

NEW YORK STATE
A S S E M B L Y

SHELDON SILVER, SPEAKER



committee on
Consumer Affairs and Protection
Audrey I. Pheffer, Chair



Annual Report 2010

December 15, 2010

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 2010 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2010 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 that will significantly update and enhance New York's Rent-to-Own Law.

Several other laws were enacted this year to protect consumers' rights and ensure consumer safety. Chapter 416 of the Laws of 2010, the Energy Service Company Consumers Bill of Rights, will require energy service companies to provide a short, plain-language list of consumer rights to prospective customers, limit early cancellation fees, and regulate the marketing of energy services. Chapter 245 of the Laws of 2010 will help to ensure that the cribs in which our children sleep are safe by prohibiting any person or business from importing, manufacturing, or selling a crib that does not meet applicable federal safety standards. Legislation aimed at addressing automobile trade-in scams, in which unscrupulous motor vehicle dealers fail to pay off as agreed the prior credit balance owed on a vehicle purchased or obtained in trade in a timely manner (Chapter 254 of the Laws of 2010) 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,

A handwritten signature in cursive script that reads "Audrey".

Audrey I. Pfeffer, Chair

2010 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 the Committees on Banks; Transportation; Corporations, Authorities, and Commissions; Economic Development, Job Creation, Commerce, and Industry; Agriculture; and Insurance.

II. 2010 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. 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.

New York State Automatic Identification Technology Privacy Task Force (Veto Memo 6771, Pheffer)

Automated systems used to identify, track, record, store, and transfer data, commonly referred to as automatic identification systems, are increasingly being used by public and private entities, including retailers, manufacturers, and hospitals. As the price of automatic identification technology decreases, the employment of this technology is expected to increase rapidly. Several major retailers are moving rapidly to add one type of automatic identification technology, Radio Frequency Identification (RFID) tags, to products they sell. This new technology has privacy implications, including the potential for the tracking of movements of a person who possesses or handles objects containing radio frequency identification tags and the profiling of consumers without their consent.

This bill would authorize and direct the establishment of the New York State automatic identification privacy task force. The task force would assess various privacy issues associated with the use of automated identification systems by public and private entities and determine the need for the State to regulate this technology in order to ensure personal privacy.

Unfortunately, this bill was vetoed by the Governor on the grounds that certain provisions would impose an unfunded cost burden on the Department of State. The Committee intends to consider a revised version of this bill next year that should address this concern.

Reducing the Unnecessary Disclosure of Social Security Numbers (A.9532-B, Pheffer)

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 prohibit any person or business entity 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. The bill would not apply if disclosure of the SSN is required by

law or covered under one of several exemptions provided for legitimate uses, including collecting child or spousal support, opening a deposit account, interacting with a law enforcement agency, a credit transaction initiated by the consumer, and tax compliance. **(Passed Assembly)**

Prohibiting Caller ID “Masking” (A.9390-B, Paulin)

Caller identification technology, commonly referred to as Caller ID, is a very popular feature that can help consumers avoid unwanted telephone calls. Unfortunately, new software programs have become available which allow users to intentionally 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, harass, or harm the recipient of the call or a third party and 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 Assembly)**

Temporary State Commission on Personal Privacy (A.8156-A, Kavanagh)

This bill would establish a temporary state commission to be known as the “Commission on Personal Privacy.” The roles of the Commission would include assessing the level of citizen concerns about personal privacy and the incidence of privacy intrusions, examining the practices of government agencies and businesses related to personal information, assessing the effectiveness of existing privacy protection laws, and recommending legislative and administrative reforms related to the collection and maintenance of personal information by the state and businesses. The Commission would be required to make a report to the Governor and the Legislature on its findings and recommendations no later than November 1, 2011. **(Passed Assembly)**

B. Improving Business Practices

Rental Purchase Agreements (Chapter 309 of the Laws of 2010, Pheffer)

Merchants that lease personal property under rental purchase or rent-to-own agreements provide a unique transaction that is popular with many consumers. New York's "Rent to Own Program Law" (Article 11 of the Personal Property Law) was enacted in 1986 and has not been updated since that time. The law caps the total amount a consumer must pay in order to acquire ownership of rental merchandise at twice the "cash price" of the merchandise, which is defined

as the price at which the merchant would sell the merchandise to the consumer for cash. According to memoranda issued at the time of the law's enactment, several consumer groups, as well as Attorney General Robert Abrams, voiced concern that rent-to-own merchants could abuse their authority to set cash prices. According to recent reports and testimony received at the September 20, 2006, and October 5, 2006, Assembly public hearings on financial services for low-income consumers, rent-to-own merchants often sidestep the intent of the law by setting cash prices as high as twice the price found for the same merchandise at nearby retail outlets.

This measure will amend the Rent to Own Program Law to reflect the new realities of the rent-to-own marketplace and address several flaws in the statute, most notably by replacing the existing price control provisions with well-defined caps on the amount that can be charged to ensure that consumers pay fair prices. The law will also require rent-to-own merchants to provide consumers with several important disclosures in a clear and understandable format, provide consumers with additional rights to reinstate an agreement and pay lower periodic payments following a significant loss of income, and maintain rental merchandise in good working order.

Unsolicited Telemarketing Sales Calls (Chapter 344 of the Laws of 2010, Pheffer)

Despite the success of the “Do Not Call” law, the Consumer Protection Board continues to receive more consumer inquiries and complaints regarding telemarketing than any other business category. In recent years, the telemarketing industry has increasingly employed new technologies, including systems that transmit prerecorded “robocall” messages, which have been the subject of numerous complaints. The Board has also received complaints regarding telemarketing solicitations that involve “negative option features,” in which a consumer is provided a free product or service for a limited time. Consumers who are not adequately informed of the need to affirmatively decline the continued receipt of such products or services are often frustrated when they realize that they unknowingly signed onto a long term commitment.

This new law will provide the Board with the authority to enforce existing statutory restrictions prohibiting telemarketers from calling consumers after 9:00 p.m. and before 8:00 a.m. and requiring telemarketers to provide consumers with the identity of the telemarketer and seller, the purpose of the call, and the identity and cost of the goods or services being offered. The law will also require telemarketers to disclose all terms and conditions related to offers that include a negative option feature and clarify that prerecorded calls and messages delivered to a consumer's voicemail or answering machine are subject to the requirements of the Do Not Call law. These changes will conform New York law to the Federal Trade Commission’s Telemarketing Sales Rule.

Motor Vehicle Trade-in Scams (Chapter 254 of the Laws of 2010, Pheffer)

Complaints regarding unscrupulous motor vehicle dealers that fail to pay off as agreed the prior credit balance owed on a vehicle purchased or obtained in trade in a timely manner have risen in

recent years. In these instances, the obligation to pay the balance owed often reverts to the consumer who traded in the vehicle, and since the consumer has likely not budgeted for this extra car payment, they can suffer significant financial loss and damaged credit reports.

This new law will require that when a motor vehicle dealer obtains a vehicle in trade and agrees to pay off the balance still owed on the vehicle by the consumer, the dealer would have to pay off the balance within twenty-one calendar days. Dealers will also be prohibited from selling or transferring any ownership interest in the vehicle until the balance has been paid off.

Magazine Subscription Expiration Notices (Chapter 230 of the Laws of 2010, Pheffer)

In recent years, the Committee has received complaints regarding magazine publishers' failure to disclose subscription expiration dates in written renewal offers, or to disclose such dates in a clear and conspicuous manner, as required by section 335-a of the General Business Law. This new law will encourage compliance with existing law by providing for increased penalties and strengthen the law by stipulating that publishers that package renewal notices with an issue of a magazine must point subscribers to the expiration date disclosure on the mailing label on such notices. The law will further protect consumers by extending the subscription expiration date disclosure requirement to for-profit third-party magazine subscription solicitors, including publication clearinghouses and their agents.

Prohibiting Paper Billing Fees (Chapter 556 of the Laws of 2010, Pheffer)

In recent months, there have been instances of companies charging or proposing to charge customers a fee if they choose to receive a paper bill or pay by mail. Paper-billing fees impact consumers that do not have Internet access in their homes, as well as those that are uncomfortable using the Internet, including many senior citizens and those concerned about personal privacy.

This new law will prohibit businesses from charging a consumer an additional rate or fee when the consumer chooses to receive paper-billing statements or pay by United States mail. The law specifies that businesses would be able to offer consumers a credit or other incentive to select a specific payment option, such as a discount for making an online payment.

Energy Service Company Consumers Bill of Rights (Chapter 416 of the Laws of 2010, Gianaris)

For the past decade, New York State has allowed Energy Service Companies (ESCO) to sell electricity and/or natural gas to utility customers. Consumers who switch to an ESCO purchase their electricity and gas from the ESCO, but continue to have their energy delivered by their existing utility. Recently, the Consumer Protection Board and the New York City Department of Consumer Affairs reported an increase in consumer complaints related to ESCO marketing practices.

This new law will protect consumers from unscrupulous practices related to the marketing of energy services by regulating marketing practices and restricting certain terms and conditions in ESCO contracts. Specifically, the law will prohibit any person who sells or offers for sale any energy services for or on behalf of an ESCO from failing to properly identify himself or herself and the energy services company or companies that he or she represents and from engaging in any deceptive acts or practices in the marketing of energy services, or from failing to provide each prospective customer with a copy of the "ESCO consumers bill of rights" developed by the Public Service Commission and the Long Island Power Authority. It will require the salesperson to explain that he or she does not represent a distribution utility.

The law will also prohibit ESCO contracts from including provisions requiring prepayment for energy services or authorizing a fee for termination or early cancellation of the contract in excess of \$100 if less than twelve months remain in the contract term, \$200 if the remaining term is twelve months or more, or twice the estimated bill for energy services for an average month. To charge this fee, an ESCO will be required to provide the customer or business with an estimated average monthly bill for energy services when the contract is offered. Lastly, ESCOs will not be allowed to change the terms or duration of any contract for energy services without the express consent of the customer or business.

Internet Dating Safety Act (Chapter 425 of the Laws of 2010, Pheffer)

While the use of Internet dating services has resulted in countless happy couples, this new method of meeting potential mates can pose unique safety risks to participants. This new law requires Internet dating services to post a safety awareness notification, which would include a list of recommended safety measures users should take to ensure safe dating. This information will be required to be provided to users when they register for the service and via a link on the main website of the service.

Rebate Disclosure (Chapter 269 of the Laws of 2010, Pheffer)

Rebates are popular with many consumers and businesses. While most rebates are provided in the form of a check, in recent months, some consumers have been surprised to find that some entities now issue rebate funds on prepaid debit cards or as store credit.

The purpose of this new law is to ensure that consumers are informed of the method of rebate payment prior to purchasing a product subject to a rebate. The new law will require any entity that offers a rebate to disclose whether it will be issued in any form other than cash or a check, and whether any additional fees related to the exercise or non-exercise of the rebate apply.

Clothing Donation Bin Disclosure (Chapter 264 of the Laws of 2010, Nolan)

Consumers who donate clothing at a collection bin expect that the donated items will go to help someone in need. Some bins, however, serve as collection points for clothing that is sold at market prices for profit, and some companies pay a small yearly fee to non-profit organizations for the right to label their bins with the logo or name of the organization, which can mislead consumers into thinking that the materials collected will be provided to underprivileged individuals or used to fund the operations of such organization.

This new law will require any entity that places a clothing donation bin in a public space to affix to the bin a label that shall clearly and conspicuously display the name, address, and telephone number of such entity and a statement disclosing whether the items placed in the container will be used for charitable purposes or for profit.

Private Arbitration Organizations (A.7943-B, Pheffer)

In recent years, consumer advocates have raised concerns regarding the fairness of private arbitration proceedings. Many advocates maintain that consumers may not be able to get a fair hearing since arbitrators have a financial incentive to rule in favor of the businesses paying for his or her services. According to a 2007 report issued by Public Citizen, a national, non-profit consumer advocacy organization, between January 1, 2003, and March 31, 2007, arbitrators working for one of the largest private arbitration organizations ruled in favor of businesses in ninety-four percent of the cases involving California residents that it examined.

This bill would require private arbitration organizations involved in consumer arbitration cases to make certain information regarding those cases available to the public on its website and on paper upon request. The information required to be disclosed for each consumer arbitration would include: the name of the non-consumer party; the type of dispute involved; whether the consumer was the prevailing party; and on how many occasions, if any, the non-consumer party has been a party in an arbitration administered by the private arbitration organization.

The bill would provide for enforcement by the Attorney General of the disclosure provisions, as well as the existing prohibition against the inclusion of mandatory arbitration clauses in certain consumer contracts. The Attorney General would be empowered to seek an injunction against violators and/or a civil penalty of up to \$2,000 for each violation. Each contract offered and entered into in violation of the mandatory arbitration clause prohibition would constitute a separate violation. **(Passed Assembly)**

Improving New York's Membership Campground Law (A.11119-B, Pheffer)

Membership campgrounds provide members with access to convenient, family-friendly vacation destinations with a host of amenities and benefits, including the ability to camp at a network of

campgrounds across the nation. While these arrangements are very popular, some consumers have complained about being trapped in lengthy multi-year, and even lifetime, contracts. This bill would provide campground members the ability to cancel their membership under certain circumstances, including when the purchaser enters a nursing home or suffers a serious injury or illness. **(Passed Assembly)**

Bicycle Theft Prevention (A.9407-A, Hevesi)

The Federal Bureau of Investigation estimates that over 1.5 million bicycles are stolen each year in the United States. These thefts not only deprive people of property, but also hinder efforts to reduce traffic congestion, help the environment, and promote physical fitness.

This bill would require the Consumer Protection Board (CPB) to establish a bicycle theft prevention website that would include information regarding proper methods for locking bicycles and the benefits of bicycle registration and an interactive feature that allows consumers to determine if a municipality has established a bicycle registration program. The bill would also require retailers that sell bicycles to inform consumers of the CPB's website via a posted sign or printed notice. **(Passed Assembly)**

Regulating Rainchecks (A.10778, Galef)

Smart shoppers know to look for sales advertised by retailers in order to save money. When retailers sell their entire stock of a sale item, consumers can request a raincheck allowing them to purchase the item at the sale price at a later date. While most retailers have favorable raincheck policies, a small minority do not have written policies, and there are currently no statewide statutory consumer protections related to rainchecks. This bill would regulate the issuance of rainchecks and require retailers to provide clear and conspicuous disclosures regarding the terms of a raincheck to consumers. **(Passed Assembly)**

Requiring Debt Collectors and Buyers to Obtain a License (A.3926-D, Pheffer)

While many of those engaged in the business of debt collection are honest and ethical in their dealings, there are 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. Debt collection agencies and debt buyers would also be required to obtain surety bonding in an amount between \$10,000 and \$75,000, depending on the number of people employed by the agency. **(Passed Assembly)**

Improper Debt Collection Practices (A.8840-B, Pheffer)

Many consumers today are finding themselves the subjects of debt collection proceedings. Creditors and debt collectors in pursuit of collection often fail to inform the consumers of the important details related to the debt, such as where the debt originated or the name and address of the original creditor. Debts are often sold to third parties without consumers' knowledge, and consumers are left to determine the validity of collection claims from unknown entities. This creates a frustrating process for a debtor who disputes all or part of the claimed debt. In addition, consumers are sometimes subjected to persistent and abusive debt collection tactics. In the past four years, the Consumer Protection Board has received approximately 3,894 debt collection complaints and/or inquiries.

This bill would provide consumers with adequate recourse to address the kinds of improper practices described in those complaints, while still allowing businesses to collect upon the debts owed to them. It would require that debt collectors provide notice to consumers when their debt is sold. Furthermore, it would incorporate several provisions of the Fair Debt Collection Practices Act into state law that governs how and when a debt collector may communicate with a debtor, require debt collectors to provide the debtor with a written notice titled "debtor's rights," and provide consumers with a private right of action. **(Passed Assembly)**

Protecting the Relatives of Deceased Debtors from Aggressive Collection Efforts (A.7889-B, Rosenthal)

Recent investigations have shown that some debt collectors pursue payments from the relatives of deceased debtors. Relatives of deceased debtors are not required by law to assume their loved ones' debts but collection agencies often omit this information when they ask the relatives to make payments on alleged debts.

This bill would require any creditor or debt collector attempting to collect a debt incurred by a deceased debtor from a person who is not obligated to pay such debt to disclose such fact to the person contacted. Creditors and debt collectors would also be prohibited from making any misrepresentation about such person's obligations to pay such debt. **(Passed Assembly)**

Debtor's Bill of Rights (A.271-B, 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. **(Advanced to Third Reading)**

Unordered Goods (A.8049, 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 law, 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 a violator to recover the greater of actual damages or up to \$500 for each instance in which goods were sent in violation. **(Passed Assembly)**

Important Information Regarding Weight Loss Services (A.3302, 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 spending as much as \$33 billion each year on diet programs and products.

The purpose of this bill is to provide consumers with 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 and the consumer's need to consult their doctors prior to starting any weight loss program or using diet medications or formulas. **(Passed Assembly)**

C. Protecting Consumer Health and Safety

Prohibiting Unsafe Cribs (Chapter 245 of the Laws of 2010, Fields)

In recent years, over nine million unsafe cribs have been recalled, including several drop-side cribs. The federal Consumer Product Safety Commission (CPSC) has reported at least thirty-two infant and toddler deaths and hundreds of incidents of injury attributable to drop-side detachments in cribs. This new law will prohibit any person or business from importing, manufacturing, or selling a crib that does not meet the standards established by the CPSC and the American Society for Testing and Materials. The Attorney General will be authorized to enforce the law and seek a civil penalty of up to \$1,000 per crib sold in violation.

Product Recall Awareness (Chapter 539 of the Laws of 2010, Meng)

In recent years, hundreds of products designed to protect, educate, and amuse our children have been subject to safety recalls. While these recalls are often publicized in news reports, if a parent happens to skip over an article or report regarding a recall, the lives of their children

could be endangered. This new law will help increase parents' awareness of the United States Consumer Product Safety Commission's (CPSC) product recall e-mail alert system. Under the law, hospitals and birth centers will be required to distribute an informational leaflet to each new maternity patient containing information on how parents and guardians can subscribe to the CPSC subscription lists to receive product recall and safety alerts via e-mail.

Labeling Sunscreen Products (A.6367, Weisenberg)

According to the American Cancer Society, over 800,000 new skin cancer cases of 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)**

Combating the Spread of Bed Bugs (Veto Memo 6735, Castro)

In recent years, bed bugs have been found in all types of living quarters, including apartments, dormitories, and mansions, and the number and severity of infestations continues to rise. Cross-contamination between used mattresses contaminated with bed bugs and new mattresses has contributed to the spread of these noxious pests, which can be very difficult to eradicate.

This bill would remove an exemption in existing law that allows mattress sellers to sell as new bedding that has been returned by the purchaser within thirty days and prohibit the transportation, storage, or display of used bedding with new bedding unless the used bedding has been sanitized or is enclosed in a membrane designed to prevent the passage of contaminants and pests.

Unfortunately, this bill was vetoed by the Governor on the grounds that certain provisions would impose an unfunded cost burden on the Department of State. The Committee intends to consider a revised version of this bill next year that should address this concern.

D. Increasing Consumer Recourse

Victims of Price Gouging (A.278, Pheffer)

Price gouging occurs when businesses take unfair advantage of consumers during abnormal market disruptions caused by natural or man-made disasters 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. Hearing on the "New York State Consumers' Right to Repair Act of 2010"

On May 14, 2009, the Committee held a joint public hearing with the Senate Consumer Protection Committee on the current state of the motor vehicle repair industry and the New York State Consumers' Right to Repair Act (A.6634-A).

Contradictory claims have been made regarding the access to information necessary to diagnose, service, and repair a motor vehicle and whether both independent automobile repair shops and service centers within automobile dealers have equal access. Legislation similar to A.6634-A, commonly called "Right to Repair" legislation, has been introduced in many states and on the federal level. The purpose of this hearing was to assess the availability of information necessary for the diagnosis, service, and repair of motor vehicles, acquire information regarding the current manner in which automobile dealers and independent repair facilities diagnose, service, and repair motor vehicles, and gauge the impact A.6634-A may have on consumer ability to obtain access to adequate and competent motor vehicle diagnoses, service, and repair.

The Committees heard testimony from the Consumer Protection Board, motor vehicle manufacturers, motor vehicle repair shop owners and technicians, motor vehicle dealers, and aftermarket parts manufacturers.

B. Hearing on Food Safety Consumer Protections

On December 1, 2010, the Committee, along with the Committee on Agriculture, held a public hearing to review the implementation of food safety consumer protections by the Department of Agriculture and Markets and the Consumer Protection Board. The hearing also examined whether current funding levels provide the Department of Agriculture and Markets and the Consumer Protection Board with the resources necessary to protect consumers from foodborne illness.

IV. OUTLOOK AND GOALS FOR 2011

The 2011 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 2010 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 2010

A.1558-C	Gianaris	Requires energy services companies to provide prospective customers with a consumer bill of rights. Chapter 416 of the Laws of 2010
A.2642-C	Pheffer	Enhances subscription expiration notice requirements for magazines. Chapter 230 of the Laws of 2010
A.3083-E	Pheffer	Provides greater protections to consumers in rental purchase agreements. Chapter 309 of the Laws of 2010
A.5180-A	Pheffer	Requires Internet dating services to provide consumers with a notice describing safe internet dating practices. Chapter 425 of the Laws of 2010
A.8839-A	Pheffer	Provides for enhanced consumer protection measures and enforcement of the do-not-call registry. Chapter 344 of the Laws of 2010
A.9223-C	Fields	Prohibits any person or business from importing, manufacturing, or selling a crib that does not meet the standards established by the Consumer Product Safety Commission and the American Society for Testing and Materials. Chapter 245 of the Laws of 2010
A.9869-C	Meng	Requires hospitals to distribute a leaflet on how parents can subscribe to the US Consumer Product Safety Commission's e-mail subscription lists. Chapter 539 of the Laws of 2010
A.10000-A	Pheffer	Requires automobile dealers to pay a specified amount on the prior credit or lease balance owing on the vehicle purchased or obtained in trade within twenty-one calendar days. Chapter 254 of the Laws of 2010
A.10766-A	Nolan	Requires any entity that places a clothing donation bin in a public space to affix to the bin a label that shall clearly and conspicuously disclose whether the items placed in the container will be used for charitable purposes or for profit. Chapter 264 of the Laws of 2010
A.11007-A	Pheffer	Requires any entity that offers a rebate to disclose whether it will be issued in any form other than cash or a check, and whether any additional fees related to the exercise or non-exercise of the rebate apply. Chapter 269 of the Laws of 2010

APPENDIX B

2010 BILLS PASSED BY THE ASSEMBLY

A.275-A	Pheffer	Would establish a task force on the privacy implications of automatic identification technology.
A.278-A	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.3302	Cook	Would require disclosures to consumers of weight loss services.
A.3926-D	Pheffer	Would require debt collection agencies to be licensed by the State.
A.5180-A	Pheffer	Would require internet dating services to provide a safety awareness notice to consumers in New York.
A.6367	Weisenberg	Would require sunscreen products to be labeled with “best if used before” dates and storage recommendations.
A.7889-B	Rosenthal	Would prohibit debt collectors from collecting or attempting to collect a debt owed by a deceased debtor.
A.7943-B	Pheffer	Would require private arbitration organizations to make certain information regarding the outcomes of consumer arbitrations available to the public on its website.
A.8049	Zebrowski	Would authorize the state Attorney General to bring an action for violation of the prohibitions concerning unlawful selling practices.
A.8156-A	Kavanagh	Would create a temporary state commission on personal privacy.
A.9390-B	Paulin	Would prohibit a business from altering its caller identification with the intent to defraud, harass, or harm the recipient of the call or a third party.
A.9407-A	Hevesi	Would require the Consumer Protection Board (CPB) to establish a bicycle theft prevention website and require retailers that sell bicycles to inform consumers of the CPB’s website via a posted sign or printed notice.
A.9532-B	Pheffer	Would restrict the ability of businesses to refuse any service, privilege or right to an individual because such individual refuses to disclose or furnish his or her Social Security number.

A.10778	Galef	Would regulate and require issuance of rainchecks by retailers in situations in which advertised merchandise is not available for sale.
A.11119-B	Pheffer	Would allow purchasers of campground memberships to cancel such memberships under limited circumstances.

APPENDIX C

VETOES of 2010

A.275-A	Pheffer	Would establish the New York State Automatic Identification Technology Privacy Task Force. Veto Memo 6771
A.7691-C	Castro	Would amend provisions relating to the sale of mattresses. Veto Memo 6735
A.4501-A	Espaillet	Would require baby bottles and sippy cups offered for sale to have a written or printed warning regarding the effect they have on early childhood tooth decay. Veto Memo 6719

APPENDIX D

**2010 SUMMARY OF ACTION ON ALL BILLS REFERRED TO
THE ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION**

<u>Final Disposition of Bills</u>	<u>Assembly Bills</u>	<u>Senate Bills</u>	<u>Total</u>
<u>Bills Reported With or Without Amendment</u>			
To Floor; Not Returning to Committee			
To Floor; Recommitted and Died			
To Ways and Means	3		3
To Codes	29		29
To Rules	1		1
To Judiciary			
Total	33		33
<u>Bills Having Committee Reference Changed</u>			
To Judiciary	1		1
To Corporation, Authorities & Commissions	1		1
Total	2		2
<u>Senate Bills Substituted or Recalled</u>			
Substituted			
Recalled			
Total			
Bills Defeated in Committee			
Bills Never Reported, Held in Committee	49		49
Bills Never Reported, Died in Committee	164	6	170
Bills Having Enacting Clause Stricken	3		3
Motions to Discharge Lost			
Total Bills in Committee	251	6	257
Total Number of Committee Meetings Held	9		

December 15, 2010

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 2010 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2010 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 that will significantly update and enhance New York's Rent-to-Own Law.

Several other laws were enacted this year to protect consumers' rights and ensure consumer safety. Chapter 416 of the Laws of 2010, the Energy Service Company Consumers Bill of Rights, will require energy service companies to provide a short, plain-language list of consumer rights to prospective customers, limit early cancellation fees, and regulate the marketing of energy services. Chapter 245 of the Laws of 2010 will help to ensure that the cribs in which our children sleep are safe by prohibiting any person or business from importing, manufacturing, or selling a crib that does not meet applicable federal safety standards. Legislation aimed at addressing automobile trade-in scams, in which unscrupulous motor vehicle dealers fail to pay off as agreed the prior credit balance owed on a vehicle purchased or obtained in trade in a timely manner (Chapter 254 of the Laws of 2010) 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,

A handwritten signature in cursive script, reading "Audrey".

Audrey I. Pheffer, Chair

2010 ANNUAL REPORT
OF THE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION

AUDREY I. PHEFFER, CHAIR

MAJORITY

Peter J. Abbate, Jr.
Peter M. Rivera
Margaret M. Markey
Ginny Fields
Michael N. Gianaris
Michael R. Benedetto
Karim Camara
Ellen Jaffee
Dennis H. Gabryszak
Micah Kellner
Michael DenDekker

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Gregory R. Ball,
Ranking Minority Member
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Ann Rabbitt
Tony Jordan

COMMITTEE STAFF

Joanne Barker, Assistant Secretary for Program and Policy
Jeffrey O'Donnell, Senior Legislative Analyst
Nicola Coleman, Associate Counsel
Eric Jacobsen, Committee Assistant
Kimberly A. Lease, Committee Clerk
Kathleen Quackenbush, Program and Counsel Secretary

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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 the Committees on Banks; Transportation; Corporations, Authorities, and Commissions; Economic Development, Job Creation, Commerce, and Industry; Agriculture; and Insurance.

II. 2010 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. 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.

New York State Automatic Identification Technology Privacy Task Force (Veto Memo 6771, Pheffer)

Automated systems used to identify, track, record, store, and transfer data, commonly referred to as automatic identification systems, are increasingly being used by public and private entities, including retailers, manufacturers, and hospitals. As the price of automatic identification technology decreases, the employment of this technology is expected to increase rapidly. Several major retailers are moving rapidly to add one type of automatic identification technology, Radio Frequency Identification (RFID) tags, to products they sell. This new technology has privacy implications, including the potential for the tracking of movements of a person who possesses or handles objects containing radio frequency identification tags and the profiling of consumers without their consent.

This bill would authorize and direct the establishment of the New York State automatic identification privacy task force. The task force would assess various privacy issues associated with the use of automated identification systems by public and private entities and determine the need for the State to regulate this technology in order to ensure personal privacy.

Unfortunately, this bill was vetoed by the Governor on the grounds that certain provisions would impose an unfunded cost burden on the Department of State. The Committee intends to consider a revised version of this bill next year that should address this concern.

Reducing the Unnecessary Disclosure of Social Security Numbers (A.9532-B, Pheffer)

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 prohibit any person or business entity 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. The bill would not apply if disclosure of the SSN is required by law or covered

under one of several exemptions provided for legitimate uses, including collecting child or spousal support, opening a deposit account, interacting with a law enforcement agency, a credit transaction initiated by the consumer, and tax compliance. **(Passed Assembly)**

Prohibiting Caller ID “Masking” (A.9390-B, Paulin)

Caller identification technology, commonly referred to as Caller ID, is a very popular feature that can help consumers avoid unwanted telephone calls. Unfortunately, new software programs have become available which allow users to intentionally 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, harass, or harm the recipient of the call or a third party and 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 Assembly)**

Temporary State Commission on Personal Privacy (A.8156-A, Kavanagh)

This bill would establish a temporary state commission to be known as the “Commission on Personal Privacy.” The roles of the Commission would include assessing the level of citizen concerns about personal privacy and the incidence of privacy intrusions, examining the practices of government agencies and businesses related to personal information, assessing the effectiveness of existing privacy protection laws, and recommending legislative and administrative reforms related to the collection and maintenance of personal information by the state and businesses. The Commission would be required to make a report to the Governor and the Legislature on its findings and recommendations no later than November 1, 2011. **(Passed Assembly)**

B. Improving Business Practices

Rental Purchase Agreements (Chapter 309 of the Laws of 2010, Pheffer)

Merchants that lease personal property under rental purchase or rent-to-own agreements provide a unique transaction that is popular with many consumers. New York's "Rent to Own Program Law" (Article 11 of the Personal Property Law) was enacted in 1986 and has not been updated since that time. The law caps the total amount a consumer must pay in order to acquire ownership of rental merchandise at twice the "cash price" of the merchandise, which is defined as the price at which the merchant would sell the merchandise to the consumer for cash. According to memoranda issued at the time of the law's enactment, several consumer groups, as well as

Attorney General Robert Abrams, voiced concern that rent-to-own merchants could abuse their authority to set cash prices. According to recent reports and testimony received at the September 20, 2006, and October 5, 2006, Assembly public hearings on financial services for low-income consumers, rent-to-own merchants often sidestep the intent of the law by setting cash prices as high as twice the price found for the same merchandise at nearby retail outlets.

This measure will amend the Rent to Own Program Law to reflect the new realities of the rent-to-own marketplace and address several flaws in the statute, most notably by replacing the existing price control provisions with well-defined caps on the amount that can be charged to ensure that consumers pay fair prices. The law will also require rent-to-own merchants to provide consumers with several important disclosures in a clear and understandable format, provide consumers with additional rights to reinstate an agreement and pay lower periodic payments following a significant loss of income, and maintain rental merchandise in good working order.

Unsolicited Telemarketing Sales Calls (Chapter 344 of the Laws of 2010, Pheffer)

Despite the success of the “Do Not Call” law, the Consumer Protection Board continues to receive more consumer inquiries and complaints regarding telemarketing than any other business category. In recent years, the telemarketing industry has increasingly employed new technologies, including systems that transmit prerecorded “robocall” messages, which have been the subject of numerous complaints. The Board has also received complaints regarding telemarketing solicitations that involve “negative option features,” in which a consumer is provided a free product or service for a limited time. Consumers who are not adequately informed of the need to affirmatively decline the continued receipt of such products or services are often frustrated when they realize that they unknowingly signed onto a long term commitment.

This new law will provide the Board with the authority to enforce existing statutory restrictions prohibiting telemarketers from calling consumers after 9:00 p.m. and before 8:00 a.m. and requiring telemarketers to provide consumers with the identity of the telemarketer and seller, the purpose of the call, and the identity and cost of the goods or services being offered. The law will also require telemarketers to disclose all terms and conditions related to offers that include a negative option feature and clarify that prerecorded calls and messages delivered to a consumer's voicemail or answering machine are subject to the requirements of the Do Not Call law. These changes will conform New York law to the Federal Trade Commission’s Telemarketing Sales Rule.

Motor Vehicle Trade-in Scams (Chapter 254 of the Laws of 2010, Pheffer)

Complaints regarding unscrupulous motor vehicle dealers that fail to pay off as agreed the prior credit balance owed on a vehicle purchased or obtained in trade in a timely manner have risen in recent years. In these instances, the obligation to pay the balance owed often reverts to the consumer who traded in the vehicle, and since the consumer has likely not budgeted for this extra car payment, they can suffer significant financial loss and damaged credit reports.

This new law will require that when a motor vehicle dealer obtains a vehicle in trade and agrees to pay off the balance still owed on the vehicle by the consumer, the dealer would have to pay off the balance within twenty-one calendar days. Dealers will also be prohibited from selling or transferring any ownership interest in the vehicle until the balance has been paid off.

Magazine Subscription Expiration Notices (Chapter 230 of the Laws of 2010, Pheffer)

In recent years, the Committee has received complaints regarding magazine publishers' failure to disclose subscription expiration dates in written renewal offers, or to disclose such dates in a clear and conspicuous manner, as required by section 335-a of the General Business Law. This new law will encourage compliance with existing law by providing for increased penalties and strengthen the law by stipulating that publishers that package renewal notices with an issue of a magazine must point subscribers to the expiration date disclosure on the mailing label on such notices. The law will further protect consumers by extending the subscription expiration date disclosure requirement to for-profit third-party magazine subscription solicitors, including publication clearinghouses and their agents.

Prohibiting Paper Billing Fees (Chapter 556 of the Laws of 2010, Pheffer)

In recent months, there have been instances of companies charging or proposing to charge customers a fee if they choose to receive a paper bill or pay by mail. Paper-billing fees impact consumers that do not have Internet access in their homes, as well as those that are uncomfortable using the Internet, including many senior citizens and those concerned about personal privacy.

This new law will prohibit businesses from charging a consumer an additional rate or fee when the consumer chooses to receive paper-billing statements or pay by United States mail. The law specifies that businesses would be able to offer consumers a credit or other incentive to select a specific payment option, such as a discount for making an online payment.

Energy Service Company Consumers Bill of Rights (Chapter 416 of the Laws of 2010, Gianaris)

For the past decade, New York State has allowed Energy Service Companies (ESCO) to sell electricity and/or natural gas to utility customers. Consumers who switch to an ESCO purchase their electricity and gas from the ESCO, but continue to have their energy delivered by their existing utility. Recently, the Consumer Protection Board and the New York City Department of Consumer Affairs reported an increase in consumer complaints related to ESCO marketing practices.

This new law will protect consumers from unscrupulous practices related to the marketing of energy services by regulating marketing practices and restricting certain terms and conditions in ESCO contracts. Specifically, the law will prohibit any person who sells or offers for sale any

energy services for or on behalf of an ESCO from failing to properly identify himself or herself and the energy services company or companies that he or she represents and from engaging in any deceptive acts or practices in the marketing of energy services, or from failing to provide each prospective customer with a copy of the "ESCO consumers bill of rights" developed by the Public Service Commission and the Long Island Power Authority. It will require the salesperson to explain that he or she does not represent a distribution utility.

The law will also prohibit ESCO contracts from including provisions requiring prepayment for energy services or authorizing a fee for termination or early cancellation of the contract in excess of \$100 if less than twelve months remain in the contract term, \$200 if the remaining term is twelve months or more, or twice the estimated bill for energy services for an average month. To charge this fee, an ESCO will be required to provide the customer or business with an estimated average monthly bill for energy services when the contract is offered. Lastly, ESCOs will not be allowed to change the terms or duration of any contract for energy services without the express consent of the customer or business.

Internet Dating Safety Act (Chapter 425 of the Laws of 2010, Pheffer)

While the use of Internet dating services has resulted in countless happy couples, this new method of meeting potential mates can pose unique safety risks to participants. This new law requires Internet dating services to post a safety awareness notification, which would include a list of recommended safety measures users should take to ensure safe dating. This information will be required to be provided to users when they register for the service and via a link on the main website of the service.

Rebate Disclosure (Chapter 269 of the Laws of 2010, Pheffer)

Rebates are popular with many consumers and businesses. While most rebates are provided in the form of a check, in recent months, some consumers have been surprised to find that some entities now issue rebate funds on prepaid debit cards or as store credit.

The purpose of this new law is to ensure that consumers are informed of the method of rebate payment prior to purchasing a product subject to a rebate. The new law will require any entity that offers a rebate to disclose whether it will be issued in any form other than cash or a check, and whether any additional fees related to the exercise or non-exercise of the rebate apply.

Clothing Donation Bin Disclosure (Chapter 264 of the Laws of 2010, Nolan)

Consumers who donate clothing at a collection bin expect that the donated items will go to help someone in need. Some bins, however, serve as collection points for clothing that is sold at market prices for profit, and some companies pay a small yearly fee to non-profit organizations for the right to label their bins with the logo or name of the organization, which can mislead consumers into thinking that the materials collected will be provided to underprivileged individuals or used to fund the operations of such organization.

This new law will require any entity that places a clothing donation bin in a public space to affix to the bin a label that shall clearly and conspicuously display the name, address, and telephone number of such entity and a statement disclosing whether the items placed in the container will be used for charitable purposes or for profit.

Private Arbitration Organizations (A.7943-B, Pheffer)

In recent years, consumer advocates have raised concerns regarding the fairness of private arbitration proceedings. Many advocates maintain that consumers may not be able to get a fair hearing since arbitrators have a financial incentive to rule in favor of the businesses paying for his or her services. According to a 2007 report issued by Public Citizen, a national, non-profit consumer advocacy organization, between January 1, 2003, and March 31, 2007, arbitrators working for one of the largest private arbitration organizations ruled in favor of businesses in ninety-four percent of the cases involving California residents that it examined.

This bill would require private arbitration organizations involved in consumer arbitration cases to make certain information regarding those cases available to the public on its website and on paper upon request. The information required to be disclosed for each consumer arbitration would include: the name of the non-consumer party; the type of dispute involved; whether the consumer was the prevailing party; and on how many occasions, if any, the non-consumer party has been a party in an arbitration administered by the private arbitration organization.

The bill would provide for enforcement by the Attorney General of the disclosure provisions, as well as the existing prohibition against the inclusion of mandatory arbitration clauses in certain consumer contracts. The Attorney General would be empowered to seek an injunction against violators and/or a civil penalty of up to \$2,000 for each violation. Each contract offered and entered into in violation of the mandatory arbitration clause prohibition would constitute a separate violation. **(Passed Assembly)**

Improving New York's Membership Campground Law (A.11119-B, Pheffer)

Membership campgrounds provide members with access to convenient, family-friendly vacation destinations with a host of amenities and benefits, including the ability to camp at a network of campgrounds across the nation. While these arrangements are very popular, some consumers have complained about being trapped in lengthy multi-year, and even lifetime, contracts.

This bill would provide campground members the ability to cancel their membership under certain circumstances, including when the purchaser enters a nursing home or suffers a serious injury or illness. **(Passed Assembly)**

Bicycle Theft Prevention (A.9407-A, Hevesi)

The Federal Bureau of Investigation estimates that over 1.5 million bicycles are stolen each year in the United States. These thefts not only deprive people of property, but also hinder efforts to reduce traffic congestion, help the environment, and promote physical fitness.

This bill would require the Consumer Protection Board (CPB) to establish a bicycle theft prevention website that would include information regarding proper methods for locking bicycles and the benefits of bicycle registration and an interactive feature that allows consumers to determine if a municipality has established a bicycle registration program. The bill would also require retailers that sell bicycles to inform consumers of the CPB's website via a posted sign or printed notice. **(Passed Assembly)**

Regulating Rainchecks (A.10778, Galef)

Smart shoppers know to look for sales advertised by retailers in order to save money. When retailers sell their entire stock of a sale item, consumers can request a raincheck allowing them to purchase the item at the sale price at a later date. While most retailers have favorable raincheck policies, a small minority do not have written policies, and there are currently no statewide statutory consumer protections related to rainchecks. This bill would regulate the issuance of rainchecks and require retailers to provide clear and conspicuous disclosures regarding the terms of a raincheck to consumers. **(Passed Assembly)**

Requiring Debt Collectors and Buyers to Obtain a License (A.3926-D, Pfeffer)

While many of those engaged in the business of debt collection are honest and ethical in their dealings, there are 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. Debt collection agencies and debt buyers would also be required to obtain surety bonding in an amount between \$10,000 and \$75,000, depending on the number of people employed by the agency. **(Passed Assembly)**

Improper Debt Collection Practices (A.8840-B, Pfeffer)

Many consumers today are finding themselves the subjects of debt collection proceedings. Creditors and debt collectors in pursuit of collection often fail to inform the consumers of the

important details related to the debt, such as where the debt originated or the name and address of the original creditor. Debts are often sold to third parties without consumers' knowledge, and consumers are left to determine the validity of collection claims from unknown entities. This creates a frustrating process for a debtor who disputes all or part of the claimed debt. In addition, consumers are sometimes subjected to persistent and abusive debt collection tactics. In the past four years, the Consumer Protection Board has received approximately 3,894 debt collection complaints and/or inquiries.

This bill would provide consumers with adequate recourse to address the kinds of improper practices described in those complaints, while still allowing businesses to collect upon the debts owed to them. It would require that debt collectors provide notice to consumers when their debt is sold. Furthermore, it would incorporate several provisions of the Fair Debt Collection Practices Act into state law that governs how and when a debt collector may communicate with a debtor, require debt collectors to provide the debtor with a written notice titled "debtor's rights," and provide consumers with a private right of action. **(Passed Assembly)**

Protecting the Relatives of Deceased Debtors from Aggressive Collection Efforts (A.7889-B, Rosenthal)

Recent investigations have shown that some debt collectors pursue payments from the relatives of deceased debtors. Relatives of deceased debtors are not required by law to assume their loved ones' debts but collection agencies often omit this information when they ask the relatives to make payments on alleged debts.

This bill would require any creditor or debt collector attempting to collect a debt incurred by a deceased debtor from a person who is not obligated to pay such debt to disclose such fact to the person contacted. Creditors and debt collectors would also be prohibited from making any misrepresentation about such person's obligations to pay such debt. **(Passed Assembly)**

Debtor's Bill of Rights (A.271-B, 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. **(Advanced to Third Reading)**

Unordered Goods (A.8049, 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 law, 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 a violator to recover the greater of actual damages or up to \$500 for each instance in which goods were sent in violation. **(Passed Assembly)**

Important Information Regarding Weight Loss Services (A.3302, 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 spending as much as \$33 billion each year on diet programs and products.

The purpose of this bill is to provide consumers with 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 and the consumer's need to consult their doctors prior to starting any weight loss program or using diet medications or formulas. **(Passed Assembly)**

C. Protecting Consumer Health and Safety

Prohibiting Unsafe Cribs (Chapter 245 of the Laws of 2010, Fields)

In recent years, over nine million unsafe cribs have been recalled, including several drop-side cribs. The federal Consumer Product Safety Commission (CPSC) has reported at least thirty-two infant and toddler deaths and hundreds of incidents of injury attributable to drop-side detachments in cribs. This new law will prohibit any person or business from importing, manufacturing, or selling a crib that does not meet the standards established by the CPSC and the American Society for Testing and Materials. The Attorney General will be authorized to enforce the law and seek a civil penalty of up to \$1,000 per crib sold in violation.

Product Recall Awareness (Chapter 539 of the Laws of 2010, Meng)

In recent years, hundreds of products designed to protect, educate, and amuse our children have been subject to safety recalls. While these recalls are often publicized in news reports, if a parent happens to skip over an article or report regarding a recall, the lives of their children could be endangered. This new law will help increase parents' awareness of the United States Consumer Product Safety Commission's (CPSC) product recall e-mail alert system. Under the law, hospitals

and birth centers will be required to distribute an informational leaflet to each new maternity patient containing information on how parents and guardians can subscribe to the CPSC subscription lists to receive product recall and safety alerts via e-mail.

Labeling Sunscreen Products (A.6367, Weisenberg)

According to the American Cancer Society, over 800,000 new skin cancer cases of 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)**

Combating the Spread of Bed Bugs (Veto Memo 6735, Castro)

In recent years, bed bugs have been found in all types of living quarters, including apartments, dormitories, and mansions, and the number and severity of infestations continues to rise. Cross-contamination between used mattresses contaminated with bed bugs and new mattresses has contributed to the spread of these noxious pests, which can be very difficult to eradicate.

This bill would remove an exemption in existing law that allows mattress sellers to sell as new bedding that has been returned by the purchaser within thirty days and prohibit the transportation, storage, or display of used bedding with new bedding unless the used bedding has been sanitized or is enclosed in a membrane designed to prevent the passage of contaminants and pests.

Unfortunately, this bill was vetoed by the Governor on the grounds that certain provisions would impose an unfunded cost burden on the Department of State. The Committee intends to consider a revised version of this bill next year that should address this concern.

D. Increasing Consumer Recourse

Victims of Price Gouging (A.278, Pfeffer)

Price gouging occurs when businesses take unfair advantage of consumers during abnormal market disruptions caused by natural or man-made disasters 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. Hearing on the "New York State Consumers' Right to Repair Act of 2010"

On May 14, 2009, the Committee held a joint public hearing with the Senate Consumer Protection Committee on the current state of the motor vehicle repair industry and the New York State Consumers' Right to Repair Act (A.6634-A).

Contradictory claims have been made regarding the access to information necessary to diagnose, service, and repair a motor vehicle and whether both independent automobile repair shops and service centers within automobile dealers have equal access. Legislation similar to A.6634-A, commonly called "Right to Repair" legislation, has been introduced in many states and on the federal level. The purpose of this hearing was to assess the availability of information necessary for the diagnosis, service, and repair of motor vehicles, acquire information regarding the current manner in which automobile dealers and independent repair facilities diagnose, service, and repair motor vehicles, and gauge the impact A.6634-A may have on consumer ability to obtain access to adequate and competent motor vehicle diagnoses, service, and repair.

The Committees heard testimony from the Consumer Protection Board, motor vehicle manufacturers, motor vehicle repair shop owners and technicians, motor vehicle dealers, and aftermarket parts manufacturers.

B. Hearing on Food Safety Consumer Protections

On December 1, 2010, the Committee, along with the Committee on Agriculture, held a public hearing to review the implementation of food safety consumer protections by the Department of Agriculture and Markets and the Consumer Protection Board. The hearing also examined whether current funding levels provide the Department of Agriculture and Markets and the Consumer Protection Board with the resources necessary to protect consumers from foodborne illness.

IV. OUTLOOK AND GOALS FOR 2011

The 2011 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 2010 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 2010

A.1558-C	Gianaris	Requires energy services companies to provide prospective customers with a consumer bill of rights. Chapter 416 of the Laws of 2010
A.2642-C	Pheffer	Enhances subscription expiration notice requirements for magazines. Chapter 230 of the Laws of 2010
A.3083-E	Pheffer	Provides greater protections to consumers in rental purchase agreements. Chapter 309 of the Laws of 2010
A.5180-A	Pheffer	Requires Internet dating services to provide consumers with a notice describing safe internet dating practices. Chapter 425 of the Laws of 2010
A.8839-A	Pheffer	Provides for enhanced consumer protection measures and enforcement of the do-not-call registry. Chapter 344 of the Laws of 2010
A.9223-C	Fields	Prohibits any person or business from importing, manufacturing, or selling a crib that does not meet the standards established by the Consumer Product Safety Commission and the American Society for Testing and Materials. Chapter 245 of the Laws of 2010
A.9869-C	Meng	Requires hospitals to distribute a leaflet on how parents can subscribe to the US Consumer Product Safety Commission's e-mail subscription lists. Chapter 539 of the Laws of 2010
A.10000-A	Pheffer	Requires automobile dealers to pay a specified amount on the prior credit or lease balance owing on the vehicle purchased or obtained in trade within twenty-one calendar days. Chapter 254 of the Laws of 2010
A.10766-A	Nolan	Requires any entity that places a clothing donation bin in a public space to affix to the bin a label that shall clearly and conspicuously disclose whether the items placed in the container will be used for charitable purposes or for profit. Chapter 264 of the Laws of 2010
A.11007-A	Pheffer	Requires any entity that offers a rebate to disclose whether it will be issued in any form other than cash or a check, and whether any additional fees related to the exercise or non-exercise of the rebate apply. Chapter 269 of the Laws of 2010

APPENDIX B

2010 BILLS PASSED BY THE ASSEMBLY

A.275-A	Pheffer	Would establish a task force on the privacy implications of automatic identification technology.
A.278-A	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.3302	Cook	Would require disclosures to consumers of weight loss services.
A.3926-D	Pheffer	Would require debt collection agencies to be licensed by the State.
A.5180-A	Pheffer	Would require internet dating services to provide a safety awareness notice to consumers in New York.
A.6367	Weisenberg	Would require sunscreen products to be labeled with “best if used before” dates and storage recommendations.
A.7889-B	Rosenthal	Would prohibit debt collectors from collecting or attempting to collect a debt owed by a deceased debtor.
A.7943-B	Pheffer	Would require private arbitration organizations to make certain information regarding the outcomes of consumer arbitrations available to the public on its website.
A.8049	Zebrowski	Would authorize the state Attorney General to bring an action for violation of the prohibitions concerning unlawful selling practices.
A.8156-A	Kavanagh	Would create a temporary state commission on personal privacy.
A.9390-B	Paulin	Would prohibit a business from altering its caller identification with the intent to defraud, harass, or harm the recipient of the call or a third party.
A.9407-A	Hevesi	Would require the Consumer Protection Board (CPB) to establish a bicycle theft prevention website and require retailers that sell bicycles to inform consumers of the CPB’s website via a posted sign or printed notice.
A.9532-B	Pheffer	Would restrict the ability of businesses to refuse any service, privilege or right to an individual because such individual refuses to disclose or furnish his or her Social Security number.

A.10778	Galef	Would regulate and require issuance of rainchecks by retailers in situations in which advertised merchandise is not available for sale.
A.11119-B	Pheffer	Would allow purchasers of campground memberships to cancel such memberships under limited circumstances.

APPENDIX C

VETOES of 2010

A.275-A	Pheffer	Would establish the New York State Automatic Identification Technology Privacy Task Force. Veto Memo 6771
A.7691-C	Castro	Would amend provisions relating to the sale of mattresses. Veto Memo 6735
A.4501-A	Espaillat	Would require baby bottles and sippy cups offered for sale to have a written or printed warning regarding the effect they have on early childhood tooth decay. Veto Memo 6719

APPENDIX D

**2010 SUMMARY OF ACTION ON ALL BILLS REFERRED TO
THE ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION**

<u>Final Disposition of Bills</u>	<u>Assembly Bills</u>	<u>Senate Bills</u>	<u>Total</u>
<u>Bills Reported With or Without Amendment</u>			
To Floor; Not Returning to Committee			
To Floor; Recommitted and Died			
To Ways and Means	3		3
To Codes	29		29
To Rules	1		1
To Judiciary			
Total	33		33
<u>Bills Having Committee Reference Changed</u>			
To Judiciary	1		1
To Corporation, Authorities & Commissions	1		1
Total	2		2
<u>Senate Bills Substituted or Recalled</u>			
Substituted			
Recalled			
Total			
Bills Defeated in Committee			
Bills Never Reported, Held in Committee	49		49
Bills Never Reported, Died in Committee	164	6	170
Bills Having Enacting Clause Stricken	3		3
Motions to Discharge Lost			
Total Bills in Committee	251	6	257
Total Number of Committee Meetings Held	9		