

**Testimony of New York City Department of Consumer Affairs
before the
New York City Council Committee on Consumer Affairs and Business Licensing
jointly with
Committee on the Justice System**

**Hearing on
Introductions 510-A and 724, regarding For-Profit Bail Bonds**

May 2, 2018

Good morning Chairs Espinal, Lancman, and members of the Committees on Consumer Affairs and Business Licensing and the Justice System. My name is Casey Adams and I am the Director of City Legislative Affairs for the New York City Department of Consumer Affairs (DCA). I am joined today by some of my colleagues from the department and I would like to thank you for inviting DCA to testify about Introductions 510-A and 724, both of which relate to the regulation of the for-profit bail bond industry in New York City. DCA supports both of these bills and we commend their sponsors, Speaker Johnson and Chairs Lancman and Espinal, as well as the members of both committees, for focusing on an issue that has a crucial impact on the lives of vulnerable New Yorkers. Today, I will offer brief comments about possible adjustments that we think would strengthen these proposals and enhance DCA's ability to ensure that consumers are armed with the information they need to protect themselves and hold businesses that wrong them accountable.

New Yorkers are forced to turn to the for-profit bail bond industry at moments of desperation: when a loved one is behind bars and counting on them for help getting home. Bail can run into thousands of dollars, often requiring far more money than the average New Yorker can produce unexpectedly and at a moment's notice. According to recent reports, the for-profit bail bond industry has grown to a size of \$14 billion nationally by offering people in need the opportunity to bring their loved ones home in exchange for a percentage of the bail amount and temporary posting of collateral by the consumer. Large insurance companies called sureties issue the bonds posted in court. They control bail bond agents through webs of contracted managers. Bail bond agents do the work of actually arranging transactions with desperate consumers. It is these low-level bail bond agencies, which often operate out of neighborhood storefronts clustered around courthouses, that are the most visible part of the for-profit bail bond industry. Unfortunately, the services provided by this industry have all too often been accompanied by deceit, deception, and abuse of those who come for help when they are at their most vulnerable.

Surities and bail bond agents must be licensed by the New York State Department of Financial Services (DFS). State law imposes a number of requirements on bail bond agents, the most important of which is a limit on the premium or compensation that may be charged for posting a bond or property as bail. According to data obtained from the DFS database, there are currently 20 business entities licensed as bail bond agents operating a total of 29 offices across New York City. In addition, there are 84 individuals licensed as bail bond agents in our city. These entities and individuals work with 25 sureties registered with DFS. All but four of these sureties are headquartered in states other than New York. Because bail bond agents are the individuals and

companies that consumers interact with directly, entrust with their collateral, and pay premiums and compensation to in exchange for services, they are the source of many of the complaints about unacceptable practices in the industry.

Unlike DFS, DCA does not have broad regulatory authority over the for-profit bail bond industry. However, companies involved in this industry, like all businesses that engage in consumer transactions in New York City, are covered by the Consumer Protection Law (CPL). The CPL, which DCA enforces, prohibits deceptive or unconscionable trade practices. In February, DCA used this authority to bring an action in New York State Supreme Court against bail bond agent Marvin Morgan, as well as the sureties and management companies that worked with him, for engaging in deceptive and unlawful trade practices. In our complaint, DCA alleges numerous violations of the CPL, including repeatedly and persistently deceiving consumers by charging illegal fees in excess of the compensation cap, failing to refund collateral to consumers after bail had been discharged, refusing to provide consumers with required documentation of transactions, and providing incomplete or misleading information on receipts. We are asking the court to award almost \$60,000 in fines and restitution for 16 consumers, and to establish a restitution fund for affected consumers who may come forward in the future. While I will only be able to discuss this case in general terms today because the litigation is still pending, DCA is proud of this action. The filing of this case puts all corporate insurance companies, management companies, and bail bond agents on notice that illegal and exploitative behavior will not be tolerated.

I will now turn to Intros. 510-A and 724, which would arm consumers with information about their rights and the legal responsibilities of entities engaged in the for-profit bail bond industry and give DCA new tools to ensure consumers are educated and informed.

Introduction 510-A

Intro. 510-A, sponsored by Chairs Lancman and Espinal, requires bail bond businesses to post a disclosure informing consumers of the premium and compensation limit imposed by state law. In addition, it requires DCA to establish a complaint mechanism for consumers to report violations of this law and refer any complaints received to the New York police department for investigation. DCA strongly supports this effort to give consumers the information they need to protect themselves and guide complaints to the agency empowered to take action when consumer harm occurs. We would like to offer the Council a few brief suggestions that we think will clarify and strengthen the proposal.

First, we think the bill would benefit from giving DCA greater flexibility to specify the content of the required disclosure by rule. Currently, the bill includes language that must be included on a disclosure and cannot be modified except by law. Revising the language to specify the substantive points the disclosure must cover, at a minimum, and allowing DCA to update or add information by rule would give the Department the flexibility to ensure that the disclosure stays up to date with changes in state laws and rules. This approach is already taken in similar disclosures required in other industries, and we believe this change would make the law more responsive to any future changes in the legal landscape.

Next, DCA supports the development of robust complaint mechanisms- indeed, we do this for all of the laws we enforce- and we want to make sure that consumers are directed to the government agency that is best equipped to help them in the first instance. It is all too easy for a consumer who is passed between different agencies at different levels of government to become discouraged and give up on getting help. Because DFS is the entity charged by state law with licensing bail bond agents, they are better positioned than DCA to respond to complaints on a routine basis. We believe that Council shares these understandings and goals, as the other bill, Intro. 724, mandates that DCA's consumer bill of rights direct consumers to file complaints with the appropriate city and state agencies. Under both bills, DCA would continue to refer any and all complaints that fall outside our jurisdiction to the correct agency. Of course, if DCA were to discover particularly egregious cases of deceptive practices, we would also conduct our own investigation and evaluate all appropriate remedies, as we have done in the past.

DCA looks forward to working with the Council on our suggestions, and others we will hear from advocates today, as Intro. 510-A moves through the legislative process. I will now turn to the second bill, Intro. 724.

Introduction 724

Intro. 724, sponsored by Speaker Johnson, provides consumers of the for-profit bail bond industry with information regarding their rights and basic information about the businesses and individuals to whom they turn for help bringing a loved one home. Specifically, the bill requires bail bond businesses, and those that refer consumers to these businesses for a fee, to post and distribute to customers a bill of rights to be developed by DCA. In addition, the bill requires covered entities to provide consumers with a copy of all documents they sign. As with Intro. 510-A, we strongly support this effort and will offer suggestions on strengthening the bill for the Council's consideration.

First, we are glad to see that the bill requires bail bond agents to provide a detailed receipt at the time of a transaction. During the investigation that led to our February case, DCA attorneys found that some bail bond agents either refuse to provide receipts altogether or provide receipts with incomplete or inaccurate information. Without detailed and accurate records of a transaction, it is very difficult for consumers to hold bail bond agents accountable. We think that this provision could be strengthened by requiring more specific information about a transaction, for example, the amount of a bond, the name of the surety that issued the bond, a description of collateral or security, and a clear statement of any money paid to a third party and the purpose for that payment. This change could be accomplished either by amending the bill's language or giving DCA the authority to specify additional required information by rule. Requiring bail bond agents to provide detailed receipts will help consumers both to protect themselves and seek effective redress when they are harmed.

Second, we suggest that bail bond businesses be required to retain an initialed copy of each consumer bill of rights. Requiring an initialed copy of the consumer bill of rights be retained, as is done in other industries with these types of documents like paid income tax preparers and secondhand car dealers, will help ensure that each consumer is given the chance to review the

document and give DCA an important tool for holding businesses accountable if a consumer later complains.

Similarly, we believe that businesses should be required to keep detailed records of transaction documents and receipts for a period of years and make them available to the Department upon request. While these entities are already required to keep certain records, as well as produce receipts as I described earlier, under DFS rules, these mandates are not enforceable by DCA. Codifying robust recordkeeping and receipt provisions in local law will help DCA investigate and remedy consumer harm as well as monitor compliance with new requirements.

Conclusion

DCA would like to thank both committees for the opportunity to testify today. Through our recent investigation, we saw first-hand how certain players within the for-profit bail bond industry prey on vulnerable New Yorkers desperate to help bring their loved ones home. Speaker Johnson and Chairs Lancman and Espinal should be commended for shining a spotlight on this complex and important issue. We support the intent of Intros. 510-A and 724 and appreciate the chance to offer suggestions on how they could be clarified and strengthened. We look forward to discussing our suggestions, and other minor technical amendments, in greater detail with the Council. Thank you, and I will be happy to take your questions.