

December 15, 2007

Honorable Sheldon Silver
Speaker of the Assembly
State Capitol, Room 349
Albany, New York 12248

Dear Speaker Silver:

It is my pleasure to forward to you the 2007 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2007 Legislative Session reflects the Committee's dedication to and concern for consumers' basic rights, safety, and interests. This year the Committee advanced legislation addressing a wide range of consumers' issues. Several of these initiatives have been enacted into law, including legislation that will significantly increase penalties for violations of New York's far-reaching and highly-effective Consumer Protection Law, which prohibits businesses from engaging in deceptive acts and practices.

Several other laws were enacted this year to protect consumers' rights and ensure consumer safety. Chapter 472 of the Laws of 2007, the Airline Passenger Bill of Rights, will require airline carriers to provide fresh air and lighting, waste removal services, and adequate food, drinking water and other refreshments to passengers on board delayed aircraft. Chapter 508 of the Laws of 2007 will help to ensure that consumers are able to make informed decisions regarding free trial offers by requiring entities offering such trials to clearly and conspicuously disclose the terms of the offer, obtain the express consent of the consumer to accept the offer, and provide adequate notice to consumers regarding the deadline to cancel an offer before a credit card is billed. Legislation aimed at strengthening the existing pool safety law (Chapters 100 and 234 of the Laws of 2007) was also enacted.

I would like to take this opportunity to thank the Committee members for their continued contributions to this past year's achievements. I would also like to express my appreciation for the assistance that the Committee received from the Committee staff in the course of our work. Finally, Mr. Speaker, I commend you for your continued leadership and support of our legislative initiatives to better protect New York State consumers.

Sincerely,

Audrey I. Pheffer, Chair

2007 ANNUAL REPORT
OF THE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION

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I. COMMITTEE RESPONSIBILITIES AND GOALS

The Assembly Consumer Affairs and Protection Committee (the "Committee") is responsible for developing legislation aimed at protecting consumers' rights and ensuring the public's ability to make informed choices in the marketplace. Generally, the Committee has jurisdiction over legislation that amends certain sections of the General Business and Personal Property Laws and parts of the Agriculture and Markets and Education Laws. The broad interests of the Committee reflect the fact that today's consumers can be victims of fraud, misinformation, or lack of information that is vital to their health, safety, and welfare.

To protect consumers' rights and help them make informed choices, the Committee works with consumer groups and state and federal agencies. At the State level, these agencies include: the Department of Law; the Consumer Protection Board; the Department of Education; the Department of Environmental Conservation; the Department of Health; the Department of Agriculture and Markets; and the Department of State. The federal government agencies with which the Committee works include: the Federal Trade Commission (FTC); the Food and Drug Administration (FDA); the Federal Communications Commission (FCC); the Consumer Product Safety Commission (CPSC); and the National Highway Traffic Safety Administration (NHTSA). The Committee also works with local agencies, such as the New York City Department of Consumer Affairs, local consumer affairs offices, numerous Better Business Bureaus, and bar associations throughout the State.

In addition, the Committee works to help consumers in the development of legislation under the jurisdiction of other Assembly standing committees. Such committees include: Banks; Transportation; Corporations, Authorities, and Commissions; Economic Development, Job Creation, Commerce, and Industry; Agriculture; and Insurance.

II. 2007 COMMITTEE ACCOMPLISHMENTS

A. Protecting Personal Privacy

The Assembly has traditionally been a strong advocate for the protection of consumers' rights, including the protection of personal privacy. As technology continues to evolve, the potential for misuse of personal information has risen dramatically. The public is increasingly aware that it has less control over its personal and sensitive information. Privacy issues include a number of very broad topics, such as: the theft of identity; credit reporting; and telecommunications.

The Committee has taken great strides in promoting legislation that would protect the privacy of New York State's consumers.

Strengthening New York's Do-Not-Call Law (Chapter 69 of the Laws of 2007, Pheffer)

The purpose of this new law is to better protect consumers against unwanted telemarketing calls and to bring consistency and uniformity to the State and federal Do-Not-Call laws.

In 2004, the Federal Trade Commission amended the Telemarketing Sales Rule to require telemarketers to update their Do-Not-Call lists every thirty-one days. New York's Do-Not-Call law and rules have required telemarketers to update their Do-Not-Call lists every ninety days. This new law amends New York's statute to prohibit telemarketers from making any unsolicited telephone sales calls to any consumer whose telephone number has been on the National Do-Not-Call Registry for a period of thirty-one days, thus conforming New York law to federal provisions.

Wireless Network Protections (Chapter 509 of the Laws of 2007, Brodsky)

An increasing number of consumers seek access to the Internet away from home. Unfortunately, many consumers who use public Internet access points are unaware that, unless certain privacy protections are implemented by the user, unauthorized individuals may be able to obtain access to information stored on their computer or surreptitiously capture information transmitted from their computer to the device connecting the computer to the Internet.

This new law will increase consumer awareness of the privacy protections available to users of public Internet access points, by requiring businesses that offer such access to post a notice advising users to implement computer security measures. The notice shall include the address of a website developed by the Consumer Protection Board explaining and emphasizing the importance of firewalls and other internet security measures. Businesses can comply with the law's requirements by posting a sign in their establishment or by integrating the warning notice into the logon procedure of the wireless network.

Strengthening New York's Credit Card Privacy Law (Chapter 233 of the Laws of 2007, Greene)

In 1989, the Legislature enacted a credit card privacy law that prohibits merchants from requiring consumers to put their names and addresses on credit card transaction forms, with certain exceptions. According to the Attorney General's office, a number of merchants are circumventing this law by taking a consumer's name and address on a separate piece of paper and attaching it to the credit card form.

This new law will prohibit merchants from writing personal information on any attachment to any credit card transaction form. The law will also remove an exception which allows merchants to record personal information if the transaction amount falls below the store's floor limit.

Identity Theft Assistance (Veto Memo 76, Pheffer)

According to the Consumer Protection Board (CPB), it takes the average victim more than a year and more than \$1,000 to extricate themselves from the effects of identity theft. This bill would establish an identity theft prevention and mitigation unit within the CPB to serve as a central source of information and assistance for identity theft victims, reducing the time, energy and money that victims must expend to clear their reputations and reestablish their credit. The bill would also create a state task force on identity security that would examine how state agencies use and protect Social Security numbers and other personal identifying information and recommend all necessary legislative and administrative reforms. Lastly, the bill would require law enforcement agencies to take identity theft complaints and issue a report.

This bill was vetoed by the Governor based on two concerns. The Governor had concerns regarding a provision in the bill that would have granted limited subpoena power to the Consumer Protection Board. The Governor also expressed concern over the composition of the proposed task force on identity security. The Committee intends to consider a revised version of this bill next year that should address these issues.

Reducing the Unnecessary Disclosure of Social Security Numbers (A.334, Greene)

The purpose of this bill is to restrict the dissemination and collection of Social Security numbers in order to increase consumer privacy and prevent identity theft.

This bill would require all entities that request an individual's Social Security number to inform such individual if such disclosure is required under federal or state law or regulation and how the number is intended to be used. The bill would also prohibit entities from requiring an individual to disclose his or her Social Security number, or to refuse any service, privilege or right based on an individual's refusal to disclose such number, unless such disclosure is required under federal or state law or regulation. **(Passed Assembly)**

Radio Frequency Identification Systems Privacy Task Force (A.225-B, Pheffer)

Radio frequency identification (RFID) systems use radio waves or other wireless means to transmit the identity of an object or person from a tag or chip to a reader. RFID tags are now small and inexpensive enough to be embedded in consumer products, and several major retailers are moving rapidly to add RFID tags to products they sell. This new technology has several privacy implications, including the potential for the tracking of movements of a person who possesses or handles objects containing RFID tags and the profiling of citizens without their consent.

This bill would establish a task force that would assess various privacy issues associated with the use of RFID by public and private entities and determine the need for the State to regulate this technology in order to ensure personal privacy. **(Passed Assembly)**

Reducing Unsolicited Advertisements (A.117-A, Pheffer)

The purpose of this bill is to protect personal privacy and reduce the threat of identity fraud by providing consumers an avenue to decline unsolicited advertisements.

This bill would require senders of unsolicited advertisements to provide a written disclosure notifying consumers of their right not to receive further unsolicited advertisements. The bill would also require senders of unsolicited advertisement to maintain an exclusion list of consumers and prohibit such senders from using the list for any purpose other than compliance with the requirements of this section. **(Passed Assembly)**

Credit Card Confidentiality (A.576, Dinowitz)

This bill would reduce the proliferation of unsolicited mail caused by the release or sale of cardholder information by granting consumers the choice of having personal information kept confidential.

Consumer resistance to unsolicited direct mail has been steadily increasing. Some responsible card issuers recognize the importance of consumer privacy and limit the release of cardholder information or notify their customers of the option not to have their personal data released. Unfortunately, not all consumers are aware of this option. **(Passed Assembly)**

B. Improving Business Practices

Protecting the Security of New York's Financial Marketplace (Chapter 533 of the Laws of 2007, Silver)

The purpose of this new law is to strengthen the physical and market security of the New York based commodities industry by expanding the fingerprinting requirements of the Martin Act.

This new law will require any employee of a designated contract market and any employee of a derivatives clearing organization that is affiliated with a designated contract market to be fingerprinted as a condition of employment. Designated contract market and derivatives clearing organizations would also be required to obtain fingerprints from any consultant that has access to secure or sensitive records, materials, buildings or property.

Airline Passenger Bill of Rights (Chapter 472 of the Laws of 2007, Fuschillo)

Earlier this year, the practices of the airline industry came under scrutiny when several incidents involving airline passengers detained on runways for extended periods were reported. On Valentine's Day, passengers were held on board an airplane at John F. Kennedy Airport (JFK) for ten hours without food, water, fresh air, or the ability to use the rest room. Several other flights were similarly stalled on the runway. On St. Patrick's Day, passengers aboard a plane waiting to liftoff from JFK were stuck for more than fourteen hours.

This new law will require, in instances in which passengers have boarded an aircraft but have been delayed from takeoff for more than three hours, airline carriers to provide electric generation for the purpose of providing fresh air and lights, waste removal services, and adequate food, drinking water and other refreshments to passengers. The law also establishes an office of airline consumer advocate within the Consumer Protection Board to assist airline customers in resolving complaints with carriers.

Increased Penalty for Deceptive Acts (Chapter 208 of the Laws of 2007, Peoples)

New York's landmark Consumer Protection Law has served as a bedrock of consumer protection since its enactment over thirty years ago. The statute grants the Attorney General broad authority to bring legal actions against businesses and individuals who engage in deceptive acts and practices. Some recent examples of cases brought under the statute include cases involving internet scams, deceptive credit card solicitations and home improvement scams. Existing law, which provides for penalties of up to \$500 per violation, went into effect in 1963, and the amount of the penalty has not been adjusted upward since then. This amount is grossly outdated and no longer serves as an adequate disincentive to deceptive acts and practices.

This new law will increase, from \$500 to \$5,000, the maximum penalty that may be imposed on a commercial enterprise that engages in an unfair or deceptive trade practice.

Increased Penalty for False Advertising (Chapter 328 of the Laws of 2007, Pheffer)

The existing penalties for false advertising are too low to be effective. Unscrupulous individuals and businesses may consider the imposition of small penalties, which pale in comparison to the amount of money obtained through the use of illegal tactics, to be a cost of doing business.

This new law significantly increases the amount a person may recover as a result of being injured by false advertising from the greater of actual damages or \$50 to the greater of actual

damages or \$500. The maximum damages a court may award when the defendant is found to have willfully or knowingly violated the false advertising statute will increase from \$1,000 to \$10,000.

Free Trial Offers (Chapter 508 of the Laws of 2007)

Free trial offers can be a good deal for consumers. Some offers, however, fail to clearly disclose a consumer's obligation to cancel during the "risk free" period. This can lead to situations where consumers are charged for goods or services they did not intend to purchase.

This new law will help to ensure that consumers are able to make informed decisions regarding free trial offers, by requiring entities offering free trials to clearly and conspicuously disclose the terms of the offer, obtain the express consent of the consumer to accept the offer, and provide adequate notice to consumers regarding the deadline to cancel a free trial offer, after which a credit card is billed.

Extending Consumer Protections in the Funeral Industry (Chapter 78 of the Laws of 2007, Pheffer)

Current law prohibits funeral directors, undertakers and embalmers from accepting any consideration (e.g., a commission or gift) from an insurer to sell, offer, or promote the sale of pre-need funeral insurance policies. Insurers are also prohibited from paying any commission or other consideration to any funeral director to induce the sale of pre-need funeral insurance. These provisions were set to expire on June 1, 2007. This law extended the provisions until June 1, 2012.

Sale of Memorials and Monuments (Chapter 390 of the Laws of 2007, Morelle)

Existing statute, commonly referred to in the death-care industry as the "separate contract law," requires that each sale of a monument be evidenced by a contract separate and apart from contracts for any other funeral goods or services. Recently, some companies have circumvented the separate contract law by including memorial foundations or inscriptions on their general price list of funeral goods and services.

This new law will ensure that consumers are able to make informed decisions during their time of mourning by clarifying the separate contract law to provide that each sale of a memorial shall only be evidenced by a written contract completely separate from a price list or similar document reflecting the purchase of other goods and services related to a funeral.

Improving New York's Pre-need Funeral Account Law (Chapter 279 of the Laws of 2007, Gianaris)

The purpose of this new law is to establish a procedure for the treatment of funds set aside in pre-need funeral accounts that are deemed "abandoned" or "dormant."

This new law will provide that the assets of any preneed funeral account shall be deemed abandoned three years after the death of the beneficiary of the account or one year after the preneed administrator has determined that the beneficiary of such account has died, whichever is later. The law will also provide that a preneed account shall be considered dormant if a beneficiary's address cannot be determined for fifteen consecutive years and, based upon the preneed agreement, the beneficiary would have reached an age of one hundred and fifteen years.

Ensuring Protection for Consumers Who Shop on the Internet (Chapter 72 of the Laws of 2007, McEneny)

New York's Mail and Telephone Order Law (section 396-m of the General Business Law) imposes certain requirements on mail-order and telephone-order businesses related to the disclosure of the availability of merchandise and refund policies, among other protections. The Law does not explicitly refer to purchases made on the Internet or via e-mail, raising the risk that its provisions could be construed to exclude such purchases. This new law will amend section 396-m to make it explicit that businesses that accept orders via electronic mail or the Internet for merchandise that is shipped through the mail or by other carrier are subject to the statute's requirements.

Prohibiting the Use of Deceptive Telephone Listing in the Floral Industry (Chapter 180 of the Laws of 2007, Pfeiffer)

The purpose of this new law is to ensure that consumers ordering floral arrangements over the phone are aware of the location of the florist they intend to use, by prohibiting floral businesses from misrepresenting the geographic location of their business in a telephone listing or directory assistance database.

This law will prohibit businesses that sell or arrange flowers from misrepresenting their geographic location by indicating a location other than their actual location in a listing, or using a local phone number which is forwarded or transferred to another phone number outside of the local calling area. The Attorney General will be authorized to enforce the provisions of this section by seeking an injunction against a violator or a court award on behalf of a plaintiff of up to two thousand dollars.

Preventing Fraudulent Practices by Computer Industry (Chapter 242 of the Laws of 2007, Brodsky)

The computer industry is an industry where consumers who purchase computers generally do not know much about the inner workings of a computer. Consumers also don't get to "kick the tires" and "look under the hood" when purchasing a computer hard drive, keyboard, monitor, printer, or other accessories. They must trust the manufacturer that a "new computer" contains all new parts.

This new law will require manufacturers and distributors of computers containing recycled, remanufactured, or rebuilt parts to provide clear and conspicuous notice to consumers regarding the use of such parts. Such notice may be provided through the use of a label stating the

computer was made with recycled, remanufactured, or rebuilt parts.

Labeling of Products Containing Fur and Faux Fur (Chapter 611 of the Laws of 2007, Rosenthal)

The purpose of this new law is to ensure that consumers are able to make informed decisions regarding the purchase of articles of clothing containing fur and faux fur.

This new law will prohibit any person, firm, partnership or corporation from knowingly importing for profit, selling at retail, offering for sale at retail, or manufacturing articles of clothing which include, or have attached in any quantity and of any value, fur that is not labeled as being "faux fur" or "real fur," or is incorrectly labeled.

Protecting Consumers from Unfair “Universal Default” Policies (Veto Memo 109, Rivera, P.)

An increasing number of credit card issuers are including “universal default” clauses in their agreements, allowing them to raise a customer’s interest rate based on the customer’s indebtedness or late payments to other creditors. For instance, a late payment on a telephone bill could cause a card holder’s interest rate to increase. Notice of this policy is almost always buried in the fine print of the card agreement, leaving many customers unaware that their interest rate could be affected based on late payments to other creditors. This results in credit card holders being penalized, even if they have never been late on a payment to the credit card issuer imposing the penalty.

This bill would prohibit “universal default” policies and provide that any violation of the prohibition would be a criminal offense.

Debtor's Bill of Rights (A.221, Pheffer)

Consumers contacted by debt collectors are often in a vulnerable position. Some unscrupulous collectors take advantage of this fact and practice methods and tactics that violate New York law, such as calling debtors late at night and threatening to have the consumer arrested if they do not pay the alleged debt, even though there is no legal basis for such threat. This bill would increase consumer knowledge of their rights within New York State debt collection practices law by requiring debt collectors to provide consumers with a "Debtor's Bill of Rights" with each initial correspondence regarding a past due debt. **(Passed Assembly)**

Requiring Debt Collectors and Buyers to Obtain a License (A.8153-A, Pheffer)

While the majority of those engaged in the business of debt collection are honest and ethical in their dealings, there is a minority of unscrupulous collection agencies that practice abusive tactics. It is imperative that the State protect the interests, reputations and fiscal well-being of its citizens against

those agencies that abuse their privilege of operation.

This bill would require third party debt collection agencies and debt buyers to obtain a license from the Department of State (DOS). Debt collection agencies and debt buyers would also be required to obtain surety bonding in an amount between \$10,000 and \$50,000, depending on the number of people employed by the agency. **(Passed Assembly)**

Increasing State Oversight of Debt Collectors (A.8612-A, Pheffer)

This bill would provide the Consumer Protection Board with the authority to process debt collection complaints, promulgate regulations regarding debt collection correspondence, and bring administrative enforcement actions against creditors and debt collectors that violate the Board's regulations. The bill would also require such regulations to include a requirement that creditors and debt collectors provide certain historical information about the debt and the appropriate contact information for the creditor and/or debt collector with each correspondence sent to the consumer regarding a debt. **(Passed Assembly)**

Enhancing Consumers' Ability to Stop Debt Collection Efforts Related to Identity Theft (A.8152, Pheffer)

The purpose of this bill is to require debt collectors to temporarily stop attempts to collect a debt upon notification by the consumer that the debt arose from identity theft.

This bill would require a debt collector to stop collecting a consumer debt if an alleged debtor provides the collector with a copy of a valid police report alleging he or she is a victim of identity theft crime and a written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector. Any alleged debtor submitting information as part of this procedure that he or she knows to be false would be guilty of a misdemeanor. **(Passed Assembly)**

Wireless Telephone Consumer Protection Act (A.2030, O'Donnell)

Complaints related to wireless telephone service topped the list of nationwide consumer complaints received by the Council of Better Business Bureaus in 2005 and the list of complaints to the New York State Consumer Protection Board. With more consumers using wireless phones as their sole method of telecommunication and in the absence of meaningful federal oversight, it is important that the State take action to protect consumers.

The Wireless Telephone Consumer Protection Act would require wireless service providers to give customers detailed coverage maps, written disclosure of all fees and charges and clearly organized billing statements. The bill would also require wireless providers to allow consumers to cancel service without penalty up to fifteen days after receiving their first bill. This would provide consumers with the ability to review their first bill and determine if they are satisfied with the quality

and monthly cost of service based on their actual usage. **(Passed Assembly)**

Debit Card Holds at the Pump (A.6853, Nolan)

High gasoline prices have left consumers more vulnerable than ever to “holds” placed on their bank accounts by some gas retailers and financial institutions to ensure payment when a debit card is used without a Personal Identification Number (PIN). These additional withdrawals – as high as \$75 – can take several days to clear, leaving consumers at risk of drawing upon insufficient funds and bouncing checks.

This bill would protect consumers from unknowingly incurring disruptive and costly overdraft fees, by requiring gas stations that place debit card holds to post a notice informing customers of their hold policy. Stations that allow customers to use a debit card would be required to post a notice informing customers that the bank that issued their debit card may place a hold against their account. **(Passed Assembly)**

Ensuring Fairness in the Rental Car Industry (A.725-A, Gantt)

The purpose of this bill is to prevent rental car agencies from discriminating against drivers who do not present a credit card. Current law prohibits agencies from requiring the primary driver of a rental vehicle to own a credit card, but this protection does not extend to non-primary drivers. Some agencies are now requiring all designated drivers to own a credit card.

This bill would prohibit rental car agencies from preventing any person from operating a rental vehicle solely on the requirement of ownership of a credit card. **(Passed Assembly)**

Credit Scoring (Veto Memo 124, Bradley)

The purpose of this bill is to prohibit consumer reporting agencies from lowering a consumer’s credit score based on that consumer’s comparison of available mortgage or automobile loan rates.

This bill would prohibit consumer reporting agencies from using inquiries of mortgage companies, banks or other financial institutions concerning a consumer’s credit in relation to a mortgage or automobile loan in determining that consumer’s credit score. The bill would also prohibit consumer reporting agencies from causing a negative inference to be placed on a consumer credit report based on that consumer’s comparison of mortgage or automobile loan rates.

Magazine Customer Service Number Disclosure (A.7812-A, Rivera, N.)

The purpose of this bill is to ensure that magazine subscribers are provided a reliable and accessible method of contacting magazine publishers with subscription-related inquiries.

This bill would require publishers of magazines sold by subscription to disclose a customer service telephone number on the billing statement or invoice of each magazine mailed to subscribers. **(Passed Assembly)**

C. Protecting Consumer Health and Safety

Enhanced Disclosure of Pool Safety Requirements (Chapter 100 of the Laws of 2007, DelMonte)

New York State and New York City building codes require barriers around swimming pools containing certain amounts of water. Studies have shown that barrier requirements reduce drowning accidents by restricting access to unattended pools. Unfortunately, many homeowners are unaware of this important safety requirement, and some homeowners fail to erect barriers in a timely manner following the construction of a pool.

This new law will require pool retailers and installers to provide enhanced notice to consumers of the swimming pool barrier requirements contained in the Residential Code of New York State and, if applicable, the building code of the City of New York. The law also requires the Department of State to establish a webpage summarizing the current requirements for swimming pools contained in the Residential Code of New York State. Sellers and installers of pools will be required to include the address of such website, and if applicable, the address of the New York City Department of Buildings in the notice.

Strengthening New York's Pool Barrier Requirements (Chapter 234 of the Laws of 2007, Magnarelli)

Most homeowners who install in-ground swimming pools comply with State building code requirements related to barriers. It has been reported, however, that some pool owners rely on temporary barriers for an inordinate amount of time. Given the fact that most temporary barriers, such as flexible plastic fencing, are less effective at preventing entry into a restricted area, their use can create a potential drowning hazard for young children. This new law will require temporary pool barriers to be replaced with permanent barriers within ninety days of the installation of an in-ground swimming pool.

Pool Safety (Chapter 75 of the Laws of 2007, Fields)

Chapter 450 of the Laws of 2006 amended the Executive Law to require all residential and commercial swimming pools to be equipped with a pool alarm. Due to certain design constraints, pool alarms do not function properly in hot tubs, spas, and swimming pools protected with a rigid safety cover. In addition, hot tubs and spas are currently required by the New York State building code to be equipped with safety covers, and swimming pools equipped with safety covers that meet certain industry standards provide more protection from accidental drowning than pool alarms.

This new law will exempt hot tubs, spas, and swimming pools with a safety cover, that complies with the American Society of Testing and Materials International standard F1346 (2003) or any similar standard, from the pool alarm requirement.

Voice Over Internet Protocol Disclosure (Chapter 329 of the Laws of 2007, Brodsky)

Consumers now have several telephone service options to choose from, including traditional landline service, wireless service, and Voice over Internet Protocol (“VoIP”) service. Many consumers are unaware that some VoIP services offer limited 911 capabilities. This new law will require Voice over Internet Protocol (“VoIP”) telephone service providers to inform prospective and current customers of any limitations of the 911 emergency call services they offer.

Yo-Yo Waterballs (A.472, Fields)

Yo-yo waterballs consist of a liquid-filled ball on an elastic cord with a small finger loop at the end that allows children to throw the ball, stretch the cord and bounce it back like a yo-yo. Since its emergence in 2003, consumer safety agencies around the world have received numerous complaints from parents reporting various injuries involving the toy, including strangulation, laceration and eye injuries. The New York State Consumer Protection Board has issued two warnings calling yo-yo waterballs a serious hazard to children and the United States Consumer Product Safety Commission (CPSC) has received over 400 complaints in the last three years. This bill would prohibit the sale, import, manufacture or distribution of yo-yo waterball toys. **(Passed Assembly)**

Labeling Sunscreen Products (A.77, Weisenberg)

According to the American Cancer Society, over 800,000 new skin cancer cases of highly curable basal cell or squamous cell cancers are diagnosed each year. Since 1973, the incidence of skin cancer has increased about four percent per year. Many consumers use sunscreen products to prevent the risk of skin cancer. In light of how important these products are in combating skin cancer, it is important that the consumer be aware that sunscreen does not protect against the sun's rays after a certain shelf life. This legislation would increase consumer awareness of sunscreen product effectiveness by requiring all products to be labeled with a “best if used before date” and storage recommendations. **(Passed Assembly)**

Safe Handling and Preparation of Produce (A.119-A, Pheffer)

The purpose of this bill is to promote consumer awareness regarding the proper handling and preparation of bagged salads and produce. Washing has been shown to reduce the levels of bacteria, pesticide and other residues, such as chlorine, that may be present on bagged produce. This bill would require retailers of pre-packaged salads to post a sign advising consumers to wash such salads, and all produce, prior to consumption. Such sign would be required to include the current mailing address and telephone number established by the United States Food and Drug Administration for receiving questions from consumers regarding the proper methods of

washing and/or safely preparing pre-packaged salads or any other food product. (**Advanced to Third Reading**)

D. Enhancing Motor Vehicle Safety

Air Bags (A.323, Pheffer)

This bill would require airbags to be sold without such sale being tied to the sale of other goods and services. The requirements under this bill are applicable to new motor vehicles only and would not apply to airbags required to be installed by federal law. A motor vehicle dealer would not be in violation of this section if the dealer, after due diligence, is unable to acquire from the manufacturer a vehicle equipped with airbags as an option without the purchase of a package of options. (**Passed Assembly**)

E. Increasing Consumer Recourse

Victims of Price Gouging (A.223, Pheffer)

Price gouging occurs when businesses take unfair advantage of consumers during abnormal disruptions of the market by charging grossly excessive prices for essential consumer goods and services. Unscrupulous businesses that gouge consumers during difficult times must be held accountable. Currently, only the State Attorney General is empowered to bring legal action against violators of the price gouging statute. This bill would leave the Attorney General's powers intact, but would also permit individual victims of price gouging to sue the price gougers directly. (**Passed Assembly**)

III. HEARINGS AND ROUNDTABLES

A. Hearings on Practices of the Credit Card Industry

The Committee held two joint public hearings with the Committee on Banks and the Senate Consumer Protection Committee on practices of the credit card industry; the first in Hempstead on April 11, 2007, and the second in Albany on April 16, 2007.

According to a study conducted by Experian, a major credit reporting agency, as of November, 2006, the average New York consumer holds more than four credit cards, and over sixteen percent of New York consumers hold ten or more cards. A September 2006 study conducted by the United States Governmental Accountability Office found that some credit cards now feature late payment penalties as high as thirty-nine dollars per occurrence and interest rates of over thirty percent for cardholders who pay late or exceed a credit limit. The Office also found widespread use of weak disclosure practices by the largest credit card issuers. In addition, many credit card agreements contain questionable terms and conditions, including universal default clauses that allow issuers to raise a borrower's interest rate based on indebtedness or late payment to other creditors, binding mandatory arbitration clauses, and over-the-limit fees for transactions approved by the issuer.

This hearing examined the billing, marketing and disclosure practices of the credit card industry. The hearing also reviewed the need for increased consumer protection in this area, as well as the ability of the State to regulate the credit card industry.

B. Hearing on Subprime Lending Practices

On May 29, 2007, the Committee on Consumer Affairs and Protection, the Committee on Banks, the Committee on Housing, the Committee on Judiciary, and the Committee on Oversight, Analysis and Investigation held a joint public hearing on subprime lending practices. According to the Center for Responsible Lending, New York is one of eight states that are predicted to suffer the greatest impact as a result of the recent spike in foreclosures in the subprime mortgage market. Many homeowners were duped into mortgages with deceptive and questionable terms, including those with low "teaser" interest rates that increase significantly after several years and interest-only mortgages. As interest rates have risen and property values decreased, foreclosures have occurred at alarming rates and delinquencies continue to climb. It has been estimated that over 50,000 families in New York are at risk of losing their homes by the end of 2008.

The purpose of this hearing was to evaluate the lending practices in the subprime market, determine steps that can be taken to help those facing foreclosure, and determine what can be done to prevent this situation from recurring. Issues of federal preemption, loan securitization, and the impact of subprime lending practices on low-income communities were discussed. The Committees received valuable testimony from the New York State Banking Department, the

Center for Responsible Lending, housing and consumer advocates, legal services organizations and industry representatives.

C. Hearing on Toy Safety

On November 1, 2007, the Committee held a joint public hearing with the Subcommittee on Child Product Safety to examine various toy safety issues.

Several major toy manufacturers issued significant recalls of children's toys this year, including the recall of toys coated with paints containing excessive levels of lead and toys containing magnets, which can become dislodged and, if found by a child, swallowed or aspirated. This hearing examined various toy safety issues, including the adequacy of the consumer product recall system and how the State can best protect children from hazardous toys. A number of bills introduced in the Committee seeking to regulate the manufacture and sale of certain toys, as well as legislation related to consumer product recalls were discussed.

The Committees received useful testimony on this important issue from the Consumer Protection Board, from child safety advocates, consumer advocacy groups, the toy industry, and the medical community. The hearing marked a successful dialogue on advancing toy safety. The Committees plan to continue the dialogue with government, consumer, and industry participants.

D. Hearing on State Agency Implementation of the Enacted State Fiscal Year 2007-08 Budget

On December 13, 2007, the Committee, along with the Committee on Agriculture, held a public hearing on state agency implementation of the enacted State fiscal year 2007-08 budget. The purpose of this hearing was to review the budget implementation initiatives of the Consumer Protection Board.

IV. OUTLOOK AND GOALS FOR 2008

The 2008 Legislative Session promises to present many challenges to the Consumer Affairs and Protection Committee. The Committee will pursue many of the issues it addressed during the 2007 Session, and new issues will emerge for consideration. As in the past, the Committee will continue to address issues brought to its attention by legislators, the executive branch, staff, and by the people of the State of New York.

APPENDIX A

CHAPTERS OF 2007

Bill #	Sponsor	Description
A.224-A	Pheffer	Requires entities offering free trials to provide consumers with enhanced disclosures regarding such offers. Chapter 508 of the Laws of 2007.
A.335	Greene	Prohibits a merchant from writing a customer's address or telephone number on a credit card transaction form or on any attachment thereto; removes the exception that allows merchant to record the customers name and address where the amount of the transaction is below the stores floor limit. Chapter 233 of the Laws of 2007.
A.339-B	Magnarelli	Provides that temporary swimming pool enclosures shall be replaced with permanent enclosures in compliance with state and local building codes within ninety days, permits extension for good cause. Chapter 234 of the Laws of 2007.
A.723-A	DelMonte	Requires retailers of temporary and permanent swimming pools to provide notice to consumers that the NYS uniform fire prevention and building code and, if such notice is given in certain localities, the building code of the city of New York require barriers around pools that contain certain levels of water; requires written notice informing consumers that local laws regarding fencing and other safety requirements for swimming pools may be more restrictive than standards in the NYS uniform fire prevention and building code and the building code of the city of New York. Chapter 100 of the Laws of 2007.
A.2023-A	Gianaris	Provides for the disposition of abandoned moneys deposited in a pre-paid funeral account. Chapter 279 of the Laws of 2007.
A.2434-A	Morelle	Expands the definition of "memorial" to include the foundations therefor; establishes the requirements for contracts for the sale of memorials, which sale must be separate from all other contracts relating to the funeral of a deceased person. Chapter 390 of the Laws of 2007.
A.3253	Peoples	Increases from \$500 to \$5,000 the civil penalty for certain unlawful acts and practices relating to consumer protection from deceptive acts and practices. Chapter 208 of the Laws of 2007.

Bill #	Sponsor	Description
A.4111-A	Brodsky	Requires that new computers and accessories be sold with only new parts unless otherwise labeled; establishes labeling requirements; permits the attorney general to seek injunctive relief and civil penalties. Chapter 242 of the Laws of 2007.
A.6218	Pheffer	Establishes no person shall misrepresent the geographical location of a business that derives any portion of its gross income from the sale or arranging of flowers in the listing of the business in a telephone directory. Chapter 180 of the Laws of 2007.
A.6520-A	Fields	Establishes certain hot tubs, spas, and swimming pools shall not be required to be equipped with a pool alarm. Chapter 75 of the Laws of 2007.
A.7592-A	Brodsky	Relates to voice over internet protocol 911 disclosure. Chapter 329 of the Laws of 2007.
A.7648	Pheffer	Prohibits telemarketers and sellers from calling a telephone number that has been on the national do-not-call registry for 31 days. Chapter 69 of the Laws of 2007.
A.7649	McEneny	Clarifies that the consumer protections contained in section 396-m of the General Business Law related to mail and telephone order merchandise apply to orders placed via electronic mail or the Internet. Chapter 72 of the Laws of 2007.
A.8231-A	Brodsky	Requires any retail business that offers internet access shall post a warning sign in their establishment that states "For the purposes of your own protection and privacy, you are advised to install a firewall or other computer security measures when accessing the Internet." Chapter 509 of the Laws of 2007.
A.8361	Silver	Requires employees of a designated contract market or derivatives clearing organization involved in the commodities market to be fingerprinted. Chapter 533 of the Laws of 2007.
A.8406-B	Gianaris	Creates a consumer bill of rights regarding airline passengers; establishes certain services shall be provided whenever airline passengers have boarded an aircraft and are delayed more than three hours on an airport runway prior to takeoff; creates an office of airline consumer advocate. Chapter 472 of the Laws of 2007.

Bill #	Sponsor	Description
A.8611	Pheffer	Provides that any person who has been injured because of false advertising may bring an action to enjoin such practices and may seek to recover his or her actual damages or \$500 instead of the present \$50 limitation; authorizes the court increase the award of damages in willful cases, not to exceed three times the actual damages incurred up to \$10,000; also authorizes the court award attorney's fees to the prevailing plaintiff. Chapter 328 of the Laws of 2007.
A.8695	Pheffer	Extends certain provisions of chapter 557 of the laws of 2001 relating to pre-need funeral services until June 1, 2012. Chapter 78 of the Laws of 2007.
A.8966-A	Rosenthal	Requires fur-bearing articles of clothing to be labeled as real fur or faux fur; defines terms; imposes a fine for violations. Chapter 611 of the Laws of 2007.

APPENDIX B

2007 BILLS PASSED BY THE ASSEMBLY

Bill #	Sponsor	Description
A.77	Weisenberg	Would require sunscreen products to be labeled with "best if used before" dates and storage recommendations.
A.117-A	Pheffer	Would prohibit certain unsolicited advertisements to consumers and the sale, rental, or exchange of personal information.
A.221	Pheffer	Would require debt collectors to send consumers a written notice of their rights under state law along with their debt collection correspondence.
A.223	Pheffer	Would create a private right of action for unlawful price gouging for injunctive relief and recovery of actual damages or \$1000 whichever is greater.
A.225-B	Pheffer	Would establish a task force on the privacy implications of radio frequency identification technology.
A.323	Pheffer	Would provide that airbags (not required by federal law) sold and installed by motor vehicle dealers or manufacturers must be offered as standard or as an independent option.
A.334	Greene	Would restrict the requirement that a person disclose his or her social security number.
A.472	Fields	Would prohibit the importation, manufacture, distribution, or sale of yo-yo waterball toys, define them, and provide for enforcement by the attorney general.
A.576	Dinowitz	Would authorize cardholders to prohibit credit, charge, and debit card issuers from renting, selling, exchanging, or otherwise making available cardholder information.
A.725-A	Gantt	Would prohibit motor vehicle rental agencies from discriminating against a person because any of the authorized operators do not have a credit card.
A.2030	O'Donnell	Would enact the "wireless telephone service consumer protection act," setting various standards to be enforced by the state Consumer Protection Board.
A.4278	Greene	Would increase the liability of creditors to consumers for credit billing errors.

Bill #	Sponsor	Description
A.6279	Rivera, N	Would require publisher of magazine subscriptions to disclose on the billing statement or invoice a customer service telephone number.
A.6853	Nolan	Would require dealers engaged in the retail sale of motor fuels and who place holds against a customer's account in excess of the cost of such fuel to post policies.
A.7657	Greene	Would prohibit any party from charging consumers for unordered or unrequested goods or services.
A.8152	Pheffer	Would require debt collectors to temporarily stop attempts to collect a debt upon notification by the consumer that the debt arose from identity theft.
A.8153-A	Pheffer	Would make it unlawful for any person to act as a debt collection agency without first having obtained a license.
A.8612-A	Pheffer	Would require third party debt collectors and debt buyers to obtain a license from the Department of State.

APPENDIX C

VETOES OF 2007

Bill #	Sponsor	Description
A.61-A	Lafayette	Would prohibit any person, firm, corporation, partnership or other association from knowingly taking an adverse action against a consumer solely because such consumer is a victim of identity theft. Veto Memo 75
A.217-B	Pheffer	Would establish an identity theft prevention and mitigation unit within the Consumer Protection Board, create a Task Force on Identity Security, and require law enforcement agencies to take identity theft complaints and issue a report. Veto Memo 76
A.1416	Bradley	Would prohibit any person, firm, corporation, or other entity from lowering a consumer's credit score based on that consumer's comparison of available mortgage or automobile loan rates. Veto Memo 124
A.5325-C	Rivera, P	Would prohibit credit card issuers from increasing interest rates or imposing fees upon account of holders based on indebtedness or late payment to other creditor. Veto Memo 109

APPENDIX D

**2007 SUMMARY OF ACTION ON ALL BILLS REFERRED TO
THE ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION**

Final Disposition of Bills	Assembly Bills	Senate Bills	Total
Bills Reported With or Without Amendment			
To Floor; Not Returning to Committee	7		7
To Floor; Recommitted and Died			
To Ways and Means	3		3
To Codes	42		42
To Rules	3		3
To Judiciary			
Total	55		55
Bills Having Committee Reference Changed			
To Corporations Committee	1		1
Total	1		1
Senate Bills Substituted or Recalled			
Substituted		7	7
Recalled		2	2
Total		9	9
Bills Defeated in Committee			
Bills Never Reported, Held in Committee	213	10	223
Bills Never Reported, Died in Committee			
Bills Having Enacting Clause Stricken			
Motions to Discharge Lost			
TOTAL BILLS IN COMMITTEE	269	19	288
TOTAL NUMBER OF COMMITTEE MEETINGS HELD	10		