

Submitted by the County Executive and Introduced By

LOCAL LAW NO. 14 - 2012

A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE
IN RELATION TO LICENSING PERSONS ENGAGED IN THE ELECTRONIC OR HOME
APPLIANCE REPAIR SERVICE BUSINESS

Passed by the Nassau County Legislature on November 19, 2012
Voting: ayes: 10 nays: 9 abstained: 0

Became a law on November 27, 2012 with the approval of the Deputy County Executive
acting on behalf of County Executive

APPROVED AS TO FORM
Deputy County Attorney

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. A new title is hereby added to chapter twenty-one of the Nassau County

Administrative Code as follows:

TITLE D-16

ELECTRONIC AND HOME APPLIANCE SERVICE DEALERS

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§ 21-28.0. Legislative purpose

It is hereby declared that the business of servicing electronic or home appliances has become the subject of great abuse. The public has been and is unprotected from unethical and financially unstable service dealers. The necessity for legislative intervention to protect the public and legitimate service dealers is hereby declared as a matter of legislative determination. It is the purpose of the Legislature in enacting this Local Law to safeguard and protect the public against abuses on the part of electronic or home appliance repair service contractors by regulating the electronic or home appliance repair service contractor business and by licensing persons engaged in such business.

§ 21-28.1. Definitions

1. "Person" means an individual, firm, partnership, LLC, trust, association or corporation.
2. "Service dealer" means a person who within the County of Nassau:
 - a. advertises that he or she performs repair service on electronic or home appliances, or makes public statements reasonably calculated to lead an ordinary consumer to believe that he or she performs such repair service;
 - b. solicits or bills a customer for repair service on electronic or home appliances;
 - c. sells service contracts or maintenance agreements for the performance of repair service on electronic or home appliances and accepts requests for such repair service under such service contracts or maintenance agreements;
 - d. accepts requests for repair service or receives electronic or home appliances for the performance of repair service; or
 - e. provides, as part of a sales transaction, repair service, including repair service performed by the seller, subcontractor, or other service repairer; provided, however, that the term "service dealer" shall apply to a manufacturer of electronic or home appliances only when such manufacturer acting as a retailer engages in any of the activities described in this subdivision.
3. "Repair service" or "repair servicing" means the installation, maintenance, repair, replacement, testing, inspection or modification for compensation, other consideration or under a warranty, of electronic or home appliances.
4. "Electronic or home appliance" means any electronic device, or any appliance, that is commonly used in a household, including, but not limited to, televisions, radios, stereo systems, compact disc players, home computer systems, telephones, telephone answering machines,

satellite dishes, cameras, calculators, video recorders or players, camcorders or other portable video recording devices, cassette recorders or players, facsimile machines, portable photocopiers, air conditioners, clothes washing machines, clothes dryers, dishwashers, food freezers, refrigerators, stoves, ranges, ovens, microwave ovens or sewing machines.

5. "Service repairer" means a person who performs repair service on electronic or home appliances.

6. "Commissioner" shall mean the Nassau County Commissioner of Consumer Affairs or his or her designated agent.

7. "Contractor" means any person who owns or operates an electronic or home appliance service dealer business or who undertakes or offers to undertake or agrees to perform any electronic or home appliance repair services in Nassau County.

8. "Electronic or home appliance repair service contract" means an agreement between a contractor and an owner for the performance of an electronic or home appliance repair service, and includes all labor, services and materials to be furnished and performed there under.

9. "Establishment" means any shop, establishment, place or premises where a person operates a business as an electronic or home appliance service dealer.

10. "Licensee" means a person permitted to engage in business as an electronic or home appliance service dealer under the provisions of this title.

11. "Owner" means any homeowner, tenant, or any other person who orders, contracts for, or purchases the services of a Contractor, or the person entitled to the performance of the work of a contractor pursuant to an electronic or home appliance repair service contract.

12. "Management Personnel" means a person or persons who are principals in a contracting business or who are employed by a Contractor and are responsible for assisting in the business of the Contractor and vested with such discretion and judgment as to accomplish the business purpose of the Contractor.

§ 21-28.2. License required: Electronic or home appliance service dealer

No person shall own, maintain, conduct, operate, engage in or transact business as an electronic or home appliance service dealer after January first two thousand thirteen, or hold himself out as being able to do so after such date unless he is licensed therefore pursuant to this title.

§ 21-28.3. Effect on other laws

1. A license issued pursuant to this title may not be construed to authorize the licensee to perform any particular type of work or kind of business which is reserved to qualified licensees under separate provisions of state or local law; nor shall any license or authority other than as is issued or permitted pursuant to this title authorize engaging in the electronic or home appliance repair servicing business.

2. Nothing in this title shall be construed to limit or restrict the power of a city, town or

village to regulate the quality, performance or character of the work of the contractors including a system of permits and inspections which are designed to secure compliance with and aid in the enforcement of applicable state and local building laws, or to enforce other laws which are necessary for the protection of the public health and safety. Nothing in this title limits the power of a city, town or village to adopt any system of permits requiring submission to and approval by the city, town or village of plans and specifications for an installation prior to the commencement of construction of the installation or of inspection of work done.

§ 21-28.4. Electronic or home appliance service dealer licenses; Requirements

1. The maintenance of a bona fide establishment at a definite location within the state shall be a prerequisite for the issuance of an electronic or home appliance service dealer's license. The use of a telephone answering service shall not constitute a location for purposes of this section.

2. (a) An applicant for an electronic or home appliance service dealer's license must establish that he is the real owner and possess title to or is entitled to the possession of the establishment and will conduct, engage in and transact business as an electronic or home appliance service dealer. He must furnish satisfactory evidence of a good moral character and financial responsibility.

(b) All applicants must furnish certificates of public liability and property damage insurance in the amount of one hundred thousand dollars (\$100,000) per person, three hundred thousand dollars (\$500,000) per occurrence, bodily injury and fifty thousand dollars (\$50,000) each occurrence and aggregate, property damage.

3. The Commissioner may require an application for a license or a renewal application 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, in an amount to be set by the commissioner, but in no event to exceed one hundred thousand dollars (\$100,000), conditioned upon the assurance that during the term of such license, the licensee will continue to comply with the provisions of this title 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 such default, of the reasonable costs of completion of the contract in the event of non-completion thereof, will be refunded to the purchaser, owner or lessee with whom such contract was made. Such bond shall run to the County of Nassau for the use and benefit of any person or persons intended to be protected thereby. The filing of the required bond in the office of the clerk of the legislature, after approval as to form by the county attorney, shall be deemed sufficient compliance with this section. The Commissioner may require a bond at any time during the term of the license based on the licensee's performance during such term.

§ 21-28.5. Licenses; Display; Renewals; Duplicates

1. All licenses, shall be for a period of two (2) years from the date of issuance and shall expire on the last day of the twenty-fourth (24th) month following issuance.

2. No license shall be assignable or transferable except as hereinafter provided. A license to conduct business as an electronic or home appliance service dealer issued to an individual may be assigned or transferred for the remainder of the license period to a partnership or corporation if such individual is a member of such partnership or a stockholder of such corporation owning not less than twenty-five (25) percent of the outstanding stock at the time of

such assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one member of such partnership provided he obtains the consent of all of the other members of such partnership. The application of such transfer or assignment must be accompanied by proof satisfactory to the Commissioner that the requirements herein provided have been complied with. No assignment or transfer shall become effective unless and until the endorsement of the transfer or assignment has been made on the face of the license by the Commissioner and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made upon a payment fee of one-hundred dollars (\$100).

3. Each license issued pursuant to this title shall be posted and kept posted in some conspicuous place in the licensee's establishment.

4. Any license, which has not been suspended or revoked, may, upon the payment of the renewal fee prescribed by this title, be renewed for an additional period of two (2) years from its expiration, upon filing of an application for such renewal on a form to be prescribed by the Commissioner. Failure to make an application for such renewal within fifteen (15) days, shall subject the licensee to a penalty of seventy-five dollars (\$75) which shall be paid prior to the issuance of the renewal.

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

6. A supplementary license may be issued for each additional place of business maintained by a licensee within the County of Nassau upon application therefore on a form prescribed by the Commissioner and a payment of the fee prescribed therefore by this title. Each such supplementary license shall have the word "supplementary" stamped across the face therefore and shall bear the same name as the original.

§ 21-28.6. Fees

1. The fee for a license to conduct business as an electronic or home appliance service dealer shall be a non-refundable application fee of five hundred dollars (\$500) and for each renewal thereof the fee shall be five hundred dollars (\$500).

2. The fee for issuing each supplementary license shall be one hundred dollars (\$100) or fifty dollars (\$50) for a duplicate license for one lost, destroyed or mutilated.

3. The fees hereinabove set forth shall be those for licenses issued for a period of two (2) years.

§ 21-28.7. Powers of the Commissioner

In addition to the powers and duties prescribed in this title, the Commissioner shall have power:

1. To appoint such officers and employees, within the appropriation therefore, as he shall deem necessary for the performance of his duties.

2. To investigate any violation of this title, examine into the qualifications and fitness of applicants for licenses under this title and to investigate the business, business practices and business methods of any person who is or may be subject to this title, if in the opinion of the commissioner, such investigation is warranted. Each person shall be obliged upon the request of the commissioner, to supply such information as may be required concerning the business, business practices or business methods or the proposed business practices or business methods.

3. To keep records of all licenses issued, suspended or revoked.

4. To adopt such rules and regulations not inconsistent with the provisions of this title as may be necessary with respect to the form and content of applications for licenses, the receipt thereof, the investigation and examination of applicants and their qualifications, and the other matters incidental or appropriate to his powers and duties as prescribed by this title and for the proper administration and enforcement of the provisions of this title, and to amend or repeal any of such rules and regulations.

5. The Commissioner or Commissioner's designee shall be authorized to suspend the license of any person pending payment of such fine, penalty or pending compliance with any order of the Commissioner or the Office of Consumer Affairs or with any other lawful order of the Office.

6. The Commissioner or the Office of Consumer Affairs may arrange for the redress of injuries or damage caused by any violation of this article and may otherwise provide for compliance with the provisions and purposes of this article.

7. The Commissioner shall be authorized to impose a fine or civil penalty or to suspend a license or both for failure to appear at a hearing at the Office after due notice of such hearing. If a license has been suspended, it shall be returned to the Office forthwith upon receipt of the order of suspension. Failure to surrender the license shall be grounds for a fine or civil penalty or revocation of the license.

8. Any of the remedies provided for in this section shall be in addition to any other remedies provided under any other provision of law.

9. The Commissioner, upon due notice and hearing, may require that persons licensed under this title who have committed repeated, multiple or persistent violations of this title or any other law, rule or regulation the enforcement of which is within the jurisdiction of the Office, conspicuously display at their place of business and in advertisements a notice (of a form, content and size to be specified by the Commissioner), which shall describe the person's record of such violations; provided that, for each time such display is required, the Commissioner may require that such notice be displayed for not less than ten not more than one hundred days.

10. For the purpose of enforcing the provisions of this title and in conducting investigations relating to any violation thereof, and for the purpose of investigating the character, competence and integrity of any person who is or may be subject to this title, and the business, business practices and business methods thereof, the commissioner, or commissioner's designee shall have the power to compel the attendance of witnesses and the production of books and records, in accordance with the provisions of the civil practice law and rules. No information supplied by any person at the request of the commissioner concerning his or her business, business practices or business methods, or proposed business practices or methods shall be disclosed, except as may be necessary for the purpose of enforcing the provisions of this title.

11. The commissioner may establish and properly equip an electronic or home appliance laboratory for the purpose of testing the competence and integrity of licensed service dealers, whenever complaints against such licensees would indicate the necessity or advisability for such testing, and such laboratory may be further used in the necessary investigations that may be conducted by the commissioner in connection with the proper administration and enforcement of the provisions of this title and the regulations adopted thereunder.

§ 21-28.8. Refusal, suspension and revocation of license; Fines

A license to conduct, operate, engage in and transact business as an electronic or home appliance service dealer may be refused, suspended or revoked by the Commissioner or a fine not exceeding five thousand dollars (\$5,000), or both, may be imposed by the Commissioner or an authorized officer or employee of the Commissioner for any one or more of the following causes:

1. Fraud, misrepresentation or bribery in securing a license.
2. The making of any false statement as to a material matter in any application for a license.
3. The contractor is not financially responsible.
4. The person or the management personnel of the contractor are untrustworthy or not of good character.
5. The business transactions of the contractor have been marked by a failure to perform its contracts.
6. The willful manipulation of assets or accounts by the contractor.
7. Failure to display the license as provided in this title.
8. Failure to resolve a valid complaint registered in the Office of Consumer Affairs.
9. Violation of any provision of this title, or of any rule or regulation adopted hereunder.
10. An electronic or home appliance service dealer who has had a license suspended and/or revoked in another jurisdiction shall report said suspension or revocation within ten (10) days of said action. Upon receipt of notification, the Commissioner, or his designee, may order a hearing to determine the continued validity of the contractor's ability to operate as a electronic or home appliance service dealer in Nassau County.

Any failure on the part of the contractor to report another jurisdiction's actions, shall be deemed a willful failure to report and will result in the immediate suspension and/or revocation of the contractor's electronic or home appliance service dealer's license in Nassau County.

§ 21-28.9. Duties of licensees.

1. All work done by a service dealer shall be recorded on an invoice which shall contain

the license number and such other detail as may be required by regulations promulgated by the commissioner. The invoice shall fully, separately and clearly describe all service work performed, all parts supplied, the date or dates thereof, and all charges made and the computations thereof. One copy of the invoice shall be delivered to the customer and one copy shall be retained by the service dealer for a period of at least three years from the date of such delivery.

2. The service dealer shall return all replaced parts to the customer, except such parts as may be exempted from this requirement by regulations of the commissioner and except such parts as the service dealer requires for return to the manufacturer or distributor under a warranty arrangement.

3. The service dealer shall comply with regulations promulgated by the commissioner setting forth requirements for estimates or the making of such estimates and shall inform the customer as to the cost thereof prior to rendering same.

4. A service dealer shall not make the remuneration, salary, wage, or other compensation of any employee, partner, officer or member contingent or dependent upon, or in any manner determined by the value, price, quantity or type of parts replaced, upon any apparatus serviced or repaired by any person required to be licensed by this title.

5. A service dealer shall maintain such additional records as are required by regulations adopted by the commissioner to carry out the provisions of this title. Such records shall be open and available for reasonable inspection by the commissioner or other law enforcement officials, and shall be kept for a period of three years.

§ 21-28.10. Prohibited acts

The following acts are prohibited:

1. Abandonment or willful failure to perform without justification, any electronic or home appliance repair service contract or project engaged in or undertaken by the contractor.
2. Making any substantial misrepresentation in the procurement of an electronic or home appliance repair service contract, or making any false promise likely to influence, persuade or induce.
3. Any fraud in the execution of or in the material alteration of any contract, mortgage, promissory note or other document incident to an electronic or home appliance repair service transaction.
4. Preparing or accepting any mortgage, promissory note or other evidence of indebtedness upon the obligation of an electronic or home appliance repair service transaction with knowledge that it represents a greater monetary obligation than the agreed consideration for the electronic or home appliance repair service.
5. Directly or indirectly publishing any advertisement relating to electronic or home appliance repair servicing which contains an assertion, representation or statement of fact which is false, deceptive or misleading, provided that any advertisement which is subject to and complies with the then existing rules, regulations or guides of the Federal Trade Commission shall not be deemed false, deceptive or misleading; or by any means or advertising or purporting

to offer the general public any electronic or home appliance repair service with the intent not to accept contracts for the particular work or at the price which is advertised or offered to the public.

6. Disregard and/or violation of the building, sanitary and health laws of this state or of any political or municipal subdivision thereof.

7. Failure to notify the Commissioner, in writing, of any change or control in ownership, management or business name or location.

8. Conducting business as an electronic or home appliance service dealer in any name other than the one in which the contractor is licensed.

9. Failure to comply with any order, demand or requirement made by the Commissioner pursuant to provisions of this title.

10. As part of, or in connection with, the inducement to make an electronic or home appliance repair service contract, no person shall promise or offer to pay credit charges or allow to a buyer any compensation or award for the procurement of an electronic or home appliance repair service contract with others.

11. No contractor shall offer or pay a loan as an inducement to enter into an electronic or home appliance repair service contract.

12. No acts, agreements or statements of a buyer under an electronic or home appliance repair service contract shall constitute a waiver of any provisions of this title intended for the benefit or protection of the buyer.

13. Any transaction or agreement which fails to provide that the buyer can cancel same at any time prior to midnight on the third business day after the date of such agreement without penalty and every electronic or home appliance repair service contract, excluding contracts signed in the seller's retail business establishment, shall contain a "Notice of Cancellation" in such form as provided by the Commissioner pursuant to such rules and regulations as he promulgates.

14. A willful deviation from or disregard of plans or specifications in any material respect without the consent of the owner.

16. No contractor shall permit the use of his license by another.

§ 21-28.11. Exceptions

No contractor's license shall be required of any person when acting in the particular capacity or particular type of transaction set forth in this section.

1. An individual who performs labor or services for a contractor as an employee thereof.

2. A person who is required by state or local law to attain standards of competency or experience as a prerequisite to engaging in his or her craft or profession and who is acting exclusively within the scope of the craft or profession for which he is currently licensed pursuant

to such other law.

3. This title shall not apply to an electronic or home appliance repair service contract otherwise within the purview of this local law which is made prior to the effective date of the respective provisions of this title governing such contracts.

§ 21-28.12. Completion date

Every electronic or home appliance repair service contract shall provide for a completion date on which date all labor, services and materials be furnished and performed is to be completed and in no event shall such work be completed any later than thirty (30) days after said contract completion date.

§ 21-28.13. Issuance, refusal and renewal of licenses

1. When an application or renewal application has been filed with the Commissioner in proper form, the Commissioner shall, within a period of ninety (90) days from the date thereof, issue or refuse the appropriate Contractor's license to the applicant. If the application for a license is refused, the Commissioner shall send to the applicant a written statement setting forth the reasons for refusal to grant the license.

2. The Commissioner shall prescribe and furnish such forms as he may deem appropriate in connection with applications for licenses and issuance, renewal or termination thereof.

3. An applicant for any license required by the provisions of this title shall file with the Commissioner a written application which shall be signed and under oath. As a part of or in connection with such application, the applicant shall furnish information concerning his true identity, residence, personal history, history in business as an electronic or home appliance service dealer and any other pertinent facts which the Commissioner may require. The Commissioner may require names of owners, stockholders, partners, directors and officers of any applicant, and the business address and trade names of any applicant.

4. Every contractor licensee shall immediately after a change in control or ownership or of management or a change of address or trade name, notify the Commissioner in writing of such changes.

5. Licenses of all Contractors shall expire two (2) years from the date of issuance unless prior thereto the license is revoked or suspended by the Commissioner. Upon payment of the bi-annual license fee, as prescribed by section § 21-28.6 of this title, prior to the expiration date, a license may be renewed at the discretion of the Commissioner for another two (2) years, and the authority to do business shall continue in effect until such time within the two (2) years as the Commissioner revokes or suspends the license.

6. Temporary licenses may be issued in accordance with such rules or regulations as the Commissioner may prescribe to any applicant for a license who files an application in proper form and pays the bi-annual license fee thereof. A temporary license shall automatically expire at the time the Commissioner either refuses to issue or grants the license.

7. The Commissioner may, at any time, require reasonable information of an applicant or licensee, and may require the production of books of accounts, financial statements or other

records which relate to electronic or home appliance repair servicing, qualification or compliance with this title by the licensee.

§ 21-28.14. Hearings on charges; Decisions

1. No license shall be revoked until after a hearing had before an officer or employee of the Commissioner designated for such purpose by the Commissioner upon notice to the licensee of at least ten (10) days except as otherwise provided in this section. The notice shall be served by registered or certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee; and, if the licensee fails to attend such hearing, the Commissioner shall revoke the license of said licensee. The licensee shall be heard in his defense either in person or by counsel and may offer evidence on his behalf. The person conducting the hearing shall make a written report of his findings and a recommendation to the Commissioner for decision. The Commissioner shall review such findings and the recommendations and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation. For the purpose of this title, the Commissioner or any officer or employee of the department designated by him may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

2. A license may be suspended or fine imposed after a hearing had before an officer or employee of the Commissioner designated for such purpose by the Commissioner upon notice to the licensee of at least ten (10) days except as otherwise provided in this section. The notice shall be served by registered or certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee, and if the licensee fails to attend such hearing, the Commissioner shall revoke the license of said licensee. The licensee shall be heard in his defense either in person or by counsel and may offer evidence on his behalf. For the purpose of this title, the Commissioner or any officer or employee of the department designated by him may administer oaths, take testimony, subpoena witnesses and compel the production of book, papers, records and documents deemed pertinent to the subject of investigation.

3. Any fine authorized by Section § 21-28.8 may be waived or compromised by the Commissioner or his designated representative.

§ 21-28.15. Violations and penalties

1. Any person who shall own, conduct or operate a business as an electronic or home appliance service dealer without obtaining a license therefor or who shall violate any of the provisions of this title or any rules promulgated thereunder, or having had a valid license which has been suspended or revoked, shall continue to engage in such business, shall be guilty of a class A misdemeanor and subject to the punishment provided therefor. Each such violation shall be deemed a separate offense.

2. In addition to the penalties provided by paragraph 1 of this subdivision and those provided by sections 21-10.2 of this title, any person who violates any of the provisions of this title shall be liable for a penalty of not more than five thousand dollars (\$5,000) for each such violation.

3. In addition to the penalties provided by paragraphs 1 and 2 of this section and those provided by sections 21-10.2 of this code, any person who uses a false or invalid license number,

or falsely states or implies that he or she is licensed under this title, in any advertisements or in dealings with consumers, whether oral or written, shall be subject to a penalty for a deceptive trade practice, in accordance with the provisions of section 21-10.2 of this code.

4. The county attorney may bring an action in the name of the county to restrain or prevent any violation of this subdivision or any continuance of any such violation.

5. Where any violation of this subdivision is found to be willful or where such violation has posed a threat to the health or safety of the persons residing at the property at which the contractor has performed the work, the Commissioner may order the contractor to pay to the owner of such property, an amount which shall not exceed three times the actual amount of damages sustained by the owner or other person as a result of such violations.

21-29.16. Severability

If any clause, sentence, paragraph or part of this Title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

Section 2. The numbering of this title and the sections thereunder may be altered to ensure numerical consistency with the rest of the Administrative Code without the necessity for a vote to be taken by the County Legislature or by the members of any Standing Committee of said Legislature if this local law is passed by the affirmative vote of a majority of said Legislature.

Section 3. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that the adoption of this ordinance is a "Type II" Action within the meaning of Section 617.5(c)(20) and (27) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

Section 4. This local law shall take effect January 1, 2013.

APPROVED



County Executive

DATE _____

NOV 27 2012