

TESTIMONY

BY

DEPUTY COMMISSIONER

MICHAEL BLAISE BACKER

NEW YORK CITY

DEPARTMENT OF SMALL BUSINESS SERVICES

BEFORE

THE COMMITTEE ON SMALL BUSINESS

OF THE

NEW YORK CITY COUNCIL

FRIDAY, APRIL 09, 2021

Good morning Chair Gjonaj and members of the Committee on Small Business and City Council. I am Michael Blaise Backer, Deputy Commissioner for Neighborhood Development at the New York City Department of Small Business Services (SBS). I am joined by my colleague Amna Malik and from the Mayor's Office for People with Disabilities (MOPD) Edward Friedman and Phil Monaco. At SBS, we aim to unlock economic potential and create economic security for all New Yorkers by connecting them to quality jobs, building stronger businesses, and fostering thriving neighborhoods across the five boroughs. I am pleased to testify on the proposed bills—Introductions 2097 and 2110—and SBS's efforts to support small businesses create greater access to the disability community and navigate accessibility compliance issues.

New York City small businesses collectively create a vital and essential infrastructure for the people that inhabit and visit the city. This includes the roughly one million New Yorkers who have a self-disclosed disability and the approximately seven to nine million tourists with disabilities who visit New York City each year. Creating access to our small businesses is essential to equity for people with disabilities who have faced centuries of physical and attitudinal barriers. It is also essential for thriving businesses

and building stronger communities— of which the disability community is an integral part.

In 1990 the landmark Americans with Disabilities Act (ADA) was passed and since then we have come a long way, but there is still work to be done. At SBS we recognize the need to provide adequate access for people with disabilities and the challenges that small businesses face when meeting their legal obligations under federal, state and local law. In 2019, SBS provided resources through the Avenue NYC grant program to the NYC Business Improvement District (BID) Association, and the Public Policy Lab and partnered with MOPD to provide support to the small business community. The goal of the project was to create greater access to the City's small businesses by supporting better understanding of, and compliance with, accessibility requirements; leading to fewer penalties for New York City businesses. The stakeholders took a deep dive into compliance requirements and mapped out the different challenges that a business owner may potentially face.

The result was the creation of the Empowering Accessibility Report and the launch of a digital resource platform at www.businessaccessibility.nyc.

These resources provide information for all business owners, whether they are in the process of opening a business, operating an existing business, or

responding to an accessibility issue. The digital platform includes information on the benefits of making a business accessible, physical and digital accessibility standards, the risks of accessibility lawsuits, and additional resources. It also includes step-by-step navigation materials for businesses translated into 12 languages.

Additionally in 2019, MOPD and SBS conducted an in-person and digital accessibility training for representatives from BIDs across the city to highlight the Empowering Accessibility program and ensure that BIDs are aware of accessibility obligations when supporting their neighborhood businesses.

The premise of this work and the resources created are in line with the spirit of Introduction 2110. SBS compliance advisors meet with businesses regularly to address various compliance questions and needs. Intro 2110 would build on these existing education and training efforts. With regards to Introduction 2097, the City is firmly committed to providing small businesses with information to help them better understand their legal obligations under the ADA and related laws. We look forward to a continued conversation with the Council on how to ensure that small businesses are supported as they seek to comply with their accessibility mandates.

SBS believes increased accessibility is not only a civil right but also makes good business sense. The disability community must have access to the small businesses and restaurants that play a critical role in our economy and cultural life. We also believe that any business that is fully inclusive of people with disabilities at the consumer and employment levels has an increased return on investment for themselves and the City.

Educating small business owners about accessibility mandates —so that they are inclusive for all New Yorkers and visitors with disabilities—is vitally important. The City remains firmly committed to providing educational materials that inform business owners on laws requiring accessibility for people with disabilities. We look forward to working with the Council, and the business and disability communities to ensure that New York City is accessible to all.

Thank you for the opportunity to testify today and we are happy to answer any questions.

**Testimony of
the New York City Hospitality Alliance
Before the Committee on Small Business
April 9th, 2021**

My name is Andrew Rigie, and I am Executive Director of the New York City Hospitality Alliance (“The Alliance”), a not-for-profit association representing restaurant and nightlife establishments throughout the five boroughs. I want to thank Chair Mark Gjonaj and Councilmember Kallos for sponsoring this legislation, along with members of the small business committee for the opportunity to testify in support of Int. 2097 and Int. 2110 subject to our following comments.

Int. No. 2097, in relation to accessibility in small businesses

- The legislation should make clear whether both the tenant AND the property owner need to be a “small business” in order to be eligible for a grant or loan. It should be only the applicant for the grant or loan. If the property owner also needs to be a “small business,” then it is likely that many tenants (who are small businesses) will not be eligible for a grant or loan despite likely being responsible for ADA compliance pursuant to the tenants’ lease agreements with the “large” property owners.
- If both the property owner and the tenant need to consent to the receipt of the loan or grant, but the City has the authority to require the property owner to decrease the rent charged to the tenant, then it would not be surprising if property owners refuse to provide such consent and the legislation has the unintended consequence of not helping small business tenants improve the accessibility of their establishments.

Int. No. 2097, in relation to accessibility in small businesses and Int. No. 2110, in relation to providing training and education to small businesses on compliance with the Americans with disabilities act

- A provision should be added to both bills stating that participation in the training and education program and/or the grant/loan request should not be deemed an admission of wrongdoing or violation of law.

We thank the City Council and Small Business Committee for your time and consideration of our comments on Int. 2097 and Int. 2110.

If you have any questions or comments, I am reachable at arigie@thenycalliance.org.

Respectfully submitted,

Andrew Rigie
Executive Director
NYC Hospitality Alliance



In support of Intros 2097 and 2110

Good afternoon. My name is Kathleen Reilly and I am the NYC Government Affairs Coordinator for the New York State Restaurant Association. We are a trade group that represents food and beverage establishments in New York City and State. We are the largest hospitality trade association in the State, and we have advocated on behalf of our members for over 80 years. Our members represent a large and widely regulated constituency in New York City.

Thank you to the Small Business Committee and Chair Gjonaj for holding today's hearing, and Council Member Kallos and the cosponsors for introducing Intros 2097 and 2110. Overall, this legislation has our wholehearted support. Accessibility and ADA compliance are important to us and to NYC, and helping businesses meet that standard through education and resources is a helpful way for the city to get involved.

In regards to financial resources, Intro 2097 provides for some combination of grants, loans, and in-kind materials and services. From the restaurant industry's perspective, grants and in-kind services or materials would be highly preferable, and loans would be less preferable. Due to COVID-19, restaurant operators are on very precarious financial footing, and many are already taking on significant debt to try to survive. Between government debt, debt to a landlord, and other personal debt, many operators are finding themselves in this situation. As Council Member Gjonaj pointed out, personally guaranteed loans in particular would be risky for operators to take on. With that in mind, we hope this program could be funded in such a way that grants and in-kind offerings are widely available.

On the final provision of Intro 2097, which may require a landlord and tenant to agree to a rent decrease as a condition for receiving assistance from the city, we can see the intent and rationale. The city would be paying for a permanent upgrade to the storefront, which presumably raises the value of the storefront for the property owner. That said, if the lease agreement places the onus on the tenant to make these kinds of changes, the incentives might not play out as intended. Landlords may resist lowering the rent, and that may then prevent the improvement from taking place. Especially in the somewhat shaky rental landscape we see right now, when tenants may owe significant back rent, or a brand new, lower rent lease may have recently been negotiated, we are uncertain about how the law's requirement would play out. Of course, lower rent would benefit restaurant tenants, so we would just like to flag this point as a potential stumbling block. If we do see landlords frequently blocking upgrades because they do not want to lower the rent, we would like to prioritize getting the accessibility upgrades done anyway.

In regards to Intro 2110 and education mandates, we are very supportive of increasing the efforts of SBS to inform businesses about ADA compliance, and specifically, to tailor materials to those businesses in the midst of a lawsuit. In that vein, we are aware of certain "cutting edge" or mostly untested areas of ADA litigation, for instance, businesses being sued if their gift cards do not have

braille. While we do not expect SBS to necessarily be able to give authoritative answers about these frontiers of ADA litigation, we would ask that they stay current on these developments so they can best educate restaurants about their obligations and potential risks.

In conclusion, the New York State Restaurant Association is grateful to City Council, and the Small Business Committee, for discussing these important proposals aimed at improving accessibility in NYC and providing the support that small businesses need to be compliant. We look forward to working on this issue in collaboration with all of you in the future. Thank you.

Respectfully Submitted,

Kathleen Reilly

NYC Government Affairs Coordinator

New York State Restaurant Association

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Greater New York
Automobile Dealers
Association

April 9, 2021

**Testimony by Greater New York Automobile Dealers Association in Support of
Int 2097-2020 and Int 2110-2020**

To: Hon. Mark Gjonaj, Council Member and Small Business Committee Chair

Good Morning Chair Gjonaj, other members of the Small Business Committee and guests.

I'm Mark Schienberg, President of the Greater New York Automobile Dealers Association (GNYADA) -- a membership-based not-for-profit trade association organization that has proudly represented the interests of franchised new car dealers in the New York metro area for more than a century. GNYADA members sell more than 2,000,000 new and used vehicles annually and perform service repairs to over 9 million vehicles. The 425 Franchised New Car Dealerships in the New York Metropolitan Area represent a total of \$53.4 billion of total economic activity, providing over 72,000 jobs, donating \$21 million to local community organizations and charities, and have invested \$420 million of their own money in capital improvements to their business operations in 2018 and 2019 combined.

GNYADA continually strives to develop and maintain programs that enable our members to succeed in the ever-changing automotive retail market. We applaud the committee's efforts to advance Int 2097-2020 and Int 2110-2020, as the passage of these bills will play a key dual role in expanding accessibility to individuals and providing small businesses with much needed resources to effectively comply with the provisions of the Americans with Disabilities Act (ADA.)

Over the past year, the COVID-19 pandemic has resulted in a notable shift in consumer behavior with respect to automobile purchases. According to an August 21, 2020 *Brooklyn Daily Eagle* article, New York City dwellers registered nearly 40,000 cars during the previous month — which was at the time the highest in recent years. Added to that, registrations were up by 2,000 in June 2020 compared to the previous year, and up by more than 9,000 in July during the same month in 2019. While a return to normalcy may be on the horizon with the current distribution of COVID-19 vaccines, many consumers have said that they now prefer the flexibility, comfort and feeling of added protection of commuting in cars.



This change in behavior, in addition to a foreseeable increase in local work and leisure travel presents a great opportunity for small businesses to make infrastructural investments in their storefronts, with the goal of expanding accessibility. The funding options, as well as ADA education being proposed in the above-mentioned bills is a critical step in giving small businesses a boost, as many are still reeling from the economic perils of the past year. In addition to consumers and small businesses, these bills will also help to increase job opportunities and accommodations for disabled individuals in our city's workforce.

GNYADA would welcome the opportunity to partner with the New York City Council to ensure effective implementation of these proposals in the franchised new car dealer industry, using both our Center for Automotive Education site in Whitestone Queens and our virtual access to our members along with other forums and platforms deemed fit by the Council.

Thank you for your leadership and for the opportunity to testify on this matter.



**Written Testimony of Tom Stebbins
Executive Director Lawsuit Reform Alliance of New York**

**Before the New York City Council
Committee on Small Business
Hearing on Accessibility in Small Businesses
April 9, 2021**

Thank you Chairman Gjonaj, the Honorable Members of the Committee on Small Business, and the staff of the New York City Council for inviting me to provide testimony on accessibility in small businesses.

My name is Tom Stebbins. I am the executive director of the Lawsuit Reform Alliance of New York a nonpartisan organization that advocates for reforms to the civil litigation system. I also serve on the advisory board of the Progressive Policy Institute's Center for Civil Justice.

New York is second in the nation for the filing of lawsuits under Title III of the Americans With Disabilities Act. In 2020, despite the COVID-19 pandemic, [plaintiffs attorneys filed 2,238](#) such suits in New York federal courts. From January 2014 to June 2019, ADA litigation in the Empire State [increased by 300 percent](#). A total of 2,635 claims were filed here in 2019.

While much of this litigation has moved from lawsuits that allege access issues at brick-and-mortar locations to lawsuits over website and mobile app accessibility — a category of litigation where New York leads the nation — the Big Apple's mom and pop establishments still remain a prime target for physical access claims. And these are often not one-off claims. The same law firms and the same plaintiffs file nearly identical, cut-and-paste lawsuits against numerous businesses at a time.

This is due to the law's private right of action or the component that allows for the filing of private lawsuits, as opposed to only allowing for government enforcement of the law. As written, the law allows prevailing attorneys to recoup costs and fees from defendants.

Motivated by the prospect of collecting attorneys' fees, lawyers have reportedly filed hundreds of claims on behalf of only a handful of plaintiffs. And some have gone to great lengths — Stuart Finkelstein is alleged to have [earned over \\$930,000 filing ADA claims](#) with [at least 25](#) of those lawsuits filed without the knowledge of the plaintiff. Before practicing in New York, Finkelstein filed 286 lawsuits in Florida. The named plaintiff in those suits also says they were filed without his consent. In 2019, Finkelstein was arrested charged with fraud, identity theft, and false declarations by the Department of Justice.

This is an extreme case, but Finkelstein is not alone in filing a slew of lawsuits on behalf of individual plaintiffs. Brooklyn Judge Brian Cogan [held up the payment of fees](#) to Tara Demetriades, who filed more than 60 lawsuits on behalf of two men, writing in his decision that the filings were "an exercise in

shooting ducks in a barrel — marginal businesses that barely have enough funds to defend themselves — in order to generate a small amount of attorneys' fees.”

A report produced by my organization, [Serial Plaintiffs: Abuse of ADA Title III](#) includes a brief addendum cataloging New York’s most prolific serial plaintiffs as of September 1, 2017.

While enacted with the best of intentions and with the truly laudable goal of protecting and enriching the lives of persons with disabilities, the ADA has created costly challenges for businesses of all sizes throughout the country. There are a number of “frequent-flyer” serial litigants and law firms that specialize in filing these “drive-by” lawsuits.

Some localities have become particularly vulnerable to abusive ADA related litigation. In addition to the ADA, they have enacted their own laws that allow for the collection of damage awards in litigation that is consistent with violations of the ADA. One such law is the New York City Human Rights Law.

While, as noted above, the ADA only allows for the attorneys to receive costs and fees, the NYC Human Rights Law allows plaintiffs to receive statutory damages. This confluence of overlapping local and federal remedies – one paying out to the plaintiff and the other paying out to the attorneys – creates a perverse incentive for the filing of abusive litigation.

The legislation under discussion today should be welcomed by businesses – education on how to remain compliant and funding for alterations are crucial to ensuring access for all – but the laws that entice extortionate litigation must be changed as well.

The Lawsuit Reform Alliance of New York supports the following proposals to reduce the incentives for abusive, “frequent-flyer” lawsuits in this area:

- A “notice and cure” period that will alert business owners of possible violations and give them a period to remedy the issues before being subject to a lawsuit or enforcement;
- A cap on the reimbursement of attorneys fees;
- A lower cap on the damages payable to plaintiffs; and
- A vexatious litigant database, similar to what has been enacted in California and is overseen by the state’s attorney general.

Thank you again for your efforts in this area and please do not hesitate to reach out to me for any additional information. The Lawsuit Reform Alliance of New York is standing by to work with the New York City Council on this important issue effecting our small businesses. In the wake of the COVID-19 economic crisis, small businesses now more than ever cannot afford to be extorted through one of these shake down lawsuits.