

WRITTEN TESTIMONY ON
**2024 JOINT LEGISLATIVE BUDGET HEARING ON ECONOMIC
DEVELOPMENT:
New York State Consumer Protection Laws**

PRESENTED TO:

**NEW YORK STATE
SENATE FINANCE AND ASSEMBLY WAYS
AND MEANS COMMITTEES**

PRESENTED BY:

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The Western New York Law Center (“WNYLC”) submits this testimony specifically about the Consumer Protection Act (“CPA”), which is Part JJ of the Transportation, Economic Development and Environmental Conservation Article VII bill in the FY 2025 Executive Budget. While we applaud the Governor for her commitment to modernizing New York’s consumer protection law, we believe the Consumer and Small business Protection Act (S.795/A.7138) sponsored by Senator Leroy Comrie and Assemblymember Helene Weinstein contains additional, necessary protections that better accomplish the Governor’s goals of protecting New Yorkers and catching New York up to the rest of the country.

WNYLC is a nonprofit legal services provider located in Buffalo, New York that advocates on behalf of low-income and underserved Western New Yorkers on a variety of matters ranging from housing to consumer credit to civil rights and disability-related issues, guided by an overarching commitment to economic justice.

I. Why New York’s Consumer Protection Law is One of the Worst in the Nation

Bans on unfair, deceptive, and abusive practices, known as “UDAP” laws, are the prevailing consumer protection standard around the country. As opposed to the “whack-a-mole” approach of reactively passing new laws in response to innovative scams or regulating problematic industries piecemeal, a UDAP is flexible enough to deter bad conduct throughout the marketplace and protect consumers against new and unforeseeable schemes. Although UDAP statutes vary widely from state to state, their basic premise is that unfair and deceptive tactics in the marketplace are inappropriate, and they nearly all agree that the “U” that stands for unfair is at least as important as the “D” that stands for “deceptive.”

Yet New York is one of only eight states whose consumer protection law, General Business Law § 349, does not ban unfair or abusive practices. In other words, whereas 43 jurisdictions have a fulsome “UDAP,” New Yorkers are only protected by a puny “DAP.” This glaring oversight allows unscrupulous businesses to scam people while brazenly hiding behind a contract’s complicated “fine print.” It also places honest companies that treat their customers fairly at a competitive disadvantage. This vacuum allows bad actors to target communities of color with predatory products while denying them basic services; without an unfairness ban, schemes that extract wealth from Black and Brown communities flourish.

The following are some examples of unfair but not necessarily deceptive conduct that we have seen in our practice in the Western New York area. These illustrate how important a broad unfairness ban is in protecting New Yorkers from predatory business practices:

- Debt settlement companies provide lengthy contracts with complicated disclosures to consumers that, upon close analysis, provide no economic benefit to the consumer because the company’s fees eat up any promised savings on the original debts;
- Car dealers refuse to sell a car unless the consumer agrees to overpriced and useless extended warranty or other add-on products, inflate the contract interest rate far above what the bank approved for the consumer without telling the consumer that they qualified for a much lower rate, or sets monthly payments that it knows exceed the purchasers’ income, resulting in repeated repossessions and retention of down-payments from multiple consumers;
- A debt collector repeatedly freezes exempt funds in a consumer’s bank account despite knowing that the contents of the bank account are exempt from judgment collection;
- Nursing homes shake down relatives to pay patients’ bills;
- Salespeople talk small business owners into signing complicated contracts with unrealistic minimum supply requirements, so that instead of making money thousands of small business owners end up being sued for failing to meet the unrealistic contract requirements.

New Yorkers, including small business owners, deserve a fair marketplace where entities that exploit people are held accountable and the people harmed can be made whole.

General Business Law § 349 is ineffective in other ways as well. For example, the penalty for violating the law is \$50—a slap on the wrist. The current law does not authorize statutory damages in class

actions, which are a crucial deterrent. In addition, courts have further watered down the law with an untenable requirement that the bad acts affect the public at large.

II. How to Make New York's Consumer Protection Law the Best in the Nation

We welcome the Governor's proposal to strengthen New York's current weak law. The CPA includes much-needed reforms, including prohibiting unfair and abusive practices, strengthening the ability of the Attorney General and individuals to seek redress, increasing statutory damages to \$1,000, and mandating attorney's fees to a prevailing consumer. However, the CPA omits several key reforms that are necessary to modernize New York law.

We are deeply troubled that the bill as drafted does not eliminate the requirement that a harmed consumer show that a business's bad acts affect the public at large; imposing this burden on consumers makes no sense for a law specifically intended to remedy individual harms. Furthermore, the CPA's requirement that a harmed person provide notice to the offender and an opportunity to cure before filing suit is confusingly drafted and lacks even common-sense exceptions. The CPA's definition of "abusive" is inconsistent with and weaker than the prevailing definitions. The CPA also does not explicitly cover small business owners. Regarding remedies, the CPA misses several opportunities to modernize and strengthen General Business Law § 349 by updating the damages framework, increasing damages for the worst violations, and authorizing class action lawsuits seeking statutory damages and "tester" standing.

A simple way to fix the problems of the CPA is to adopt the comprehensive Consumer and Small business Protection Act (S.795/A.7138), which shares the same goal as the CPA, and much of the same language, but with important differences:

- CSPA explicitly covers unfair, deceptive, or abusive acts or practices regardless of whether the conduct is "consumer-oriented," so that individuals could vindicate their rights without having to prove that the general public was impacted, removing a significant barrier to justice under the current law;
- CSPA allows New Yorkers to recover actual damages and statutory damages, whereas the CPA limits recovery to the greater of the two. CSPA mirrors federal consumer protection laws and would help make harmed consumers whole and deter bad actors;
- When unlawful behavior is done willfully and knowingly, CSPA allows judges to determine what punitive damages are appropriate, whereas the CPA would cap these damages at \$1000. Limiting courts' ability to impose damages that are commensurate with the underlying offense prevents the penalty from having any meaningful deterrent effect against future misconduct;
- CSPA includes a definition of "abusive" that mirrors the federal standard and maximizes protections for New Yorkers;
- CSPA clarifies small businesses' right to sue under the law;
- CSPA explicitly authorizes class action penalties, as required under New York law, whereas the CPA is silent and would likely be interpreted as not authorizing these damages;
- CSPA would allow non-profit organizations that engage in consumer testing to bring lawsuits when they uncover unlawful conduct, rather than waiting for an actual consumer to experience harm, whereas the CPA does not include a "tester standing" provision; and
- CSPA includes a notice and opportunity to cure provision for actions seeking injunctive relief only, whereas the CPA's notice provision would apply to actions seeking monetary relief.

Adopting CSPA or amending the CPA to reflect its more robust protections, will ensure that the Governor fulfills her goal of providing New Yorkers with meaningful consumer protections.

Thank you for the opportunity to provide this testimony; to discuss the issues raised in more detail or if you have any questions, please contact Matthew Parham at mparham@wnylc.net.