

**Testimony of Assistant Commissioner Carlos A. Ortiz
New York City Department of Consumer and Worker Protection**

**Before the Committee on
Consumer and Worker Protection**

Hearing on Introductions 813, 818, and 891

March 29, 2023

Introduction

Good morning, Chair Velázquez and members of the Committee on Consumer and Worker Protection. My name is Carlos Ortiz, and I am the Assistant Commissioner for External Affairs at the Department of Consumer and Worker Protection (DCWP). I am joined by Elizabeth Wagoner, our Deputy Commissioner for the Office of Labor Policy & Standards, Andrew Schwenk, our Associate General Counsel, and Steven Picker, Executive Director of Food & Beverage Industry Partnership at the Department of Small Business Services (SBS). Thank you for the opportunity to testify today on Introductions 813, 818, and 891, relating to delivery fee caps, the temporary schedule change law, and games of chance, respectively.

These three bills each highlight different aspects of the varied work we do to protect New Yorkers during their daily lives and uplift the small businesses that bring vibrancy and necessary services to our communities.

Delivery Fee Caps and Introduction 813

As part of our licensing of online third-party food delivery services (delivery apps), DCWP enforces caps on what delivery apps can charge restaurants for each delivery they facilitate. Currently, delivery apps can only charge a restaurant a total of 23% of an order in fees, broken down as follows: up to 15% for delivery fees; up to 3% for transaction fees; and up to 5% for other fees.

The caps on fees that delivery apps can charge restaurants were first created by the City Council during the COVID-19 pandemic, and were later made permanent under Local Law 103 of 2021.¹ Local Law 103 also requires DCWP to submit a report every two years to the Council that provides feedback on the impact of the fee caps in New York City.

Introduction 813 seeks to amend the fee caps. Our understanding of the bill as drafted, is that it will allow delivery apps to charge additional fees to restaurants in exchange for being listed and marketed on their platforms.

¹ See Local Law 52 of 2020:

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4344564&GUID=BAB73224-E999-411A-8C42-1BDF14C0DACE&Options=ID|Text|Search=delivery+fees>; and Local Law 103 of 2021: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5116226&GUID=C266469A-2803-4C77-ACD2-ACCFA711B12D&Options=ID|Text|Search=delivery+fees>.

My colleague at the Department of Small Business Services can speak more directly to the fee caps and their impact on New York City's restaurants and small businesses. As the restaurant industry continues to recover, SBS is ready to provide continued support and help small businesses navigate a rapidly changing market landscape.

As an enforcement agency, DCWP will enforce the fee caps at the limits mandated by local law. We are also on track to submit the required report on the impact of the fee caps this September. If the fee caps are amended before that time, we believe that the report will need to be pushed back to account for the changed circumstances in the industry. I would also note that the current fee caps are subject to ongoing litigation.

Temporary Schedule Change Law and Introduction 818

Under the Temporary Schedule Change Law, employees are entitled to a temporary adjustment to their normal work hours or location for certain personal events. The temporary change could include shifting working hours, taking unpaid time off, or swapping working hours with a coworker. Employees are protected from retaliation for making requests under the law. However, this right to a temporary schedule change is limited. An employee is guaranteed up to two schedule changes per year for a maximum of two business days. The law covers only certain types of personal events, which include caregiving for an employee's family member with a disability or for a child under 18, attending a public benefits hearing, or anything that would be a permissible use under the New York City Paid Safe and Sick Leave Law.²

Introduction 818 would require DCWP to conduct an annual outreach campaign to inform New Yorkers about the Temporary Schedule Change law. The agency would be required to develop and distribute materials relating to the law to employers, who would then be required to distribute them to their employees. Additionally, DCWP would have to implement a media campaign online and on television, radio, and print.

DCWP supports the intent of this bill; we are committed to educating New Yorkers about their rights in the workplace. DCWP currently does extensive outreach on all of its worker rights. In 2022 alone, our community affairs team conducted more than 250 worker-focused events in partnership with community organizations, sister agencies, and elected officials, reaching more than 20,000 New Yorkers.

We would recommend that the bill also include outreach on the Paid Safe and Sick Leave Law, which also provides vital opportunities for workers to address personal needs. A combined outreach campaign would provide workers with a more complete understanding of their rights to time off under City law. Additionally, we would like to explore ways to refine the protections under the Temporary Schedule Change law to align them with those under the Paid Safe and Sick Leave Law and reduce administrative burdens on our small businesses and workers. We look forward to working with the Council as this bill continues through the legislative process.

Games of Chance and Introduction 891

² See § 20-1261 and § 20-1262 of the New York City Administrative Code:
<https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCAAdmin/0-0-0-36509>

Currently, both New York City and the New York State Gaming Commission regulate charitable gaming. In New York City, DCWP issues licenses to non-profits operating games of chance, such as a raffle or a casino night. Currently, operators of games of chance cannot offer prizes worth more than \$100, allow wagers more than \$10 or admission fees more than \$2, or conduct more than 12 games a year. There are also restrictions on the amount of advertising an organization may do and how much the organization may compensate the staff that operates the game. Finally, New York City law prohibits the sale of alcohol other than beer during games of chance.

Introduction 891 would provide exemptions to these restrictions for games of chance that take place at professional sporting venues. This bill would eliminate the restriction on the sale of alcohol during all games of chance, not just those held at professional sporting venues.

DCWP is supportive of efforts like this to modernize the games of chance license and align it with New York State charitable gaming regulations. Currently other New York State-based sports venues hold charitable games of chance on-site, including the Buffalo Bills and New York Islanders. New York City's sports teams should also have that right. DCWP looks forward to working with the Council as this bill moves forward.

Conclusion

Thank you for the opportunity to testify on these three bills. We look forward to answering any questions you may have.