

**Testimony of the
New York City Department of Consumer Affairs
Before the
New York City Council Committees on Consumer Affairs, Small Business, and
Governmental Operations**

Testimony on Intro. 726 and Intro. 729

April 14, 2015

Good afternoon Chairman Espinal, Chairman Cornegy, Chairman Kallos, and members of the Committees on Consumer Affairs, Small Business, and Governmental Operations. I am Amit Bagga, Deputy Commissioner of External Affairs at the Department of Consumer Affairs (“DCA”), and I am joined by my colleagues Marla Tepper, General Counsel and Deputy Commissioner of Legal Affairs, Alba Pico, First Deputy Commissioner, and Sandra Abeles, Deputy Chief of Staff.

Thank you for inviting us to testify about Intro. 726 and Intro. 729 today.

DCA’s overall mission is to empower consumers and businesses alike to ensure a fair and vibrant marketplace. The agency licenses approximately 80,000 businesses across 55 different industries, mediates complaints between consumers and businesses, conducts patrol inspections and legal investigations, educates businesses about laws and rules, and also enforces several labor-related laws, such as the Earned Sick Time Act, the Living Wage Executive Order, and soon, the “transit benefits” law. DCA also houses the Office of Financial Empowerment (“OFE”), which is the first municipal government initiative in the country with the specific mission to educate, empower, and protect New Yorkers with low incomes.

Intro. 726: Business Education Days

Today’s testimony will first address Intro. 726, a bill that would require, among other things, the Commissioners of the Departments of Consumer Affairs and Small Business Services (“SBS”) to organize and conduct business education days, on which we shall provide local businesses with information regarding the City’s consumer protection and other related laws, such as those related to pricing and licensing. The agencies would also be required to conduct these business education days in at least two separate locations within each borough and the first such day must occur before June 30 of this year. DCA supports this legislation.

I am pleased to report to you that since 2003, DCA has held 10 “Business Education Days,” on which, DCA and SBS staff, along with local business organizations, community associations, and elected officials, have visited hundreds of small businesses across the five boroughs to educate business owners about key consumer protection laws and licensing requirements.

On these business education days, representatives have gone door-to-door in small business corridors, educating business owners and operators about regulations that apply to their businesses, so that they know about the laws they must comply with - before an inspector might come visit them and issue violations. DCA staff members then conduct a mock inspection to highlight compliance issues, covering licensing requirements, refund rules, receipts and price posting, and weights and measures rules, among others.

During our most recent business education day, DCA staff visited thirty-four communities across the five boroughs to educate more than 2,000 businesses about how to avoid violations. With the help of local Business Improvement Districts (BIDs), elected officials, and community organizations, DCA identified business strips to target for education. In each borough, DCA visited between three and 11 business communities: from Parkchester in The Bronx to Canarsie in Brooklyn, from East Harlem in Manhattan to Jamaica in Queens, and from Brownsville in Brooklyn to Port Richmond on Staten Island. In each community, DCA staff provided businesses with our “10 Things Every Business Should Know” guide, which is available in English, Spanish, Chinese, Korean, Russian, Haitian Creole, and Bengali, both in print and on our website. A copy of this guide is also on your chairs. As you can see, the guide provides critical information to business owners about licensing requirements, price posting, the process by which consumer complaints are resolved, and addresses other questions and concerns frequently posed to the agency by business owners.

DCA has also shared information about its online Business Toolbox, which features the City’s first online “live chat” option. This way, business owners can save precious time by not having to visit DCA’s Licensing Center or take time away from their customers to call in a question.

Outreach

DCA is proud of its continued work with sister agencies to conduct robust, multi-lingual outreach and education for businesses on topics ranging from paid sick leave to the earned income tax credit and small business relief.

With the help of our sister agencies and community partners, DCA conducted unprecedented outreach on Paid Sick Leave, a signature achievement for both Mayor de Blasio and Speaker Mark-Viverito. As of April 10, 2015, DCA has posted information on our website in 26 languages, distributed more than 1.9 million pieces of paid sick leave literature, visited more than 1,500 businesses in person to educate owners about the law, and held or attended nearly 850 paid sick leave-related events across the five boroughs. These events have included workshops with SBS’ Jobs Plus participants, presentations before dozens of industry groups, ranging from The Bodega Association to the New York Hospitality Alliance, community events such as street fairs and NYCHA Family Days, and specific trainings for multi-branch businesses, such as Gregory’s Coffee and Ricky’s Cosmetics. Of our events, 482 have taken place in boroughs

outside Manhattan and more than twenty five percent of them have taken place in a language other than English.

Beyond paid sick leave, we are committed to interagency collaboration in all elements of our outreach – from the immigrant town halls we have been hosting with SBS, as well as the Mayor’s Office of Immigrant Affairs and the Community Affairs Unit, to our collaboration with the Human Resources Administration, the Department of Homeless Services, and NYCHA to distribute information about the Earned Income Tax Credit to eligible New Yorkers. Additionally, our enforcement division has had significant direct engagement with community boards through participation in business education events and attendance at borough or district service cabinet meetings.

DCA is firmly committed to educating businesses about laws and rules and bringing them into compliance before violations are issued and fines are assessed. We look forward to continued collaboration with SBS and other sister agencies, industry groups, BIDs, merchant associations, community-based organizations, community boards, and of course, the City Council on educating our City’s businesses.

Small Business Relief Package

Under Mayor de Blasio’s leadership, DCA has deepened its commitment to educating business before issuing violations and assessing fines. In July 2014, DCA implemented approximately two dozen reforms that will ultimately result in the reduction of fines assessed on small businesses by \$5 million in the current fiscal year, as compared to the previous fiscal year.

One key reform was the reduction in the number of counts per violation type for minor infractions. In the past, if five cans of a particular food product were missing price tags, a count would be noted for each can, each count resulting in an incremental increase in the total fine amount, even though the type of the violation was exactly the same. Our reforms now assess all counts of a particular type of violation – pricing in this case – as one count. This change has been particularly helpful to small businesses such as bodegas and local grocery retailers, which often do not have resources to cover the costs of large and onerous fines. In addition to reducing fines, our business relief package increases transparency and fairness and greatly expands DCA’s education and outreach efforts. As a former small business owner, Commissioner Menin knows how important it is to obtain clear, consistent information from the City about laws and rules. To further Mayor de Blasio’s vision of reducing burdens on small business owners, DCA introduced a new Legal Ombudsman in October 2014. Our Ombudsman is dedicated to answering questions that businesses have about the laws that DCA enforces.

DCA is also particularly focused on meeting the needs of immigrant small business owners, who, by some estimates, own or operate 40% of our City’s businesses. For example, 41 of our most commonly-used inspection checklists are now on our website in plain English and in several other languages including Bangla, Arabic, Spanish and Chinese. Additionally, patrol inspections

can now be conducted on the spot in an owner's language of choice by using Language Line. These important changes help eliminate fear and confusion on the part of immigrant small business owners and also help increase access to information and facilitate compliance with the law.

To ensure small business owners are informed about these changes, in fall of 2014, the agency launched a citywide business education tour with each of the borough-wide chambers of commerce. By the close of 2014, the agency worked in partnership with BIDs, community-based organizations, and elected officials to hold an additional 74 events reaching over 3,000 businesses.

Thank you for giving DCA the opportunity to testify about this important issue. I would now like to offer comments on Intro. 729, a bill that would require an annual analysis of, and recommendations based on, violations dismissed by DCA's tribunal.

Intro. 729: Reporting Dismissed Violations

We appreciate the opportunity to testify about Intro. 729 today; it is in the joint pursuit of effective tools to provide relief to small business owners and ensure efficient and effective government operation that DCA offers its position on the legislation being addressed today.

DCA has worked tirelessly to ensure that we aid the business community with compliance while we also maintain a rigorous structure of oversight over our City's businesses, particularly those that egregiously flout laws and rules, engage in predatory or deceptive practices, and have a negative impact on consumers or the marketplace.

As we have testified today, we are also careful to ensure that businesses are not subject to excessive violations and fines and we employ careful and calibrated enforcement methods to ensure compliance. DCA also shares the Council's goal of minimizing violations that are not properly charged, and therefore already has clear protocols in place to assess dismissed violations.

Among other things, Intro. 729 proposes that the agency include a catalogue and an analysis of the characteristics of the violations dismissed by DCA's tribunal and the reasons for their dismissal in an annual report.

The issuance of charges depends on individual facts. A tribunal's assessment of charges may be contingent on a variety of factors, including the credibility of witnesses. The agency agrees that ensuring accuracy and efficiency in our operations, as well as minimizing inconveniences faced by small businesses, requires, as the bill states, "planned action." Our legal and enforcement divisions assess every violation dismissal on an individual basis to determine whether the dismissal is appropriate or whether we have grounds for an appeal, and whether adjustments in forms, checklists, and trainings are necessary.

Considering the unique nature of each dismissal, it is crucial that any reporting mechanism accurately and appropriately reflect violation dismissal data. As such, DCA welcomes the opportunity to work with the Mayor's Office and the Council to identify an appropriate way in which to report violation dismissal data.

We would like to note that our rate of violation dismissals is low. In fact, violations are dismissed by the agency's tribunal at such low levels that the analysis of dismissal rates on an annual basis is not likely to show statistically significant trends. Of the notices of hearing ("NOHs") that DCA has issued in Fiscal Year 2015 to date¹, only 5.6% of those NOHs contained a charge that was ultimately dismissed. Considering how low this rate is, a catalogued report issued on an annual basis is not likely to show trends in violation dismissal.

Once again, thank you for the opportunity to testify before you today on these two important bills; my colleagues and I will be happy to answer any questions you might have.

¹ Through March 31, 2015