

By First Class Mail and Electronic Mail

March 2, 2020

Hon. Andrea Stewart-Cousins, Majority Leader
c/o Shontell Smith
907 Legislative Office Building
New York State Senate
Albany, NY 12247

Dear Majority Leader Stewart-Cousins:

The undersigned organizations write to request that the Assembly's Fiscal 2020-2021 budget include legislation that would modernize the state's primary consumer protection law, General Business Law § 349, as set forth in S.2407-C, the "Consumer and Small Business Protection Act."

New York shamefully lags behind 39 other states in protecting consumers and in holding businesses accountable for unfair, abusive and deceptive practices. This would have no effect on the cost of the overall budget, but would make an enormous difference for consumers, small businesses and nonprofit groups in the state.

General Business Law § 349 is deficient in comparison to other states' consumer protections laws because it fails to protect consumers who are harmed by unfair and abusive business practices; it does not protect small businesses and nonprofit organizations; the penalty of \$50 *or* actual damages is woefully out of date; consumers are required to meet an unreasonably high pleading burden to show the conduct is "consumer oriented"; and courts are not required to award attorney's fees even when consumers overwhelmingly prove their case.

The Governor's executive budget incompletely addresses the pressing need to update and strengthen the consumer protection law by recommending a modest expansion of the oversight powers of the Department of Financial Services ("DFS").¹ This proposal, however, is too narrow because unfair, abusive and deceptive business conduct occurs outside DFS' jurisdiction of "financial services." Thus, DFS would not be able to investigate or take action against used car dealers, furniture stores, timeshare companies, or nursing homes, to name just a few examples.

General Business Law § 349, first enacted in 1963 and last substantially revised in 1982, has failed to keep up with marketplace practices, consumer expectations, and ongoing reforms in other jurisdictions. In 2020, the vast majority of other states' consumer protection laws are considerably stronger, including the laws in Alabama, Arkansas and Georgia. At a time when federal agencies have not just abandoned consumers but are *actively rolling back* hard-won protections, New York must update its laws to protect individuals, small businesses and nonprofit groups when they are taken advantage of in the marketplace.

¹ Transportation, Economic Development and Environmental Conservation Article VII legislation, Part NN, pp. 288-293, available at <https://www.budget.ny.gov/pubs/archive/fy21/exec/artvii/ted-bill.pdf>.

As noted, adopting the *Consumer and Small Business Protection Act* as part of the budget would not cost taxpayers, but it would provide important protections from unfair, abusive and deceptive acts and practices.

Let us be clear: we do not oppose giving DFS additional authority to expand its consumer protection tools, and we support giving additional powers to the Office of the Attorney General so that it may more fully protect consumers. We believe, however, that it's of critical importance to also give the individuals harmed direct power to get the relief they need, whether it is getting their money back when they have been tricked into paying abusive fees, or stopping the sale of their home when they have fallen victim to a deed theft scam. This relief is not something they can expect DFS to be able to give them, let alone quickly. Banning unfair business conduct for all New Yorkers, as proposed in the *Consumer and Small Business Protection Act*, is the only way to bring our consumer protection law into the 21st Century. The 2021 budget is an opportunity to do just that, and we urge the Assembly to fulfill the leadership role in this area as it has done historically.

Thank you for consideration of this request. We look forward to working with you to improve the executive budget to fully protect consumers, small businesses and nonprofit organizations.

[Signatories on next page]

Sincerely,

AARP

African Communities Together

Americans for Financial Reform

Association for Neighborhood and Housing Development

Brooklyn Bar Association Volunteer Lawyers Project

Brooklyn Community Bail Fund

CAMBA Legal Services, Inc.

Carroll Gardens Association

Center for NYC Neighborhoods

Community Service Society of New York

Consumer Justice for the Elderly: Litigation Clinic, St. John's University School of Law

Consumer Reports

District Council 37

Empire Justice Center

Genesee Co-op Federal Credit Union

Hebrew Free Loan Society

Inclusiv

JASA/Legal Services for Elder Justice

The Legal Aid Society

Lower East Side People's Federal Credit Union

Mobilization for Justice, Inc.

National Center for Law and Economic Justice

National Consumer Law Center (on behalf of its low-income clients)

New Economy Project

New York Legal Assistance Group

New York Public Interest Research Group (NYPIRG)

New Yorkers for Responsible Lending

NY County Defender Services

NY-National Association of Consumer Advocates

Queens Volunteer Lawyers Project, Inc.

Rockland Housing Action Coalition

TakeRoot Justice

Teamsters Local 237

VOCAL-NY

Western New York Law Center

cc: Todd Scheuermann, Secretary to Senate Finance Committee
Felix Muniz, First Deputy Secretary to Senate Finance Committee