



WRITTEN TESTIMONY ON
2024 JOINT LEGISLATIVE BUDGET HEARING ON ECONOMIC DEVELOPMENT:
NEW YORK CONSUMER PROTECTION LAWS

SUBMITTED TO NEW YORK STATE
SENATE FINANCE AND ASSEMBLY WAYS AND MEANS COMMITTEES

Via email to financechair@nysenate.gov and wamchair@nyassembly.gov

January 30, 2024

Thank you for the opportunity to submit written testimony for today’s hearing on behalf of New Economy Project, a New York City-based economic justice organization, whose mission is to build an economy that works for all, based on cooperation, equity, social and racial justice, and ecological sustainability.

For nearly three decades, New Economy Project has worked with community groups and low-income New Yorkers to combat persistent redlining, predatory lending, and other inequities in our financial system and economy that perpetuate poverty, inequality, and segregation. For years, our organization has operated a free legal assistance hotline serving low-income New Yorkers, brought impact litigation challenging Wall Street corporations, and led legislative and policy campaigns to curb abusive debt collection, predatory lending, and other harmful financial practices. We have assisted thousands of people—especially Black and brown New Yorkers, women, and older adults—aggrieved by unfair, abusive, or deceptive business practices by banks, debt collectors, fintech companies, debt relief companies, credit repair organizations, and other entities.

Our testimony focuses on the Governor’s Consumer Protection Act (CPA),¹ which would amend New York’s consumer protection law. We commend the Governor for seeking to modernize New York’s sorely outdated consumer protection law. We urge the Committees, however, to incorporate the critical additional protections contained in the Consumer and Small business Protection Act (S.795 (Comrie) / A.7138 (Weinstein)) (CSPA), which would ensure that New York’s consumer protection law meaningfully protects New Yorkers, especially low-

¹ Included in Part JJ of the Transportation, Economic Development and Environmental Conservation Article VII bill in the FY 2025 Executive Budget.

income New Yorkers and New Yorkers of color, and deters businesses from engaging in harmful practices.

I. New York’s General Consumer Protection Law is One of the Weakest in the Nation

Forty-two other states have “UDAP” statutes—laws that broadly ban unfair and deceptive acts and practices by businesses, and thereby protect against evolving and unforeseeable schemes and enable people to seek meaningful recourse from businesses that engage in harmful conduct. New York’s notoriously weak consumer protection law, contained in section 349 of the General Business Law, bans only deceptive practices. As a result, New Yorkers lack recourse under state law against any business that harms them through conduct that is unfair or abusive, but arguably not deceptive, such as when a debt collector harasses older adults into giving up their limited, legally protected income—conduct that has harmed many of our hotline callers.

Feeble remedies also render our consumer protection law ineffectual: The penalty for violating the law is an astonishingly low \$50, and damages are capped at \$1,000 for even the worst repeat offenders. Nor does the current law authorize statutory damages in class actions, a crucial deterrent against harmful conduct by businesses. Our courts have further undermined the law’s remedial nature, by requiring that the individual harmed prove that the business’s bad conduct affects the public at large.

II. The Governor’s Consumer Protection Act (CPA) Lacks the Critical Additional Provisions in S.795/A.7138 Needed to Ensure that New York’s Consumer Protection Law Is Meaningful and Effective

Though the CPA includes several much-needed reforms—including a ban on unfair or abusive practices, a penalty of \$1,000 (increased from \$50), and mandatory attorney’s fees—the bill omits numerous key provisions that are necessary to render New York’s consumer protection law meaningful and effective. For example, the CPA would not increase damages for the worst violations; eliminate the onerous (and often unfulfillable) requirement that an individual harmed provide evidence that a business’s bad conduct affects the public at large; or authorize class actions seeking statutory damages. The CPA also defines “abusive” more narrowly than prevailing, broader definitions, and does not explicitly define a small business owner as a “person” who could be harmed by another business’s unfair, abusive, or deceptive conduct.

We urge the Committees to remedy the CPA’s shortfalls by incorporating the critical additional protections contained in S.795 (Comrie) / A.7138 (Weinstein), which shares the same goals and much of the same language as the CPA, but which, in contrast, would also:

- Explicitly cover unfair, deceptive, or abusive acts or practices regardless of whether the individual succeeded in showing that the bad conduct affects the public at large;
- Allow New Yorkers to recover both actual damages and statutory damages;
- Allow courts to award greater damages where a business’s bad conduct was knowing and willful;
- Define “abusive” more broadly, thereby mirroring the federal standard;
- Clarify small businesses’ right to sue under the law;
- Explicitly authorize class action penalties;
- Apply a notice-and-opportunity-to-cure requirement only to actions seeking injunctive relief, not to actions seeking monetary relief; and
- Provide for “tester standing,” allowing not-for-profit organizations that engage in consumer testing and mystery shopping to bring lawsuits when they uncover unlawful conduct.

By incorporating the critical additional protections contained in S.795 (Comrie) / A.7138 (Weinstein), our state will finally ensure meaningful and effective protections for New Yorkers against unfair, abusive, or deceptive business practices.

Thank you for the opportunity to submit this written testimony. If you have any questions, please contact Susan Shin at susan@neweconomynyc.org or 212-680-5100.