



Written Testimony on:

2024 Joint Legislative Budget Hearing on Economic Development:

New York State Consumer Protection Laws

Presented to:

New York State Senate and Assembly Ways and Means Committees

Presented by:

Carolina Rodriguez, Community Service Society of New York

January 30, 2024

I. Introduction

Thank you for the opportunity to submit written testimony for the 2024 Joint Legislative Budget Hearing on Economic Development. My name is Carolina Rodriguez, and I am the Director of the Education Debt Consumer Assistance Program (EDCAP) at the Community Service Society of New York (CSSNY). CSS is an informed, independent, and unwavering voice for positive action on behalf of low-income New Yorkers. CSS draws on a 175-year history of excellence in addressing the root causes of economic disparity through research, advocacy, litigation, and innovative program models that strengthen and benefit all New Yorkers. My testimony is focused on the Consumer Protection Act (“CPA”).

The Consumer Protection Act can be found in Part JJ of the Transportation, Economic Development, and Environmental Conservation Article VII bill in the FY 2025 Executive Budget. While we commend the Governor's commitment to modernizing consumer protection laws in New York, we believe that the Consumer and Small Business Protection Act (S.795/A.7138), led by Senator Leroy Comrie and Assemblymember Helene Weinstein, offers essential additional safeguards that better align with the Governor's objectives of safeguarding New Yorkers and bringing New York up to national standards.

Through our work in higher education and healthcare, we have witnessed the pressing need to enhance consumer protections to ensure New Yorkers are shielded from unscrupulous practices when financing their higher education or accessing essential care.

II. New York's Consumer Protection Law Needs Urgent Improvement

Bans on unfair, deceptive, and abusive practices, known as “UDAP” laws, serve as the primary consumer protection standard, adaptable enough to address evolving schemes and deter bad behavior. 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 banning “unfair” practices is as important as banning “deceptive” practices.

New York, however, stands among only eight states where its consumer protection law, General Business Law § 349, fails to prohibit unfair or abusive practices. Put simply, while 43 jurisdictions uphold comprehensive "UDAP" standards, New Yorkers are left with a limited "DAP" safeguard. This significant gap enables unscrupulous businesses to exploit individuals without resorting to outright falsehoods. Moreover, it unfairly disadvantages companies that prioritize fair treatment of customers. This void in protection facilitates the targeting of communities of color with predatory products while depriving them of essential services. Without an unfairness ban, schemes that siphon wealth from communities of color thrive unchecked harming not only individuals but our general economy.

Through our Education Debt Consumer Assistance Program (EDCAP), a program that helps New Yorkers struggling with student debt, we have seen hundreds of student loan borrowers be harmed by student loan servicing practices that result in unfair outcomes. And yet, New Yorkers lack a robust UDAP to be able to obtain the relief they need and deserve. A student loan servicer, for example, should be held accountable when they steer borrowers into prolonged forbearances, the wrong repayment plan, or fail to maintain accurate payment status records. Here are some examples:

Joan is in her early 60s. She became concerned about her student loan debt becoming unmanageable. A closer look at her loan history showed that her servicer had steered her into forbearance for years instead of offering more favorable repayment options that would lead to eventual forgiveness. Her total debt has now doubled. Due to her age and the fact that she will be retiring in a few years, her options for relief are limited.

Bryan's loans have been mismanaged by multiple student loan servicers. While he should be eligible for discharge under recent relief, he is not because part of his repayment history is missing. Under New York's current laws, Bryan cannot leverage UDAP to make a case for discharge due to servicer account mismanagement.

A true UDAP is needed to help people like Joan and Bryan get a fair outcome and hold student loan servicers accountable.

In the healthcare sector, it is not uncommon for medical suppliers, for example, to overcharge patients for their equipment, like oxygen tanks, either by inflating the price or by charging excessive fees for delivery or maintenance. Nursing facilities should also be held accountable for residents' preventable injuries and illnesses caused by intentional understaffing.

Below are additional examples of unfair but not necessarily deceptive conduct to illustrate how important a broad unfairness ban is in protecting New Yorkers from predatory business practices:

- A debt collector manipulates seniors into giving up their limited, protected income.
- An auto dealer refuses to return a customer's trade-in vehicle until a deal is finalized.
- A credit reporting agency recklessly exposes people's personal information to theft.
- A landlord refuses to make repairs to push out its rent-stabilized tenants.
- Homeowners in gentrifying neighborhoods are swindled out of their homes because of deed theft scams.

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.

Furthermore, General Business Law § 349 is ineffective in other ways. The penalty for violating the law is \$50—a slap on the wrist—and damages are capped at \$1,000 for the worst repeat offenders. 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.

III. Making New York's Consumer Protection Law the Best in the Nation

To enhance New York's Consumer Protection Law, we commend the Governor's proposal to fortify the existing legislation. The Consumer Protection Act (CPA) initiates essential reforms, such as prohibiting unfair and abusive practices, empowering the Attorney General and individuals to seek redress, raising statutory damages to \$1,000, and mandating attorney's fees. However, the CPA overlooks critical reforms required to modernize New York law.

Concerns arise from the CPA's failure to eliminate the requirement for harmed consumers to demonstrate that a business's misconduct affects the public at large, a burden that contradicts the law's intent to address individual harms. Additionally, the CPA's provision mandating notice and an opportunity to cure before filing suit lacks clarity and exceptions. Its definition of "abusive" is weaker than prevailing standards, and it does not explicitly protect small business owners. Moreover, the CPA misses opportunities to update damages, authorize class action lawsuits, and allow tester standing.

A straightforward solution lies in adopting the comprehensive Consumer and Small Business Protection Act (CSPA), which aligns with the CPA's objectives but offers vital

improvements. The CSPA explicitly covers unfair, deceptive, or abusive practices, allowing New Yorkers to recover both actual and statutory damages. It empowers judges to determine punitive damages for willful offenses, clarifies small businesses' right to sue, authorizes class action penalties, and enables non-profit organizations to bring lawsuits.

By adopting the CSPA or amending the CPA to incorporate its robust provisions, the Governor can fulfill her commitment to providing New Yorkers with effective consumer protections. These safeguards are increasingly vital as New Yorkers navigate the aftermath of the COVID-19 pandemic, contend with escalating inflation rates, resume student loan payments for federal loan holders, and confront the looming threat of being uninsured or underinsured when it comes to healthcare.

Thank you for the opportunity to provide this testimony. For questions, please contact Carolina Rodriguez at crodriguez@cssny.org or 212-614-5457.

###