

**Testimony of Lorelei Salas
New York City Department of Consumer Affairs**

**Before the
Committee on Consumer Affairs and Business Licensing**

**Hearing on
Int. 1622-2019 and Int. 1609-2019**

December 16, 2019

Introduction

Good morning Chair Espinal and Members of the Committee on Consumer Affairs & Business Licensing. I am Commissioner Lorelei Salas, and it is my pleasure to testify in support of Introduction 1622 and Introduction 1609; legislation that will modernize the agency's landmark Consumer Protection Law and officially rename the agency to the Department of Consumer and Worker Protection (DCWP).

Intro. 1622

In 1969, the City Council recognized a need for broad consumer protection against “deceptive or unconscionable trade practice[s].”¹ It passed the New York City Consumer Protection Law, or CPL, and, in doing so, created the first municipal consumer protection agency in the United States, the Department of Consumer Affairs – an agency I am proud to lead.

Today, the CPL remains an indispensable instrument to fulfill our mission of protecting and enhancing the daily economic lives of New Yorkers. Since becoming Commissioner, I've prioritized prosecuting deceptive business practices under the CPL to hold accountable a range of individuals and businesses including, bail bond agents, telecommunications companies, immigration service providers, and others that often prey on our City's most vulnerable communities.

The CPL protects New Yorkers from deceptive practices in the marketplace, provides redress to consumers, and stipulates penalties to deter future abuse. Like any decades-old law, the CPL requires amendments to adapt to the modern marketplace and clarify any ambiguities in the law. Introduction 1622 amends the City's Administrative Code to address these issues.

In 2019, digital communication between businesses and consumers are ubiquitous in the marketplace. When the CPL was passed by the City Council in 1969, they intended the CPL to be “a comprehensive substantive ban on all forms of consumer fraud,”² but could not possibly foresee the prevalence and influence of online communications and advertisements. With that

¹ NYC Ad. Code § 20-700

² Report of the City Council Comm. on Codification, Proceedings of the Council of the City of N.Y., Int. No. 873, Dec. 2, 1969

intent in mind, DCWP already brings cases under the CPL for deceptive online practices. To bring the text of the CPL into the 21st Century, and reflect the work currently done by the agency, Introduction 1622 clarifies that the CPL covers digital mediums that businesses and individuals use to deceive consumers.

Since the CPL's inception, the penalty amounts have remained unchanged. Penalties that may have been effective at deterring unlawful behavior in 1969 are less so in 2019. Introduction 1622 updates the penalty amounts to levels equivalent to where they were in 1969, after adjusting for inflation, increasing the penalty range from \$50 to \$350 per violation to \$350 to \$2500 and from \$500 to \$3500 for "knowing" violations. Furthermore, Introduction 1622 clarifies that the agency may seek restitution on behalf of aggrieved consumers for violations of the CPL whether we bring an action at OATH or in state Supreme Court.

Finally, change in our City is not just reflected in technology, but in our neighborhoods and in our communities. New York City is, proudly, more diverse than it was half a century ago when the CPL was passed. I have had the pleasure of walking with many of you in your districts' busiest business corridors and utilizing multi-lingual resources to communicate with residents in their native tongue. The language of New York City's marketplace is not just English, but Spanish, Cantonese, Arabic and more. To that end, Introduction 1622, makes clear that it is a deceptive trade practice under the CPL for businesses to fail to provide consumers complete and accurate translations of documents into the language the transaction was negotiated in.

Modernizing the CPL with these updates and clarifications will ensure that the agency can continue to perform its work and build on its legacy established so many years ago.

Intro. 1609

I will now turn my attention to Introduction 1609. In 2015, the City Council created the Office of Labor Policy and Standards (OLPS) to enforce vital workplace protections, such as the Paid Safe and Sick Leave Law, the Fair Workweek Laws, and the Freelance Isn't Free Act, to name a few. To better reflect the expansion of our mission and send a strong message to everyday New Yorkers of our role in the City, the Mayor announced at his 2019 State of the City Address that our agency would be renamed the Department of Consumer and Worker Protection (DCWP). Introduction 1609 would formalize our renaming in the Charter and Administrative Code, all our public-facing communications, and legal documents.

This legislation also clarifies our agency's authority to order restitution, on behalf of consumers and workers, for any laws or rules that DCWP enforces, providing a meaningful remedy for New Yorkers. It also clarifies our authority to inspect businesses onsite for workplace violations, a common compliance tool for labor enforcement agencies.

Conclusion

New York City is the fairest big city in America. Modernizing the CPL and memorializing our expanded mission to advocate for, and protect, workers will ensure that it remains that way. We look forward to working with the Council on these critical bills and other progressive policies, like

paid personal time, that will ensure New York remains, in the words of our Mayor, "a City where work is rewarded, and prosperity shared." Once again, thank you Chair and Members of the Committee for the opportunity to testify today and I am happy to answer any questions you may have.

FOR THE RECORD



FOR IMMEDIATE RELEASE
Monday, December 16, 2019

Contact: Josh Knoller, Josh@nicholaslence.com, (201) 294-9586

**TESTIMONY BY STATUE CRUISES REGARDING INTRO 1622 AS IT RELATES TO
ILLEGAL TICKET HAWKERS IN BATTERY PARK**

“We welcome the City Council’s efforts to tackle such deceptive business practices, but the legislation as is will not stop the most deceptive business practice of all- the ongoing proliferation of unauthorized vendors in Battery Park who mislead and intimidate tourists by illegally selling tickets to boats that do not actually stop at the Statue of Liberty and Ellis Island but merely sail near them.

Despite the recent crackdown the City of New York announced in early October when one of those unsuspecting tourists was Actor Alec Baldwin, the problem has only gotten worse.

To truly stop the criminal menace that has plagued Battery Park the last seven years and counting, the City must not only step up its enforcement efforts but more importantly cut off the supply of tour boat services operating out of city-owned piers that are affiliated with these ticket hawkers. No dock access, no boat, no tickets, no deceptive business practices, no more problem. It’s as simple as that.”

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About Statue Cruises

Statue Cruises is the official concessioner to the National Park Service to provide ferry service to the Statue of Liberty and Ellis Island from Battery Park in lower Manhattan and Liberty State Park in Jersey City, NJ for over 4.4 million visitors annually. Statue Cruises also operates the Liberty Landing Ferry between Jersey City and the World Financial Center in lower Manhattan. For more information, please visit <http://www.statuecruises.com>.



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December 13, 2019

Rafael L. Espinal, Jr., Chair
Committee on Consumer Affairs and Business Licensing
The New York City Council
City Hall
New York, NY 10007

Re: Int. 1609-2019 and Int. 1622-2019

Dear Chairperson Espinal:

I write on behalf of Mobilization for Justice (MFJ) in support of the two bills referenced above, to amend the New York City's Charter, Administrative Code, and Consumer Protection Law to clarify that restitution is available to the NYC Department of Consumer Affairs (DCA) no matter the forum, to raise penalties, and to better define deceptive practices.

MFJ envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised or have disabilities. We do this through providing the highest quality direct civil legal assistance, providing community education, entering into partnerships, engaging in policy advocacy, and bringing impact litigation. We assist more than 10,000 New Yorkers each year, benefitting over 25,000. MFJ's Consumer Rights Project provides advice, counsel and representation to low-income New Yorkers on consumer problems, including issues related to debt collection and deceptive business practices.

Through our weekly hotline and the clinics we staff, MFJ's Consumer Rights Project works with New Yorkers who have been abused by auto dealers, process servers, debt collectors, storage units, and others within DCA's jurisdiction. We advise many of our clients to file complaints with DCA because the agency is often best situated to investigate and penalize deceptive businesses, particularly given the limits of our state consumer protection law, General Business Law § 349.

While improving business practices and shutting down unscrupulous actors are important enforcement goals, what our low-income clients really need when money is wrongfully taken from them is reimbursement of their lost funds. Without clear authority to obtain restitution in all available fora, whether courts or administrative tribunals, DCA is limited in its ability to help the individuals who have been harmed and have brought these problems to its attention. Clear authority to obtain restitution for aggrieved individuals in all available fora also deters bad conduct and provides enforcement leverage.

In addition, Int. 1622-2019 provides important clarifications about the breadth of conduct that can constitute a deceptive practice: for example, that an omission can be misleading; and it incorporates existing requirements that a contract negotiated in a language other than English be provided in that language. It also modernizes the law by raising the penalty for violating New York City's Consumer Protection Law to \$3,500—a level that will serve as an effective deterrent.

Especially given that we cannot count on the federal government to protect consumers, New York City needs a robust consumer protection agency now, more than ever. We urge the New York City Council to pass these two important bills.

Sincerely,

/Ariana Lindermayer/

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Memo of Support for *Intro 1609-2019*

To: New York City Councilmember Rafael Espinal
Chair of the Council Committee on Consumer Affairs & Business Licensing

The Community Service Society (CSS) is an independent 175-year old nonprofit organization that works to advance upward mobility for low-income New Yorkers. CSS has advocated for the expansion of protections and benefits for low-wage workers, including a lead role in efforts to pass the paid sick days law in New York City.

We are writing to express our support for Intro 1609, which would expand the mandate of the Department of Consumer Affairs and rename it the Department of Consumer and Worker Protection. By renaming the agency, the city would recognize the importance of the agency's role in strengthening the rights of working New Yorkers and in enforcing recently implemented city labor standards such as paid sick leave, legislation to combat unpredictable scheduling for fast food and retail employees, and protections for freelance workers.

We also endorse the provision in Intro 1609 that clarifies the agency's ability to conduct on-site inspections and seek restitution on behalf of consumers and workers as part of enforcing the city's labor laws. To date, the agency has a strong track record in actively enforcing paid sick leave and other labor standards recently passed by the City Council. However, enforcement of these laws is largely driven by worker complaints, and workers who stand to benefit the most from these new labor standards—immigrants and those in low-wage industries—are often unaware of their rights or reluctant to speak up because of fears of retaliation from their employers [see [Expanding Workers' Rights](#), by Nancy Rankin and Irene Lew, January 2018]. This provision would enable the agency to be more proactive in identifying employers who are denying their employees the rights that they are entitled to. While we support this provision, we also believe that outreach should be a key part of enforcement. Low public awareness hinders enforcement and limits the effectiveness of laws in benefiting the workers they were designed to help. To ensure that working New Yorkers understand their right to paid sick leave, for example, the City Council should approve Intro 1797, a bill recently introduced by Councilmember Mark Levine to create a [public education campaign](#) that would inform New Yorkers about their right to paid sick leave by the voluntary display of posters at local pharmacies and other health providers.

In line with the agency's name change that reflects its dual mission to protect both consumer and worker rights, the City Council should also move forward with the proposed amendment to the city's paid sick time law that would require private-sector employers of five or more workers to provide additional paid personal time to their employees. Workers with low incomes, those working part time and employees of small businesses disproportionately [lack access to paid vacation](#) and would benefit the most from the proposed law.

For the reasons outlined above, CSS urges the City Council to approve Intro 1609.

December 16, 2019

Re: New York City Hospitality Alliance Testimony on
Int. No. 1622, amending the Consumer Protection Law

The New York City Hospitality Alliance is a not-for-profit trade association that represents thousands of eating and drinking establishments throughout the five boroughs. We offer the following cautionary comments regarding this well-intended legislation.

1. Minor consumer transactions must be excluded from the new non-English language documents requirement

The bill adds a new tenth category of deceptive trade practices enumerated under § 20-701, making it illegal for a business to provide a consumer with a document in English related to a consumer transaction if the transaction was primarily negotiated in a language other than English.

This requirement would sweep restaurant receipts within its scope, which we sincerely hope is not the bill sponsor's intention. Consider the following examples:

- A consumer who speaks Punjabi eats at a restaurant in Queens where he orders his meal from a waiter also speaks Punjabi. At the end of the meal, he receives a bill in English.
- A consumer orders a drink at a bar in Spanish from a bartender who understands Spanish and serves her the drink she ordered. The bartender runs her credit card and gives her the receipt, which is in English.
- A Korean restaurant puts a sign in its window advertising a lunch special. The sign is in Korean, but the receipts printed by the cash register are in English.

These scenarios and countless more are consumer transactions that take place hundreds of thousands of times a day in New York City. Some POS systems, credit card machines and cash registers may only print bills and receipts in English, putting restaurants and bars in a difficult position, especially in a city like New York where so many languages are spoken. This requirement creates a strong disincentive against eating and drinking establishments speaking to customers in languages other than English (or the primary language at the business) to avoid the stiff per-consumer per-day penalties contemplated by the bill.

The Council must make clear that minor consumer transactions under a certain dollar amount are excluded from this new non-English language documents requirement.

2. Such a massive increase in potential fines must be accompanied by common-sense protections for small businesses

The bill increases maximum fines from \$500 to \$3,500, but more importantly, it creates new provisions that consider each individual day of noncompliance and each individual consumer exposed to noncompliance as *individual* violations.

Such draconian fines expose small businesses to bankruptcy for inadvertent violations. We strongly stand in opposition to per-consumer per-day penalties, which are unnecessarily punitive and limitless in scope.

If the Council does insist on such penalties, they must be accompanied by common-sense protections for small businesses. We offer several:

- No “gotcha” games. Almost all the enumerated deceptive trade practice hinge on the term “material,” such as “failure to disclose all material exclusions.” The term “material” is subjective by its nature, leaving the Department of Consumer Affairs with significant discretion to determine whether something is “material” or not on a case-by-case basis. Given the massive new penalties contemplated by the bill, businesses should have the right to know in advance whether DCA believes a particular trade practice is compliant or not. If a business submits a contemplated trade practice to DCA in writing in advance of its implementation, DCA should be required to respond within 30 days advising the business whether the practice is compliant with § 20-701. That way, businesses can act with the confidence that DCA has given their plans approval. This should not be a game of “gotcha.”
- No retroactive application. The legislation must expressly provide that it is not intended to apply retroactively, and only applies to trade practices that take place on and after the legislation’s effective date.
- Cap on penalties. Per-consumer per-day penalties expose small businesses to limitless fines. There must be a maximum cap on a total fine, so that a violation does not put a small business out of business.
- Warning and cure period on the non-English language documents requirement. Even with the substantive changes we suggest in Point 1, any new substantive requirement such as this one should be accompanied by a warning, education, and cure period for first-time offenders.

Thank you for your consideration. Please contact Andrew Rigie, Executive Director of the NYC Hospitality Alliance at arigie@thenycalliance.org or 212-582-2506 with comments or questions.

Respectfully submitted,

New York City Hospitality Alliance

ANDREW RIGIE | EXECUTIVE DIRECTOR | NYC HOSPITALITY ALLIANCE

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RWDSU

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Retail, Wholesale and Department Store Union

**New York City Council
Committee on Consumer Affairs and Business Licensing
Testimony Regarding Intro-1609 and Intro-1622
December 16th, 2019**

The Retail, Wholesale and Department Store Union (RWDSU) represents 100,000 workers across the United States primarily in retail, grocery stores, food processing, car washes, healthcare, warehousing, building services, manufacturing and the public sector. We have approximately 25,000 members in New York City.

I want to thank Councilmember Torres for introducing Intro-1609 and I would also like to thank the Chair of the Committee on Consumer Affairs and Business Licensing, Chairman Espinal for introducing Intro-1622 and for holding today's hearing.

The RWDSU is supportive of Intro-1609 and the positive impact it will have to strength workers' rights and the enforcement of these rights in New York City. The Department of Consumer Affairs has a strong record for undertaking this important work. For the RWDSU, the licensing of car wash businesses by the Department has directly benefited our members who have historically experienced rampant levels of wage theft and exploitation. The licensing of ticket sellers and tour guides by the Department has also directly impacted RWDSU members by providing a regulatory framework to uphold industry standards. Furthermore, the enforcement of paid leave entitlements by the Department has benefited all workers throughout New York City.

Changing the Department's name to the 'Department of Consumer and Worker Protection', as well as designating that the Office of Labor Policy and Standards and Paid Care Division be housed within the Department, accurately reflects the Department's important role in upholding workers' rights and ensuring it will be an ongoing priority in years going forward. In addition, the changes to clarify onsite inspection authority and the ability to secure restitution will also serve as important shop-floor protections and enforcement mechanisms for workers throughout the city. The RWDSU is fully supportive of these changes.

The RWDSU is also supportive of Intro-1622 to update the city's Consumer Protection Law. It is critical that vulnerable populations, such as law income workers and immigrants, are protected from unfair and deceptive consumer practices. Updating the Consumer Protection Law to increase penalties and to cover modern communication businesses, particularly in the digital sphere, are positive changes that the RWDSU supports.

Thank you for your time and consideration.

For further information please contact the RWDSU Political Department at political@rwdsu.org or 212-684-5300.



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New York City Council

Committee on Consumer Affairs and Business Licensing

Intro 1609 – 2019: Changing the name of the Department of Consumer Affairs to the Department of Consumer and Worker Protection

Testimony of 32BJ SEIU

December 16 2019

Submitted via email

Thankyou committee chair Espinal and committee members for the opportunity to submit testimony on Intro 1609 of 2019. We are pleased to support the proposed change to department's name. We also provide here a number of recommendations to further strengthen the operations of the Department.

32BJ is proud to have championed a number of the laws overseen the department, including paid safe and sick leave, fair scheduling for fast food and retail workers, the \$15 minimum wage, rights for freelancers and protections for displaced building service workers. The Department has demonstrated its effectiveness in enforcing these laws - many of which are pioneering pieces legislation that provide protections to workers in industries where labor rights are often neglected.

We particularly wish to commend the department for its recent actions to enforce the city's fair work week laws. The department filed a lawsuit in September against Chipotle for over \$1 million in restitution for workers, and has successful negotiated settlements on behalf of more than 1000 workers with some of the nation's largest fast food companies. These actions have given this nation leading law real teeth and made clear to fast food workers that the city has their back.

It is only fitting for the department to change its name to include "worker protection". The change makes clear that protecting workers' rights is not a secondary function of the department, but one that is central to its mission and work. This clarity will assist both workers and businesses on a day-to-day basis by making it easier for people to identify the department and to understand its purpose when seeking assistance or engaging with it.

To ensure the interest of workers continues to be upheld by the department, we ask that labor organizations be included among the organizations listed as relevant stakeholders with who the commissioner shall intentional communicate and share information with. The proposed text at page 7, line 18 should be amendment as follows:

"facilitate the exchange and dissemination of information in consultation with city agencies, federal and state officials, businesses, employees,

independent contractors, labor organizations, and nonprofit organizations working in the field of worker education, safety and protection"

We also express our support for the recommended amendments to Intro 1609 made by A Better Balance regarding the procedures of the department and the office of administrative trials and hearings (OATH). These proposed changes will help to ensure workers are well informed of their rights and how their complaint is being handled, and that their interests are central throughout the investigative and litigation process.

We again wish to thank you for your time and consideration of these comments, and for your contribution to improvements the City has made to workers' rights in New York City.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1609 1622 Res. No. _____

in favor in opposition

Date: 12/16/2019

(PLEASE PRINT)

Name: Lawrence Ben

Address: 370 7th AV, New York, NY 10001

I represent: RWDSU

Address: 370 7th AV., New York, NY 10001

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. 1622/1600 Res. No. _____

in favor in opposition

Date: 12/16/19

(PLEASE PRINT)

Name: Lorelei Salas

Address: _____

I represent: DCWP

Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1609 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Carlos Hernandez

Address: 1640 Lacombe Ave Apt #1

I represent: 3205

Address: 25 W 18th Street

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. 1672/1609 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Mike Tiger

Address: 42 Broadway

I represent: DCWP

Address: _____

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