

TESTIMONY

BY

COMMISSIONER KEVIN D. KIM

NYC

DEPARTMENT OF SMALL BUSINESS SERVICES

BEFORE

THE COMMITTEE ON SMALL BUSINESS

OF THE

NEW YORK CITY COUNCIL

WEDNESDAY, APRIL 12, 2023

Good afternoon **Chair Menin** and members of the Committee on Small Business. My name is **Kevin D. Kim**, and I am the Commissioner of the NYC Department of Small Business Services (“SBS”). I am joined by **First Deputy Commissioner Jackie Mallon** and colleagues from our sister agencies. We are pleased to offer our support for **Intro 845**, which implements **Mayor Eric Adams’ Small Business Forward initiative**.

SBS’s mission is to unlock NYC’s economic potential and create economic security for all New Yorkers by connecting them to good jobs, creating stronger businesses, and building thriving, vibrant neighborhoods.

On just Day 4 of his administration, Mayor Eric Adams demonstrated his strong and clear commitment to New York City’s small business community by signing **Executive Order 2** (“EO 2”), also known as “**Small Business Forward**.” With this executive order, Mayor Adams directed six agencies -- the **Department of Consumer and Worker Protection**, the **Department of Health and Mental Hygiene**, the **Department of Buildings**, the **Department of Sanitation**, the **Department of Environmental Protection**, and the **Fire Department** -- to overhaul regulations impacting small businesses, cut down on fines and penalties, and ignite a paradigm shift which places education over enforcement.

As a result, this Administration identified **over 100 reforms** to save small businesses **more than \$8 million per year**. These reforms, which focus on reducing fine schedules, creating cure periods, and implementing warnings to first-time violators who are not endangering public health or safety, will allow small businesses to continue to lead our economic recovery efforts.

Every dollar that a small business spends on a penalty is a dollar that could have been invested in staff or upgrades in business processes. Every minute that a small business spends on navigating the City’s sometimes complex rules and regulations is time that could be used to better serve their customers. That is why the passage of Intro 845 is so important - this initiative saves businesses both time and money.

SBS is proud of the role we’ve played in this process, and we are eager to continue the work of making New York City a “City of Yes” for small businesses. We are revamping our **NYC Business Portal**, expanding the reach of our **NYC Business**

Express Service Team or NYC BEST to help businesses avoid fines and violations, and giving voice to small business owners through our **Small Business Advisory Commission**.

I would like to take a moment to **recognize and thank Chair Menin** for sponsoring this bill and being such a consistent partner in our agency's efforts to help clear hurdles for our small businesses. I also want to **thank our sister agencies** for all the work they put into this effort. Together, we are sending a message that New York City is not only open for business, but is committed to propelling small businesses forward.

Thank you, and I look forward to answering any questions you may have.

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PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

**STATEMENT OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON SMALL BUSINESS
APRIL 12, 2023**

Good afternoon,

My name is Jumaane D. Williams, and I am the Public Advocate for the City of New York. I would like to thank Chair Menin and members of the Committee on Small Business for holding this hearing today. I am here to advocate on behalf of Res. 0243-2022, which calls on the New York State Legislature to pass, and the Governor to sign, Senate Bill [S2632](#) and its accompaniment, Assembly Bill [A2443](#).

These bills would prohibit the use of a confession of judgment in a contract or agreement for a financial product or service. Confessions of judgment lend themselves to the facilitation of predatory lending practices. In spirit, if not the letter of the law, they often violate the principle of due process for someone by waiving their right to assert a robust defense in court regarding debt assigned to them by a creditor.

In 2019, New York State limited the use of confessions of judgment against out-of-state debtors [A7500/S6395](#). On the federal level, the use of confessions of judgments has long since been prohibited for consumer loans yet the practice remains legal for business loans. At a 2019 forum on small business financing, Rohit Chopra, who was then-Commissioner of the United States Federal Trade Commission, called for the elimination of confessions of judgment in small business lending contracts. That same year, Governor Cuomo signed into law [S6395/A7500A](#), amending Section 3218 of New York's Civil Practice Law and Rules to mitigate and remedy abuses in the use of confessions of judgment by creditors against out-of-state debtors.

Resolution 0243 seeks to build on this progress and end the loophole that enables creditors within New York State to obtain a judgment against borrowers without any further notification and furthermore, legally seize the assets of borrowers without a court proceeding. S2632/A2443 will help protect small businesses from predatory lenders that offer loans and cash advances on the condition of a signed confession of judgment.

I urge the Council to pass this resolution, close the loophole and protect everyday New Yorkers from this predatory lending practice. Thank you.

April 12th, 2023

Testimony of the NYC Hospitality Alliance to the NYC Council Committee on Small Business on [Introduction 845](#) (Menin): Reducing penalties, allowing opportunities to cure for certain violations, and eliminating certain requirements for commercial establishments

My name is Andrew Rigie and I am the Executive Director of the NYC Hospitality Alliance (“The Alliance”), is a not-for-profit association representing thousands of restaurants, bars, and nightclubs throughout the five boroughs.

We appreciate Council Member Menin, the Council and administration considering Int. 845 and the regulatory burdens on small businesses. Though small in isolation, they quickly add up. The Alliance therefore applauds any effort to reduce these burdens in ways that support education and compliance over fines and punishment. The Alliance particularly supports provisions of Int. 845 that would:

- Require the City to provide restaurants with a free copy of the required choking sign;
- Eliminate various first-time fines for violating the requirements for businesses that employ bicycle delivery workers; and
- Reduce the fines for other first-time violations.

In the same spirit, Int. 845 presents an excellent opportunity to add a provision that would relieve a burden that is increasingly problematic for bars and restaurants - amending section 24-244(b) of the Administrative Code. Parenthetically, Int. 845 already amends a neighboring provision, 24-218.1 - Use of Mobile Telephones in a Place of Public Performance.

24-244(b) is also in the DEP title of the code, under a section of the Noise Control chapter regulating "Specific Noise Sources" like snow blowers, burglar alarms, and barking dogs. This one deals with "Sound Reproduction Devices," and was designed to prohibit souvenir shops and similar retail businesses from putting speakers outside playing recordings to attract customers. The relevant language is as follows:

(b) No person shall operate or use or cause to be operated or used any sound reproduction device, for commercial or business advertising purposes or for the purpose of attracting attention to any performance, show, sale or display of merchandise, in connection with any commercial or business enterprise (including those engaged in the sale of radios, television sets, compact discs or tapes), (i) outside or in front of any building, place or premises or in or through any aperture of such building, place or premises, abutting on or adjacent to a public street, park or place;

Our members have experienced a problem lately with a group of private citizens who are using a citizen-enforcement section of the code to issue summonses - through DEP - directly to bars and restaurants, alleging a violation of this law simply because it may be a nice day out and the restaurant has its windows open and you can hear the restaurant's music from the sidewalk. OATH and the courts are throwing these 24-244(b) cases out because they recognize that under such facts, it does not constitute *commercial advertising purposes* or *attracting attention to a performance, show, sale or display of merchandise* for a restaurant that plays music to open its windows.



But for most businesses, the cost of challenging these summonses far exceeds the cost of simply settling. That is what most bars and restaurants have been doing. The settlement value is under \$500. Yet like everything else in Int. 845, those nickel-and-dime issues quickly add up.

We therefore implore the Council and administration to consider amending Int. 845 to clarify that incidental music heard on the street which is intended for the background enjoyment of guests and not advertising or hawking is not a violation of 24-244(b). In addition, there should be a provision removing 24-244(b) from the citizen enforcement scheme under the Administrative Code.

Thank you for your consideration of our comments. You may contact me at arigie@thenycalliance.org with comments and/or questions.

Respectfully,

Andrew Rigie
Executive Director
NYC Hospitality Alliance



FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.

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Government Relations (518) 434-8144

Testimony by the Food Industry Alliance of New York State, Inc. in Support of Int. No. 845-2022

Thank you for the opportunity to testify in support of Int. No. 845-2022. My name is Jay Peltz and I am the General Counsel and Senior Vice President of Government Relations for the Food Industry Alliance of New York State (FIA). FIA is a nonprofit trade association that advocates on behalf of grocery, drug and convenience stores throughout New York. We represent a broad spectrum of the New York City retail food sector, from independent neighborhood grocers to large chains, including many unionized stores.

Neighborhood grocers have never faced a more difficult operating environment. Operating expenses have increased as rents and health insurance premiums continue to rise. A tight labor market has boosted wages while the State Legislature and Governor continue to negotiate a likely minimum wage increase. Soaring theft and higher cost of goods have reduced profits. Supply chain disruptions have caused shortages of goods, resulting in lost sales. Nontraditional, nonunion retailers such as warehouse clubs and dollar stores are taking market share from neighborhood grocers.

These circumstances are making it increasingly difficult for neighborhood grocers to net even a penny on the dollar. Marginal traditional grocers may have to shut their doors while food deserts remain present throughout the city. Accordingly, a rationalization of the regulations governing the city's food retailers, including repealing requirements that are unreasonably burdensome or unnecessary for the protection of consumers and eliminating penalties for first time violations of certain provisions, is long overdue.

This reform bill is a notable example of such rationalization. It is focused on changes that will make a difference to neighborhood grocers, such as the simplification of signage requirements, making the civil penalty \$0 for certain first-time violations and repealing the mandate that businesses with raincheck policies post signs. The money saved from these changes can be redeployed to productive uses, including increasing investments in store personnel and renovations. Stronger independent, neighborhood grocery stores will strengthen the communities served by those stores, in part by providing quality job opportunities to neighborhood residents.

Considering the foregoing, FIA enthusiastically supports adoption of this bill. We would like to thank Chairwoman Menin for her thoughtful leadership on this very important issue. I'd be happy to answer any questions you may have.

Respectfully submitted,

Food Industry Alliance of New York State, Inc.

Jay M. Peltz

General Counsel and Senior Vice President of Government Relations

Metro Office: 914-715-1750

jay@fiany.com

April 12, 2023

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/12/23

(PLEASE PRINT)

Name: Carleen McLaughlin

Address: NYC DEP

I represent: Director of Legislative

Address: Affairs

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Gregory Anderson

Address: _____

I represent: DSNY

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 845 Res. No. _____

in favor in opposition

Date: 4/12/23

(PLEASE PRINT)

Name: Commissioner Kevin D. Kim

Address: _____

I represent: Small Business Services

Address: 4 Liberty Plaza, N.Y. N.Y.

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 845 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jackie Mallon

Address: _____

I represent: Small Business Services

Address: 4 Liberty Plaza, N.Y. N.Y.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Carlos Ortiz

Address: Assistant Commissioner DWP

I represent: _____

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Ricky Wong, Assistant Commissioner, Government Affairs

Address: NYC Health Dept.

I represent: _____

Address: _____