as any name used does not connote debt collection; and

(5) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that he or she is not authorized to accept process for the consumer; or

(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry. The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.

(b) *Communication in connection with debt collection.* A debt collector, in connection with the collection of a debt, shall not:

(1) After institution of debt collection procedures, without the prior written consent of the consumer given directly to the debt collector after the institution of debt collection procedures, or without permission of a court of competent jurisdiction, communicate with the consumer in connection with the collection of any debt;

(i) at any unusual time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock ante meridian and before 9 o'clock post meridian time at the consumer's location;

(ii) if the debt collector knows the consumer is represented by an attorney with respect to such debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer, except any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited;

(iii) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer or supervisor prohibits the consumer from receiving such a communication; or

(iv) with excessive frequency. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that more than twice during a seven-calendar-day period is excessively frequent. In making its calculation, the debt collector need not include any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than one who is responsible for the debt as long as the message is limited to a telephone number, the name of the debt collector and a request that one who is responsible for the debt telephone the debt collector; or any communication which is required by law or chosen from among alternatives of which one is required by law. The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation.

(2) In order to collect a debt, and except as provided by 6 RCNY § 5-77(a), communicate with any person other than the consumer, his or her attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, the attorney of that debt collector, or the attorney for that debt collector's employer, without the prior written consent of the consumer given directly to the debt collector after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy.

(3) Communicate with any person other than the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt collector's employer in a manner which would violate any provision of this part if such person were a consumer.

(4) After institution of debt collection procedures, communicate with a consumer with respect to a debt if the consumer has notified the debt collector in writing that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except that any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited. The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request, except that any debt collector who knows or has reason to know of the consumer's notification and who causes further communication shall have violated this provision. The debt collector may, however:

(i) communicate with the consumer once in writing:

(A) to advise the consumer that the debt collector's further efforts are being terminated or;

(B) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or;

(C) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy if that is a remedy he is legally entitled to invoke and if he actually intends to invoke it; and

(ii) respond to each subsequent oral or written communication from the consumer.

(5) For the purpose of 6 RCNY § 5-77(b)(1)-(4), the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector cease further communication, provided for under 6 RCNY § 5-77(b)(4), if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request.

(c) *Harassment or abuse.* A debt collector, in connection with the collection of a debt, shall not engage in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with a debt. Such conduct includes:

(1) the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) the advertisement for sale of any debt to coerce payment of the debt;

(4) causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(5) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 U.S.C. § 1681a(f) or 15 U.S.C. § 1681b(3); or

(6) except as provided by 6 RCNY § 5-77(a), the placement of telephone calls without meaningful disclosure of the caller's identity.

(d) *False or misleading representations.* A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include:

(1) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform or facsimile thereof;

(2) the false representation or implication that any individual is an attorney or any communication is from an attorney;

(3) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

(4) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(5) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

- (ii) become subject to any practice prohibited by this part;
 - (6) the false representation of implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;
 - (7) the false representation or implication that accounts have been turned over to innocent purchasers for value;
 - (8) the false representation or implication that documents are legal process;
 - (9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;
 - (10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);
 - (11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;
 - (12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;
 - (13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;
 - (14) after institution of debt collection procedures, the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation;
 - (15) except as otherwise provided under 6 RCNY § 5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;
 - (16) the use of any name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained;
 - (17) any conduct proscribed by New York General Business Law §§ 601(1), (3), (5), (7), (8), or (9);
 - (18) the false, inaccurate, or partial translation of any communication when the debt collector provides translation services; or
 - (19) the false representation or omission of a consumer's language preference when returning, selling or referring for litigation any consumer account, where the debt collector is aware of such preference.
- (e) *Unfair practices.* A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes:
- (1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;
 - (2) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;
 - (3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and telegram fees;
 - (4) taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:
 - (i) there is no present right to possession of the property claimed as collateral;
 - (ii) there is no present intention to take possession of the property; or
 - (iii) the property is exempt by law from such dispossession or disablement;
 - (5) after institution of debt collection procedures, when communicating with a consumer by use of the mails or telegram, using any language or symbol other than the debt collector's address on any envelope, or using any language or symbol that indicates the debt collector is in the debt collection business or that the communication relates to the collection of a debt on a postcard, except that a debt collector may use his or her business name or the name of a department within his or her organization as long as any name used does not connote debt collection;
 - (6) after institution of debt collection procedures, communicating with a consumer regarding a debt without identifying himself or herself and his or her employer or communicating in writing with a consumer regarding a debt without identifying himself or herself by name and address and in accordance with 6 RCNY § 5-77(e)(5); or
 - (7) after institution of debt collection procedures, if a consumer owes multiple debts of which any one or portion of one is disputed, and the consumer makes a single payment with respect to such debts:
 - (i) applying a payment to a disputed portion of any debt; or
 - (ii) unless otherwise provided by law or contract, failing to apply such payments in accordance with the consumer's instructions accompanying payment. If payment is made by mail, the consumer's instructions must be written. Any communication by a creditor made pursuant to 6 RCNY § 5-77(e)(7)(ii) shall not be deemed communication for the purpose of 6 RCNY § 5-77(b)(1)(iv). The employer of a debt collector may not be held liable in any action brought under 6 RCNY § 5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation;
 - (8) engaging in any conduct prohibited by New York General Business Law §§ 601(2) or (4); or
 - (9) after institution of debt collection procedures, collecting or attempting to collect a debt without first requesting and recording the language preference of such consumer.
- (f) *Validation of debts.*

(1) Upon acceleration of the unpaid balance of the debt or demand for the full balance due, the following validation procedures shall be followed by debt collectors who are creditors or who are employed by creditors as defined by 15 U.S.C. § 1602(f) (Truth in Lending Act) but who are not required to comply with 15 U.S.C. § 1637(a)(8) (Fair Credit Billing Act), and who do not provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 U.S.C. § 1637(a)(8) and regulations promulgated thereunder: Within five days of any further attempt by the creditor itself to collect the debt, it shall send the customer a written notice containing:

(i) the amount of the debt;

(ii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector;

(iii) a statement that, if the consumer notifies the debt collector in writing within the thirty-day period at the address designated by the debt collector in the notice, that the debt, or any portion thereof is disputed, the debt collector shall either:

(A) make appropriate corrections in the account and transmit to the consumer notification of such corrections and an explanation of any change and, if the consumer so requests, copies of documentary evidence of the consumer's indebtedness; or

(B) send a written explanation or clarification to the consumer, after having conducted an investigation, setting forth to the extent applicable the reason why the creditor believes the account of the consumer was correctly shown in the written notice required by 6 RCNY § 5-77(f)(1) and, upon the consumer's request, provide copies of documentary evidence of the consumer's indebtedness. In the case of a billing error where the consumer alleges that the creditor's billing statement reflects goods not delivered in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless it determines that such goods were actually delivered, mailed, or otherwise sent to the consumer and provides the consumer with a statement of such determination.

(iv) if the debt collector is not the original creditor, a statement that, upon the consumer's written request within the thirty-day period, sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor;

(v) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor.

(2) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer has paid the debt, send the consumer a written notice containing:

(i) the amount of the debt;

(ii) the name of the creditor to whom the debt is owed;

(iii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(iv) a statement that if the consumer notifies the debt collector in writing within the thirty-day period at the address designated by the debt collector in the notice that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector;

(v) a statement that, upon the consumer's written request within the thirty-day period sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor;

(vi) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor;

(vii) a statement informing the consumer of any language access services available, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English; and

(viii) a statement that a translation and description of commonly-used debt collection terms is available in multiple languages on the Department's website, www.nyc.gov/dca.

(3) If, pursuant to 6 RCNY §§ 5-77(f)(1) or 5-77(f)(2) of this Regulation the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt or a copy of the judgment or the name and address of the original creditor. The debt collector shall maintain for one year from the date the notice was mailed, records containing documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response.

(4) The failure of a consumer to dispute the validity of a debt under 6 RCNY § 5-77(f) shall not be construed by any court as an admission of liability by the consumer.

(g) *Liability.* The employer of a debt collector is liable for the debt collector's violation of 6 RCNY § 5-77. A debt collector who is employed by another to collect or attempt to collect debts shall not be held liable for violation of 6 RCNY § 5-77.

(h) *Public websites.* Any debt collector that maintains a website accessible to the public must clearly and conspicuously disclose on such website:

(1) a statement informing the consumer of any language access services available, including whether the consumer may obtain from the debt collector a translation of any communication into a language other than English; and

(2) a statement that a translation and description of commonly-used debt collection terms is available in multiple languages on the Department's website, www.nyc.gov/dca.

(Amended City Record 5/28/2020, eff. 6/27/2020)

§ 5-78 Deceptive Forms.

It is a deceptive and unconscionable trade practice for any person to design, compile and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

§ 5-79 Severability.

If any provision of this part or the application of such provision to any person or circumstances shall be held unconstitutional or invalid, the constitutionality of the remainder of the part and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§ 5-80 Citation Form.

This part may be cited as Consumer Protection Law Regulations Part 6.

Part 7: 'Sales' and 'Discounts'

§ 5-86 Definitions.

Advertiser. Where the "advertiser" is a chain store, the requirements of this part shall apply to each branch as if it were a separate store.

Advertiser's bona fide selling price. "Advertiser's bona fide selling price" shall mean the immediately preceding price at which the same item or service was actually offered for sale to the public by the advertiser for a reasonably substantial period of time in the recent regular course of the advertiser's business, unless an earlier time period is clearly specified, and not a price charged for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.

(1) "Recent regular course of business" shall mean the current selling season on seasonal goods; or, on services or non-seasonal goods, the period of the current model or twelve months, whichever is shorter.

(2) It is prima facie evidence that a selling price for a service or an item is bona fide if:

(i) the item was offered for a reasonably substantial period of time and a substantial quantity of sales were made at that price, or

(ii) if a substantial number of sales was not made at such price, that the item was openly offered for sale to the public for a reasonably substantial period of time and that such offering price was reasonable based upon the manner in which such items were displayed or offered for sale, and such other factors as the mark-up reflected in such price and the price of comparable items.

Genuine. "Genuine," when used in this part with such phrases as "open stock price," "list price," "suggested retail price," and "catalog price" shall mean that the price is one at which substantial quantities of the identical merchandise have actually been sold to the public within the recent regular course of business, by the advertiser or principal retail outlets within the New York City trading area, or, if identical merchandise is not available in the New York City trading area, in principal retail outlets in other similar trading areas provided that the fact is disclosed. During the first two weeks after a new model or item has been introduced, a "list price," "suggested retail price" or "catalog price" may be considered "genuine" only if:

(1) the list price, suggested retail price or catalog price for the last previous model was genuine, or,

(2) where no previous model existed, the list price, suggested retail price or catalog price for other similar goods, produced by the same manufacturer and sold in the preceding selling season or twelve month period, was genuine. Where no previous model or similar goods existed or where the manufacturer has not previously made use of list price or suggested retail price, the list price, suggested retail price or catalog price may be used for up to thirty days after introduction of the new model or item after which time, the advertiser must be able to demonstrate that the price is genuine.

In-store. "In-store" representation shall mean any written statement, visual description, advertisement, or other written representation of any kind, or any oral statement by a demonstrator which is made inside the interior premises of the merchant.

Models and types. "Models" and "types" refer to models and types exclusive of differentiations attributable only to sizes or colors except where sizes or colors are material, e.g. mattresses, paint.

Out-of-store. "Out-of-store" representations shall mean any oral or written statement, visual description, advertisement or other representation of any kind made outside the interior premises of the advertiser, including representations made in newspapers, magazines, handbills, billboards, direct mailings, on radio and television and in store windows, storefronts, and other similar places where the representations can be perceived by the public not yet inside the premises of the merchant.

Retail market price. "Retail market price" shall mean:

(1) the price at which substantial sales of the same article or service are presently being made in principal retail outlets in the New York City trading area, or

(2) where no substantial sales have been made, the bona fide, usual and customary selling price of the item or service as offered in principal retail outlets in the New York City trading area.

§ 5-87 Prohibited Conduct.

It is a deceptive practice in the sale or offering for sale of consumer goods or services for a person (including any business entity) having a store, place of business for sales or mailing address for sales in the City of New York, or otherwise selling in the City of New York to advertise or represent in connection with sales made in the City of New York or offerings for sales to be made in the City of New York that such goods or services are being or will be offered or sold to New York City consumers at a reduction, discount, or savings in a manner in violation of this part.

§ 5-88 Identification of Merchandise and Services (Out-of-Store Representations).

An out-of-store representation or advertisement containing words or numbers indicating a savings, reduction, discount or sale price, must include limiting language which permits the consumer to identify the merchandise or services being offered at savings, reductions, discounts or sale price. Identification simply by former price is not sufficient unless the items so identified constitute a percentage of the advertised brands, styles, types, models, classes, or categories of merchandise or services sufficiently large to meet reasonable consumer expectations created by the advertisement.

(a) Such limiting language should be sufficiently precise to permit consumers to distinguish the applicable merchandise or services. This can be accomplished only by setting forth the brand, price, style, type, model, class or category, as appropriate in the context of the out-of-store representation or advertisement. Vague language such as "percentage off some merchandise" does not comply with this requirement. An advertisement shall be construed to apply to every piece of merchandise (or every service) within that category, type, make, model, (etc.).

Examples:

(1) "Brand X aluminum tennis rackets." Acceptable.

(2) "Steel belted radial tires." Acceptable if all steel belted radial tires are now on sale.

(3) "Famous manufacturer's single lens reflex cameras." Acceptable if all of the particular manufacturer's single lens reflex cameras are on sale.

(4) "Men's cashmere sweaters, formerly \$40, now \$30." This is acceptable if all men's cashmere sweaters that were formerly \$40 are now on sale, and these sweaters constitute a percentage of the store's total supply of cashmere sweaters sufficiently large to meet reasonable consumer expectations created by the advertisement.

(b) (1) If the merchandise or services referred to in the out-of-store representation or advertisement as being offered at a savings, reduction, discount or sale price cannot be specified with precision because the sale involves:

(i) less than all of the brands, styles, types, models, classes or categories of merchandise or services identified;

(ii) a storewide sale in a broad cross-section of departments; or

(iii) one or more established departments, but less than all of the merchandise or services in such departments, the terms "selected," "many," "representative," "assorted," or terms of similar import, may be used as limiting language to comply with identification requirement of this section, provided that a meaningful percentage of such merchandise or services is so offered. "Meaningful percentage" shall mean an amount of merchandise that will meet reasonable consumer expectations created by the advertisement. For 5 RCNY § 5-88(b)(1)(i), it shall be prima facie evidence of a violation of the meaningful percentage requirement if at least 15 percent of such brands, styles, types, models, classes or categories identified are not on sale, provided however, that the advertiser shall be permitted to show that under the particular circumstances involved the amount on sale was not deceptive.

(2) In the absence of words of limitation, an advertisement shall be construed to apply to every piece of merchandise or every service within that category, type, make, model, etc.

Examples:

(i) "Numerous pottery vases" complies if at least 15 percent of the pottery vases are on sale, unless the advertiser can demonstrate that under the particular circumstances involved the amount on sale, in light of the advertisement itself, is not deceptive.

(ii) "Assistant Managers' birthday sale – storewide savings on selected merchandise" complies if the amount of merchandise on sale meets reasonable consumer expectations created by the advertisement.

(iii) "Representative low-cut tennis sneakers" complies provided 15 per cent of the types of brands, makes or etc., are on sale, unless the advertiser can demonstrate that under the particular circumstances involved the amount on sale in light of the advertisement itself was not deceptive.

(iv) "Special grouping of Misses' slacks, regularly \$20 now \$15" complies if at least 15 percent of all Misses' slacks regularly \$20 are now \$15 unless the advertiser can demonstrate that under the particular circumstances involved the amount on sale, in light of the advertisement itself, was not deceptive.

(v) "Reduction on many items in the Sporting Goods and Luggage Department" complies if the amount of merchandise on sale in each department meets reasonable consumer expectations created by the advertisement.

(c) An out-of-store representation or advertisement concerning a storewide sale or a sale in a broad cross-section of departments which displays, pictures, or mentions specific items which are on sale must also disclose whether the items displayed, pictured or mentioned are the only ones on sale. If they are not the only ones on sale, the advertisement must disclose the extent to which items not displayed, pictured or mentioned are on sale.

Example: "Semi-annual White Sale – These and many other savings" complies if the complete supply of all pictured items is on sale and a meaningful percentage of the other sale items is offered at a savings.

§ 5-89 "Wholesale Price," "Manufacturer's Price," "Factory Price," and Similar Terms.

If an advertiser states or implies that goods are offered at or below "list," "wholesale," "wholesale price," "original wholesale," or other similar terms, these terms must pertain to the price currently and generally paid for such goods by retailers in the New York City trading area. If the advertiser states or implies that goods are offered at or below "manufacturer's wholesale," "manufacturer's price," "factory price," or other similar terms indicating purchase directly from a manufacturer, these terms must pertain to the price currently and generally paid for such goods by retailers in the New York City trading area who purchase the category of merchandise directly from the manufacturer. It is presumptive evidence of compliance with this section if the advertiser can show that the goods are offered below the price paid by the advertiser.

§ 5-90 "Less Than Cost," "At a Loss," and Similar Terms.

If the advertiser uses the words:

"less than cost" "at a loss" "below retailer's cost"

or other similar terms implying that the purchaser is paying a lower price than the advertiser, the price to the consumer must actually be less than the price paid by the advertiser.

§ 5-91 Reductions Based on Advertiser's Own Price; "Formerly," "Regularly," "Reduced," "Percent Off," "Save," and Similar Terms.

(a) *Immediately preceding price.* If an advertiser uses the words:

"percent off" "formerly ..., now ..." "reduced" "reduced to" "regularly..., now ..." "now only" "save \$..." "was ..., now ...," "item now \$..."

or any similar term implying a reduction from a prior price charged by the advertiser, the price to which the reduced offering price is being compared must be the advertiser's bona fide selling price for that item or service unless the advertiser clearly discloses another basis of comparison or qualification.

(b) *Intermediate reductions.* If the term "originally," or any similar term, is used in any advertisement, the price stated as the "original" price must be the advertiser's bona fide selling price for the same article or service prior to intermediate reductions, and the price immediately prior to the current reduction must be disclosed, unless intermediate reductions are clearly indicated by the language used.

Example: "Originally \$75; then \$68; now \$65" "Earlier this year \$75; now \$65" "Further reduced to \$50."

(c) *Comparison not recent.* If a claim is based on a past bona fide selling price of the advertiser prior to the recent, regular course of business, the advertiser must clearly disclose that fact.

Example: "Last year \$40, now \$20."

§ 5-92 Comparisons Based on Price of Identical Merchandise or Services Sold Elsewhere: "Value," "Nationally Advertised at," "Usually," "List," and Similar Terms.

(a) "Value," "nationally advertised at," "sold nationally at," "made to sell for," "woven to sell for," "usually." If the terms:

"value" "nationally advertised at" "sold nationally at" "made to sell for" "woven to sell for" "elsewhere"

or other similar terms implying a generally accepted value or price are used with regard to any item or service, then the price to which the reduced offering price is being compared must be the retail market price of the item or service. Furthermore, the terms "value," "nationally advertised at," or "sold nationally at" or any similar terms implying a generally accepted value or price in a national market may be used only

(1) in relation to articles or services whose prices have been nationally advertised to the consuming public and

(2) i) in relation to prices which are retail market prices, or,

(ii) if the advertised item or service is not available elsewhere in the New York City trading area, the prices for which the article or service is currently selling in principal retail outlets in a substantial number of other representative communities in the United States.

(b) If the term "usually" is used with regard to any item or service, then the price to which the reduced offering price is being compared must be either

(1) the advertiser's own bona fide price for the item or service, or

(2) the retail market price.

(c) "list," "catalog," "suggested," "manufacturer's suggested," prices. Any "list" price, "catalog" price, "suggested" price, "manufacturer's suggested" price, "retailer's suggested" price or a preticketed price displayed by the advertiser must be genuine, unless, in the case of a price printed by a supplier of

the advertiser, the advertiser has made every reasonable effort to remove or obliterate totally the printed price, or if removal or obliteration is impracticable taking into account the cost thereof, has conspicuously disclaimed that it is genuine. The display of any list price or printed price accompanied by a lower price constitutes a representation that such price is genuine and that the merchandise is being offered at a discount from such genuine price unless in the case of a price printed by a supplier of the advertiser, the advertiser has made every reasonable effort to remove or obliterate totally the printed price, or if removal or obliteration is impracticable taking into account the cost thereof, has conspicuously disclaimed that it is genuine.

§ 5-93 Claims Based on Price of Comparable Merchandise or Services: "Comparable Value" and Similar Terms.

If the term:

"comparable value" "compare with" "equal to"

or other similar term implying comparison with non-identical merchandise is used

- (a) the advertisement must not imply that the comparison is with the former or usual price of the advertised merchandise or service itself; and
- (b) the compared merchandise or service must be of essentially similar quality in those material respects which affect consumer preferences and marketability; and
- (c) the price to which the advertiser's price is compared must be the retail market price or the genuine list, suggested or catalog price of the comparable article or service; and
- (d) the comparable article or service must be generally available in New York City at the price stated; and
- (e) the advertisement must clearly and conspicuously disclose that "comparable value" pertains to similar but not identical merchandise or services. If an aggregate "open stock" price is used as a comparative price for an advertised set, the advertisement must disclose this fact and indicate that the advertised saving is based upon the difference between the price for the set and the total open stock price for items comprising the set.

§ 5-94 Range Discounts: "% to % Off," "Up to % Off Selected" and Similar Terms.

(a) If an advertiser uses terms such as:

"Savings of ____ % to ____ %" "____ % to ____ % off"

or other similar terms to indicate a price range, then:

- (1) the minimum percentage reduction must be stated as conspicuously as the maximum percentage reduction; and
- (2) the price from which the discount or reduction is taken must be either a genuine list, suggested or catalog price, the retail market price or the advertiser's bona fide selling price, for the same articles or services, unless another basis is clearly stated; and
- (3) "out-of-store" advertisements must disclose which of the above standards was or were used (if a single advertisement relates to merchandise or services offered at reductions according to different standards, it must disclose which standards apply to which types of merchandise or services);

Example: "____ % to ____ % off the manufacturer's price" "____ % to ____ % off last year's price."

(4) at least 15 percent of all types, models, or categories of items or services on sale in the advertised category must in fact be reduced by the maximum percentage reduction and a representative number of other models or types or services must be offered at various points in the range significantly separated and representatively scattered.

Example: "PORTABLE RADIOS AND TELEVISIONS 10%-50% off our former prices"

Complies if at least 15 percent of all models of portable radios and televisions available are selling at 50 percent off, and a representative number of the remaining models are offered at various points between 10 and 50 percent representatively scattered throughout that range.

(b) If the terms:

"discounts from %" "up to % off" "as high as" "save up to %"

or other similar terms are used to advertise a range of reductions with no specified minimum reduction,

- (1) the prices used for comparison must be the advertiser's bona fide selling price, the retail market price, or a genuine list, suggested price for the same articles or services, unless another basis or a qualification is clearly stated;
- (2) "out-of-store" advertisements must disclose which of the above standards was or were used;
- (3) at least 15 percent of all the types, models, or services on sale in the advertised categories must be offered for sale at the stated maximum percentage reduction; and
- (4) a representative number of the remaining models or types or services must be offered at various points representatively scattered throughout the range from the stated maximum percentage reduction to the bottom of the range, or the majority of such other models or types or services must be offered at points in the higher portion of the range.

Example: "BRAND Y CASSETTE TAPE RECORDERS" "Up to 30 percent off"

Complies if at least 15 percent of all models of Brand Y Cassette tape recorders available are selling at 30 percent off and the remaining models are offered at various points representatively scattered throughout the range below 30 percent or the majority of the remaining models are offered at points in the higher portion of the range. If the range is 0-30 percent, the majority of the remaining models would have to be offered above 15 percent; if the range is 10-30 percent, the majority would have to be offered above 20 percent.

(c) If terms such as "formerly \$ to \$; now \$" are used, the maximum price in the range of advertised former prices must represent the advertiser's bona fide selling price for at least 15 percent of all the types, models or services advertised. Bona fide selling prices for the other items or services must have been at levels representatively scattered through the range of advertised former prices.

§ 5-95 "Advance Sale" or "Introductory Offer."

(a) If an advertiser uses the words "advance sale" or "introductory offer" or statements such as "if there are any left they will be marked \$", or any other words or statements implying that the goods or services are offered for sale at a reduced price in relation to a future mark-up, he must also

- (1) have, in fact, in the case of goods, either a reasonable quantity of merchandise in stock, or an order to be marked up; or demonstrate his intention to order such merchandise for future mark-up; and
- (2) mark up the goods or services within a reasonable period of time and maintain the mark-up for a reasonable period of time not less than 30 days, unless he can show that competitive circumstances occurring subsequent to the advertisement required him to maintain or lower the price in order

to maintain a competitive position.

(b) If the words "introductory offer" or words of similar meaning are used, they must pertain only to merchandise or services not previously sold by the advertiser nor sold by him for more than six weeks prior to the advertisement.

§ 5-96 Combination Offers.

(a) If the advertiser uses "combination offers," in which he offers his product in combination with one or more additional articles or services at a stated price, and claims that the combined articles or services have a "value" greater than the total advertised selling price of the individual items, the total "value" claimed must not be greater than the total of the retail market prices of the articles and services as sold separately.

(b) If none of the combination articles is being sold in the New York City trading area and the comparison is based on comparable merchandise, the phrase "comparable value" may be used only if it complies with 6 RCNY § 5-93.

(c) If one or more of the articles offered in combination is in general retail distribution, but one or more is not, comparative prices for the articles may be stated separately, according to the facts.

§ 5-97 "Discount," "Outlet," "Bargain" and "Warehouse" Operations.

If a retailer includes in the name of his store, or in any other "out-of-store" manner represents the regular retail operation of his entire store by use of the words "discount," "outlet," "bargain," "warehouse," or any other term implying that all goods and services are regularly sold at less than genuine list, catalog, suggested or retail market prices, then 75 percent of the retailer's dollar volume in the last selling season exclusive of fair-traded items must have been from items which were in fact sold for at least 5 percent less than genuine list, catalog, suggested or retail market price.

§ 5-98 Discount Departments.

A retailer may not use the words "discount," "bargain," "warehouse," "bargain basement," or other similar terms in characterizing a particular department or section within his regular retail operation unless

(a) a substantial percentage of the dollar volume of the last previous selling season within that department or section was derived from items sold for less than genuine list, catalogue, suggested or retail market prices. It shall be presumptive evidence of violation of this section if the advertiser cannot show that at least 35 percent of the dollar volume in the last previous selling season within that department or section was derived from items selling for less than genuine list, catalog, suggested or retail market prices for such items; or

(b) all items not presently being sold for at least 5 percent less than genuine catalog, list, suggested or retail market price, are clearly and conspicuously designated as non-discount items. This requirement of designation may be satisfied by segregation of identified non-discount items, shelf labels, or other prominent signs, a listing of non-discount items clearly and conspicuously displayed in the relevant department, or a standardized sticker or tag with a clear and conspicuous explanation that the item to which it is affixed is a non-discount item.

Example: A shoe department in a retail store sells brands X, Y, and Z shoes. Brand X is sold at less than retail market price, and brands Y and Z are sold at retail market price. In the last previous selling season, 35 percent of all shoe sales came from the sale of brand X shoes. The store is in compliance with this article. But if less than 35 percent of all sales came from sales of brand X shoes, brands Y and Z must be conspicuously designated as nondiscount items in order for the department to be called "discount shoe department."

§ 5-99 Meaningful Reductions.

All discounts, sales, reductions or savings must be meaningful, and not merely nominal or insignificant. All articles and services so advertised must be offered at a reduction or savings of at least 5 percent from the price to which the advertiser's is being compared, unless [in the case of items retailing for over \$100] the advertisement clearly sets forth the actual percentage of reduction or the dollar amount of the reduction.

§ 5-100 Sufficient Quantities.

The retailer either must have in stock or on order, or be prepared to supply within a reasonable time sufficient quantities of each advertised item or service to fulfill reasonably anticipated public demand, or clearly conspicuously disclose in the advertisement any items or services of genuinely limited availability. A retailer is not "prepared to supply" merchandise unless he has communicated with suppliers and ascertained, prior to advertising, that the merchandise is available to him.

§ 5-101 Inherently Misleading Terms.

The following inherently misleading terms are prohibited in retail advertising: "our list price" below "manufacturer's wholesale cost" "manufacturer's cost"

§ 5-102 Adequacy of Disclosure.

All disclosures and words of limitation or qualification required by this part shall be written or printed in letters at least one third as high and one third as broad as the largest words or numbers appearing in the advertisement which relate to or describe the reduction, discount or savings, but in no event in less than ten point type. In radio announcements, the disclosure or words of limitation or qualification shall be clearly spoken, and in television announcements they shall be part of the radio track and not merely part of the picture.

§ 5-103 Records Required.

(a) Each person who advertises or represents the existence of a discount, reduction or savings shall for three months maintain records demonstrating compliance with this part at his principal place of business within the City of New York or at a location where such records are normally maintained by such person.

Example: An advertiser who advertises "20 percent off Brand X cameras" must maintain records demonstrating that the reduction is from the bona fide selling price. If the cameras were last sold at such lower price eleven months ago, the advertiser must retain the records indicating the earlier price. These records must be kept for a period of three months after the sale is over.

(b) Where the Commissioner of Consumer Affairs or her delegate requests a person to produce by mail information or records to demonstrate compliance with this part, and the information, or original, carbon, photographic or electrostatic copies of the records are available in the company's files, the person shall mail a copy of such information to the person requesting it within seven business days after receipt of the request unless such time period is extended by the Chief of the Law Enforcement Division. Where the information is available to the person but not in his possession, or where the record must be reconstructed (e.g., where they have been stored in the memory bank of a computer), the person shall mail a copy of such information to the person requesting it within a reasonable period of time, not to exceed sixty business days, after receipt of the request unless such time period is extended by the Chief of the Law Enforcement Division. In lieu of mailing requested information or records to the Commissioner, a person may grant access to the files for purpose of examination and to copy documentary evidence by advising the Commissioner in writing within 5 business days after receipt of the request that such access will be granted provided the information or records are kept in New York City.

(c) No action shall be maintained by the Commissioner under Administrative Code, § 20-703(c) merely for failure to maintain or produce records required by this section. However, all of the other penalties provided by § 20-703 shall apply.

§ 5-104 Regulations 6 RCNY §§ 5-06 and 5-12 Not Affected.

Nothing in this part repeals or modifies 6 RCNY §§ 5-06 and 5-12 or any portion thereof. In the event of any inconsistency, the advertiser should comply with the requirements of 6 RCNY §§ 5-06 or 5-12, as the case may be.

§ 5-105 Exemptions.

(a) Except as provided in 6 RCNY § 5-92, this part does not apply to advertisements printed or packaging material prepared by a manufacturer outside of the City of New York unless such advertisements were requested or ordered by the advertiser located within the City of New York.

(b) This part does not apply to advertising placed prior to its effective date, nor, until four months after its effective date, to non-periodical advertising displays in existence and used by the advertiser prior to the effective date.

§ 5-106 Citation Form.

This regulation may be cited as Consumer Protection Law Regulations, Part 7.

Subchapter B: Truth-in-Pricing Law

§ 5-111 Definitions.

As used in the following 6 RCNY §§ 5-111 - 5-114:

Retail entity. "Retail entity" shall mean any person, partnership, corporation or other organization engaged in the sale, display or offering for sale of consumer commodities at retail from one or more retail establishments. For the purposes of these regulations, retail establishments owned or controlled by different persons, partnerships, corporations or other organizations, but associated together for the purpose of sharing a trade name or advertising expenses or for joint or cooperative purchase of merchandise or services, shall not constitute a single retail entity.

Retail establishment. "Retail establishment" shall mean a single geographical location in which consumer commodities are sold, displayed or offered for sale at retail.

Self service. "Self service" shall mean the offering or display of consumer commodities for retail sale in such a manner that the consumer may examine and select commodities for purchase without the assistance of sales personnel.

§ 5-112 Exemptions.

(a) § 20-709 of the Administrative Code, "Display of Price per Measure," shall apply only to consumer commodities sold, displayed or offered for sale by self service.

(b) § 20-709 of the Administrative Code, "Display of Price per Measure," shall not apply to any consumer commodity packaged without a declaration of volume, weight, quantity or other appropriate size declaration.

(c) § 20-709 of the Administrative Code, "Display of Price per Measure," shall not apply to any consumer commodity sold in one, two, five, or ten units of the applicable standard measure designated in 6 RCNY § 5-113(b).

(d) § 20-709 of the Administrative Code, "Display of Price per Measure," shall not apply to any consumer commodity whose method of sale is governed by § 191, § 193, or § 193-d of the New York Agriculture and Markets Law.

(e) § 20-709 of the Administrative Code, "Display of Price per Measure," shall not apply to any retail establishment in which the total dollar volume sales of consumer commodities constitutes 20 percent or less of the total dollar volume of sales from such retail establishment.

(f) § 20-709 of the Administrative Code, "Display of Price per Measure," shall not apply to any retail entity whose gross receipts from retail sales of merchandise of any sort for the preceding tax year of such retail entity were less than two million dollars.

§ 5-113 Calculation and Display of Price Per Measure.

(a) Price or measure shall be expressed in terms of dollars or cents, as applicable, carried to three digits. If the price is \$1.00 or over, it is to be stated to the nearest full cent, provided that said price is rounded off from one-half cent or over to the next higher cent; and, if less than one-half cent, reduced to the next lower cent.

Example: "\$1.35 per pound." If the price is less than \$1.00, it should be stated to the nearest tenth of a cent.

Example: "24.8¢ per pound."

(b) Price per measure shall be expressed as follows:

(1) price per pound for commodities whose net quantity is stated in units of pounds or ounces or both;

(2) price per 100 units for commodities whose net quantity is stated by numerical count;

(3) price per pint or quart for commodities whose net quantity is stated in fluid ounces, pints, quarts or gallons or a combination thereof; provided that the same unit of measure is used for the same commodity in all sizes sold in the retail establishment;

(4) price per 50 feet or per 50 square feet, as appropriate, for commodities whose net quantity is stated in units of inches, feet, yards, square inches, square feet or square yards, or whose net quantities are stated in units of length or area and the "ply" count, if any.

(c) All price information required by §§ 20-708 and 20-709 of the Administrative Code shall be clear and conspicuous and shall be on a stamp, tag, label or sign directly above, below, adjacent to, or on the consumer commodity to which it relates. Such stamp, tag, label or sign shall:

(1) state the total selling price;

(2) state the price per measure;

(3) identify sufficiently the consumer commodity to which the price information relates, if not affixed to the consumer commodity;

(4) indicate the total selling price on the right side of a horizontal label or on the upper part of a vertical label;

(5) indicate the price per measure on the left side of a horizontal label or on the lower part of a vertical label;

(6) contain the words "Unit Price" above or below the price per measure;

(7) indicate the price per measure and unit of measure on an orange background, except that packages which are pre-priced by the manufacturer shall not be required to use an orange background on a label affixed to the consumer commodity;

(8) indicate price per measure in type no smaller than that used for the total selling price, but in no event smaller than pica type;

(9) be submitted to the commissioner for approval prior to its use in any retail establishment.

(d) Every retail establishment required to post price per measure by the regulations governing Truth-in-Pricing, in those cases where shelf labels are used, shall conspicuously post a sign for every two thousand square feet of sales area, but in no event less than two signs nor more than five signs in any retail establishment, which explains the use of price per measure information to the consumer. The price per measure, as used in examples on these signs, shall appear on an orange background in type no smaller than that used for the selling price.

(e) Upon written application to the commissioner, and upon a showing of exceptional circumstances, a retail establishment or retail entity may be granted an extension in writing, not to extend beyond December 31, 1972, in which to comply, in whole or in part, with the requirements of section c above.

§ 5-114 Consumer Commodities Regulated.

The following commodities shall be labelled in accordance with the provisions of § 20-709 of the Administrative Code, "Display of Price per Measure," and of the regulations governing Truth-in-Pricing.

- (a) Canned and bottled vegetables which do not require refrigerated storage.
- (b) Canned and bottled fruits which do not require refrigerated storage.
- (c) Canned and bottled real and imitation vegetable and fruit juices which do not require refrigerated storage.
- (d) Canned and bottled tomatoes, tomato sauce, tomato paste, tomato puree and other related tomato products which do not require refrigerated storage.
- (e) Canned and bottled baby foods which do not require refrigerated storage.
- (f) Cooking and salad oils.
- (g) Canned and bottled salmon, tuna and sardines which do not require refrigerated storage.
- (h) Jams, jellies and preserves.
- (i) Peanut butter.
- (j) Carbonated beverages.
- (k) Coffee, instant and regular.
- (l) Dog and cat foods.
- (m) Breakfast cereals (does not include corn meal, rice, maize).
- (n) Cake, pie crust and other pastry mixes.
- (o) Macaroni, spaghetti and other dry pasta products (does not include pre-prepared or pre-flavored convenience pasta foods).
- (p) Paper towels, napkins, facial tissues, plates, cups and toilet paper.
- (q) Dishwashing and laundry soaps and detergents.
- (r) Scouting powders. The above regulations shall be known as Truth-in-Pricing Regulations 6 RCNY § 5-111 to § 5-114.

§ 5-115 Guidelines on Multiple Pricing.

(a) *Definitions.* Whenever used in these guidelines, the following terms shall be deemed to mean and include:

Commissioner. The Commissioner of the Department of Consumer Affairs of the City of New York.

Consumer Protection Law. New York City Local Law 83 of 1969, as the same has, or may hereafter be, amended.

Department. The Department of Consumer Affairs of the City of New York.

Identical items of merchandise. "Identical items of merchandise" shall mean a single unit of merchandise available for purchase that is of the same brand and is the same as another unit of merchandise in every other way. For the purpose of these guidelines, items of merchandise that have different prices but have no other differences shall be deemed identical.

Item of merchandise. "Item of merchandise" shall mean a single unit of merchandise available for purchase.

Multiple pricing. "Multiple pricing" shall mean the practice of having identical items of merchandise, as above defined, available for sale at a particular time for more than one price. For purposes of these guidelines, a difference in price achieved by the use of discount coupons, quantity purchases or the like shall not be deemed an instance of multiple pricing.

Retail food store. "Retail food store" shall mean a store which has as its principal line of business the sale at retail of a broad range of food items.

Truth-In-Pricing Law. "Truth-In-Pricing Law" shall mean New York City Local Law 14 of 1971, as the same has, or may hereafter be, amended.

(b) *Consumer Protection Law.* It is the enforcement policy of the Department of Consumer Affairs in interpreting the Consumer Protection Law that Multiple Pricing is a deceptive trade practice except where each of the following conditions are complied with:

(1) *Applicability.* The practice is maintained by a retail food store.

(2) *Information program.* The terms of the Multiple Pricing program are communicated to the retail food store's employees who are to implement the program and those terms are also clearly explained to its customers in New York City. The means by which the program is explained to customers shall include the conspicuous posting of the terms of the retail food store's Multiple Pricing program which terms shall include a list of any items excluded from the operation of the Multiple Pricing program and, where applicable, any method of identifying the location of multiple priced merchandise. Each sign shall cover an area of not less than 18 inches by 18 inches and shall be printed in legible type in a manner that shall make it easily readable. There shall be at least one sign for each two thousand (2,000) square feet of selling area. One such sign shall be placed near each door through which consumers enter, in such a place and positioned in such a way as to be readily seen by a consumer upon entering. No retail food store shall be required to have more signs than the greater of:

- (i) the number of consumer entrances to such store, or
- (ii) five signs. In addition, a smaller sign shall be placed at each cash register clearly visible to the consumer advising the consumer of the store's

program of Multiple Pricing. At least two (2) weeks prior to termination of Multiple Pricing, a retail store shall so notify its customers in New York City. Such notification shall include the conspicuous posting of signs indicating such intended termination in compliance with the second paragraph of this 6 RCNY § 5-115(b).

(3) *Retail food store internal operations.*

(i) Identical items of merchandise are not offered for sale at more than two prices, except that where a store has a policy of not remarking items marked for sale after the termination of the sale, identical items of merchandise may be offered for sale at three prices until the items that were marked for the sale are sold.

(ii) Any item of merchandise sold in a retail food store that bears more than one price, shall be sold at the lowest price shown. Having more than one price visible on any item of merchandise is a violation of the regulations of the Department and selling such merchandise at the lowest price appearing on such merchandise shall not cure any such violation.

(iii) Where an item of merchandise is offered for sale at a price based on a multiple purchase, as for example "2 cans for 35 cents," and an identical item of merchandise is offered for sale at a different price that is higher per item than the group price, or at a higher group price, a consumer who purchases the items of merchandise in the quantity necessary for the group price, shall be entitled to purchase said quantity at the lowest group price. By way of illustration, item X was originally priced at 2 cans for 40 cents, however the new cans of X placed on the shelf are priced at 21 cents each. A consumer purchasing 2 cans of X, one bearing the old markings and one the new would pay a total of 40 cents for the two cans.

(iv) In any retail food store where Multiple Pricing is in effect all items sold shall be subject to it and the only products not multiply priced may be

(A) items which prior to the initiation of the program were not individually marked with a price and price was disclosed by such means as a price sign at the point of sale,

(B) items where the retailer cannot vary the price by the requirement of any law or regulation of any governmental authority or the requirements of any fair trade agreement, and

(C) items for which the retailer has received the Department's prior approval to remove them from Multiple Pricing.

(v) Multiple priced merchandise shall be placed in such a way that

(A) lower priced items are grouped together and

(B) lower priced items are placed nearest to the consumer. On a surface which is parallel to the store floor, such as shelf merchandise, such lower priced items will be placed towards the front edge of the shelf with higher priced items behind. Where items are stacked vertically, as in freezer cabinets, the lower priced items will be stacked on top of the higher priced items and grouped at the front of the vertical space allocated to such items. If any type of physical separation of multiple priced merchandise is instituted this must be applied uniformly throughout the store and must be disclosed on the store signs referred to in 6 RCNY § 5-115(b)(2) and also at each point of sale of the item. As an example, if items at a lower price are placed on a different shelf such sign shall be placed where the higher priced item is and where the lower priced item is.

(vi) In all places where multiple priced items are offered for sale some clear identifying symbol shall be conspicuously displayed at the point of sale to indicate the availability of merchandise at a lower price. This requirement shall apply whether or not the retail food store is subject to the requirements of the Truth-In-Pricing Law. The symbol and the fact that the symbol designates the presence of lower priced merchandise shall be disclosed in the signs referred to in 6 RCNY § 5-115(b)(2).

(4) *Advertising.*

(i) The fact that any item may be available at a lower price shall not be advertised where such lower price is due to Multiple Pricing. Advertising material may contain a general statement concerning any Multiple Pricing policy in effect in any store or group of stores.

(ii) When a sale is advertised the sale price shall be lower than the lowest price at which items of the merchandise are then available for sale in any quantity.

(iii) Where, in advertising material, a potential savings to the consumer is described in such terms as "save 3 cents off regular price by purchasing X at 75 cents a can" the saving shown must be based on the lower price of the merchandise.

(iv) All advertising material relating to Multiple Pricing shall contain a list of any items excluded from the operation of multiple pricing.

(v) When retail food stores are subject to a common ownership, as in a chain, or though not commonly owned, participate in an advertising program under some common name covering more than one store, if one or more stores in the group is not utilizing Multiple Pricing, each store not using Multiple Pricing shall be specifically identified. Such statements as "... not available in certain stores" will not be permissible.

(vi) If merchandise is available at a price lower than the advertised price, it shall be sold at the price shown on the item of merchandise. Having merchandise available for sale at a price lower than the sale price is a violation of 6 RCNY § 5-115(b)(4)(ii) hereof and selling such merchandise at such lower price shall not cure any such violation.

(c) *Unit pricing.* In stores subject to the requirement of the Truth-In-Pricing Law, unit pricing stickers will be prepared which indicate in all instances either

(1) unit pricing data at each price at which an item is being sold, or

(2) unit pricing information at the highest price that an item of merchandise is being sold and some method of clearly identifying at each place, where any merchandise is being sold at multiple prices that some of the same merchandise is available at a lower price. That method of disclosure shall be set out and explained in the signs referred to in 6 RCNY § 5-115(b)(2).

(d) *Notification of the department.* Any retail food store intending to use Multiple Pricing shall advise the Department in writing sent certified mail addressed to the Commissioner at 42 Broadway, New York, N.Y. 10004. Such notice shall be mailed at least one (1) business day prior to initiating such program. Such notice shall be accompanied by copies of all instructions given to store employees concerning procedures which affect Multiple Pricing together with copies of any and all advertising materials discussing Multiple Pricing to be used by any retail food store or group of retail food stores. Retail food stores shall have the duty to notify the Commissioner when they intend to use any instructions or advertising materials not previously submitted to the Department. Notification of the Department pursuant to this paragraph shall not imply review of, or consent to the use of, such material by the Department. Any retail food store intending to terminate Multiple Pricing shall advise the Department in writing sent certified mail addressed to the Commissioner at 42 Broadway, New York, N.Y. 10004. Such notice shall be mailed at least two (2) weeks prior to terminating such program.

(e) *Powers of the Commissioner.*

(1) The Commissioner has the power to require such information as he or she may reasonably require to determine the administration and effect of any program of Multiple Pricing and such materials shall be supplied promptly and at no cost and expense to the Department of Consumer Affairs.

(2) The Commissioner has the power to require additional steps to be taken by a retail food store to comply with the intent of these guidelines as she, in her discretion, may deem appropriate including the further publicizing of Multiple Pricing.

(3) If these guidelines or directions of the Commissioner issued pursuant to these guidelines are not complied with after passage of sufficient time to allow for compliance, such failure shall be deemed a violation of the Consumer Protection Law or the Truth-In-Pricing Law, or both, as the case may be, and the Commissioner shall thereupon take such steps as shall be necessary to assure compliance or she may deny the retail food store the opportunity of operating a Multiple Pricing program. Each violation of a provision of these guidelines shall be treated as a separate violation under the appropriate law.

(f) *Amendment.* The Commissioner reserves the right at any time and from time to time to revise, amend, revoke or to otherwise modify or annul the effect of these guidelines.

(g) *Other laws.* Nothing herein contained shall be deemed to interpret, waive or modify the requirements of any law, rule or regulation of the City of New York, the State of New York or the Federal Government other than the Consumer Protection Law and the Truth-In-Pricing Law.

Subchapter C: Posting of Prescription Drug Prices

§ 5-121 Posting of Prescription Drug Prices.

(a) *Sign to be displayed.* In accordance with the provisions of § 20-713 of the Administrative Code of the City of New York, every pharmacy is required to display the most recent prescription price list prepared and provided by the State Board of Pharmacy, New York State Education Department, as required by § 6826 of the New York State Education Law.

(b) *Adjustment of current selling prices.* Nothing in this rule shall prohibit a pharmacy from changing the current selling price of a drug provided the pharmacy shall simultaneously adjust the price on the posted sign.

§ 5-122 Display of Information Relating to Emergency Contraception.

(a) As used in this section:

(1) "Not sell" shall mean not to have available for usual and customary dispensing at any time, except that this shall not include circumstances where the pharmacy customarily dispenses such drug or drugs that are temporarily not in stock and such pharmacy will be able to fill prescription within 12 hours after a customer requests that a prescription for such drug be filled.

(2) "Emergency contraception prescription drug" shall mean the named drugs, Plan B and Preven, and any other drug expressly approved by the U.S. Food and Drug Administration (FDA) for use as emergency contraception drug with a physician's prescription or when and as specifically authorized by law to be dispensed for emergency contraception without a prescription.

(b) Any pharmacy that does not sell an emergency contraception prescription drug shall conspicuously post a sign adjacent to each counter where prescription drugs are sold on which is displayed either the name of each such drug that is not sold and identified as the "morning after pill," or that states that "no morning after pills" are sold if all such drugs are not sold at such pharmacy.

(c) Any pharmacy that does not have an emergency contraception prescription drug available for immediate dispensing, and stocks such drug or drugs, shall conspicuously post a sign adjacent to each counter where prescription drugs are sold on which is displayed either the name of such drug or drugs not immediately available and identified as the "morning after pill" stating that such drug or drugs are not currently in stock but will be available within 12 hours after a customer requests that a prescription for such drug be filled. A pharmacy that cannot fill such prescription within 12 hours from original request shall post the sign identified in subsection (b).

(d) The signs required to be posted shall be not less than 8.5 by 14 inches, with letters sufficiently large to fill the entire space with appropriate borders and spacing between lines.

Subchapter G: Information with Respect to Funeral Costs

§ 5-161 Casket and Outer Interment Receptacle Information.

The retail price, which is required to be prominently displayed on caskets and outer interment receptacles pursuant to § 20-731 of the Administrative Code, must be clearly visible regardless of whether such casket or receptacle is open or closed.

§ 5-162 General Price List to be Furnished by Provider of Funeral Services.

(a) *Size of print.* The presentation sheet required to be furnished by providers of funeral services pursuant to § 20-732 of the New York City Administrative Code shall be printed clearly and conspicuously.

(b) *Form and content.*

(1) Except as specifically provided otherwise in this subchapter, the presentation sheet required pursuant to § 20-732 of the New York City Administrative Code shall conform to and shall contain the information required to be included in the General Price List as prescribed by the New York State Sanitary Code (10 NYCRR § 79.4) and the Federal Trade Commission Funeral Industry Trade Practices Rule (16 C.F.R. Part 453), as such may be amended from time to time, and shall be known hereinafter as the "General Price List."

(2) The following disclosures shall be placed on the General Price List in addition to and immediately after such disclosures that are required to be placed immediately above the price information required pursuant to State and federal law or regulations promulgated pursuant thereto specifying the form and content of the General Price List:

(i) Your authorization is required for a funeral home to obtain custody of a body, and a body must be released promptly upon your request.

(ii) The provider of funeral services is required to give price information in person and over the telephone.

(iii) A provider of funeral services is prohibited from representing that the deterioration of human remains can be prevented for more than a limited time by embalming, caskets, vaults or outer interment receptacles.

(3) The following statement shall be inserted in the General Price List in a box immediately after the listing of prices for caskets or the listing of the price range for caskets: "The Federal Trade Commission prohibits the provider of funeral services from imposing any additional fee or surcharge to consumers who obtain a casket elsewhere."

(c) *Availability and display.*

(1) The provider of funeral services shall immediately offer a General Price List to any person who inquires about funeral services at the funeral service establishment.

(2) Copies of the General Price List shall be clearly visible and easily accessible in all areas of the funeral service establishment where sales or potential sales of funeral services are discussed and in the area within the funeral service establishment that is in the immediate vicinity of the main public entrance to such establishment.

§ 5-163 Display of Merchandise.

(a) Caskets must be displayed in the same general manner as required by § 20-734 of the New York City Administrative Code, both in printed material supplied by a provider of funeral services and in all exhibits shown to customers and prospective customers. Standards for the same general manner of display include, but are not limited to, lighting, visibility, accessibility, and overall condition of caskets, as well as to any representations made about them.

(b) For purposes of § 20-734(b)(2) of the New York City Administrative Code, defacement shall include, but not be limited to, the failure to provide the same care and maintenance for all merchandise which results in some merchandise becoming soiled or damaged.

§ 5-164 Price Information Over Telephone.

(a) When a telephone caller makes an inquiry regarding the cost of funerals, the provider of funeral services shall, during the course of that telephone conversation, give the caller a price range including:

(1) the cost of all items that such provider requires must be purchased as part of all arrangements for burial or cremation, depending upon which alternative the caller inquires about; and

(2) the average cost of a funeral or the cost of a customarily provided funeral. The caller shall be informed of which items of service are included in all prices given.

(b) When a telephone caller makes a specific inquiry regarding a category of item or service which is contained in the General Price List, the caller shall, during the course of the telephone conversation, be given the price and description of the most expensive and the least expensive item or service in that category.

Example: A caller inquiring about caskets may be told by the provider of funeral services: "We have caskets ranging in price from \$(price) for a (description, model, brand) to \$(price) for a (description, model, brand)."

If there is no variation in price for an item or service, then the provider of funeral services must give the caller a specific price.

(c) A provider of funeral services need not provide to a telephone caller price information for items and services on the General Price List under the heading of "CASH ADVANCES."

§ 5-165 Display of Ownership Information.

(a) Every provider of funeral services shall display all of the following ownership information on a sign that is either located immediately outside the main entrance to its funeral services establishment or that is located immediately inside the main entrance to its funeral services establishment. If such sign is located immediately inside the main entrance to such funeral establishment, it must be clearly visible to someone standing inside such entrance and shall not be placed on the back of the door to such main entrance or in any other location where it would be hidden from view.

(1) The name of every licensed funeral director who holds at least a ten percent ownership interest in the corporation, limited liability company, partnership, limited liability partnership, association, organization, or other business entity which operates such funeral services establishment.

(2) The names of any and all corporations, limited liability companies, partnerships, limited liability partnerships, associations, organizations, or other business entities which directly or indirectly hold an ownership interest of ten percent or more in the corporation, limited liability company, partnership, limited liability partnership, association, organization, or other business entity which operates such funeral services establishment.

(3) The lettering on such sign shall be at least one inch high.

(b) When an ownership interest of ten percent or more in a funeral services establishment is held, either directly or indirectly, by one or more corporations, limited liability companies, partnerships, limited liability partnerships, associations, organizations, or other business entities, the name, complete headquarters address and telephone number of each such corporation, limited liability company, partnership, limited liability partnership, association, organization, or other business entity shall also be listed on all advertising material used by such funeral services establishment and on the "General Price List."

§ 5-166 Sale of Monuments.

(a) As used in this section:

(1) **"Monument"** means any memorial, headstone, footstone, plaque, ledger stone or other marker that is designed or intended to be erected or installed in or on any cemetery, grave, mausoleum or other appropriate place of burial or memorialization.

(2) **"Foundation"** means a poured concrete or other permanent base intended to support the monument and installed at the gravesite in the appropriate location.

(b) Whenever a provider of funeral services sells or offers for sale a monument as part of or in connection with any funeral arrangements, such provider shall:

(1) Make available to customers a price list of all monuments offered for sale as part of or in connection with funeral arrangements. Such price list shall be captioned at the top of the page as a "MONUMENT PRICE LIST" in capital bold face letters. Such price list shall only contain price information about monuments.

(2) The following statement shall be clearly and conspicuously included in at least 10 point type on the Monument Price List inside a box set immediately below the caption for such price list:

"The purchase of a monument is not required as part of your funeral arrangements. The cost and arrangements for the purchase of a monument must be accounted for and set out in a document that is separate from the one under which you agree to the other funeral arrangements you make."

(c) In addition to the disclosures about a monument sale that are required to be included in the written statement required to be furnished showing the price of the funeral and including an itemized list of funeral services and funeral merchandise to be supplied at the listed prices, such sale shall also be evidenced by a separate written contract which shall be signed by all the parties to the contract. Such contract shall be captioned at the top of the page as a "MONUMENT CONTRACT" in capital bold face letters, a full and completed copy shall be furnished to the consumer by the funeral service provider at the time of the purchase of such monument, and such contracts shall be retained by the funeral service provider for at least three years from the date of the sale. Such contract shall include the following information:

(1) the name, address and telephone number of the funeral service provider and of the purchaser;

(2) the full name of the individual to be memorialized and, if known, the date of such individual's death;

(3) a full description of the monument, including the material to be provided, the dimensions of the finished monument, a sketch or drawing of the proposed monument, the wording of any inscription on such monument, including the approximate layout thereof, and the method of engraving of such inscription;

- (4) the approximate date when the monument is expected to be completed;
- (5) the name of the cemetery in which the monument is to be placed, together with the location of the plot or grave, if known; and
- (6) a full disclosure of the following: the price of the monument; 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.

Subchapter H: Income Tax Preparers

§ 5-171 Location.

Each tax preparer shall prominently and conspicuously post the statement required by § 20-740 of the Administrative Code at the public entrance to the tax preparer's business premises or in the immediate area where consumers arrive and are met for business purposes by the tax preparer.

§ 5-172 Form and Content.

(a) Except as provided in subdivision (b) of this section, the sign shall be composed of proportionately spaced, upper-case black characters, "sans-serif," at least one-half inch (1/2") high on a white background. The lines on the sign shall be spaced at least one-half inch (1/2") apart.

(b) The heading "IDENTIFICATION AND QUALIFICATIONS OF TAX PREPARER" shall appear at the top and center of the sign. Subsequent lines shall begin at the left-hand margin of the sign. The first line beneath the heading shall state the full name of the tax preparer. The second and third lines shall state the address at which the tax preparer may be contacted throughout the year. The fourth line shall state the telephone number at which the tax preparer may generally be contacted throughout the year during business hours. The fifth line shall begin with the caption "**QUALIFICATIONS:**" and be followed by a statement of the tax preparer's relevant training and/or experience. Such statement may consist of characters one-quarter inch (1/4") high. (See Specimens No. I and II appearing below for sample signs.)

(c) A partnership, corporation or other business entity operating as a tax preparer may satisfy the disclosure requirements of § 20-740 of the Administrative Code by posting one sign, containing its name, address and phone number as set forth above, and a statement of the minimum qualifications possessed by all individuals who prepare or assist in the preparation of tax returns as an agent or employee of the partnership, corporation or other business entity. (See Specimen No. II.)

(d) The sign shall not contain language which falsely indicates that a tax preparer is licensed or in any manner approved or authorized to do business by the City of New York

Specimen No. I

IDENTIFICATION AND QUALIFICATIONS OF TAX PREPARER

JANE DOE

1 MAIN ST.

BRONX, NY 11111

212-555-5555

QUALIFICATIONS: DEGREE IN TAX PREPARATION FROM ABC COLLEGE AND FOUR YEARS EXPERIENCE IN PREPARING TAX RETURNS AT DEF TAX SERVICES.

Specimen No. II

IDENTIFICATION AND QUALIFICATIONS OF TAX PREPARER

XYZ TAX PREPARERS, INC.

1 MAIN ST.

NEW YORK, NY 10000

212-555-0000

QUALIFICATIONS: EACH INDIVIDUAL WHO PREPARES TAX RETURNS FOR XYZ TAX PREPARERS, INC. HAS AT LEAST SIXTY HOURS OF CLASSROOM TRAINING CONDUCTED BY XYZ TAX PREPARERS, INC.

§ 5-173 Consumer Bill of Rights Regarding Tax Preparers.

(a) Each tax preparer must post a sign provided by the Department stating: "By law, tax preparers must give you a free, current, and legible copy of the Consumer Bill of Rights Regarding Tax Preparers before beginning any discussions about tax preparation services. The tax preparer must let you review that document and answer any questions you have. To file a complaint about this business, contact 311 or visit DCA's website."

(1) The sign must measure at least 17 inches wide by 11 inches tall.

(2) The sign must be:

(i) posted prominently and conspicuously at the public entrance to the tax preparer's business premises or in the immediate area where consumers arrive and are met for business by the tax preparer; and

(ii) in English and in any other language which the tax preparer uses to attract customers, provided that the Department has made available a translation of such sign into that language.

(b) Prior to any discussion with the consumer, each tax preparer must give to each consumer a free, current, and legible copy of the consumer bill of rights regarding tax preparers in English and in the primary language spoken by the consumer, if the Department has made available a translation of such consumer bill of rights in such language.

(Added City Record 12/14/2017, eff. 1/13/2018)

Subchapter J: Information Regarding Redemption of Beverage Containers

§ 5-191 Size of Sign.

The sign required to be posted pursuant to § 20-746 of the Administrative Code shall not be smaller than eleven inches in width and seventeen inches in length.

§ 5-192 Content of Sign.

(a) Except as otherwise provided in subdivision b of this section, every dealer shall be required to post a sign which contains the following language:

BOTTLE BILL OF RIGHTS

IF you buy beer, soda or mineral water in New York State, you pay a deposit on each can or bottle. That gives you certain rights ...

THE RIGHT to return your empties for refund to any dealer who sells the same brand, type and size, whether you bought the beverage from that dealer or not.

THE RIGHT to get your deposit refund in cash, without proof of purchase.

THE RIGHT to return your empties any day, any hour, except the first and last half-hour of the dealers' business day.

THE RIGHT to return your containers if they are empty and intact. Washing containers is not required by law, but it is strongly recommended to maintain sanitary conditions.

The regulations of the New York State Returnable Beverage Container Act are enforced by the New York State Department of Environmental Conservation. Report any violation to the NYS Department of Environmental Conservation, (insert current address of Department)

THE CITY OF NEW YORK, (insert name of current mayor), MAYOR Department of Sanitation, (insert name of current commissioner), Commissioner Department of Consumer Affairs, (insert name of current commissioner), Commissioner

This notice is required to be posted pursuant to Local Law 25 of the Laws of 1985, enacted by the NYC Council.

(b) A sign shall be in compliance with this section if it contains the language specified in subdivision a except that it still includes the name of a former mayor or commissioner in lieu of the current mayor or commissioner.

§ 5-193 Signs Provided by the Department.

The Department of Consumer Affairs shall make available to all dealers signs which comply with the Department's regulations as to size and content. Dealers may request such signs by contacting the Department.

§ 5-194 Substitute Signs.

Any dealer who wishes to post a sign other than the one supplied by the Department may do so, provided that the sign so substituted is approved by the Commissioner prior to its posting. To be approved, substitute signs shall be at least eleven inches by seventeen inches in size and shall contain language that is similar in import to that required by 6 RCNY § 5-192. Dealers may expand upon, but may not omit, any of the language required by 6 RCNY § 5-192. To obtain prior approval for a substitute sign, a dealer shall submit to the Department a true representation of the sign for which approval is being sought. The type for the heading on substitute signs shall not be smaller than three quarters (3/4) of an inch in size. The type for the text on substitute signs shall not be smaller than one half (1/2) of an inch in size.

§ 5-195 Posting of Signs.

The sign required to be posted pursuant to § 20-745 of the Administrative Code shall be conspicuously placed within ten feet of the dealer's cash register(s) and shall be visible to consumers prior to the time they pay for their merchandise.

§ 5-196 Number of Signs.

Dealers whose stores contain four (4) or less cash registers shall be required to post at least one (1) sign. Dealers whose stores contain between five (5) and ten (10) cash registers shall be required to post at least two (2) signs. Dealers whose stores contain more than ten (10) cash registers shall be required to post at least three (3) signs.

§ 5-197 Signs in Foreign Languages.

The sign required to be posted pursuant to § 20-745 of the Administrative Code must be in English and shall also be in any other language which the dealer uses to attract customers.

Subchapter K: Theatre Tickets [Repealed]

§ 5-211 Definitions. [Repealed]

(Repealed City Record 6/7/2018, eff. 7/7/2018)

§ 5-212 Conduct of Ticket Selling Business. [Repealed]

(Repealed City Record 6/7/2018, eff. 7/7/2018)

§ 5-213 Financial Records. [Repealed]

(Repealed City Record 6/7/2018, eff. 7/7/2018)

§ 5-214 Group Ticket Sales and Theatre Parties. [Repealed]

(Repealed City Record 6/7/2018, eff. 7/7/2018)

§ 5-215 Public Posting of Statutory and Regulatory Information. [Repealed]

(Repealed City Record 6/7/2018, eff. 7/7/2018)

§ 5-216 License Suspension or Revocation. [Repealed]

(Repealed City Record 6/7/2018, eff. 7/7/2018)

Subchapter L: Collateral Loan Brokers

§ 5-221 Fees.

No collateral loan broker shall charge or exact a fee other than that permitted by § 44 of the General Business Law, except that the collateral loan broker may charge a reasonable fee for:

- (1) insuring the articles from injury, fire, theft, burglary, robbery and other contingencies; and
- (2) extra care actually given when specifically requested by the customer and only if such fee does not exceed the following amounts:
 - (i) Storage of furs, fur coats, fragile, delicate or bulky items: \$25.00.
 - (ii) Storage of art objects including paintings, sculptures and all works in any other medium for sizes not to exceed 36 inches by 36 inches: \$25.00 plus any costs actually incurred for special crating and packaging; and for sizes exceeding the foregoing: an amount separately agreed to by the parties.
 - (iii) Vault storage for stamp or coin collection: \$20.00.
 - (iv) Vault storage for jewelry: 2 percent of the amount of the loan not to exceed \$20.00; if the loan exceeds \$1,000: an amount separately agreed to by the parties.
 - (v) Transportation of pledged items to and from the vault either by courier(s) or vehicle(s), together with security therefore: one percent of the amount loaned.
 - (vi) Special handling or wrapping of cameras and photographic equipment: \$5.00.
 - (vii) Special handling of musical instruments: \$5.00 for standard size; instruments exceeding standard size: by separate agreement of the parties.
 - (viii) Special handling of radios, hi-fi's, VCR's, stereos and television equipment: \$10.00.
 - (ix) Special handling for other electrical apparatus, including computers: \$10.00.

§ 5-222 Caveats on Pawn Tickets.

- (a) Every ticket issued by a collateral loan broker shall include a notation in either of the following forms: "Not accountable for loss of goods by fire or theft" or "Protected against loss by fire or theft." Words having practically the same meaning as the foregoing may be used.
- (b) Every collateral loan broker shall, in every possible way, call attention to the contents of the pawn ticket, including the placing in a prominent position in his place of business of a sign reading: "Read your ticket."
- (c) In every case where a charge is made or a fee exacted for extra care, the collateral loan broker shall specifically call the pledgor's attention to the said charge at the time the loan is made, and no such charge or fee shall be allowed unless the pledgor shall sign an agreement to pay such extra charge and the fee for such extra charge, as agreed upon, shall be plainly written on the face of the pawn ticket.
- (d) Every collateral loan broker shall place in a prominent position in his or her place of business a reproduction of the application for the pawn ticket and the front of the pawn ticket which have been enlarged to twice their normal size, and a reproduction of the back of the pawn ticket which has been enlarged to three times its normal size.

§ 5-223 Pledgor's Identity Required for Precious Metals. [Repealed]

§ 5-224 Proof of Notice of Intention to Sell Pledged Property.

Upon mailing a notice to the pledgor of an intention to sell for failure to redeem, the pledgee shall obtain from the postal authorities a receipt for the letter. This receipt, or in case of failure by the postal authorities to deliver such notice, the return letter, shall be retained as proof of compliance with the law.

§ 5-225 Proof of Notice of Surplus Realized for Sale of Pledged Property and Arrangement for Payment to Pledgor. [Repealed]

§ 5-226 Acceptable Forms of Verification of Pledgor's Identity and Required Records.

(a) It shall be the duty of every collateral loan broker to verify the identity of every person from whom he accepts any article as a pledge for a loan and to make and keep a written record of the nature of the evidence submitted by such person to prove his identity. Only the following shall be deemed acceptable evidence of identity:

- (1) Any official document issued by the United States government, any state, county, municipality or subdivision thereof, any public agency or department thereof, or any public or private employer, which requires and bears signature of person to whom issued.
- (2) Police, fire department and postal department badges containing numbers.
- (3) A passport.

(b) In addition, and in every case, it shall be the duty of every collateral loan broker, to require that every person from whom he accepts an article as a pledge for a loan, sign his name in the presence of the collateral loan broker, compare the signature with the signature on the identifying document and retain on his premises the person's signature together with the number and description of the identifying document.

§ 5-227 Papers in Which Collateral Loan Brokers Can Advertise Auction Sales.

The following is a list of all newspapers published in the City of New York in which collateral loan brokers may advertise the sale of all unredeemed pawns or pledges which remain in their possession in excess of the period prescribed by § 48 of the General Business Law. To the extent required by § 48 of the General Business Law, such sale shall be at public auction by a licensed auctioneer, so long as auctioneers are required to be licensed pursuant to the New York City Administrative Code.

American Banker
Brooklyn Daily Bulletin
China Daily News
The China Post
China Tribune
Daily News
El Diario – La Prensa

Jewish Daily Forward
National Herald
New York Daily Challenge
The New York Evening Express
New York Post
The New York Times
The News World
Novoye Russkoye Slovo
Nowy-Dziennik
The Peimer News
Il Progresso Italo-Americano
Queens Evening News
Staten Island Advance
Svoboda Ukrainian Daily
United Journal
The Wall Street Journal
Women's Wear Daily
World Journal
Yiddish Zeitung

Subchapter M: Employment Agencies

§ 5-241 Records.

It shall be the duty of each licensed agency to keep its financial records on a monthly or quarterly basis and such records shall be brought up to date not later than thirty(30) days after the expiration of such period. All such records shall be kept at the principal place of business for a period of three (3) years and shall be made available for inspection during normal business hours to the Commissioner of Consumer Affairs of the City of New York, or his duly authorized representatives.

§ 5-242 Applications for License – Corporation.

(a) A corporate applicant for a license shall list on the original application, or a renewal application, the names and addresses of all its officers and all stockholders holding ten percent (10%) or more of the stock of said corporation. A true and certified copy of the minutes electing such officers shall be attached to the application.

(b) The licensee shall notify the Department of Consumer Affairs within thirty (30) days in writing of any change of its officers or principal stockholders. In the event of a change of officers a true and certified copy of the minutes shall be attached to such notification.

§ 5-243 Trade Name and Partnership Certificates.

(a) If the applicant conducts business under a trade name or if the applicant is a partnership, then the application for a license must 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.

(b) Such trade name shall not be similar or identical to that of any existing licensed agency.

§ 5-244 Fingerprinting.

(a) Every applicant for a license, if he is a natural person, shall be fingerprinted in the office of the Department and the fingerprints shall be filed with and made part of the original application.

(b) If the applicant is a partnership each member thereof shall be fingerprinted and the fingerprints shall be filed with and made a part of the original application. In the event of a change in the members of a partnership, each new member shall appear at the office of the Department within thirty (30) days after such change, be fingerprinted, and the fingerprints shall be filed with and made a part of the application.

(c) If the applicant is a corporation, all the officers and all stockholders holding ten percent (10%) or more of the stock of the corporation shall be fingerprinted, and the fingerprints shall be filed with and made part of the original application. In the event of any change of officers or stockholders of any corporate licensee, such new officers or stockholders shall appear at the office of the Department within thirty (30) days after such change, be fingerprinted, and the fingerprints shall be filed and be made part of the licensee's application.

(d) Whenever an applicant for a license does not have the required two years' experience, then the manager so designated shall be fingerprinted and the fingerprints shall be filed with and made a part of the original application.

§ 5-245 Premises.

(a) An agency may share premises, provided that the sharing is with an unrelated entity or with an entity permitted by New York General Business Law § 187(8). The agency shall not directly or indirectly suggest to an applicant that he or she purchase the services or products of the entity sharing the premises. For purposes of this section, "unrelated" shall mean that no exchange of the proceeds or sharing of profits in any form takes place between the agency and the entity, and that they do not have any officers, directors, partners, shareholders, principals, managers, executives, administrators, salespersons, or job-placement counselors in common.

(b) Every room of an employment agency shall be properly and adequately lighted and ventilated.

(c) The premises of every licensed agency shall be kept in a suitable and sanitary condition.

(d) Every employment agency shall be provided with running water and suitable and adequate washing facilities. Where both males and females are

employed or dealt with in such agency, separate facilities shall be provided for each sex.

§ 5-246 Referral Cards.

(a) Whenever a licensed agency refers an applicant for a position to an employer where it reasonably knows or should have known that a labor dispute is in progress, then it shall be the duty of the licensee to deliver to the applicant a statement in large and bold lettering, to the effect that the employees in such place of employment are engaged or involved in a labor dispute.

(b) Whenever a licensed agency shall refer an applicant for employment to an employer who has agreed to pay to the agency the fee for the employee, or where the agency has agreed not to charge said applicant a fee for such referral, then the referral card shall clearly set forth the terms under which the employer has agreed to pay the fee for the applicant or the terms under which the applicant shall not be required to pay the fee.

§ 5-247 Recruitment of Domestic or Household Employees from Without the State.

(a) No employment agency shall recruit domestic or household employees outside the State of New York as provided in § 184 of the General Business Law without notifying the Commissioner of Consumer Affairs of the City of New York in writing.

(b) Every employment agency engaged in such recruitment shall keep on file in its principal place of business for a period of three (3) years a written record indicating or setting forth the name and address of the premises where such applicant is lodged and a receipt, signed by the applicant, setting forth the number of meals and the date and place where such meals were served to the applicant.

§ 5-248 Prohibited Practices.

(a) No employment agency shall discriminate against any individual because of his age, race, creed, color, national origin, religion, sexual orientation, or sex, in receiving, classifying, disposing or otherwise acting upon applications for its services, in referring an applicant or applicants to an employer or employers or with respect to any guidance, training or apprenticeship program.

(b) No employment agency shall:

(1) print or circulate or cause to be printed or circulated any statement, advertisement or publication, or

(2) use any form of application for employment, or

(3) use any business name, trade name or display name, or

(4) make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, religion, sexual orientation, or sex, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(c) No employment agency engaged in securing or obtaining positions for applicants in the modeling field shall directly or indirectly refer any applicant to a particular school or course for modeling, nor induce, suggest, or encourage choice of such school or course.

(Amended City Record 2/27/2019, eff. 3/29/2019)

§ 5-249 Definitions of GBL § 171 Terms.

As used in § 171 of GBL Art. 11, the following terms shall have the meanings indicated:

Applicant. "Applicant" means a person seeking employment.

Employment agency.

(1) "Employment agency" shall include all persons who, for a fee, render vocational guidance or counseling services, and who directly or indirectly represent, by any means, that:

(i) they obtain or attempt to obtain employment for an applicant; or

(ii) they will or may arrange interviews with employers for an applicant; or

(iii) they have or may make contacts with employers which may improve an applicant's chances to obtain employment; or

(iv) they have knowledge of job openings or positions which is not available to the public; or

(v) they have knowledge of job openings or positions which cannot be obtained with reasonable effort from other sources; or

(vi) they maintain or sell a list or lists of job openings or positions unless all of the information contained in the list or lists appears in, and is part of, a newspaper or other publication in general circulation, and this fact is disclosed to consumers.

(2) "Employment agency" also shall include all persons who, for a fee, render vocational guidance or counseling services, and who directly or indirectly represent, by any means, that:

(i) they provide information about job search techniques or job search strategies; or

(ii) they assist an applicant in any attempt to present to employers the availability or qualifications, or both, of the applicant for a position or class of positions. Such representations include, but are not limited to, representations that they "market" or "promote" applicants.

Person. "Person" means any individual, company, society, association, corporation, manager, contractor, subcontractor, partnership, bureau, agency, service, office, or the agent or employee of the foregoing.

Vocational guidance or counseling services. "Vocational guidance or counseling services" means services which consist of one or more oral presentations and which:

(1) provide information concerning the qualifications generally required for one or more positions or class of positions; or

(2) assess, or attempt to assess, the suitability of a person seeking employment for one or more positions or class of positions; or

(3) provide information concerning the availability of one or more positions or class of positions.

§ 5-250 Display of Sign.

(a) Every licensed employment agency must post conspicuously at his or her place of business a sign, at least 12 inches by 18 inches in dimension with letters at least 1-inch high, which includes the name that appears on his or her license(s), the license number(s), and instructions on contacting the Department to file a complaint.

(b) Every licensed employment agency must post conspicuously in the main room of his or her place of business a sign, at least 12 inches by 18 inches in dimension, containing sections one hundred seventy-eight, one hundred eighty-one, one hundred eighty-five, and one hundred eighty-six, of Article 11 of the general business law. The sign must be posted in all languages in which the employment agency does business, provided the commissioner has made signs available in such language(s).

(c) Every licensed employment agency must post conspicuously in the main room of his or her place of business a sign, at least 8.5 inches by 11 inches in dimension, containing the rights of job seekers. The sign must be posted in all languages in which the employment agency does business, provided the commissioner has made signs available in such language(s).

(d) For the purposes of this section, "main room" means the main reception or waiting area or, where no reception or waiting area exists, the main entrance to the agency.

(Amended City Record 2/27/2019, eff. 3/29/2019)

§ 5-251 Display of License.

Every licensee must post conspicuously his or her license at the licensee's place of business. A licensee may post a copy of the license at the licensee's place of business only if the original is available at such place of business for inspection by any person.

§ 5-252 Notice of Hearing and Subpoena Duces Tecum.

A licensee must appear in person at the Department to answer a notice of hearing or a subpoena duces tecum served upon that licensee. If the licensee is an individual, he or she must appear; if a partnership, one of its general partners must appear; and if a corporation, one of its officers must appear. A notice of hearing or subpoena duces tecum may be served by ordinary mail addressed to the licensee's place of business. They may also be served by ordinary mail addressed to the residence of an individual licensee; the residence of a general partner of a partnership licensee; or the residence of an officer or principal stockholder of a corporate licensee.

§ 5-253 Change of Address.

A licensee shall notify the Department in writing of any change of address within 10 days of the change. This requirement applies to the address of the licensed business, and to the resident addresses of: individual licensees; all partners of partnership licensees; and the officers and principal stockholders of corporate licensees.

§ 5-254 Judgments.

A licensee or license applicant must satisfy any outstanding judgment against him or her that has been obtained by a consumer and that relates to activities for which a license is required:

- (a) within thirty (30) days from the date of entry of the judgment; or
- (b) if the judgment has been stayed or appealed, within thirty (30) days from the date the stay is lifted or the appeal decided; or
- (c) according to a payment schedule the parties agree upon.

§ 5-255 Response to Consumer Complaints.

A licensee or license applicant must respond in writing to the Department about any consumer complaint sent to the licensee or applicant by the Department. The response must be made within 20 days of the date the complaint is sent to the licensee or applicant and must set forth the licensee's or applicant's position regarding the transaction which is the subject of the complaint, including the facts which the licensee or applicant believes justify its position. The licensee or applicant must respond to subsequent communications from the Department concerning the complaint within 10 days after receiving a communication.

§ 5-256 Proof of Surety Bond.

No license or renewal shall be issued unless the licensee or applicant submits proof that every bond required by the Department for the license is in effect and does not expire prior to the end of the licensing period. Except where otherwise provided, all such bonds must allow any person aggrieved by the bondholder's breach of the conditions of the bond to proceed against the bond.

§ 5-257 Lost or Mutilated Licenses.

(a) *Lost license.* A licensee shall immediately report, in an affidavit, the loss of a license issued to him or her by the Department, requesting the issuance of a new license. Replacement licenses are issued at the discretion of the Department.

(b) *Mutilated license.* Should a license issued by the Department to any licensee become mutilated or otherwise illegible, the holder of the license shall promptly surrender it to the Department and request the issuance of a new license. The request shall be made upon a form provided by the Department.

(c) *Fee.* A fee of fifteen dollars (\$15) shall be charged for the issuance of a replacement license. This fee shall be paid when the affidavit for a lost license is filed or when a mutilated or otherwise illegible license is surrendered and a request for the issuance of a new license is filed. This fee will be refunded should the Department decide not to issue the replacement license.

§ 5-258 Late Renewal Fee.

Any licensee who files for a license renewal more than one (1) month, but less than three (3) months, after the expiration date of the license must pay to the Department, in addition to any other fees or penalties provided by law, the sum of \$20 or 20 percent of the license fee, whichever is greater. Any licensee who files for a license renewal more than three (3) months after the expiration date of the license must pay to the Department, in addition to any other fees or penalties provided by law, the sum of \$50 or 30 percent of the license fee, whichever is greater.

§ 5-259 Statement of Terms and Conditions.

(a) All employment agencies must provide to each applicant a document accompanying each contract entitled "Terms and Conditions," except when offering an applicant a contract for Class "C" theatrical employment.

(b) Each "Terms and Conditions" document provided to an applicant must conform to the template made available by the commissioner.

(c) The "Terms and Conditions" document must be provided to each applicant in the language in which their contract was negotiated, provided the commissioner has made a template available in such language.

[\[Click here to open a PDF copy of the terms and conditions form.\]](#)

(Added City Record 2/27/2019, eff. 3/29/2019)

Subchapter N: Immigration Consultants

§ 5-260 Location and Availability of Records.

All records required to be retained shall be kept at the provider's principal place of business and shall be made available for inspection during normal business hours to the Commissioner or his or her duly authorized representative.

§ 5-261 Requirements for Written Agreements.

The statements required to be included in written agreements pursuant to subdivisions one through seven and nine through twelve of § 20-777 of the New York City Administrative Code shall all be included together in a box that is set off from the rest of the text of the written agreement. The text of the required statements shall be in at least twelve (12) point font. The box containing the required statements shall appear immediately above the place for the consumer's signature.

(Amended City Record 8/7/2018, eff. 9/6/2018)

§ 5-262 Completing Form Preparation Declaration.

Every immigration assistance service provider shall complete and sign the form preparation declaration contained on any form that was directly or indirectly prepared by such provider as part of the service for which the consumer is charged a fee under the written agreement required by § 20-777.

(Amended City Record 8/7/2018, eff. 9/6/2018)

§ 5-263 Exemption Obtained by Fraud or Misrepresentation.

Any person or organization that obtained by fraud or misrepresentation any status set forth in § 20-775(b)(1) - (7) of the New York City Administrative Code, which otherwise would have entitled such person or organization to an exemption from regulation as a provider of immigration assistance services pursuant to Subchapter 14-a of Chapter 5 of Title 20 of the New York City Administrative Code, shall be deemed to have been a provider of immigration services and never exempt from such regulation.

(Amended City Record 8/7/2018, eff. 9/6/2018)

§ 5-264 Disclosure of Surety Maintained by Provider.

(a) Every immigration assistance service provider shall post a sign that shall be not less than eleven (11) inches by seventeen (17) inches in dimension stating that the provider is by law required to maintain in full force and effect, for the entire period during which the provider provides immigration assistance service and for one year after the provider ceases to do business as an immigration assistance service provider, a surety bond, contract of indemnity, or irrevocable letter of credit, payable to the people of the City of New York, in the principal amount of \$50,000.00. The sign must also include the name, address and telephone number where a claim against such surety bond, contract of indemnity, or irrevocable letter of credit is required to be filed. Such sign shall be conspicuously displayed in the area where it will be clearly visible to consumers entering and leaving the premises.

(b) Every immigration assistance service provider shall also furnish to each consumer, upon signing a contract, the same information required to be posted on such sign. The information shall be furnished to each consumer on a separate sheet of paper in at least twelve (12) point bold faced font and in a color that contrasts sharply with the color of the paper.

(Amended City Record 8/7/2018, eff. 9/6/2018)

Subchapter O: Tenant Screening Report Signs

§ 5-265 Requirements Concerning the Posting of Signs About Tenant Screening Reports.

(a) The sign required to be posted pursuant to § 20-809 of the Administrative Code of the City of New York at any location at which the principal purpose is to conduct business transactions pertaining to the rental of residential real estate properties shall include text printed in the specified size type and shall contain the required information in the order listed below, except that italicized text included below is not part of the text for the sign:

(1) The words "NOTICE ABOUT TENANT SCREENING REPORTS" shall be printed at the top of the sign in one and one half-inch high capital letters.

(2) If application information is or may be used to screen tenants through a report from a consumer reporting agency, the sign shall state in 24-point type as follows: "Tenant screening reports from consumer reporting agencies are sometimes used to assist landlords in making rental decisions. In regard to such reports (Check the applicable box):

We do not use such reports.

We may use such reports by contacting the following:

- (Insert name and address of each consumer reporting agency that may be contacted, and identify any that are a nationwide specialty consumer reporting agency).

- (Use additional lines for each listed agency).

"The law requires us to notify you if we do not lease or rent to you based on information in that report. You also have the right to dispute the accuracy of the information in the report directly with the reporting agency and to obtain a free report from such agency if we do not lease or rent to you based on such report.

"You also are entitled to receive one free report every 12 months from any nationwide specialty consumer reporting agency used by us, as well as a free credit report every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian and TransUnion. You can request this free credit report through the website www.annualcreditreport.com. You may dispute the accuracy of any information about you that is contained in such report directly with the credit reporting agency."

(b) The color of the text of the notice required in paragraph (1) of subdivision (a) shall contrast sharply with the color of the remaining text, and the colors of the printed text shall contrast sharply with the background color of the sign.

(c) All the required information shall be included on one sign that shall be posted at the location at a place where it is conspicuously visible to a consumer who is seated while the transaction is conducted at such location.

Subchapter P: Pregnancy Services Centers

§ 5-266. Definitions.

As used in this chapter, the following terms have the following meanings:

Directly provide. The term "directly provide" means that the licensed medical provider provides the service.

Directly supervise. The term "directly supervise" means that the licensed medical provider is on site and directly overseeing the provision of the service from beginning to end.

Services. The term "services" means abortion, emergency contraception, obstetric ultrasounds, obstetric sonograms, prenatal care, pregnancy testing, pregnancy diagnosis, and other medical and/or pharmaceutical services.

Social media site or social network site. The term "social media site" or "social network site" means a form of electronic communication, such as a website for social networking or microblogging, which allows users to interact or through which users create online communities to share information, ideas, personal messages, and other content, and includes, but is not limited to, Facebook, Twitter, YouTube, Flickr, LinkedIn, Tumblr and Myspace.

(Added City Record 3/28/2016, eff. 5/27/2016)

§ 5-267. Exemption.

A pregnancy services center shall not include a facility:

(a) that is licensed by the state of New York or the United States government to provide medical or pharmaceutical services; or

(b) where a licensed medical provider is present to directly provide or directly supervise the provision of all services defined in 6 RCNY § 5-266 that are provided at the facility.

(Added City Record 3/28/2016, eff. 5/27/2016)

§ 5-268. Display of Sign for Required Disclosure.

(a) Every pregnancy services center must display at its facility, including a mobile facility, a sign provided by the Department stating in English and Spanish: "This facility does not have a licensed medical provider on site to provide or supervise all services." The Department will provide both signs on its website for downloading by pregnancy services centers. The sign will measure eleven (11) inches by seventeen (17) inches and the lettering will be one inch high.

(b) Every pregnancy services center must post the sign at every public entrance. If the pregnancy services center is located in an office building or other structure containing two or more independent units, the sign must be posted at each entrance used exclusively for entry to the pregnancy services center. The sign must be: (1) posted on the outside of the entrance door and so that the distance from the top of the sign to the floor is between sixty-six (66) and seventy (70) inches and the distance between the frame of the door and the closest edge of the sign is not more than twelve (12) inches; (2) clearly and conspicuously visible to the client as she or he enters the pregnancy services center; and (3) laminated or protected by a clear sheeting or other suitable material so that the text will not be destroyed, soiled, distorted, or rendered illegible.

(c) Every pregnancy services center must post at least one sign in every area where clients wait to receive services. If the waiting area contains a reception desk, the sign must be posted on the reception desk or on a wall at a location not greater than 12 inches from the reception desk. If the sign is posted on a wall, it must be posted so that the distance from the top of the sign to the floor is between sixty-six (66) and seventy (70) inches.

(Added City Record 3/28/2016, eff. 5/27/2016)

§ 5-269. Disclosures in Advertising.

(a) "Advertisement promoting the services of a pregnancy services center" includes all promotional materials, statements, visual descriptions, or other visual representations of any kind disseminated in print or electronically, including, but not limited to, mailings, postcards, signs, business cards, flyers, hand-outs, brochures, banners, billboards, subway or bus signs, window signs, store-front signs, newspaper print advertisements and listings, telephone directory listings, television advertisements, internet advertisements, social media or social network sites and radio advertisements. "Advertisement promoting the services of a pregnancy services center" does not include communications or statements made by a center in the course of its operations that do not promote the center's services to clients or the general public, and that are directed exclusively to the center's non-client directors, employees, past financial donors, and interns.

(b) Every advertisement promoting the services of a pregnancy services center must include in English and Spanish the statement: "This facility does not have a licensed medical provider on site to provide or supervise all services." The lettering of such statements in printed materials must be clear, legible, and in the same color and darkness, and in a type size at least one-third as high and one-third as broad, as the largest print in the advertisement. The lettering of such statement in television and internet advertisements must be clear and legible and in close proximity to the description of services provided at the pregnancy services center. The lettering of such statement on business cards may be printed on the back of the cards.

(c) Every pregnancy services center must also post the statement provided in Subsection (b) of this Section on its website and social media or social network sites. The lettering of such statement must be clear, legible, in the same color and darkness, and in a type size at least one-third as high and one-third as broad, as the largest print on the website or on the social media or social network site. The statement must be posted on every page of the website and social media or social network site. Where a page of the website or social media or social network site contains the description of services provided by such pregnancy services center, the statement must also be contained on that page, in close proximity to the services description.

(d) In addition to the disclosure requirements provided in subsection (c), the statement provided in subsection (b) must be included in the text of each post made on a social media or social network site. In the event a social media or social network site, such as Twitter, limits the number of characters that may be used in a post, the statement may be attached as a photo image to each post rather than included in the text of each post. Where the statement is included in a photo image, the lettering of such statement shall be consistent with the requirements described in subsection (c). Where a post contains the description of services provided by such pregnancy services center, the statement must also be in close proximity to the services description. Each post that does not comply with this requirement shall constitute a single violation, except that for the purpose of imposing a sealing order pursuant to section 20-818(b)(1) of the administrative code, each day of noncompliance shall be treated as a separate occasion.

(Added City Record 3/28/2016, eff. 5/27/2016)

§ 5-270. Oral Disclosure.

Upon a client or prospective client request for an abortion, emergency contraception and/or prenatal care service, a pregnancy services center shall orally disclose in English and Spanish the statement: "This facility does not have a licensed medical provider on site to provide or supervise all services."

(Added City Record 3/28/2016, eff. 5/27/2016)

§ 5-271. Evidence.

(a) It shall be prima facie evidence that a facility has the appearance of a licensed medical facility if it has two or more of the factors listed in subparagraphs (a) through (f) of Title 20, Subchapter 17, Section 20-815(g)(2) of the New York City Administrative Code.

(b) A facility's distribution of a pregnancy test kit shall not, by itself, be sufficient to establish that it has the "appearance of a licensed medical facility," provided that the test is self-administered, self-diagnosed, and self-interpreted. Notwithstanding, a facility's distribution of a pregnancy test kit – even if the pregnancy test kit was exclusively self-administered, self-interpreted, and self-diagnosed – may be relied upon, in combination with another legally

permissible factor, to establish the "appearance of a licensed medical facility."

(Added City Record 3/28/2016, eff. 5/27/2016)

Subchapter Q: Bail Bond Agents

§ 5-272. Definitions.

As used in this chapter, the following terms have the following meanings:

Bail bond agent. The term "bail bond agent" has the same definition as that term is defined in Section 20-830 of the Administrative Code.

Designated citywide language. The term "designated citywide language" has the same definition as that term is defined in Section 20-830 of the Administrative Code.

(Added City Record 4/11/2019, eff. 5/11/2019)

§ 5-273. Disclosures.

(a) To comply with Section 20-831(b) of the Administrative Code, a bail bond agent must post in a conspicuous manner at its business and where transactions are executed a sign, produced and made available by the Department, no less than 8.5 inches by 11 inches in dimension that contains the following information:

- (1) The name of the bail bond agent as registered with the New York State Department of Financial Services;
- (2) The New York State Department of Financial Services license number of the bail bond agent;
- (3) All addresses and phone numbers registered under the license; and
- (4) The name of any sublicensee registered under the license.

(b) To comply with Section 20-831(c) of the Administrative Code, before entering into a contract with a consumer, a bail bond agent must produce and distribute to every consumer a flier no less than 8.5 inches by 11 inches in dimension, containing the information described in Subdivision (a) of this section.

(c) To comply with Section 20-831(c) of the Administrative Code, before entering into a contract with a consumer, a bail bond agent must produce and distribute to every consumer, the consumer bill of rights shown below on paper no less than 8.5 by 11 inches in dimension. The consumer must sign and date a copy of the consumer bill of rights produced and distributed by the bail bond agent. The bail bond agent must produce the consumer bill of rights in English and in a designated citywide language if the consumer is a limited English proficient individual who speaks a designated citywide language and the bail bond agent knows or reasonably should know that the consumer is such an individual.

Bail Bond Consumer Bill of Rights

By law, bail bond agents must give you a copy of this document *before* you sign a contract. It outlines your rights, how the process works, and maximum fees that a bail bond agent can charge. Take the time to read and understand it before you sign it. The bail bond agent must give you a copy of any signed document, including a contract, to keep.

Know Your Rights

It's illegal for a bail bond agent to:

- Charge a fee (also called a premium) for the bail bond that is more than the maximum fee allowed by law. See the Maximum Fees Chart. The fees charged by the bail bond agent are not refundable, which means you will not get back your money.
- Charge extra for services if the charges, combined with other fees, exceed the maximum fees allowed. Services might have names like "courier fee" or "check-in fee."
- Require someone to pay more fees for a bail bond if the maximum fees have been paid already.

You have the right to:

- Know the name and license number of the bail bond agent and receive this information in writing.
- Negotiate the contract with the bail bond agent.
- Take documents off the premises to review them before signing them.
- Get a contract that tells you when the bail bond agent will return your collateral and under what conditions. Collateral can be cash, property, such as the deed to a home, or something with value that the bail bond agent keeps until a case is over. Collateral is refundable, so you get it back when the case is over. However, the bail bond agent may be able to keep the collateral if the defendant violates the court's orders; for example, if the defendant does not show up for a scheduled court appearance.
- Get back the collateral you provided if the judge decides that the defendant followed all of the court's directions. *It does not matter if the defendant is convicted or acquitted.*

How the Process Works

Someone close to you is arrested and charged with a crime.

The court sets bail. If you cannot pay cash bail directly to the court, you can go to a bail bond agent to arrange a bail bond. Know your rights when using a bail bond agent! See Know Your Rights.

You pay the bail bond agent, possibly provide collateral, and sign a contract. The bail bond agent secures the bail bond.

The defendant is released from jail.

While the case is open, the defendant must obey all court orders and attend all scheduled court appearances. If not, the court may revoke bail, which means the bond is forfeited and you lose your collateral.

If the judge "exonerates" the bond (either at the end of the case or while the case is still open), then the bail bond agent must return the collateral. The court has exoneration paperwork, often called the "disposition," which says whether the bail was exonerated, and you can take this to the bail bond agent

as proof.

The bail bond agent either gives you the collateral immediately or mails it to you.

Maximum Fees Chart

The formula to determine the maximum fees that a bail bond agent can charge for a bail bond is:

- If the bond is \$200 or less, the maximum fee is \$10.
- If the bond is more than \$200, the maximum fee is:
 - o 10% of the amount up to \$3,000
 - o An additional 8% for any amount between \$3,000 and \$10,000
 - o An additional 6% for any amount above \$10,000

The maximum fees are set based on the size of the bond, not the number of people signing for it. If the maximum fee for a bond is \$100 and two or more people sign for the bond, the bail bond agent may still only charge \$100 total.

Bail Bond Amount	Calculation of Fees	Maximum Fees
\$1 to \$200	\$10	\$10
\$1,000	10% of \$1,000	\$100
\$5,000	10% of \$3,000 + 8% of \$2,000	\$460
\$7,500	10% of \$3,000 + 8% of \$4,500	\$660
\$10,000	10% of \$3,000 + 8% of \$7,000	\$860
\$20,000	10% of \$3,000 + 8% of \$7,000 + 6% of \$10,000	\$1,460
\$50,000	10% of \$3,000 + 8% of \$7,000 + 6% of \$40,000	\$3,260

An online tool to calculate maximum fees is available at: <https://nybondcalculator.org/>

What to Do if a Bail Bond Agent Breaks the Law

To report an unlicensed bail bond agent, or a bail bond agent charging illegal fees or failing to return or refund collateral, contact the New York State Department of Financial Services (DFS) at (800) 342-3736 or dfs.ny.gov.

To report other illegal business practices, contact the New York City Department of Consumer Affairs (DCA) by calling 311 or visiting nyc.gov/dca. Illegal business practices may include refusing to provide copies of documents; failing to provide a complete receipt or providing an illegal receipt; or false advertising.

For Consumer to Complete:

The bail bond agent must give you this document in your preferred language if it is one of the six designated citywide languages (Spanish, Bengali, Chinese, Haitian Creole, Korean, Russian).

Signature Date

Print Name

(d) To comply with Section 20-832 of the Administrative Code, a bail bond agent must post a copy of the sign shown below on a paper no less than 17 inches by 28 inches in a conspicuous manner at the location where transactions are executed.

Bail Bond Fees

The formula to determine the maximum fees that a bail bond agent can charge for a bail bond is:

- If the bond is \$200 or less, the maximum fee is \$10.
- If the bond is more than \$200, the maximum fee is:
 - o 10% of the amount up to \$3,000
 - o An additional 8% for any amount between \$3,000 and \$10,000
 - o An additional 6% for any amount above \$10,000

The maximum fees are set based on the size of the bond, not the number of people signing for it. If the maximum fee for a bond is \$100 and two or more people sign for the bond, the bail bond agent may still only charge \$100 total.

Bail Bond Amount	Calculation of Fees	Maximum Fees
------------------	---------------------	--------------

Bail Bond Amount	Calculation of Fees	Maximum Fees
\$1 to \$200	\$10	\$10
\$1,000	10% of \$1,000	\$100
\$5,000	10% of \$3,000 + 8% of \$2,000	\$460
\$7,500	10% of \$3,000 + 8% of \$4,500	\$660
\$10,000	10% of \$3,000 + 8% of \$7,000	\$860
\$20,000	10% of \$3,000 + 8% of \$7,000 + 6% of \$10,000	\$1,460
\$50,000	10% of \$3,000 + 8% of \$7,000 + 6% of \$40,000	\$3,260

An online tool to calculate maximum fees is available at: <https://nybondcalculator.org/>

Consumer Bill of Rights

You are entitled to receive a Consumer Bill of Rights and you must sign it before entering into a contract with the bail bond agent.

File a Complaint

If you think the bail bond agent broke the law by charging excessive fees, you should file a complaint.

To report an unlicensed bail bond agent, or a bail bond agent charging illegal fees or failing to return or refund collateral, contact the New York State Department of Financial Services (DFS) at (800) 342-3736 or dfs.ny.gov.

To report other illegal business practices, contact the New York City Department of Consumer Affairs (DCA) by calling 311 or visiting nyc.gov/dca. Illegal business practices may include refusing to provide copies of documents; failing to provide a complete receipt or providing an illegal receipt; or false advertising.

(Added City Record 4/11/2019, eff. 5/11/2019)

Subchapter R: Cashless Establishments

§ 5-280. Presumption of a Cashless Establishment.

(a) There is a presumption that a food store or retail establishment is in violation of subdivision b of section 20-840 of the Administrative Code of the City of New York if such food store or retail establishment displays a sign representing that it refuses to accept payment in cash from consumers, or if any employee or agent of such food store or retail establishment represents that it refuses to accept payment in cash from consumers.

(b) There is a presumption that a food store or retail establishment is in violation of subdivision c of section 20-840 of the Administrative Code of the City of New York if such food store or retail establishment displays a sign representing that it charges 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 cashless transaction, or if any employee or agent of such food store or retail establishment represents that it charges 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 cashless transaction.

(Added City Record 9/8/2020, eff. 10/8/2020)