

SI 2025-200, SI 2025-201

TO: BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee recommends the adoption of "A LOCAL LAW amending the County of Westchester Consumer Protection Code."

Your Committee is advised that the Consumer Protection Code (the "Code") was enacted in 1975, together with subsequent amendments, to establish an Office of Consumer Protection for the protection of all consumers in the County of Westchester, to establish just and uniform enforcement procedures, and to provide a method of administering all consumer complaints. Since that time, the Code has protected Westchester County residents from merchants engaging in deceptive or unconscionable trade practices, as defined by the Code, to ensure a level playing field between merchants and consumers.

Your Committee is further advised, for example, the Code prohibits a merchant from using false or misleading statements of fact to encourage a consumer to do business with that merchant, mandates clearly stamped or tagged pricing and expiration dates for perishable food, requires the posting of a merchant's refund or exchange policy, requires provision of an easily accessible scale for pre-packaged foods and produce, provides for a cap on charges for towing a vehicle less than a mile, as well as other protections regarding consumer products and services. The Code also prohibits unconscionable trade practices in regards to the sale, lease, or rental of goods, products, or services, which seeks to take unfair advantage of a consumer.

Your Committee is informed that, in the twenty-first century, law-breakers have become more innovative in the ways in which they seek to take advantage of consumers. In response, the federal government in 2010, enacted a law prohibiting abusive conduct, in addition to deceptive practices, in the wake of the financial crises in 2007-08. Moreover, last year, New York State Governor Kathy Hochul unveiled her proposal to strengthen protections for consumers against unfair and abusive business practices, while noting that New York remains one of only eight states in the nation whose law fails to protect against such practices. While the County prohibits deceptive and unfair practices in the consumer industry, we believe that it is necessary for our local law to go further and also ban abusive practices to keep current with federal and state authorities.

You Committee is further informed that, according to Title 12, Section 5531 of the Federal Consumer Financial Protection Act, abusive practices concern situations where a merchant:

(1) materially interferes with the ability of a consumer to understand a term of condition of a product; or (2) takes unreasonable advantage of (i) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service, (ii) the inability of the consumer to protect their interests in selecting or using a consumer product or services, or (iii) the reasonable reliance by the consumer on a merchant to act in the interest of the consumer.

According to guidance issued by the Federal Consumer Financial Agency, materially interfering may include actions that obscure, withhold, de-emphasize, render confusing, or hide information relevant to the ability of the consumer to understand terms and conditions. Evaluating whether a merchant is taking unreasonable advantage of a consumer involves an evaluation of the facts and circumstances to determine whether a particular transaction was unreasonable under the circumstances—in other words, a merchant should not receive a windfall due to a gap in understanding of the consumer, unequal bargaining power, or a consumer's reliance on a merchant to act in the consumer's best interest.

Your Committee notes that interference can take numerous forms, such as buried disclosures, physical or digital interference, overshadowing, and various other means of manipulating consumers' understanding. Taking unreasonable advantage of a consumer, for example, occurs when there are gaps in understanding which affect the consumer's decision in regards to the product or service, unequal bargaining power where a consumer lacks the practical ability to switch providers, seek more favorable terms, or make other decisions to protect their interests. In addition, interference may also include a consumer's reasonable reliance on a merchant to make a decision for them or advise them on how to make a decision where such merchant has communicated to the public that they will act in their best interest.

Your Committee further notes that the proposed amendments to the Code would close the gap between the deceptive acts and practices, against which the Code already protects, and abusive and unfair acts and practices referenced above. The proposed amendments would seek to ensure that there is no gap in understanding between a merchant and consumer as to the material terms or conditions of a product or service, that a consumer can adequately protect their own interest despite unequal bargaining power between a merchant and a consumer, and that a consumer may reasonably rely on a merchant who holds themselves out as acting in the best interest of consumers.



Your Committee further notes that the proposed amendments work to update the Code, recognizing the experience gained by the Office in the last several years in regards to enforcement and the changes within the field of consumer protection. For example, the proposed amendments strengthen the Office's ability to enforce the Code, by authorizing the Office to promulgate rules and regulations to streamline the process for enforcement (currently, the Code allows for rules and

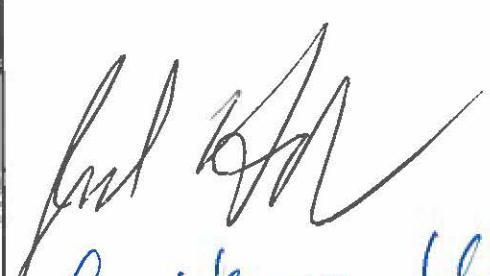


regulations in some areas and not others), raising the minimum and maximum penalties for violations, and closing gaps in regulation—the goal being to deter violations and, alternatively, have the ability to seek redress for consumers. The proposed amendments also modernize the Code’s existing language in recognition of the changes within the consumer protection industry.

Your Committee is advised that the proposed amendments do not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 8, 2025, which is on file with the Clerk of the Board of Legislators.

Your Committee recommends adoption of this Local Law.

Dated: May 19, 2025  
White Plains, New York

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Legislation

COMMITTEE ON

Economic Development

**LOCAL LAW INTRO. NO. 2025**

A LOCAL LAW amending the  
Westchester County Consumer  
Protection Code.

BE IT ENACTED by the County Board of the County of Westchester as follows:

**Section 1.** Chapter 182 of the Laws of Westchester County is hereby amended to read as follows:

**Chapter 182 - CONSUMER PROTECTION**

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**Sec. 182.61. - Powers and duties of the Director and Sealer.**

In addition to any powers and duties set forth in the Administrative Code or the Consumer Code, the Director and Sealer shall have the following powers and duties:

1. To authorize the issuance of subpoenas to compel the attendance of witnesses and require the production of books, records, papers, documents, physical exhibits and other evidence which the Director or Sealer deems relevant in connection with an investigation or hearing. Such subpoena shall be issued in the manner and form approved by the County Attorney;
2. In connection with any investigation, to administer oaths and affirmations, take testimony, examine witnesses, receive evidence and preside over or conduct such investigation;
3. In connection with any hearing before a hearing officer, to prosecute any claim of violation of the Consumer Code at such hearing and to request the assistance of the County Attorney pursuant to Section 158.11 of this Charter in connection therewith;
4. To act upon consumer complaints presented to him or her pursuant to procedures set forth in Chapter 277, Article VIII, of the Administrative Code or recommended by the board; to issue summonses and participate in hearings before the hearing officer;

5. To make such investigations concerning consumer affairs as the Board may direct or as the Director or Sealer may determine pursuant to Chapter 277, Article VIII, of the Administrative Code, including but not limited to the rights of the Director or Sealer, or their duly authorized agents, to enter any retail or commercial establishment for the purpose of making any investigation, examination or inspection that he may deem necessary to carry out the duties of his office, including the enforcement of the provisions of Chapter 863 of the Laws of Westchester County;
6. To request the County Attorney to maintain an action or proceeding in the name of the county in a court of competent jurisdiction to compel compliance with an order of the Director or Sealer or a hearing officer, to enforce a consent decree or agreement pursuant to Section 277.201 of Article VIII of the Administrative Code, and/or to restrain by injunction a violation of the Consumer Code. The foregoing relief shall be in addition to but not in limitation of any other provisions provided herein or in the Administrative Code or the Consumer Code for a penalty or any other punishment for such violation;
7. To negotiate, subject to Chapter 277, Article VIII, of the Administrative Code, the settlement of consumer complaints including consent decrees or agreements;
8. To enforce all the provisions of the Consumer Code, without limiting the power granted hereunder or in Chapter 277, Article VIII, of the Administrative Code, the Director or Sealer may request the County Attorney to file a civil complaint in the name of the county in the court of competent jurisdiction or refer any evidence gathered by the Director or Sealer to the appropriate federal, state or local law enforcement office or agency;
9. To conduct hearings, fix penalties and make other dispositions upon a finding of a Consumer Code violation, or make referrals to other appropriate agencies or officers, as authorized by the Administrative Code;

10. To collect on behalf of the county all penalties imposed by order of the Director or Sealer or a hearing officer upon any person found to have violated any provision of the Consumer Code. The term "person," as used in this chapter, shall include, without limitation any individual firm, association, joint venture, copartnership, group or corporation, or any other legal entity whatsoever;
11. To assist, develop and conduct programs of consumer education and information.
12. To establish administrative rules and procedures to carry out the provisions of this Chapter, Chapter 277, and Chapter 863 in conformity with the provisions thereof.

**Section 2.** Chapter 277 of the Laws of Westchester County is hereby amended to read as follows:

**Sec. 277.151. - Complaints, hearings and appeals.**

1. The Director or Sealer shall have the power at his own initiative or upon direction of the Consumer Policy Board to investigate and issue a summons to any person for violating the Consumer Code or any other local law relating to consumer protection. Such summons in the form of an appearance ticket shall give notice of the alleged violation and shall set forth the time and place of the hearing on such complaints, which shall not be less than eight days following service of the summons. Such hearing shall be held before the Director or Sealer unless the person complained of shall request a hearing before a hearing officer as provided in subdivision of this section. However, the Director or Sealer shall have the right, in his or her discretion, to proceed directly to a hearing before a hearing officer if notice of the Director's or Sealer's intention to do so is given in the summons.

2. The person complained of shall have the right: (1) to subpoena witnesses to attend at any hearing held pursuant to this section using process issued by the Director or Sealer as provided in Section 182.61 of the County Charter; and (2) to request a hearing before a hearing officer. Such hearing officer shall be an attorney or a person with appropriate experience in consumer affairs and appointed by the Director or Sealer from a list of hearing officers previously approved by the board. Such hearing officer shall be compensated at a rate of \$125.00 per hour, not to exceed \$750.00 per day. Notwithstanding the provisions of this section, a hearing on a complaint alleging a violation of Subdivision 1 of Section 863.328 of the Consumer Code shall be held before the Director or Sealer or the designee of the Director or Sealer in accordance with Subdivision 3 of Section 863.328 of the Consumer Code.

3. The Director or Sealer may, where no hearing before a hearing officer is requested, conduct a hearing and, in addition to his or her other powers, including but not limited to the right to commence a criminal proceeding pursuant to Section 277.181 hereof, either dismiss the complaint as not proven by a preponderance of evidence, seek an adjustment or consent agreement or decree, fix a penalty or provide, among other things, for restitution, replacement, repair, cessation of harassment, or disapproved business conduct, upon a finding of a Consumer Code violation; to request the County Attorney to institute appropriate proceedings in a court of competent jurisdiction as provided in Chapters 182 and 277, Article VIII of the Laws of Westchester County; to refer the complaint to a hearing before a hearing officer; or refer the matter to the District Attorney or other proper officer or agency for appropriate action in the Director's or Sealer's discretion.

4. Whenever a hearing is to be held before a hearing officer, such officer shall have the power to dismiss the complaint as not proven by a preponderance of evidence, fix a penalty or provide,

among other things, for restitution, replacement, repair, cessation of harassment, or of disapproved business conduct, upon a finding of violation of the Consumer Code.

5. In any hearing conducted hereunder, the Director, Sealer or hearing officer shall, consistent with the requirements of due process, hear testimony and examine such exhibits as may be offered and received in evidence, but shall not be required to follow strict rules of evidence. At the close of the hearing and after full opportunity to be heard has been afforded all parties, the Director, Sealer or hearing officer shall file a decision with the board setting forth findings and conclusions, as well as the reasons or basis thereof, and an appropriate order. In addition to the requirements of this section, all hearings shall be conducted in accordance with such other rules and regulations as may be recommended by the Consumer Policy Board, as provided in Section 182.31 of the County Charter. The final order of the Director, sealer or hearing officer may be appealed to a court of competent jurisdiction by the commencement of a proceeding within 30 days after service of said order upon the aggrieved party.

6. The provisions of this section shall apply to any proceedings to enforce or compel compliance with the various consumer provisions of the Laws of Westchester County heretofore or hereafter enacted.

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**Sec. 277.171. Enforcement, violations and civil penalties.**

1. The hearing officer may impose for each proven violation of the code or for failure to comply with any order made pursuant thereto a civil penalty not to exceed \$5,000.00~~\$1,000.00~~. Each day that such violation or failure continues shall constitute a separate offense for which a penalty may be assessed. Any person found by the Director or Sealer or the designee of the Director or Sealer to be in violation of subdivision 1 of Section

863.313 of the Consumer Code shall be liable for a civil penalty not to exceed ~~\$5,000.00~~~~\$1,000.00~~ for the first violation; not more than ~~\$10,000~~ \$5,000.00 for the second violation within a five-year period; and not more than ~~\$15,000.00~~ ~~\$10,000.00~~ for the third and all subsequent violations within a ten-year period. Nothing herein contained shall be construed to exempt an offender from any other prosecution or penalty imposed by law. The penalty imposed hereunder and the reasonable costs and expenses attendant to its collection shall be recoverable from the offender in the same civil action brought by the County Attorney in the name of the County of Westchester;

2. The County Attorney in the name of the county may, upon request of the Consumer Policy Board, the Director or the Sealer, in addition to any other action authorized hereunder, maintain an action or proceeding in a court of competent jurisdiction to compel compliance with an order of the Director, Sealer or a hearing officer, to enforce a consent decree or agreement pursuant to Section 277.201 of this Chapter, or to restrain by injunction a violation of the Consumer Code. The foregoing relief shall be in addition to but not in limitation of any other provision of the Laws of Westchester County authorizing a penalty or other punishment for such violation;
3. Failure to comply with a subpoena duly issued as provided in section 182.61 of the County Charter shall be punishable by a civil penalty not to exceed \$500.00.

**Sec. 277.181. Criminal procedures and penalties.**

The Director or Sealer may commence a criminal proceeding for a violation of the Consumer Code by filing a criminal complaint in a court of competent jurisdiction. Conviction for violation of any provision of the Consumer Code in the case of a first offense shall constitute a violation punishable by a fine of not less than ~~\$100.00~~ ~~\$25.00~~ and not more than ~~\$5,000.00~~~~\$1,000.00~~. Conviction for violation of any provision of the Consumer Code committed by a person (including,

without limitation any individual, firm, association, joint venture, partnership, group or corporation or any other legal entity whatsoever) previously convicted of a violation of said code shall constitute a violation punishable by a fine of not less than \$250.00 ~~\$400.00~~ nor more than \$10,000 ~~\$2,500.00~~ or by imprisonment for a term not to exceed 15 days, or by both fine and imprisonment.

**Section 3.** Chapter 863 of the Laws of Westchester County is hereby amended to read as follows:

### **Chapter 863 CONSUMER PROTECTION CODE**

#### **ARTICLE I. SHORT TITLE, DEFINITIONS, APPLICATIONS, MISCELLANEOUS**

##### **Sec. 863.01. Short title.**

This Code shall be known as the “County of Westchester Consumer Protection” Code and is also referred to in the laws of Westchester County as “Consumer Protection Code” or “Consumer Code.”

##### **Sec. 863.11. Definitions.**

As used in this code, unless the context otherwise requires, the term:

1. *Consumer goods* means goods sold by retail merchants and which are intended to be used by consumers primarily for personal, household or family purposes, and includes, but is not limited to, furniture, household furnishings, items commonly known as appliances and automobiles.
2. *Consumer services* means services which are primarily for personal, household or family purposes, including home improvement repairs and additions.

3. *Consumer credit and debt* shall include but not be limited to, consumer loans, retail charge accounts, credit cards, home mortgages and retail installment contracts, obligations and agreements.
4. *Consumer* means a purchaser, lessee or borrower or a prospective purchaser, lessee or borrower of consumer goods, services or credit, including a co-obligor or surety or a person for whose use or benefit a consumer acquired or obtains such goods, services or credit.
5. *Merchant* means a seller, lessor, creditor or an agent or employee of any seller, lessor or creditor or any other person who makes available, either directly or indirectly, goods, services or credit to consumers. "Merchant" includes, without limitation, manufacturers, wholesalers and any other person who is responsible for any act or practice prohibited by this code.
6. *Person* shall include without limitation any individual, firm, association, joint venture, co-partnership, group or corporation or any other legal entity or combination of entities whatsoever.
7. *Deceptive trade practices.* Any false, falsely disparaging or misleading oral or written statement, visual description or other representation of any kind made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental or loan of consumer goods or services, or in the extension of consumer credit, or in the collection of consumer debts, which has the capacity, tendency or effect of deceiving or misleading consumers. Deceptive trade practices include but are not limited to:
  - a. Representations that goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or qualities that they do not have; the merchant has a sponsorship, approval, status, affiliation or connection that he does

not have; goods are original or new if they are deteriorated, altered, reconditioned, reclaimed or secondhand; or, goods or services are of a particular standard, quality, grade, style or model, if they are of another;

- b. Disparaging the goods, services or business of another by false or misleading representations of material facts or by failure to state a material fact;
- c. Offering goods or services with intent not to sell them as offered;
- d. Advertising goods or services for sale when a merchant does not have available a sufficient quantity thereof to supply reasonably anticipated public demand except upon compliance with section 863.191 hereof, unless the offer discloses limitations of quantity by stating the specific number of each item offered or, in the case of a bona fide “closeout” sale, the purpose of which is to sell out an existing inventory of non-replaceable goods, by stating the nature and purpose of such sale, together with a statement that quantities are limited;
- e. Making false or misleading representations of fact concerning the reasons for, existence of or amount of price reductions or price in comparison to prices of competitors, the manufacturer’s suggested price, wholesale price, generally accepted price or one’s own price at a past or future time;
- f. Making false or misleading representations of fact or failing to state a material fact concerning the warranties, consumer rights, remedies or obligations involved in a consumer transactions;
- g. Falsely stating that services, replacements or repairs are needed;
- h. Making false or misleading representations of fact, or, except, upon compliance with section 863.191 hereof, failing to state a material fact concerning the existence of,

amount of, or supplying of goods or services at sale of discount prices or at no additional cost;

- i. Representations of the selling price of consumer goods or services in written or printed displays or advertisements which appear on signs placed in windows facing, or otherwise visible from, the outside of the business to which they refer which do not state the unit of measure in written or printed figures which are clearly visible and which occupy, in no case, less than twenty-five (25) percent of the area used to indicate the selling price on such signs;
- j. ~~Failing to disclose on each~~Failing to provide a sales slip, receipt, contract or other memorandum of sales for goods or services that disclose the true full name or names or the legally registered name and legal address under which a merchant transacts business, the service provided, and the total amount charged therefor. All sales slips, receipts, contracts or other memoranda of sales shall be legible and clear to the consumer;
- k. Displaying gasoline prices in a manner which fails to include and make plainly visible to the consumer of the difference, if any, between the price per gallon for payment by cash, debit or credit. For example, a sign which only reveals the price per gallon for a cash payment, but fails to include and make plainly visible the price per gallon for payment by debit or credit when a difference in price exists, shall constitute a deceptive trade practice. However, a sign which does not distinguish between the price per gallon for payment by cash and payment by debit or credit shall not be considered a deceptive trade practice only if the price per gallon is the same regardless of the form of payment.

8. *Unconscionable trade practice.* Any act or practices in connection with the offering for sale, lease, rental or loan of consumer goods or services, or in connection with the extension of any consumer credit, or in the collection of consumer debts which takes unfair advantage of the lack of knowledge, ability, experience or capacity of a consumer, or results in a gross disparity between the value received by a consumer and the price paid to the consumer's detriment or results in gross disparity between the rights and remedies of a consumer and the rights and remedies of the merchant to the consumer's detriment. In determining whether a trade practice is unconscionable, the following factors among others shall be considered:
- a. Knowledge by a merchant who engages in the act or practice that the consumer will not receive reasonably anticipated benefits from the goods or services involved.
  - b. Gross disparity between the price of goods or services and their value measured by the price at which similar goods or services are readily obtained from another merchant.
  - c. The fact that the acts or practices may enable a merchant to take advantage of the inability of a consumer reasonably to protect his interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or other similar factors.
  - d. The degree to which terms of the transaction require consumers to waive legal rights.
  - e. The degree to which terms of the transaction require consumers to jeopardize money or property in addition to the price of goods or services or the amount of credit or debts which are the subject of the transaction.

9. *Abusive trade practice.* An act or practice that materially interferes with the ability of a consumer to understand a term or condition, in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental or loan of consumer goods or services, or in the extension of consumer credit, or in the collection of consumer debts, or takes unreasonable advantage of (a) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (b) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (c) the reasonable reliance by the consumer on a merchant to act in the interests of the consumer.
10. *Unfair trade practice.* An act or practice that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers, in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental or loan of consumer goods or services, or in the extension of consumer credit, or in the collection of consumer debts; and such substantial injury is not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Director or the Sealer may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.
- ~~11.~~ 9. *Sealer.* The Westchester County sealer of Weights and Measures or County Director of Weights and Measures.
- ~~12.~~ 10. *Director.* The Westchester County Director of the Office of Weights and Measures-Consumer Protection.

- 13.11: *Computer-assisted checkout system* means any electronic device, computer system or machine which determines the selling price of a stock-keeping item by interpreting its universal product code, or by use of its price look-up function.
- 14.12: *Department* means the Westchester County Department of Weights and Measures-Consumer Protection.
- 15.13: *Retail store* means a store which sells consumer commodities at retail, which store is not primarily engaged in the sale of food for consumption on the premises. An establishment which sells consumer commodities only to its members shall be deemed to be included within this definition unless the members pay a direct fee to qualify for membership and the establishment is not required to collect sales tax on transactions with members, pursuant to Article 28 of the Tax Law.
- 16.14: *Shelf price* means the tag or sign placed by an authorized person at each point of display of a stock keeping unit, which clearly sets forth the true and actual price of the stock keeping item.
- 17.15: *Retail area* means the area designated in a retail store to display and sell products, provide customer service and checkout. The retail area does not include the storage area, back rooms, stock area, maintenance areas or other locations which are not intended to be accessible to consumers.

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## **ARTICLE II. DECEPTIVE, ~~OR~~ UNCONSCIONABLE, ABUSIVE, OR UNFAIR TRADE PRACTICES**

### **Sec. 863.61. Practices prohibited.**

It shall be a violation for any merchant to engage in any deceptive, ~~or~~ unconscionable, abusive, or unfair trade practices as defined in Article I of this Code.

### **ARTICLE III. LABELING/POSTED PRICES**

#### **Sec. 863.71. Item price marking—Advertised prices.**

1. The selling price shall be clearly stamped, tagged, labeled or otherwise marked in arabic numerals on each item of consumer goods offered for sale within Westchester County unless a waiver is granted pursuant to terms and conditions set forth in § 863.72 below.
2. The provisions of subdivision 1. of this section shall not apply to the following consumer goods provided the selling price and the unit of measure is plainly and clearly displayed in arabic numerals on a sign, clearly designating the particular consumer goods to which it refers, located as close as practicable, and closer than any other sign, to the location at which the goods are displayed:
  - a. Fresh milk.
  - b. Fresh eggs.
  - c. Items such as gum, candy and cigarettes offered for sale in single packages.
  - d. Food sold for consumption on premises.
  - e. Food or other goods sold from vending machines operated by the consumer.
  - f. Fresh produce which is not packaged prior to sale; displayed for sale in bulk; and is either packaged for or by the consumer at the time of sale.
  - g. Nonfood consumer goods which are not packaged prior to sale; displayed for sale in bulk; and are either packaged for or by the consumer at the time of sale.
  - h. Nonfood consumer goods offered for a period of seven days or less on sale in good faith at a price below the price such commodities are usually sold for in the store, provided

that the sale price is clearly indicated to the consumer at both the point of display of such goods and at the point of sale.

- i. Nonfood consumer goods which are subject to uniform, across-the-board price changes in the ordinary course of business, and which are customarily marked in good faith with either an alphabetic or color code referring directly to the corresponding numerical prices displayed on signs; provided, however, that such corresponding price signs are clearly visible to the consumer at both the point of display and at the point of sale of said goods.
3. It shall be a violation of this code:
- a. To stamp, tag, label or otherwise mark any item of consumer goods at a selling price greater than the selling price advertised or displayed for that item.
  - b. To stamp, tag, label or otherwise mark more than one selling price upon an item of consumer goods offered for sale in Westchester County unless the prior selling price is unmistakably deleted or obliterated or is otherwise marked so as to indicate clearly the prior selling price is not the current selling price.
  - c. To sell or offer for sale any consumer goods or services at a greater price than the price displayed or advertised therefor.
  - d. To sell or offer for sale any consumer goods which do not have a selling price marked thereon or which do not have a selling price displayed in conformity with subdivisions 1. or 2. of this section.
  - e. To offer services without a posted selling price at a retail location. All services offered shall have a selling price clearly and conspicuously posted near the point of sale and on any printed or electronic advertisement for said services.

- ef. To add an additional fee to any transaction for consumer goods or services, beyond sales tax, and fail to provide adequate and reasonable notice of said fee during the transaction, including but not limited to the point of sale, price displays, signage and menus, and further, only adding said fee to bill or receipt at end of the transaction shall not be deemed adequate notice.
- g. Any additional fee beyond sales tax, including fees for non-cash transactions must be disclosed within the posted or labeled selling price of any commodity or service to which the surcharge may apply.

**Sec. 863.72. Waiver from Item Price Marking.**

1. Every retail store which uses a computer-assisted checkout system and which would otherwise be required to price mark each item as provided in § 863.71 above may make an application, in writing, to the Department of Weights and Measures - Consumer Protection for a waiver of the item pricing requirement. Retail stores that are required by the law of their local jurisdiction to price mark each item are not qualified to apply for a waiver. A separate application shall be required for each qualified retail store. Each application shall be subject to a non-refundable waiver fee based upon the square footage of the retail area of each store as set according to the following schedule:

| Store's Square Footage of Retail Area | Waiver Fee  |
|---------------------------------------|-------------|
| Under 3,000 square feet               | \$500.00    |
| Between 3,001 and 10,000 square feet  | \$1,000.00  |
| Between 10,001 and 30,000 square feet | \$3,000.00  |
| Between 30,001 and 90,000 square feet | \$5,000.00  |
| Over 90,000 square feet               | \$15,000.00 |

2. Upon receipt of an application and fee as provided in subsection 1 above, the Department shall cause to be conducted a scanner count, location and accuracy inspection of the store for which the application has been submitted. At stores with a retail area in excess of 10,000 square feet, a minimum of 100 stock keeping units shall be checked at inspection. At stores with a retail area of 10,000 square feet or less, a minimum of fifty stock keeping units shall be checked. If the number of stock keeping units found to be in violation does not exceed 2% of those stock keeping units inspected, the Department shall grant to the applicant a one-year revocable waiver from the item pricing requirement set forth in § 863.71 above.
3. In the event that total violations in excess of 2% are discovered in the inspection process, the Department shall not grant a waiver to the applicant. Such a store may, within 10 business days of being notified of the failure, request a second inspection. If the number of stock keeping units found to be in violation during this second inspection does not exceed 2% of those stock keeping units inspected, the Department shall grant to the applicant a one-year revocable waiver for the item pricing requirement.
4. Stores whose waivers are revoked pursuant to subsection 8 or stores which, upon renewal for a waiver, fail the scanner accuracy inspection(s) twice must comply with item pricing as set forth in § 863.71 within 30 days from the final date of failure. Such a store will be prohibited from applying for a new waiver for one year from the date of revocation or second inspection failure.
5. Waivers shall be valid for a period of one year from the date of issuance, at which time the waiver shall expire. Stores must reapply annually for renewal. The waiver fee and inspection shall be required for each annual renewal application, as required for an original waiver application.

6. In the event that the Department is unable to conduct an inspection within 45 days of receipt of a completed application with the appropriate fee, then the Department will issue a temporary waiver pending the completion of the inspection process. The Department shall cause an inspection to be completed as soon as practicable. If, upon completion of an inspection, there is a violation rate not to exceed 2%, then the Department shall issue a permanent waiver with an expiration date of one year from the date of the issuance of the temporary waiver. If, upon completion of an inspection, there is a violation rate in excess of 2%, the temporary waiver shall be immediately revoked. Nevertheless, the store may, within 10 business days of being notified of the failure, request a second inspection. If the number of stock keeping units found to be in violation during this second inspection does not exceed 2% of those stock keeping units inspected, the Department shall grant to the applicant a one year revocable waiver for the item pricing requirement from the date of the issuance of the temporary waiver. If the store does not request a second inspection or if the store fails the second inspection, then the store must comply with the item pricing requirements set forth in § 863.71 above.
7. As a condition of the waiver from item pricing, each store must agree to meet all of the following requirements, and no regular or temporary waiver shall be granted to a store which has not agreed to these requirements in writing:
  - a. In addition to scanners at the point of sale, the store shall make available price check scanners to enable consumers to confirm the price of stock keeping items. These price check scanners shall be in locations convenient to consumers with signs of sufficient sized lettering to identify the units to the consumers. Stores will submit their proposed sign and device locations to the sealer for approval. In stores with multiple floors, there shall be at least one price check scanner conveniently located on each floor of the store.

The number of conveniently located price check scanners shall also be dependent on the store's retail area:

| Store's Retail Area                          | Price Check Scanner  |
|--|--|
| Under 1,500 square feet                      | No price check scanners necessary but only if an item will be scanned for the price, upon the request of a consumer. |
| Under 3,000 square feet                      | 1  |
| Between 3,001 and 10,000 square feet         | 2  |
| Between 10,001 and 30,000 square feet        | 3  |
| <del>Over 30,001 square feet</del>           | <del>Minimum of three and such additional price check scanners as the sealer may deem appropriate; and</del>         |
| <u>Between 30,001 and 90,000 Square feet</u> | <u>4</u>   |
| <u>Over 90,001 square feet</u>               | <u>6</u>   |

- b. Stores must also have a shelf price for each stock keeping item which is visible to the consumer and which is located directly under the item on the shelf on which the item is displayed; or if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed near the point of procurement. Failure to display the shelf price for a stock keeping item shall constitute a violation. The sealer may specify standard shape, typeface, placement and format of shelf prices and may set other requirements to ensure the readability of shelf prices and the ability of consumers to identify which shelf price

applies to each stock keeping item. This subdivision shall not be construed to diminish the requirements of section 214-h of the New York State Agriculture and Markets Law, but shall be in addition thereto. In the event of a conflict, the provisions of the New York State Agriculture and Markets Law shall control.

- c. The store shall not charge any customer a price for any stock keeping items which exceeds the item, shelf, sale or advertised price, whichever is less; and
  - d. The store shall make prompt payment to consumers who have been overcharged and shall correct all pricing errors identified by consumers.
8. The Director or sealer may revoke a waiver from item pricing for any of the following reasons:
- a. Failure to comply with any provisions of this Chapter;
  - b. Deliberate overcharging of any consumer; or
  - c. Material misrepresentation in the application for a waiver.

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#### **ARTICLE IV. RETAIL SALE, RENTAL AND REPAIR OF GOODS**

##### **Sec. 863.91. Concealment of prices, defects, etc., prohibited.**

Each of the following shall be a violation of this code in the sale, rental or repair of consumer goods and/or the sale of consumer services:

- 1. To sell or deliver any defective consumer goods with knowledge of such defect or in circumstances in which the merchant should have known thereof, unless each item is plainly marked as defective and the nature of the defect is clearly shown or stated;
- 2. In any sale or lease or offering for sale or lease of consumer goods which are not new, to advertise such goods without disclosing that they are not new. Words such as "used," or,

where applicable, "antique," "demonstrator's floor model," "rebuilt," "renovated," "restyled" or "remodeled" may be used to indicate that the goods are not new. "Floor model" shall be defined as any item which is sold from the floor or a display in a particular case but which is not regularly sold from the floor or from such a display. (Example, a sofa which is displayed but which is not regularly sold from the display must in that case be disclosed to be a "floor model". A pair of pliers or other similar tool which is regularly sold from the display in a hardware store need not be described as a "floor model");

3. It shall be a violation of this code:

- a. To utilize any register, machine or any other device for the purpose of itemizing or totaling consumer sales which does not display on at least one side visible to the consumer, of said register, machine or device, the cost of each item purchased plus the tax and total cost of all items purchased;
- b. To cause, allow or approve the blockage, obstruction or concealment from the view of a consumer of any display required in subdivision 3.a. of this section;
- ~~c. No violation of subdivision 3.a. of this section shall be found in any case of any register, machine or device which was either located within the County of Westchester prior to September 8, 1975, or contracted for prior to said date for location within the County of Westchester and thereafter installed in the county, and only if the merchant gives to each consumer at the time of the transaction utilizing such register, machine or device an itemized sales slip designating in words each item purchased and the cost thereof, plus the tax and the total cost of all items purchased;~~

~~c.d.~~ The requirements of this section shall not apply to consumer sales totaling under \$2.00;

- 4. To cause, allow or approve the blockage, obstruction or concealment from the view of the consumer of any scale, machine, weighing device or part thereof used to weigh or indicate

the weight of consumer goods offered for sale to consumers in Westchester County. As used herein, the meaning of the terms “blockage, obstruction, concealment” shall include but not be limited to: the placing of any merchandise, display, partition, or counter within 18 inches of the top or side of a weighing device; or any act which prevents the consumer from viewing the items weighed and the indication of the weight of that item. This subdivision shall not apply to weighing devices used to indicate the weight of consumer goods packaged by the merchant in advance of being sold, offered for sale or exposed for sale, where such consumer goods have affixed to the package a label clearly indicating the weight of the goods;

5. When food or food products are packaged or wrapped for sale by the retailer in advance of being sold, offered for sale or exposed for sale, or whenever meat, poultry or fish in containers are sold, offered for sale or exposed for sale, to fail to provide and maintain an accurate computing scale of adequate capacity for use by the consumer. This computing scale shall be sealed by the Director or the Westchester County scaler of Weights-Measures according to the provisions of the Agriculture and Markets Law of the State of New York, ~~and shall not be placed or set more than 30 feet from the prepackage display counter so as to be easily available to consumers.~~ A prominent and conspicuous sign, clear of all obstructions, shall be displayed as close as practicable, and closer than any other sign, to the location of said scale, such sign to read “For Customer Use”;
6. To fail to give notice by a sign prominently displayed at each cash register, totalizer or at the place where the transaction or sale is culminated of the existence of any present policy regarding refunds, credit or exchange on unused goods. This section shall not apply to the sale of food items, perishable items, items sold “as is” or special sale items;

7. To sell or offer for sale any milk product or other perishable foods sold in containers, but excluding therefrom packaged fresh fruit and fresh vegetables, unless there is stamped, printed or otherwise plainly and conspicuously marked on the top cover or principal panel of its container, or any label affixed thereto, a statement that it is not to be sold after a clearly specified date. In all cases where such date is mandated by this section, the only date which shall be affixed to the product is the date of the final day of sale and shall consist of the month and the day;
8. To sell or offer for sale any milk product or other perishable foods sold in containers, excluding packaged fresh fruit and fresh vegetables on a date after that marked as the final day of sale, except that outdated perishable food products may continue to be sold provided that they are physically separated from perishable food products which are not outdated and are identified as outdated perishable food products by a sign posted conspicuously at the point of sale;
9. To sell or offer for sale fresh ground beef unless the percentage of beef fat is stated; ~~meat as hamburger unless it shall consist of chopped fresh or frozen beef with or without the addition of beef fat. Hamburger designated ground sirloin or ground round shall contain no more than 20 percent beef fat and hamburger designated ground beef, ground meat or ground chuck shall contain no more than 25 percent beef fat;~~
10. To refuse reasonable requests to sell to a consumer, when practicable, food items in smaller quantities than those that are prepackaged by the retailer.

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## ARTICLE V. FUTURE SERVICE CONTRACTS

### Sec. 863.141. Definition of contracts.

A “contract for future consumer services” is any contract which includes a provision for consumer services to be rendered in the future on a continuing basis including, but not limited to, computer ~~classes~~~~schools~~, technology classes, or schools, health spas or gyms, home study school and courses or dance studios, except that future services shall not mean, nor include:

1. Boarding accommodations; or
2. Travel arrangements contracted for less than a year in advance; or
3. Contracts which incorporate warranties of service or repair given in conjunction with appliances or other goods, where the sale of goods is the primary object of the contract; or
4. Services by a public or private nonprofit educational institution, i.e., a college or university chartered by the University of the State of New York or the Board of Regents of New York State, secondary school and elementary school, a nursery school or kindergarten.

**Sec. 863.151. Cancellation clauses.**

It shall be a violation for any merchant to communicate orally or in writing to the consumer that any contract for future consumer services sold by him is noncancellable or not subject to cancellation or to use words of similar meaning or import. Nothing in this section or in section 863.161 shall preclude any person from communicating to a consumer that the consumer may be liable to the merchant for damages if he breaches or cancels a contract.

**Sec. 863.161. Collection of fees limited; cancellation requirements.**

1. It shall be a violation for any merchant who sells future consumer services or collects consumer debts to contract for, receive or demand, in the event of cancellation by the consumer of such a contract for future service, more than a total of:
  - a. Ten percent of the cash price, but not to exceed ~~\$250.00~~~~\$100.00~~; and
  - b. A pro rata portion of the total price, representing the proportion of services used or completed up to 25 percent of the time or lessons contracted for. The proportion of

services used or completed shall include the time or lessons missed prior to cancellation;  
and

- c. The cost to the merchant of any ancillary goods which the consumer has used or has retained after cancellation of the contract.

2. Cancellation shall occur:

- a. When the consumer mails to the merchant notice of his intention to cancel; or
- b. Where the consumer fails to attend consecutive scheduled classes or lessons constituting at least 25 percent of the total lessons or time contracted for, without informing the merchant in writing that he intends to remain enrolled.

3. The contract forms used by the merchant shall conspicuously disclose the merchant's cancellation provisions in compliance herewith.

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## ARTICLE VII. CONSUMER CREDIT

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### **Sec. 863.216. Removal of vehicles.**

1. Where the operator of a towing truck removes an unattended motor vehicle from privately-owned real property under the direction of the owner or an individual acting on behalf of the owner of such property, said operator shall immediately notify the police agency having jurisdiction at the site of such removal. Said towing truck operator shall be entitled to charge the owner of such motor vehicle for removal and any storage in accordance with the following rate schedule:
  - a. A charge of up to \$65.00 may be imposed if vehicle is towed for distance of one mile or part thereof.

- b. An additional charge of up to \$1.50 per mile may be imposed for each additional mile or part thereof.
  - c. Storage charges shall be at the rate of not more than \$5.00 for each 24 hours or part thereof. All vehicles must be stored on the premises of the towing operator, unless a waiver is granted by the County Department of Weights and Measures-Consumer Protection.
- 2. This section shall apply to any vehicle registered as a passenger vehicle and to any commercial vehicle not exceeding three tons gross weight, as determined by the vehicle's registration document. The towing of those commercial vehicles, for which the maximum permitted towing and storage charges do not apply, remains subject to Article II, § 863.61 of the Consumer Protection Code prohibiting deceptive or unconscionable trade practices.
  - 3. A receipt reflecting all charges shall be provided to the vehicle owner or person(s) to whom the vehicle is released.

**Sec. 863.217. Booting of vehicles.**

- 1. Where the operator of a booting service places a booting device on an unattended motor vehicle parked without authorization on privately-owned real property under the direction of the owner or an individual acting on behalf of the owner of such property, said operator shall immediately notify the police agency having jurisdiction at the site where such booting device was affixed, clamped or locked on a motor vehicle, in the manner prescribed by subsection (2) of this section. Said operator shall only be entitled to charge the owner of such motor vehicle the maximum fee of \$65.00 for the placement and removal of such booting device.
- 2. The operator of a booting service shall immediately notify such police agency as required by subsection (1) of this section, by either of the following means at the discretion of said

operator: by personal appearance at a station house or other office of such police agency; or by telephone. Such notification may also be made by facsimile transmission or electronic mail, provided that such police agency, in its discretion, provides the information necessary to receive notification by facsimile transmission or electronic mail. Said operator shall provide such police agency with all relevant information, including, but not limited to: the name and address of the booting service operator; the description and license plate number of the motor vehicle upon which the booting device was placed; and the time and location of booting.

3. A receipt reflecting all charges shall be provided to the vehicle owner or person(s) to whom the vehicle is released.

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## **ARTICLE XI. CONTROL AND REGULATION OF DEALERS OF SECONDHAND GOODS**

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### **Sec. 863.244. Application for license or renewal; fee required.**

1. An application for a license to be a secondhand dealer shall be made by the owner, or operator if different from the owner, on forms provided by and filed with the office of sealer or Director (hereinafter referred to in this Article as the "office"). The application shall contain the following information:
  - a. Name and description of the applicant's business enterprise. Individuals operating under a trade name shall present a certified copy of the trade name certificate filed with the New York State Department of State. A partnership conducting business, whether or not under a trade name, shall submit a certified copy of the partnership certificate which was filed in the New York State Department of State's office when the partnership was formed. A corporation shall furnish a copy of its certificate of incorporation, as well as

- its certificate of good standing and, if a foreign corporation, its application for authority to do business in New York State;
- b. The applicant's legal address and address of all places of business within Westchester County and the name and address of a designated agent for service of process;
  - c. A description of the nature of the business to be conducted and/or being conducted by the applicant in Westchester County;
  - d. The name and address of the owner or owners of the business premises and the nature of the right of occupancy of the applicant to the use of said premises;
  - e. A statement that the applicant is at least 18 years of age; and
  - f. A statement as to whether or not the applicant has, within the past ten years, been convicted of a crime, the nature of the offense and the punishment or penalty assessed therefore and such other facts or evidence as is deemed necessary to establish that the applicant is a person fit and capable of properly conducting the activity or business for which the license is sought.
2. Such application for a license shall be accompanied by a non-refundable application fee of \$250.00. If a license hereunder shall be lost, stolen, or destroyed; a duplicate may be issued by the office upon; (a) the filing of an affidavit satisfactorily explaining the facts of such loss or theft; and (b) the payment of a \$50.00 fee for each duplicate copy.
3. The process to obtain a duplicate license for an additional establishment owned or operated by the applicant shall be the same as described in subsections 1. and 2. of this section.
4. Licenses shall expire annually after the date of issuance. Every license may be renewed upon payment of the required renewal fee in the amount of \$200.00, and filing a renewal application with the office no earlier than 60 days, and no later than 15 days before the license is due to expire.

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## **ARTICLE XV. LICENSING OF PERSONS ENGAGED IN THE ALARM SYSTEMS BUSINESS**

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### **Sec. 863.307. Miscellaneous.**

1. Nothing set forth in this Article shall subject the County of Westchester or its officials, agents or employees to liability for damages or otherwise arising out of or related to the conduct of any alarm agent or alarm business.
2. Applicants already doing business in the county on the effective date of this Article may continue to do business while their license applications are being processed. An applicant not previously doing business in Westchester County on the effective date of this Article may commence doing business upon filing an application in accordance with section 863.293 of this Article.
3. Notwithstanding any provision of this Article to the contrary, this Article shall not apply to persons installing their own alarm system components.
4. ~~The sealer is empowered to establish administrative procedures to carry out the provisions of this Article in conformity with the provisions thereof.~~

## **ARTICLE XVI. LICENSING OF PERSONS ENGAGED IN HOME IMPROVEMENT BUSINESS**

### **Sec. 863.311. Legislative findings.**

It is hereby declared and found that because of the increase in complaints by residential dwellers in the County of Westchester about abuses on the part of home improvement contractors, it has

become desirable to safeguard and protect such residents by regulating the home improvement, remodeling and repair business and by licensing persons engaged in such business. Such licensing will protect and promote the health, safety and welfare of the residents of the County of Westchester.

**Sec. 863.312. Definitions.**

Unless the context otherwise specifically requires, the following terms, when used in this Article, shall have the following meanings:

1. “Contractor” means any person who owns, operates, maintains, controls, transacts or conducts a home improvement business or who undertakes, facilitates or advertises a home improvement service or offers to undertake, facilitate or agrees to perform any home improvement. A person shall be deemed to facilitate a home improvement service when, for a fee, they organize, oversee, or arrange for other contractors to perform home improvement services.
2. “Home improvement” means a repair, replacement, remodeling, installation, construction, alteration, conversion, modernization made to, in or upon a private residence, townhouse, condominium, apartment, or dwelling place of not more than three units, or residential property that is a part of one of the foregoing, including, but not limited to the following:
  - a. Waterproofing;
  - b. Exterior siding, awnings, leaders and gutters;
  - c. Decks, patios, garages, carports and additional rooms;
  - d. Storm and/or replacement windows and doors;
  - e. Roofs;
  - f. Driveways and walkways;
  - g. Kitchens and bathrooms;

- h. Masonry;
  - i. Fence installations;
  - j. Chimney maintenance;
  - k. Exterior and interior painting;
  - l. Landscaping and gardening;
  - m. Arboriculture;
  - n. Tile setters;
  - o. Swimming pools;
  - p. Underground sprinkler systems;
  - q. Excavation; ~~and~~
  - r. HVAC;
  - s. Power washing or pressure washing; and
  - ~~t.~~ Other similar improvements.
3. "Home improvement business" means the business of providing for a profit, a home improvement to an owner, provided, however, the term shall not include labor or services performed by an employee for a contractor.
  4. "Home improvement contract" means an agreement between a contractor and an owner for the performance of a home improvement, and includes all labor, services and materials to be furnished and performed thereunder, either directly by the contractor or by another person under separate agreement with the contractor.
  5. "Leaf blower" means any portable device powered by a self-contained internal combustion engine, which is commonly used in landscaping and property maintenance to blow, disperse or redistribute dust, dirt, leaves, grass clippings, cuttings, trimmings from trees or shrubs, or other debris on sidewalks, driveways, lawns, or other surfaces.

6. "Licensee" means a person licensed to engage in the home improvement business under the provisions of this Article.
7. "Owner" means a homeowner, tenant, or any other residential dweller who orders, contracts for, or purchases a home improvement.
8. "Person" means an individual, firm, company, partnership, association, corporation or other business entity.
9. "Affiliate" shall mean any person controlling, controlled by, or under common control with a licensee or contractor. The terms "control", "controlled" or "controlling" shall mean the possession, direct or indirect, of the power to cause the direction of management and policies of such controlled person. The ownership, directly or indirectly, of at least 51 percent of the voting securities of, or the possession of the right to vote, in the ordinary direction of its affairs, of 51 percent of the voting interest in, any person shall be presumed to constitute such control.

**Sec. 863.313. License required.**

1. No person shall maintain, conduct, advertise, operate, or engage in the home improvement business within the County of Westchester, or hold himself or herself out as being able to do so, unless such person is licensed pursuant to this Article.
2. Upon issuance of a home improvement license under the provisions of this Chapter, the Director or sealer shall issue a vehicle decal for each vehicle identified by the licensee as a vehicle which will be used in connection with the licensed activities. Such vehicle decals shall be conspicuously displayed in or on the vehicle(s) used in connection with the licensed activities during the term of the license, in addition to displaying the name and address of the licensed contractor pursuant to Sec. 863.326.

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**Sec. 863.316. Grant or denial of license or renewal.**

1. Within 90 days after receipt of a complete application in proper form, the Director or sealer shall grant or deny a license, or renewal thereof, under this Article. The Director or sealer shall grant the license or renewal unless the Director or sealer determines that applicant:
  - a. Is not financially responsible. In making such a determination the Director or sealer shall take into consideration all final non-appealable determinations of liability in any civil, criminal or administrative actions including, but not limited to, those involving nonpayment or underpayment of wages rendered by any local, state, or federal government court, agency, or division, including any such determinations rendered against any business for which the applicant was an owner, director, officer, member, or otherwise exercised control over the business;
  - b. Is unqualified to engage in the home improvement business;
  - c. Has made a false statement of a material fact in the application for a license under this Article;
  - d. Has outstanding against it unsatisfied home improvement business-related judgments. In making such a determination the Director or sealer shall take into consideration all final non-appealable determinations of liability in any civil, criminal or administrative actions including, but not limited to, those involving nonpayment or underpayment of wages rendered by any local, state, or federal government court, agency, or division, including any such determinations rendered against any business for which the applicant was an owner, director, officer, member, or otherwise exercised control over the business;
  - e. Has against it an unacceptable amount of home improvement complaints as determined by the Director or sealer.

A denial of a license or renewal shall be made by the Director or sealer in writing and shall set forth a statement of the reason or reasons therefor and shall be subject to administrative and judicial review in accordance with subsection 2. of this section.

2. Within 30 days after a denial of an application for a license or a renewal thereof, the applicant shall be entitled to demand a hearing before the Director or sealer by making a written demand therefor. Following receipt of such written demand, a hearing shall be held by the Director or sealer, or by a deputy designated by the Director or sealer, or by such other person or persons designated by the Director or sealer. A record of such hearing shall be made. At such hearing the applicant may be represented by counsel and may offer evidence in his or her behalf to demonstrate that a license or renewal should be granted. Compliance with technical rules of evidence shall not be required. If a deputy or other person or persons is designated to hold the hearing, such deputy or other designated person or persons shall refer the record and recommendations to the Director or sealer for determination. The determination made by the Director or sealer shall be subject to judicial review in accordance with Article 78 of the Civil Practice Law and Rules in a proceeding brought within four months after the determination is rendered.
3. The 90 days within which the Director or sealer shall either deny or renew a license may be extended if there are unresolved open civil, criminal, administrative actions, or consumer complaints that relate to the qualifications or fitness of the applicant, until such actions or complaints are resolved or closed.

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**Sec. 863.324. Liability; applicability.**

1. Nothing set forth in this Article shall subject the County of Westchester or its officials, agents or employees to liability for damages or otherwise arising out of or related to the conduct of any home improvement business by a licensee.
2. The provisions of this Article shall not apply to any home improvement to be performed under a home improvement contract made prior to the effective date of this Article.
3. Persons engaged in the home improvement business in Westchester County on the effective date of this Article who have applied for licenses hereunder may continue to engage in such business while their license applications are processed. Persons not engaged in the home improvement business in Westchester County on the effective date of this Article may commence such business upon filing a license application in accordance with section 863.314 of this Article.
4. Notwithstanding any provision of this Article to the contrary, this Article shall not apply to:
  - a. Plumbing work;
  - b. Electrical work;
  - c. Architectural services;
  - d. Work or services performed by a person within the scope of an occupation, craft or profession in which such person has met standards of competency or experience established by state law as a condition to engaging in the occupation, craft or profession;
  - e. Full-time students under the age of 22 engaged in seasonal or part-time employment;
  - f. The construction of a new home building;
  - g. The sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials;

- h. Work performed upon a residence or building owned by or controlled by the state or any municipality;
  - i. The sale, leasing, maintaining, installing, repairing, altering, moving, replacing or servicing of an alarm device or system by a county-licensed alarm business or alarm agent;
  - j. The installation of photovoltaic devices by an individual who is licensed as a master electrician pursuant to Article XVII of Chapter 277 of the Laws of Westchester County and who is also certified as an installer of photovoltaic devices by the North American Board of Certified Energy Practitioners. For the purposes of this paragraph "photovoltaic device" means a device that absorbs infrared, visible and/or ultraviolet light and produces an electric potential;
  - k. The installation of solar heating devices by an individual licensed as a master plumber pursuant to Article XV of Chapter 277 of the Laws of Westchester County and who is also certified as an installer of solar heating devices by the North American Board of Certified Energy Practitioners. For the purposes of this paragraph "solar heating device" means a device that uses flat collector plates to harness the sun's energy to heat water.
5. ~~The Director or sealer is empowered to establish administrative procedures to carry out the provisions of this Article in conformity with the provisions thereof.~~ The Director or sealer shall require proof of liability and property damage insurance in an amount to be set by the Director or sealer.
6. The Director or sealer may require an application for a license to be accompanied by a bond, approved as to form by the County Attorney, executed by a bonding or surety company authorized to do business in the State of New York or cash security in an amount to be set by the Director or sealer not to exceed \$50,000.00, conditioned upon the assurance that

during the term of such license, the contractor will continue to comply with the provisions of this Article, to assure that, upon default in the performance of any contract, the advance payments made thereon, less the reasonable value of services actually rendered to the date of the contract in the event of noncompletion thereof, will be refunded to the consumer, owner or lessee with whom such contract was made. Such bond shall run to the County of Westchester for the use and benefit of any person or persons intended to be protected thereby. The required bond, after the aforementioned approval by the County Attorney, shall be filed in the office of the Director or sealer. The Director or sealer may require a bond at any time during the term of the license based on the licensee's performance during such term.

7. Any licensee using chemicals regulated or controlled by the New York State Department of Environmental Conservation shall show proof of certification for use of said chemicals.

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**Sec. 863.326. Vehicles to display name and address of contractor. ~~landscaper or gardener.~~**

1. All motor vehicles which are used in the normal course of business by ~~landscapers or gardeners~~ a contractor or their employees to deliver tools, materials or workers to a job site in Westchester County shall, while such vehicle is parked at the job site, display on both sides of the vehicle the name and address of the ~~contractor landscaper or gardener~~ contractor in letters and numerals readily legible from a distance of fifty (50) feet during daylight hours and while the motor vehicle is stationary.
2. The requirements of this section may be complied with by permanently affixing the ~~landscaper or gardener's~~ contractor's name and address of the contractor or the contractor's company, licensed pursuant to this Article, to the motor vehicle or by affixing removable signs to the

motor vehicle to be displayed while such vehicle is parked at a job site and the ~~landscapers or gardeners~~ contractors or their employees are engaged in the normal course of business in Westchester County.

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#### **Sec. 863.329. Contract provisions.**

Every home improvement contract and all amendments thereto, shall be in writing and shall be signed by all the parties to the contract. The writing shall be legible, in plain English, and shall be in such form to describe clearly any other document which is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor. The writing may also contain other matters agreed to by the parties to the contract.

The writing shall contain the following:

- (a) The name, address, telephone number and license number of the contractor.
- (b) The approximate dates, or estimated dates, when the work will begin and be substantially completed.
- (c) A description of the work to be performed, the materials to be provided to the owner, including make, model number or any other identifying information.
- (d) A notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract or the material person who provides home improvement goods or services and is not paid may have a claim against the owner which may be enforced against the property in accordance with the applicable lien laws.
- (e) A notice to the owner purchasing the home improvement that, except as otherwise provided by law, the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with Subdivision 4 of Section 71-a of

the New York State Lien Law and that, in lieu of such deposit, the home improvement contractor may post a bond, contract of indemnity or irrevocable letter of credit with the owner guaranteeing the return or proper application of such payments to the purposes of the contract.

- (f) If the contract provides for one or more progress payments to be paid to the home improvement contractor by the owner before substantial completion of the work, a schedule of such progress payments showing the amount of each payment, as a sum in dollars and cents, and specifically identifying the state of completion of the work or services to be performed, including any materials to be supplied before each such progress payment is due. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials to be purchased, or expenses for which the contractor would be obligated at the time of payment.
- (g) Before a contractor or subcontractor begins work on a home, such writing shall disclose to the homeowner the existence of a property and/or casualty insurance policy that covers the scope of such contractor or subcontractor's employment should an insurance claim be filed resulting from losses arising from work at such property. Such disclosure shall also include the contact information of the insurance company providing such property and/or casualty insurance, including phone number and address.

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## ARTICLE XIX. INSTALLATION AND REPAIR OF OVERHEAD GARAGE DOORS

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~~Sec. 863.604. Violations:~~

~~A violation of section 863.603 shall be punishable by a civil fine not to exceed one hundred fifty dollars (\$150.00).~~

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## ARTICLE XXV. AUTOMATED TELLER MACHINE (ATM) REGISTRATION

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### Sec. 863.1010. Registration.

1. Any ATM located in a place accessible to the public, including, but not limited to, shopping malls, convenient stores, restaurants, bowling alleys, amusement parks, arcades, gas stations, movie theatres, schools, colleges or retail stores, shall be registered with the Westchester County Department of Weights and Measures – Consumer Protection. The ATM shall be registered by the person or entity owning, leasing or otherwise controlling the place of public accessibility where the ATM is located. Such registration shall be for a period of two (2) years and the cost shall be no more than seventy-five dollars (\$75.00) for the initial issuance and each subsequent renewal as determined by the Westchester County Department of Weights and Measures – Consumer Protection.
2. Within ninety (90) days of the enactment of this Article, the Westchester County Department of Weights and Measures – Consumer Protection, in conjunction with the Westchester County Department of Public Safety, shall establish an application form to be used as a prerequisite for the issuance of a certification of registration. Such application shall require information necessary to locate the ATM, its owner and its operator.

3. Upon completion of an application for a certificate of registration pursuant to this section, the Westchester County Department of Weights and Measures – Consumer Protection shall issue to the registrant a decal to be placed on the ATM signifying that such ATM is registered, the location at which the ATM is registered and the expiration date of such registration.
4. The certificate of registration issued pursuant to this section shall not be transferable from one person or entity to another person or entity or from one location to another. If the ownership or control of the place of public accessibility changes, the new owner or person or entity controlling said location must re-register the ATM with the Westchester County Department of Weights and Measures – Consumer Protection pursuant to the application procedure established under this section.

**Sec. 863.1020. ATM consumer advisory.**

All persons or entities required to register ATM machines pursuant to section 863.1010 of this Article shall conspicuously post in close proximity to the ATM an "ATM Consumer Advisory" which shall be prepared and distributed by the Westchester County Department of Weights and Measures – Consumer Protection in conjunction with the Westchester County Department of Public Safety in both English and Spanish language, as appropriate. The exact design, size and location of the Advisory shall be determined by the Commissioner of the Westchester County Department of Weights and Measures and shall include, but not be limited to the following information:

**ATM — CONSUMER SAFETY**

1. Be aware of other persons near you and the ATM. If you notice suspicious activity, cancel your transaction, take your card, leave the area and report suspicious activity and crimes immediately to the police.

2. Commit your PIN to memory, do not write the PIN on your card and report a lost or stolen card immediately.
3. ATM's usually charge transaction fees. Make sure you know how much in fees you are paying before using an ATM.
4. If you have any questions regarding ATM security call the Westchester County Department of Consumer Protection at (914) 995-2155 or log on to [www.westchestergov.com/consumer](http://www.westchestergov.com/consumer).

**Sec. 863.1030. Enforcement and penalties.**

1. The provisions of this Article shall be enforced by the Westchester County Department of Weights and Measures – Consumer Protection.
2. Failure to submit an application for registration pursuant to section 863.1010 herein shall result in the issuance of a warning by the Department which shall state that the individual has thirty (30) days to submit a completed application. Failure to submit a completed application within the thirty-day period shall constitute a violation. No other violations occurring under this Article shall be entitled to a warning.
3. For the first violation of this Article, a civil penalty not exceeding five hundred dollars (\$500.00) shall be imposed. For the second and succeeding violations, a civil penalty not exceeding one thousand dollars (\$1,000.00) shall be imposed for each single violation. No civil penalty shall be imposed as provided for herein unless the alleged violator has received notice of the charge against him or her and has had an opportunity to be heard.

**Section 4. Effective Date.** This Local Law shall take effect thirty (30) days after enactment.

WESTCHESTER COUNTY  
CLERK OF THE COUNTY

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