



**Statement of Andrew Eiler  
Director of Legislative Affairs  
Department of Consumer Affairs  
before the  
City Council Committee on  
Consumer Affairs  
on  
Intro. 913**

**November 18, 2009**

Good morning, Chairman Comrie and members of the Consumer Affairs Committee. My name is Andrew Eiler, and I am the Director of Legislative Affairs for the Department of Consumer Affairs. Commissioner Mintz asked me to thank you for this opportunity to comment on Intro 913.

We appreciate the purpose of this bill, which is to promote the safety of large crowds that often gather to take advantage of deep discounts made available in sales like those on "**Black Friday**," the day after Thanksgiving. According to the National Retail Federation, the number of shoppers swelled to over 127 million shoppers on Black Friday in 2008.

In recent years, "Black Friday" deals have inspired consumers to start lining up as early as midnight, sometimes even pitching tents to be there in time to get in on the action. The rush to beat other shoppers to those few irresistible deals has also brought in its wake rudeness, jumping lines, fights, injuries and even occasional deaths as shoppers become frenzied in their efforts to reach the sale merchandise.

To protect shoppers drawn to such sales, Intro 913 would require that they be licensed by the Department; that a retailer apply for such license at least 60 days before a qualifying sales event; and that the Department issue licenses for such sales only on the approval of a detailed crowd control plan submitted by the applicant. The bill also provides for both civil and criminal penalties for violations.

While we share the Council's concerns about protecting the safety of shoppers, we are concerned that the proposal does not address those concerns or, worse, actually decreases consumer protections, for the following reasons:

- First, this proposal contains significant impracticalities, including vague triggering language such as “limited quantities,” and it does not accommodate the reality that many stores, particularly small businesses do not plan such sales as far in advance as 60 days.
- Second, protections offered by the submitted crowd control plans proposed here would be illusory. Even assuming for the moment the Department had the expertise and additional staff to effectively evaluate whether any proposed plan would be adequate to ensure the safety of shoppers, the required information the store must provide about the number of shoppers anticipated and resources assigned to the plan may be inaccurate, rendering the plan inoperative and thus providing only illusory and misleading protection to the public.
- And third, we would caution the Council that there may be unintended legal disadvantages to consumers should they in fact be injured in such a sale. Store owners who fully comply with an approved plan may argue in court that an injured plaintiff should not recover as a result. Their theory would be that the presence of a license absolves the store owner from legal responsibility for any injuries in civil actions against retailers who followed an approved plan that proved to be inadequate for the actual sale.

While the safety of shoppers is of paramount concern, we do not see the bill before you as the solution, and in fact worry that it might impede the current system of civil and criminal regulation designed to press merchants to safeguard shoppers on their premises under existing law.

The Commissioner again thanks you for the opportunity to comment on Intro 913. I would now be pleased to answer your questions.

Our law office represents the Estate of Jdimytai Damour. We are here to comment on the unfortunate events that took place last year on “Black Friday” and the proposed legislation that seeks to prevent such an incident from occurring again in the future.

As many know, every year large retailers, such as Wal-Mart, entice consumers to attend their “door-buster sales” on the day after Thanksgiving known as “Black Friday.” The retailers offer items at large discounts for only a limited time, and the sales begin in the early hours of the morning.

Wal-Mart and other retailers encourage customers to amass outside the entrance of their stores and literally bust down the doors in order to reap the benefits of the discounted items. Advertising and marketing campaigns for “door-buster sales” are specifically designed to create a climate of competition among the customers. Sales only last for a limited time and there are only scant quantities of the discounted products available, encouraging patrons to arrive early in order to beat out their fellow patrons for the biggest deals of the season.

This atmosphere of competitive shopping saw its ill-fated, yet inevitable, culmination last year when Jdimytai Damour was trampled to his death by a mob of shoppers at a Long Island Wal-Mart. Wal-Mart attracted bargain hunters to swell outside the store’s entrance, and then promptly at 5:00 a.m., the floodgates opened. Upon the store’s opening, the customers surged into the Wal-Mart, creating a treacherous stampede. The dangerous conditions were easily avoidable if Wal-Mart properly prepared for the massive crowds and the consumer frenzy, which it had deliberately created. There was a lack of sufficient plans for crowd control and there was no provision for crowd management training or the necessary tools to safely manage the substantial crowd. This utter disregard for human life and limb in its creation of an extremely hazardous condition caused the death of Jdimytai Damour.

The proposed legislation, if enacted, will ensure that retailers appropriately plan and organize their sales events, with the goal that the tragic events of last year's "Black Friday" will never be repeated. The legislation calls for retailers to apply for a license to conduct such a sales event and create and implement appropriate crowd control measures. These steps are important to ensure that the retail leviathans, such as Wal-Mart, are vigilant to protect those persons who are invited onto their premises for the purpose of profit. Unfortunately, greed and a lack of concern for the public welfare demonstrated by the corporate giants too often accompanies the holiday shopping season. This legislation will compel retailers to consider the safety of their customers first, instead of only their bottom line.