



TESTIMONY
PRESENTED AT:

**2024 JOINT LEGISLATIVE BUDGET HEARING ON
ECONOMIC DEVELOPMENT**

PRESENTED TO:

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

PRESENTED BY:

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Thank you to the New York State Senate Finance Committee Chair Liz Krueger and Assembly Ways and Means Committee Chair Helene Weinstein and all the members of the Legislature participating in the hearing on Economic Development. Mobilization for Justice (MFJ) submits this testimony specifically about the Consumer Protection Act, 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 and her team for putting forth this proposal to modernize New York’s consumer protection law, we believe it requires certain critical amendments to accomplish the Governor’s goal of catching New York up to the rest of the country and to meaningfully protect New Yorkers. This can be accomplished by enacting the Consumer and Small business Protection Act (S.795/A.7138) sponsored by Senator Leroy Comrie and Assemblymember Helene Weinstein.

MFJ’s mission is to achieve justice for all. MFJ prioritizes the needs of people who are low-income, disenfranchised, or have disabilities as they struggle to overcome the effects of social injustice and systemic racism. We provide the highest-quality free, direct civil legal assistance, conduct community education and build partnerships, engage in policy advocacy, and bring impact litigation. We assist more than 14,000 New Yorkers each year, benefitting over 24,000. MFJ is a member of the statewide coalitions New Yorkers for Responsible Lending, the Community Equity Agenda, and Fair Deal NY. I am Director of Litigation for Economic Justice and I supervise MFJ’s Consumer Rights Project, which provides advice, counsel, and representation to New Yorkers with limited and low incomes who are regularly taken advantage of by companies that treat them unfairly and that subject them to various abusive and deceptive practices.

I. Consumer Protection Laws

The bedrock of consumer protection in this country is the prohibition against unfair, deceptive, and abusive practices, known as “UDAP” laws. These protections have existed at the federal level in the Federal Trade Commission (FTC) Act since 1938. Over the past 50 years, all states have enacted their own form of a UDAP law to prohibit unscrupulous practices and to give state agencies the authority to enforce these prohibitions and allow individual consumers to seek remedies. As explained by the National Consumer Law Center, “UDAP statutes provide the basic protections for the thousands of everyday transactions that each consumer in the United States enters into each year. Although UDAP statutes vary widely from state to state, their basic premise is that unfair and deceptive tactics in the marketplace are inappropriate. UDAP statutes are the basic legal underpinning for fair treatment of consumers in the marketplace.”¹ Strong UDAP laws prohibit unfair, abusive and deceptive practices in marketplace transactions and must be broad and flexible in order to serve their purpose.

II. Reasons for Strong Consumer Protection Laws

States need strong UDAP laws to combat centuries of systemic racism and reverse the pattern of wealth extraction from Black and Brown communities. Bad actors target communities of color

¹ Carolyn Carter, National Consumer Law Center, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws* 10 (March 2018), available at: https://www.nclc.org/wp-content/uploads/2022/09/UDAP_rpt.pdf.

with predatory practices while denying these communities basic services, as evidenced by our country's history of redlining and reverse redlining.

Desperate New Yorkers harmed by unfair, abusive and deceptive practices by unethical and predatory businesses regularly contact MFJ for help with problems related to every aspect of the marketplace, including mortgage lending, student loan servicing, rent-to-own transactions, bank fraud, debt collection, credit reporting, and automobile sales and financing, among others. We see how unscrupulous businesses disproportionately target and extract wealth from communities of color, as well as seniors and people with disabilities and other vulnerabilities. Our clients include individuals:

- who have had their life savings wiped out from their bank account even after they have notified their bank that they were the victim of fraud;
- who were saddled with costly add-ons totaling thousands of dollars by unscrupulous car dealers who trick customers into signing English-language contracts with different terms than had been negotiated in another language;
- who pay a portion of their monthly benefits income—which is exempt from collection—to debt settlement companies that promise results that are impossible to fulfill; and
- who are swindled out of their homes because of deed theft scams.

New Yorkers, including small business owners, deserve a fair marketplace where entities that try to game the system are not given a free pass and where people who are harmed can be made whole.

III. New York's Consumer Protection Law

New York State was once a national leader in general consumer protections. In fact, we were one of the first states to enact a statute (N.Y. General Business Law § 349), modeled after the FTC Act, providing consumers redress against deceptive business conduct. GBL 349 was supposed to be a “gap-filler,” protecting New Yorkers against evolving malfeasance in all economic spheres throughout the state. It was amended to add a private right of action when the Legislature concluded that the law could not accomplish its goal relying just on public enforcement. However, New York's statute, which has not been updated in decades, is not a true “UDAP” statute because it does not proscribe unfair conduct, which makes it woefully outdated. Its damages provision—intended to be a deterrent—is also outdated: the penalty for violating the law is a paltry \$50 and damages are capped at \$1,000 for businesses that willfully harm people. It is now out of step with the rest of the country; in fact, New York is now one of only eight states that lacks a privately enforceable unfairness ban. Its utility has also been diminished by strained court interpretations over time that requires a showing that the bad acts affect the public at large. Too often, what has happened to our clients is unfair and abusive, but not illegal, or is deceptive, but not actionable under our current case law.

IV. Measures to Make New York's Consumer Protection Law the Best in the Nation

Given how weak New York's current law is, we welcome the Governor's proposal to modernize New York's consumer protection statute. The Consumer Protection Act (CPA) goes a long way toward addressing much-needed reforms, including specifically prohibiting unfair and abusive practices, strengthening the ability of both the Attorney General and members of the public

to seek redress, increasing statutory damages to \$1,000, and mandating attorney's fees. However, there are several components of the CPA that must be changed to make New York's law effective in protecting consumers and honest businesses.

We are deeply troubled that the bill as drafted does not eliminate the existing requirement that an aggrieved consumer show that a business's bad acts affect the public at large; imposing this burden on consumers restricts access to justice and gives businesses a free pass to exploit New Yorkers. Furthermore, the CPA's requirement that a harmed person provide notice to the offender and an opportunity to cure before filing suit is well intended, but is confusingly drafted and lacks common-sense exceptions, excluding many vulnerable consumers who have been harmed from the law's protections. The CPA also weakens the standard definition of "abusive," and does not proactively ensure that small business owners that are abused may seek the protections of CPA by defining "person." The CPA is also missing a basic but important consumer protection provision: authorization for state court class action lawsuits seeking statutory damages, which are critical for holding bad actors accountable and an important tool for effecting racial and economic justice. Further, without a robust damages provision, which the CPA currently lacks, businesses will not be deterred from continuing to take advantage of customers, rendering CPA toothless. As now drafted, the more a business harms a consumer, the less it loses by way of damages.

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, directly addressing the court's narrowing of the existing law, whereas the CPA is silent on this issue;
- 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 law and would help make harmed consumers whole;
- 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, the same amount as permitted for violations that are not done willfully or knowingly. 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, codifying a general practice and reducing any uncertainty about the law's applicability;
- 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 and mystery shopping 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 incorporating certain practical amendments to CPA that reflect the more robust protections of CSPA, will ensure that the Governor fulfills her ambitious and admirable goal of providing New Yorkers with meaningful consumer protections.

V. Conclusion

More than 60 organizations and coalitions, including labor groups, Consumer Reports, and AARP support improving New York's consumer protections in the manner advocated here. A ban on unfair and deceptive business practices sets a reasonable standard for business conduct that is already the norm under federal law and in 43 other jurisdictions. Updating New York's weak statute will deter unscrupulous behavior and will help level the playing field for honest companies that treat their customers fairly. Consumers and small business owners who are tricked, defrauded, deceived, and bilked should be made whole, and then some to prevent a business from evading accountability by folding the financial consequences of a violation into the cost of doing business. That is why we recommend that the Senate and Assembly include CSPA (S.795/A.7138) in their respective one-house budgets. Alternatively, the Senate and Assembly should adopt the CPA with critical amendments. We look forward to continuing to work with the Governor, the Attorney General, and the Legislature to ensure that consumers and small businesses in New York have the strong legal protections they deserve. 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 Carolyn E. Coffey (ccoffey@mfjlegal.org).