



New York State Assembly

Carl E. Heastie, Speaker

ANNUAL REPORT 2015

A dark blue silhouette of a city skyline, including various skyscrapers and buildings, positioned behind the large white text of the title.

Committee on
Consumer Affairs and Protection

Jeffrey Dinowitz, Chair



JEFFREY DINOWITZ
Assemblyman 81st District
Bronx County

**THE ASSEMBLY
STATE OF NEW YORK
ALBANY**

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Consumer Affairs & Protection
Committee

COMMITTEES
Rules
Judiciary
Health
Election Law

MEMBER
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CHAIRMAN
Bronx Delegation

December 15, 2015

Honorable Carl Heastie
Speaker of the Assembly
State Capitol, Room 349
Albany, New York 12248

Dear Speaker Heastie:

It is my pleasure to forward to you the 2015 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2015 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 consumer issues. Several of these initiatives have been enacted, including legislation providing important consumer protections to minors by extending existing credit freeze protections currently available only to adults and protections to consumers using employment agencies from hidden contract fees.

I look forward to the upcoming 2016 legislative year during which I plan to build upon the foundations established during the 2015 year by continuing to engage consumers, advocates, governmental agencies, and businesses in a dialogue as we explore innovative and effective ways to address the consumer protection issues facing our residents.

I would like to take this opportunity to thank the Committee members for their 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,

Jeffrey Dinowitz, Chair

2015 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 in many facets of life.

To protect consumers’ rights and help them to make informed choices, the Committee works with consumer groups and state and federal agencies. At the state level, these agencies include: the Department of State; the Department of Law; the Department of Financial Services; the Department of Education; the Department of Environmental Conservation; the Department of Health; and the Department of Agriculture and Markets. The federal government agencies with which the Committee works include: the Federal Trade Commission (FTC); the Consumer Financial Protection Bureau (CFPB); 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 through the development of legislation under the jurisdiction of other Assembly standing committees. Such committees include the Committees on Banks; Transportation; Corporations, Authorities, and Commissions; Economic Development, Agriculture, and Insurance.

II. 2015 COMMITTEE ACCOMPLISHMENTS

A. Protecting Personal Privacy

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

Prohibiting Caller ID “Masking” (A.4615 Mayer)

Caller identification, commonly referred to as Caller ID, is a popular feature that can help consumers avoid unwanted telephone calls. Unfortunately, new software programs have become available that allow users to alter caller identification information to mask their identity in an effort to get the recipient to answer the call. This technology can be used to make calls appear to be of a personal nature rather than a call from a telemarketer.

This bill would prohibit a business from altering its caller identification with the intent to defraud or harass the recipient of the call or a third party. It would authorize the Attorney General or any person adversely affected by a violation, to bring an action against a violator. In actions brought by the Attorney General, the court would be able to require restitution to any victim upon a showing of damages. The court would also be able to impose a civil penalty of not more than \$2,000 per call up to a total of \$100,000 within a continuous 72-hour period. Private individuals would be able to recover the greater of actual damages or an amount of not more than \$500 per call up to a total of \$25,000 within a continuous 72-hour period. **(Passed the Assembly)**

B. Improving Business Practices

Creates the State Office of the Utility Consumer Advocate (A.180, Dinowitz)

More than 40 states have an independent state agency that represents the interests of residential utility customers. New York is one of few states, and by far the largest, without such an independent office. States that have implemented these agencies have secured substantial savings on utility costs for consumers. For example, in California, it is estimated that for every \$1 spent representing and advocating on behalf of public utility customers in the 2012 report year, the average customer saved \$153 per year.

This bill would create the State Office of the Utility Consumer Advocate to serve as an independent advocate and appear on behalf of New York residential utility consumers in state and federal regulatory proceedings, as well as judicial review proceedings concerning rates and conditions of public service utilities. **(Passed the Assembly)**

Wireless Service Contracts (A.326, Rozic)

Wireless telephone companies have created consumer friendly contract options such as “shared minutes” and “family plans” that allow consumers to save money by consolidating costs. However, some consumers remain subject to high fees when trying to cancel contracts due to emergencies. For instance, victims of domestic violence who share a telephone contract with their batterer are often left with enormous fees for early contract cancellation. Providing an escape clause in such shared minutes and family plan contracts, for victims of domestic violence is good public policy and is consistent with New York’s and the telecommunications industry’s traditional support for domestic violence victims. This bill would allow victims of domestic violence who are under a shared or family contract with their batterer to opt out of such plans without penalty. **(Passed the Assembly)**

Cramming/Unauthorized Telephone Charges (A.392, Skartados)

This bill would prohibit telephone corporations from permitting the practice of cramming. “Cramming” would be defined as the imposition of any charge or fee on a consumer’s telephone bill when such charge or fee is imposed by a third party or billing aggregator without the consumer’s authorization or with authorization that is obtained through deceptive means. Any third-party charges or fees that are included without consent would be deemed void and unenforceable and would have to be removed upon notice from the consumer.

In order for a telephone corporation to authorize a charge by a third party, the third party would have to provide the telephone corporation with proof that the consumer consented to the charge after being informed of all the terms and conditions of the product or service offered. The Public Service Commission would be authorized to enforce the bill’s provisions and would have the authority to promulgate any necessary rules and regulations. **(Passed the Assembly)**

Magazine Subscription Telephone Numbers (A.1114, Dinowitz)

Consumers sometimes find themselves the recipient of unwanted and unsolicited magazines that fill their mailboxes and ultimately end up in the recycling bin. While many magazine titles provide consumers with information on how to contact the publisher regarding the receipt of such magazines, other magazine titles do not offer a convenient means to contact the publisher about the receipt of an unwanted magazine other than electronically.

This bill would require magazine publishers to include a customer service telephone number on the magazine’s billing statement or invoice. This way, consumers who are receiving monthly installments of unwanted magazines can have a means to contact the publisher to cancel the unsolicited magazine. **(Passed the Assembly)**

Unordered Goods (A.1354, Zebrowski)

In order to boost sales, some companies have been known to ship unordered goods, such as a book or pocket knife, to consumers and then demand payment unless the goods are returned at the consumer's expense. This marketing technique is restricted under state and federal laws, which provide that consumers who receive unordered goods may treat the merchandise as a free gift that does not have to be returned. Despite these existing protections, consumers continue to report instances in which they received unordered goods.

Currently, New York's unordered goods statute authorizes the Attorney General to seek an injunction to restrain the sending of additional unsolicited goods. This bill would further authorize the Attorney General or any person adversely affected by a violation to bring an action against an alleged violator to recover the greater of actual damages or up to \$500 for each instance in which goods were sent in violation. **(Passed the Assembly)**

Unauthorized Changes to Natural Gas or Electric Services (A.1903, Dinowitz)

There have been reported instances of consumers being forced to accept changes to their natural gas and electrical service, which they have not been appraised of. This type of change is commonly known as "slamming". "Slamming" is the practice of changing a utility provider without a consumer's express consent. While there are some consumer protections relating to energy services companies, or ESCOs which include instances of "slamming," such non-consumer-friendly practices would only be considered a "deceptive act and practice," which carries little force and deterrence.

This bill would prohibit any supplier of gas or electric service or any person, firm or corporation, from acting as such supplier's agent or representative, on behalf of a customer, from making or directing any change in a supplier of gas or electric service unless such supplier, agent, or representative complies with the requirements to authorize and verify such change. This bill would also outline the procedures and punishments for violating this legislation. **(Passed the Assembly)**

Employment Agency Practices (A.3702, Moya)

Many consumers who enlist the help of employment agencies are not native English speakers and are at a disadvantage when presented with English-only employment contracts and terms and conditions of employment. Furthermore, even in an instance of wrongdoing by an employment agency, current law limits the available methods and means of recourse for consumers, which only exacerbates the problem.

This bill would strengthen protections for job applicants and end certain predatory practices that certain employment agencies use. Some of the added consumer protections include: better regulation over employment agencies, ending the charging of advance fees, notification to job applicants in their native language, requiring written terms and conditions of employment in

English and the applicant's preferred language, and allowing for a private right of action. **(Passed the Assembly)**

Gift Card and Gift Certificate Fees (A.7610-B, Dinowitz)

The federal CARD Act of 2009 has changed the landscape of gift cards by, among other things, prohibiting certain fees without disclosure, and by prohibiting cash values from expiring for at least five years. Moreover, the federal law authorizes individual states to enact stronger consumer protections with regard to regulating hidden fees associated with gift certificates.

This bill would amend the General Business Law to remove the ability for fees to be assessed on gift cards or gift certificates sold in New York State with the exception of fees assessed for the replacement of a lost or destroyed gift card. The bill also prohibits monthly service fees to be assessed on certain types of gift cards prior to the end of the card's dormancy period. **(Passed the Assembly)**

C. Protecting Consumer Health and Safety

Publicly Accessible Collection Bins (A.5317, Braunstein)

There have been issues with the placement and management of collection bins, primarily in the City of New York. A growing number of companies are illegally placing used-clothing bins throughout New York City, blocking sidewalks and serving as magnets for litter and graffiti. The receptacles typically have signs that indicate donated goods will go to the poor or, in some cases, to legitimate charities. However, city officials have found that the needy do not benefit from much of what is collected and the bins are, in many cases, more of a public nuisance.

This bill would strengthen the existing regulations regarding the placement, maintenance, disposal and management of these collection bins. In addition, the bill would prohibit publicly accessible collection bins from being placed on public property and authorize municipalities to remove such bins immediately. The bill would require new information to be disclosed on bins pertaining to the charitable causes and owners of the bins and require the owners to adhere to stricter regulations concerning the maintenance and security of the collection bins. Finally, the bill would also regulate punishments for violations of the legislation. **(Chapter 524 of the Laws of 2015)**

Unsecured Furniture Public Awareness Campaign (A.7018 Dinowitz)

Every two weeks a child dies when a television, piece of furniture, or an appliance falls on top of them. In an effort to prevent tip-over related incidents, the federal Consumer Product Safety Commission has urged parents and caregivers of young children to anchor and stabilize televisions, furniture, and appliances. Young children are using dressers and tables as climbing devices to reach a toy, TV or game remote, or other desired item, and the results are tragic. New Commission data shows that 349 consumers were killed between 2000 and 2011, when TVs, furniture or appliances toppled over onto them, a large percentage of which were children under the age of ten.

This bill would require the Division of Consumer Protection to develop, establish and implement a public awareness campaign regarding the dangers of unsecured furniture, televisions, and other appliances. The campaign would be made available to the public by any means deemed appropriate by the division, including but not limited to internet, radio and print advertising and begin no later than January 1, 2016. The division would be required to prepare an annual report on the public awareness campaign to the Governor and the Legislature on or before December first of each year on the status of the campaign. **(Passed Both Houses)**

Important Information Regarding Weight Loss Services (A.6010, Cook)

Millions of New Yorkers have tried or are trying to lose weight for medical and cosmetic reasons. It is estimated that dieters across the nation are collectively spending as much as \$33 billion each year on diet programs and products. The purpose of this bill is to provide consumers with relevant information by requiring any person, firm, or corporation offering weight loss services and/or products to post a conspicuous warning notice of the risks associated with rapid weight loss. In addition, the warning would direct consumers to consult their doctor prior to starting any weight loss program or using diet medications or formulas. **(Passed the Assembly)**

Price Gouging of Prescription Drugs (A.6731, Crespo)

There have been several reported instances of disreputable distributors hoarding prescription drugs during a shortage and offering such drugs to hospitals and pharmacies at grossly inflated prices. This bill, which is modeled on the existing price gouging statute applicable to the offering of goods and services during times of emergency and market disruptions (General Business Law, §396-r), would prohibit selling a drug reported as being subject to a shortage by the U.S. Food and Drug Administration at an unconscionably high price. **(Passed the Assembly)**

III. HEARINGS AND ROUNDTABLES

A. State resource funding to protect consumers, including senior citizens, from frauds and scams.

On October 21, 2015, the Committee held a public hearing to examine consumer frauds and scams affecting the public, with specific focus on the senior citizen population. In addition, the hearing examined whether the Department of State's budget is sufficient in preventing and protecting consumers from such frauds and scams. There are many scams that consumers can fall victim to, and it seems as though these scams are becoming more pervasive in our society. In addition, as our everyday lives become more interconnected by technology, today's consumers need to be especially wary of offers that sound too good to be true. Each year, the Assembly reviews the State's budget and makes recommendations based upon any anticipated needs and/or demands of New Yorkers. This hearing reviewed the utilization of existing resources, whether there is a need for additional resources or legislative solutions to protect consumers from such fraudulent acts.

Representatives from the New York State Office of the Attorney General, the New York State Office of Children and Family Services - Adult Protective Unit, the New York City Department for the Aging, the New York City Department of Consumer Affairs, AARP, and the Coalition of NYS Alzheimer's Association Chapters provided testimony. All of this information will be useful in the upcoming session, as the Assembly will consider how to best protect consumers, especially the elderly, from various consumer fraud issues.

B. Hearing on the impact of requiring manufacturers of sugar-sweetened beverages to place a safety warning on the containers of such beverages and in places where such beverages are served to the public.

On April 13, 2015, the Committee held a public hearing to examine the effect of requiring manufacturers of sugar-sweetened beverages to place a safety warning on the containers of such beverages and in places where such beverages are served. The prevalence of obesity in the state has increased dramatically over the past 30 years. While there is certainly more than one cause for this increase, many people believe that sugar-sweetened beverages are a unique contributor to excess caloric consumption. The effects of obesity are of particular concern because obesity is associated with health ailments such as diabetes, heart disease, osteoarthritis, high blood pressure, and certain types of cancer. Medical costs are also a growing concern; each year, obesity-related ailments account for \$147 billion in health care costs nationally. The purpose of this hearing was to provide various organizations the opportunity to comment on the merits of Assembly bill 2320-A and to suggest amendments, if any, in order to address the problems associated with obesity.

Representatives from the New York City Department of Consumer Affairs, the Bureau of Chronic Disease Prevention and Tobacco Control of the NYC Department of Health and Mental Hygiene, the State Government Relations Food Industry Alliance of New York State, the American Academy of Pediatrics Committee on Nutrition, District II (New York State), the Institute of Human Nutrition, the Business Council of New York State, and a number of other interest groups and

medical experts provided testimony. All of this information will be useful in the upcoming session, as the Assembly will consider the best options for informing New Yorkers of potential health issues that can arise from consumption of these types of beverages.

IV. OUTLOOK AND GOALS FOR 2016

The 2016 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 2015 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 the people of the State of New York.

APPENDIX A

CHAPTERS OF 2015

| | | |
|-------------|------------|--|
| Chapter 3 | Dinowitz | Makes technical corrections to law relating to credit record freezes. (Chapter 3 of the Laws of 2015) |
| Chapter 84 | O'Donnell | This law relates to fees charged by employment agencies. (Chapter 84 of the Laws of 2015) |
| Chapter 524 | Braunstein | Would relate to publicly accessible collection bins. (Chapter 524 of the Laws of 2015) |

APPENDIX B

2015 BILLS PASSED BY THE ASSEMBLY

| | | |
|----------|------------|---|
| A.180 | Dinowitz | Would create the state office of the utility consumer advocate. |
| A.326 | Rozic | Would require wireless telephone companies that offer shared or family plans to allow victims of domestic violence to be released from the account without penalty in instances of domestic violence. |
| A.392 | Skartados | Would prohibit the imposition of any charge or fee on the telephone bill of a consumer when such fee is imposed by a third party, without the consent of the consumer. |
| A.1114 | Dinowitz | Would require publisher of magazine subscriptions to disclose on the billing statement or invoice a customer service telephone number. |
| A.1354 | Zebrowski | Would authorize the attorney general to bring an action for violation of the prohibitions concerning unlawful selling practices and specifies damages awardable. |
| A.1903 | Dinowitz | Would prohibit the unauthorized change of a natural gas or electric service provider. |
| A.3702 | Moya | Would relate to employment agencies, including application for license; procedures; granting of licenses and enforcement of provisions relating thereto. |
| A.4615 | Mayer | Would provide that a business entity may not alter caller identification information with the intent to defraud or harass a third party or the recipient of the call. |
| A.5317-B | Braunstein | Would relate to publicly accessible collection bins. |
| A.6010 | Cook | Would require persons offering weight loss services to provide notice of certain weight loss and dieting information. |
| A.6731 | Crespo | Would relate to price gouging of medicine. |
| A.7610-B | Dinowitz | Would relate to fees on gift cards and gift certificates. |
| A.7018 | Dinowitz | Requires the Division of Consumer Protection to develop an unsecured furniture, television, and appliance public awareness campaign. |

APPENDIX C

VETOES of 2015

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APPENDIX D

**2015 SUMMARY OF ACTION ON ALL BILLS REFERRED TO
THE ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION**

| <u>Final Disposition of Bills</u> | Assembly Bills | Senate Bills | Total |
|--|-----------------------|---------------------|--------------|
| <u>Bills Reported With or Without Amendment</u> | | | |
| To Floor; Not Returning to Committee | 3 | 0 | 3 |
| To Floor; Recommitted and Died | 0 | 0 | 0 |
| To Ways and Means | 6 | 0 | 6 |
| To Codes | 47 | 0 | 47 |
| To Rules | 4 | 0 | 4 |
| To Judiciary | 0 | 0 | 0 |
| Total | 60 | 0 | 60 |
| <u>Bills Having Committee Reference Changed</u> | | | |
| To Higher Education | 1 | | 1 |
| To Corporations, Authorities, and Commissions | 1 | | 1 |
| Total | 2 | 0 | 2 |
| <u>Senate Bills Substituted or Recalled</u> | | | |
| Substituted | | 2 | 2 |
| Recalled | | 0 | 0 |
| Total | | 1 | 1 |
| Bills Defeated in Committee | 0 | 0 | 0 |
| Bills Held in Committee with a Roll-Call Vote | 10 | 0 | 10 |
| Bills Never Reported, Held in Committee | 136 | 5 | 141 |
| Bills Having Enacting Clause Stricken | 1 | 0 | 1 |
| Motions to Discharge Lost | 0 | 0 | 0 |
| Total Bills in Committee | 199 | 7 | 206 |
| Total Number of Committee Meetings Held | | 7 | |