

VIA OVERNIGHT MAIL

October 16, 2023

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Consumer and Small business Protection Act, S.795 (Comrie) / A.7138 (Weinstein)

Dear Governor Hochul:

We write regarding the Consumer and Small Business Protection Act (CSPA) S.795 (Comrie) / A.7138 (Weinstein). This legislation would amend General Business Law (GBL) section 349 prohibiting deceptive business practices.

New York State was once a national leader in general consumer protections. In fact, in 1970, when GBL 349 was enacted, we were one of the first states to pass a statute providing consumers redress against deceptive business conduct. All states followed suit, passing similar laws known as Unfair and Deceptive Acts and Practices or “UDAP” statutes, many of which have been amended and strengthened over time. However, New York’s statute is not a “UDAP” statute because it has not been updated in over 50 years and does not proscribe unfair conduct as those of most other states do, leaving it woefully outdated. S.795/A.7138 will bring New York in line with 42 other states, including California, Connecticut, Arkansas, and Florida. The bill most importantly adds a provision to prohibit unfair acts and practices. It will also add protections for small businesses, will raise the existing damages penalty from \$50 to \$1,000, and will provide for attorney’s fees and costs to a prevailing plaintiff.

GBL sec. 349 already applies to the “acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service,” and it already provides a private right of action, but its utility has been diminished by strained court interpretations over time. CSPA would prohibit unfair and deceptive practices in a broad scope of scenarios including, mortgage lending and servicing, home equity scams, debt collection, rent to own transactions, automobile sales and financing, student lending and servicing, higher education instruction, insurance practices, health care services, landlord conduct, and financial services misconduct such as data breaches and the creation of false bank accounts and wrongful foreclosures that we have seen repeatedly over the past decade. Indeed, if CSPA were enacted, consumers would be better protected in dealings with cable companies, such as the recent Spectrum channel blackout.

Because scams, misconduct, and targeting changes and evolve over time, it is impossible for the Legislature to pass legislation in response to each unfair practice or scam that comes along. Consumers and small businesses largely stand without redress in New York State. Amendments to New York’s consumer protection statute are long overdue and critically needed to protect consumers and small businesses against ever-evolving risky business practices and scammers’ nefarious conduct.

We therefore respectfully ask that you include this legislation in your Executive Budget submission for FY 2025. Our coalition would appreciate the opportunity to speak with your staff further about this proposal and its immense benefits to consumers. Please feel free to reach out to Carolyn Coffey (ccoffey@mfjlegal.org/212-417-3701) at Mobilization for Justice.

Sincerely,

Fair Deal New York (<https://fairdealny.org/>)

National Association of Consumer Advocates (<https://www.consumeradvocates.org/>)

National Consumer Law Center (<https://www.nclc.org/>)

New Yorkers for Responsible Lending (<https://www.nyrl.org/>)

cc: Senator Leroy Comrie
Assemblymember Helene Weinstein
Secretary to the Governor Karen Persichilli Keogh
Director of State Operations Kathryn Garcia
Counsel to the Governor Liz Fine
Deputy Secretary for Legislative Affairs Chatodd Floyd
Deputy Secretary for Economic Development Albert Pulido