

New York State Assembly

Carl E. Heastie

Speaker



Committee on
Consumer Affairs & Protection

Jeffrey Dinowitz

Chair

2016

ANNUAL REPORT



JEFFREY DINOWITZ
Assemblyman 81st District
Bronx County

**THE ASSEMBLY
STATE OF NEW YORK
ALBANY**

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Committee

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Health
Election Law

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Bronx Delegation

December 15, 2016

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 2016 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2016 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 help consumers cancel contracts, help consumers know when they are speaking with a telemarketer, and to protect consumers from bad actors in the business world.

I look forward to the upcoming 2017 legislative year during which I plan to build upon the foundations established during the 2016 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

2016 ANNUAL REPORT
OF THE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION

JEFFREY DINOWITZ, CHAIR

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I. Committee Responsibilities and Goals

The Assembly Consumer Affairs and Protection Committee (the “Committee”) is responsible for developing legislation to protect consumers’ rights and ensure 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 Law, Personal Property Law, parts of the Agriculture and Markets Law and Education Law. 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 Job Creation, Commerce and Industry Members, Agriculture; and Insurance.

II. 2016 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)**

Regulating the Transmission of Caller Identification Information (A.9457-A Mayer)

There is a growing problem in New York where consumers answer their phones after checking their caller identification only to find themselves on the phone with completely different individuals than they expected. Consumers in this state have a right to know who they are being called by when they have a caller identification service. Transmitting inaccurate caller identification can lead to confusion by consumers and allows them to be taken advantage of by bad actors and telemarketing scams.

This law makes it unlawful for a telemarketer or vendor to cause a caller identification service to transmit inaccurate information to a consumer via a caller identification system. In every case where a court determines that a violation has occurred, it will impose a civil penalty between one thousand dollars and two thousand dollars for each violation. The law also provides a heavier fine for transmitting false caller identification information to a consumer whose telephone number has been placed on the New York State “Do Not Call Registry.” **(Chapter 484 of the Law of 2016)**

B. Improving Business Practices

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

More than 40 states have an independent state agency that represents the interests of residential utility customers. New York is one of a 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 in judicial review proceedings concerning rates and conditions of public service utilities. **(Passed the Assembly)**

Wireless Service Contracts (A.326-A, Rozić)

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)**

Increased Fine for Misbranding Fur-Bearing Clothing (A.1047, Rosenthal)

This law increases the fines related to the labeling of fur-bearing articles of clothing, such fines were first imposed by Chapter 611 of the Laws of 2007 (A.8966-A, Rosenthal) which regulates sellers and manufacturers of clothing containing fur and faux fur. It has been found that certain clothing stores selling fur products did not comply with the provisions of that chapter. This legislation helps to bring these bad actors into compliance with current law. **(Chapter 252 of the Laws of 2016)**

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 will enable consumers who are receiving monthly installments of unwanted magazines to 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, of which they have not been apprised. 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)**

Destruction of Personal Information Stored in Multifunction Devices (A.3174, Peoples-Stokes)

With identity theft becoming a far more common crime, it is more important than ever to protect a consumer's private information that is held by a business. With technology advancing as rapidly as it has in the past decade, so too has the ability of information to be stored. Multifunction copiers can now store the information of tens of thousands of consumers within their memory and it has been found that this information is not being destroyed properly when a business disposes of their copying systems.

This bill would regulate all business entities that own or possess a copier, facsimile device or multifunction device that uses data storage to store, reproduce, transmit or receive data or images that may contain personal information. Businesses with these devices would be required to secure the data either by using encryption software or by destroying the data through physical or technological means prior to relinquishing ownership of the device. This would also apply to companies that lease these devices to businesses and require them to follow the same information protection guidelines. **(Passed Assembly)**

Home Improvement Contract Protections (A.7339-A, Brindisi)

It is important that consumers who have become victims of a natural disaster be able to repair their homes in a safe and affordable manner. There have been reported instances of bad actors, posing as contractors, by taking advantage of homeowners who have fallen victim to a disaster during the time when they need help and good guidance the most.

This bill would amend the General Business Law relating to home improvement contractors by requiring contractors to include information about their insurance coverage in contracts for service. The bill would also ban contractors from dealing with a consumer's insurance company on behalf of the consumer, and amend the rules contractors must follow when a consumer wishes to cancel a contract when they will not be receiving insurance coverage for the project. The bill would ban contractors from charging a down payment of more than fifty percent to begin a project, require them to not limit payment types, and ban contractors from abandoning a project or altering project plans without the owner's consent. Finally, the bill would require that home improvement contractors operating a business in a municipality that does not have existing insurance requirements to have a minimum standardized amount of damage and worker's compensation insurance. **(Passed Assembly)**

Gift Card and Gift Certificate Fees (A.7610-E, 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 law amends the General Business Law to require that companies issuing gift cards disclose the procedure for replacing a lost or stolen gift card to consumers if the company has such procedure in place. The law bans any dormancy fee from being placed on the gift card before the twenty-fifth month of non-use. The law also makes it unlawful, under most circumstances, for a gift certificate to have an expiration date of less than five years after the date of purchase or the last date on which funds were added to the certificate. **(Chapter 329 of the Laws of 2016)**

Ban on Termination Fees for Early Cancellation of Certain Contracts for Military Personnel (A.7717-A, DenDekker)

Utility companies have made it a common practice to charge early termination fees to consumers who wish to leave a contract before the end of its terms. Consumers should be held responsible for following through with such contractual term with an honest utility contract, which in many cases is financially beneficial to the consumer. However, there are certain circumstances that are beyond a consumer's control that require them to cancel a contract due to their relocation outside of a service area. This law authorizes active duty military personnel who are deployed out of a service area to cancel utility contracts and certain recurring payments without being assessed a termination fee for the early cancellation of the contract. This only applies to utilities and services that are not available in the area where the service member is being deployed. **(Chapter 164 of the Laws of 2016)**

Ban on Termination Fees for Early Cancellation of Certain Contracts for Deceased Individuals (A.8630-A, Gunther)

When signing a utility contract a consumer must have the ability to make an informed decision especially with regard to the terms. It is equally important that a consumer follow through with their obligation as a customer to a utility company by adhering to the terms of an executed contract. However, there are certain circumstances that are beyond a consumer's control that require them to cancel a contract, one of which would be the death of a contract holder. This law bans any early termination fee placed on a next of kin for canceling a service contract with any telephone, cellular telephone, television, internet, energy, or water services company in the event that the person who the service contract belonged to has deceased. The law sets out a maximum civil fine of \$1000 for violations of the section. **(Chapter 331 of the Laws of 2016)**

Presentation of Mandatory Arbitration Clauses in Large Print (A.9544, Dinowitz)

It is commonplace now for consumers to sign contracts for goods or services that contain mandatory and in many cases nonnegotiable arbitration clauses. These clauses take away the right of a consumer to dispute a claim in a court of law and instead move any dispute with the business to an arbitration proceeding. In many cases, mandatory arbitration clauses are buried in the fine print of contracts and go unnoticed by the average consumer. It is important that consumers are made aware of the effects of signing an arbitration clause. This legislation is intended to ensure that all New Yorkers are capable of making informed decisions regarding how they will be able to dispute a claim when signing contracts for goods and services.

This bill would require any contract containing a mandatory arbitration clause in this state to present the arbitration clause in large print to the consumer. Any business that violates this proposed legislation would be subject to a civil penalty not to exceed \$250 for a first offense and a civil penalty not to exceed \$500 for subsequent offenses. This legislation is an attempt to raise awareness of mandatory arbitration clauses to consumers of this state who may not know that they are signing away their right to a fair court proceeding. **(Passed Assembly)**

Disclosure of Mandatory Arbitration Clauses in Consumer Contracts (A.9545, Dinowitz)

Mandatory arbitration clauses have both costs and benefits to society but many consumers will admit that they do not fully understand the process of arbitration. In fact, arbitration has become so common in contracts that many consumers have signed an arbitration clause without knowing that they have signed away their right to a court proceeding. It is important that consumers are made aware of the effects of signing an arbitration clause. The intention of this legislation is to ensure that all New Yorkers are capable of making informed decisions regarding how they will be able to dispute a claim when signing contracts for goods and services.

This bill would require that when a contract containing a mandatory arbitration clause is presented to a consumer either in person, through the mail, or electronically, that the representative of the company supervising the execution of the contract disclose to the consumer

that the contract contains a mandatory arbitration clause. The business would also be required to explain to a consumer what a mandatory arbitration clause is in the event that the consumer asks for an explanation. This is an attempt to raise awareness of mandatory arbitration clauses to consumers of this state who may not know that they are signing away their right to a fair court proceeding. **(Passed Assembly)**

Penalty Increase for Deceptive Automobile Business Practices (A.10081, Abbate)

This law increases the penalty for automobile brokers found to be in violation of Article 35-b of the General Business Law which regulates automobile brokers. Raising this penalty will help to deter unscrupulous actors who are taking advantage of consumers who purchase cars through businesses that are not considered typical car dealerships which can lead to deceptive acts against consumers. **(Chapter 372 of the Laws of 2016)**

C. Protecting Consumer Health and Safety

Sanitation Requirements for the Sale of Used Mattresses and Bedding (A.309, Dinowitz)

Infestations of bed bugs have become more and more common throughout the nation, including in New York, in the past few years. Studies have found that many infestations spread from one consumer to another through the sale of used mattresses and bedding materials. This bill would prohibit used bedding from being stored or sold with new bedding unless such used bedding has been sanitized in accordance with regulations to be promulgated by the Department of State (DOS). Under the bill, used mattresses would not be allowed to be transported with new bedding unless such used bedding has been sanitized pursuant to such DOS regulations or is enclosed in non-permeable plastic film or similar material designed to prevent the passage of contaminants. The bill prohibits shipping bags or similar products from being used as the required non-permeable cover, and requires DOS to inspect, at least once during any continuous three-year period, every place where articles of bedding are made, remade, renovated, sterilized, or where such articles or materials are sold. **(Passed 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)**

Prohibition of the Sale of Certain Unsafe Baby Crib Bumper Pads (A.9186-B, Paulin)

Certain types of “non-permeable” baby crib bumper pads can actually lead to the accidental suffocation of infants. A recent study by the Journal of Pediatrics claims that as many as 77 children have died as a result of defective bumper pads since 1985 and many other children have been hospitalized. There are currently no Federal regulations pertaining to the safety of these items and the problem has progressed where some pediatricians are discouraging the use of crib bumper pads.

This bill attempts to ban the sale of certain unsafe non-permeable baby crib bumper pads and restrict their use in certain settings including childcare facilities. The bill is designed to prevent the deaths and serious injuries to infants that have been attributed to the use of non-permeable defective crib bumper pads that are known to inadvertently suffocate children. The Office of Children and Family Services will promulgate rules and regulations regarding the enforcement of the ban on crib bumper pads in childcare facilities. If a business were to violate the provisions of this legislation, the court may impose a civil penalty of not more than five hundred dollars for each violation. Each sale of a crib bumper pad in violation of this legislation would constitute a separate violation. **(Passed Assembly)**

III. HEARINGS AND ROUNDTABLES

A. Hearing on Mandatory Arbitration

On February 10, 2016, the Committee held a joint public hearing to examine the impact of mandatory arbitration on consumers and employees. The hearing solicited testimony from various interest groups in order to ascertain whether mandatory arbitration is stripping New Yorkers of their rights to a fair court proceeding and how the state’s laws could be amended to make these proceedings fairer to consumers.

Representatives from the New York State Unified Court System, the Business Council of New York State, the National Consumer Law Center, the Long Term Care Community Coalition (LTCCC), MFY Legal Services, Inc., the National Employment Lawyers Association of New York, Legal Services of New York City, and NYPIRG provided testimony. All of the information provided was used this past session to produce legislation that would be used to protect and inform New Yorkers of their rights with regard to mandatory arbitration proceedings.

IV. OUTLOOK AND GOALS FOR 2017

The 2017 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 2016 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 2016

Chapter 164	DenDekker	Relates to the termination without penalty of certain service contracts.
Chapter 252	Rosenthal	Increases fines for misbranding of fur-bearing articles of clothing.
Chapter 329	Dinowitz	Restricts fees on gift cards and gift certificates.
Chapter 331	Gunther	Prohibits providers from imposing a fee for termination or early cancellation of certain service contracts in the event a customer has deceased before the end of such contract.
Chapter 372	Abbate	Relates to penalties for deceptive trade practices and unlawful acts by an automobile broker business.
Chapter 484	Mayer	Relates to the transmission of caller identification information to consumers.

APPENDIX B

2016 BILLS PASSED BY THE ASSEMBLY

A.309	Dinowitz	Provides for the sanitization of every used mattress or bedding material transported, stored or sold in the state.
A.1047	Rosenthal	Increases fines for misbranding of fur-bearing articles of clothing.
A.3174	Peoples-Stokes	Relates to destruction of personal information stored on copiers, facsimile machines or multifunction devices.
A.7339-A	Brindisi	Relates to home improvement contract provisions.
A.7610-E	Dinowitz	Restricts fees on gift cards and gift certificates.
A.7717-A	DenDekker	Relates to the termination without penalty of certain service contracts.
A.8630-A	Gunther	Prohibits providers from imposing a fee for termination or early cancellation of certain service contracts in the event a customer has deceased before the end of such contract.
A.9186-B	Paulin	Relates to prohibiting the sale of crib bumper pads and the restriction of the use of such pads in certain settings.
A.9457-A	Mayer	Relates to the transmission of caller identification information to consumers.
A.9544	Dinowitz	Relates to requiring mandatory arbitration clauses in certain consumer contracts to be printed in large font type.
A.9545	Dinowitz	Relates to requiring mandatory arbitration clauses in certain consumer contracts to be disclosed to the consumer.
A.10081	Abbate	Relates to penalties for deceptive trade practices and unlawful acts by an automobile broker business.

APPENDIX C

VETOES of 2016

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APPENDIX D

**2016 SUMMARY OF ACTION ON ALL BILLS REFERRED TO
THE ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION**

Final Disposition of Bills	Assembly Bills	Senate Bills	Total
<u>Bills Reported With or Without Amendment</u>			
To Floor; Not Returning to Committee	5	0	5
To Floor; Recommitted and Died	0	0	0
To Ways and Means	4	0	4
To Codes	52	0	52
To Rules	2	0	2
To Judiciary	0	0	0
Total	63	0	63
<u>Bills Having Committee Reference Changed</u>			
Total	0	0	0
<u>Senate Bills Substituted or Recalled</u>			
Substituted		4	4
Recalled		0	0
Total		4	4
Bills Defeated in Committee	0	0	0
Bills Held in Committee with a Roll-Call Vote	16	0	16
Bills Never Reported, Held in Committee	140	4	144
Bills Having Enacting Clause Stricken	3	0	3
Motions to Discharge Lost	0	0	0
Total Bills in Committee	222	8	230
Total Number of Committee Meetings Held		9	