

# NEW YORK STATE ASSEMBLY

# ANNUAL REPORT

# 2020



COMMITTEE ON  
CONSUMER AFFAIRS  
AND PROTECTION

CARL E. HEASTIE  
SPEAKER

MICHAEL G. DENDEKKER  
CHAIR



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

COMMITTEES  
Aging  
Alcoholism & Drug Abuse  
Governmental Employees  
Labor

MICHAEL G. DENDEKKER  
Assemblymember 34<sup>th</sup> District

CHAIR  
Consumer Affairs & Protection

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

December 15, 2020

Dear Speaker Heastie:

It is my pleasure to forward to you the 2020 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2020 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 pieces of legislation involve important consumer issues such as bills prohibiting price gouging during the COVID-19 pandemic, regulation of telemarketing practices and robocalls, and protections for consumers related to mandatory arbitration agreements and financial service products.

During the upcoming 2021 legislative year, the Committee plans to build upon the foundations established during the 2020 year by continuing to engage consumers, advocates, government 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,

Michael DenDekker, Chair

**2020 ANNUAL REPORT**  
**OF THE**  
**NEW YORK STATE ASSEMBLY**  
**STANDING COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION**

**Michael DenDekker, CHAIR**

**MAJORITY**

Peter J. Abbate, Jr.  
Dan Quart  
David Buchwald  
Jo Anne Simon  
Erik Dilan  
Rebecca Seawright  
Nily Rozic  
Yuh-Line Niou  
Stacey Pheffer Amato  
Jaime Williams  
Charles Fall

**MINORITY**

John Mikulin (*Ranking  
Minority Member*)  
David G. McDonough  
Brian Miller  
Anthony Palumbo

**COMMITTEE STAFF**

Aaron Suggs, Assistant Secretary for Program and Policy  
Daniel Gordon, Analyst  
Nathan Kerstein, Associate Counsel  
Kathryn Kilichowski, Committee Assistant  
Anthony Jenouri, Committee Clerk  
Dawn Fowler, 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 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; Agriculture; and Insurance.

## **II. 2020 COMMITTEE ACCOMPLISHMENTS**

### **Large Print Format Availability for Written Communication from Debt Collectors. (A.711, Niou)**

Consumers already have the option to receive various pieces of correspondence in large-print format, such as from utility companies. This bill would extend that option to consumers receiving correspondence from creditors and/or debt collectors. This bill would help elderly consumers and other consumers who are visually impaired and would allow them the option of receiving all further communication in a larger print format. **(Passed the Assembly)**

### **Department of State Study Regarding Safety Standards at Baseball Stadiums (A.362, Paulin)**

According to an NBC News investigation, from 2012-2019 there were at least 808 reports of injuries to fans from baseballs filed across Major League Baseball. With two major league teams and six minor league teams that play in stadiums with greater than 5,000 seats in New York, it is important that the State examines the potential dangers that may exist for fans.

This bill would require the Department of State to study safety standards at baseball stadiums of greater than 5,000 capacity to determine whether or not the protective netting currently in use at baseball stadiums is sufficient to protect spectators during baseball games. While all professional stadiums currently have some netting in place, this study will be able to identify if more should be done in order to protect the fans from batted balls. **(Passed the Assembly)**

### **Prohibiting the Disclosure or Use of Consumer Credit history in Hiring, Employment and Licensing Determinations (A.2611-E Dinowitz)**

There is little to no evidence that shows any correlation between credit history and job performance. Nevertheless, in today's job market, many employers are using credit checks as part of their hiring process along with other employment and licensing decisions.

This bill would prohibit an employer or potential employer from using a job applicant's or employee's consumer credit report in his or her decision to hire, terminate, promote, demote, discipline, compensate, or in setting the terms, conditions, or privileges of employment. This bill protects consumers from unfair employment decisions based upon a consumer's credit history which has no bearing on the quality of their application or employment status. **(Passed the Assembly)**

### **Prohibiting certain practices by businesses making an automatic renewal or continuous service offer to consumers in the state (A.3173-A Dinowitz)**

Often, consumers believe they made a one-time purchase or signed up to receive a free product. However, they continue to receive additional deliveries of the merchandise, or the product or service gets automatically renewed, while incurring additional charges to their credit cards or bank accounts. Consumers are often unaware of the terms and conditions of these contracts because of the way they are hidden within fine print or buried in many pages of complex contractual terms.

This legislation would require that businesses provide automatic renewal or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled, and provide consumers with a straightforward, no- or low-cost means of cancellation. This bill will help protect consumers from unknowingly getting charged for products or services that they are not intending to keep using. **(Chapter 267 of 2020)**

### **Increasing Penalties for Unlawful Delivery of Unordered Goods (A.3318 Zebrowski)**

In order to boost sales, some companies have been known to ship unordered goods 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 that provides 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)**

### **Expiration Dates on Prepaid Cellular Telephone Cards (A.3327, Dilan)**

Current law requires expiration dates to be printed on prepaid telephone cards; however there is no requirement on the type or size of font that must be used. Often the expiration date is hard to find because of small print location.

This bill requires the expiration date to be printed on the face of the card, in conspicuous print at least two times as large as any other print on the card and in bold face print at least font size ten. These requirements will help consumers to better know when one of these prepaid cards are expiring so that they don't lose out on any minutes that they have purchased. **(Chapter. 334 of 2020)**

### **Warning Labels for Decorative Lighting Products Containing Lead (A.5147-A, Galef)**

Several independent studies have shown that certain decorative and seasonal holiday lights can contain more than 30 times the levels of lead permitted to be contained in children's products. Exposure to lead has repeatedly been proven to cause serious health problems, especially involving the brain, central nervous system, heart, and kidneys. Excessive lead exposure can cause depression and infertility and can slow developmental growth.

Lead exposure is particularly harmful to young children who are prone to increased exposure due to their curiosity and their penchant to put non-food items in their mouths. Parents should be made aware of the risk that some decorative holiday lights can pose to their families. This bill would require such products to come with a warning label. **(Passed the Assembly)**

### **Motor Vehicle Dealers Repairing Recalled Vehicles Before Sales (A.5194, DenDekker)**

When people sell or trade in their vehicle to dealers or third parties, the manufacturer often has no way of notifying the person or entity that has possession of the vehicle of safety recalls that may occur. This legislation would require used car dealers to search for recalls and make necessary repairs to satisfy any open recalls before the car is sold. This would ease the consumers worry that a car they are purchasing may not be safe, and would help to keep unsafe cars off of the roads. **(Passed the Assembly)**

### **Regulation of Voice Recognition Devices (A.5306, Gunther)**

With the growing number of voice recognition devices, the need for legislation to regulate the use of these products has become apparent. In the past, companies that made these products would frequently record users without their knowledge, and even use their voice for advertising purposes without the consumers consent.

In order to address the above concerns, this legislation requires a disclosure process to consumers before the installation of one of these devices that the device may collect and retain recordings of the consumers' voice. In addition, this bill bans the use or sale of recorded voices captured by connected service device companies and any third party contractors that they employ for advertising purposes. This bill helps consumers understand what they are signing up for when having one of these devices in their house and helps protect them from having their voice used without their consent. **(Passed the Assembly)**

### **Requiring Persons Offering Weight Loss Services to Provide Notice of Risks (A.6884, Cook)**

Products and services designed to induce rapid weight loss can often be unreliable, ineffective, and unsafe. Expert dieticians consistently recommend making long-term adjustments to diet and exercise regimens as a healthier alternative to programs promising rapid weight loss through nutritional supplements, crash diets, or other methods. Consumers should be made aware of the risks of rapid weight loss programs prior to spending money on expensive diet programs in order to make an informed choice as to the programs' effectiveness.

This bill would require anyone selling or offering weight loss services or products in New York State to provide prospective customers written information on the health risks of rapid weight loss, as well as informational resources to help educate consumers on supplements and programs before enrolling. **(Passed the Assembly)**

### **Protecting Consumers from Denial of Access to an Employee Toilet Facility (A.8821, Paulin)**

In 2017, Chapter 471 enacted the Crohn's and Colitis Fairness Act which permit individuals with certain medical conditions access to employee toilet facilities in places of business when necessary. However, when the law went into effect, there was not a clear enforcement mechanism so many of the local consumer protection divisions were not able to enforce the law properly.

To enhance the ability to enforce these provisions, this bill codifies into law that the consumer protection departments have enforcement authority. This will help to better inform impacted individuals seeking redress and will also lead to more expeditious handling and resolution of violations. **(Ch. 208 of 2020)**

### **Written Notification Regarding Home Oil Heating Conversions (A.8947, Lavine)**

There have been cases where oil companies have incorrectly pumped oil into a home not knowing that the home had undergone a conversion to an alternate heating source, filling the basement with hundreds of gallons of fuel oil. Oil spills of this nature not only cause damage to homes but also the surrounding land, water, and vegetation.

This bill would require any utility company, gas corporation, electric corporation or home improvement contractor who is performing the conversion from oil to another form of home heating to provide the home owner a written notification of the conversion. In addition, the homeowner is required to reach out to the oil supplier with written notification of the change in order to stop any future deliveries of oil. **(Chapter. 62 of 2020)**

### **Removing certain provisions relating to pre-need funeral services (A.9070, Gottfried)**

A law passed in 2001 law prohibited funeral directors from accepting any consideration from an insurance company for the promotion of an insurance policy payable at the death of the insured for burial or funeral expenses. The law has been extended numerous times since the initial passage. This bill removes the sunset date to make the provisions of the 2001 law permanent. **(Chapter 340 of 2020)**

### **Third Party Charges or Fees on Telephone Bills from Third Parties. (A.9624, Jacobson)**

Consumers often find suspicious and unwanted charges on their telephone bill after filling out sweepstakes or contest entry forms, calling '900' numbers, or answering advertisements for information or entertainment services. These charges are often listed in vague terms such as 'enhanced services,' 'access,' 'activation,' or 'minimum usage fees.' While the Public Service Commission has worked with the telephone companies to promulgate voluntary guidelines and former Attorney General Spitzer reached a settlement with Verizon requiring the company to implement protections against cramming, these efforts have not significantly reduced the prevalence of this practice, known as “cramming.”

This bill would place the onus on the third-party service provider to prove that the consumer affirmatively agreed to receive the services offered before being billed. These provisions are likely to save consumers across the state thousands of dollars by protecting them from unauthorized. **(Chapter. 226 of 2020)**

### **Including Electronic Messaging Texts as a Form of Telemarketing Communication (A.10043, DenDekker)**

Currently, section 399-z of the General Business Law that regulates telemarketing activity does not include “text messaging” in the definition of telemarketing. Many companies today use text messaging as part of telemarketing and targeted advertising to consumers and they are not bound by the current regulations that other forms of telemarketing are. This bill adds text messaging into the already existing framework of telemarketing and will further protect consumers from nuisance telemarketing on their cell phones. **(Passed the Assembly)**

### **Expanding the State’s Price Gouging Statute. (A.10270, Rozic)**

During the Covid-19 pandemic, it became clear that the current price gouging statute in NYS law was not sufficient to protect consumers, businesses, and the state from being taken advantage of

during a declared emergency.

This bill expands the protection to cover essential medical supplies and services and other goods or services used to promote the health or welfare of the public. This includes items such as hand sanitizer, face masks, bandages, and other medical supplies that were in short supply during the pandemic. This bill also raises the penalty against any violators of these provisions to help deter anyone from trying to price gouge within the state of New York. Expanding the price gouging statute is a necessary step to protect the state of New York and its residents from being taken advantage of during a time of crisis such as the Covid-19 pandemic and any future state of emergencies. **(Chapter. 90 of 2020)**

### **III.**

### **OUTLOOK AND GOALS FOR 2021**

The 2021 Legislative Session promises to present many challenges to the Consumer Affairs and Protection Committee.

Consumers across the state were heavily affected by the coronavirus in 2020 and while the committee addressed some of the concerns regarding price gouging during the declared state of emergency, there will surely be more that needs to be done. The committee will continue to examine areas where consumers have been affected by the pandemic and find ways to continue to protect consumer's health, financial situation, and overall well-being while the pandemic continues.

In addition, protecting consumers' privacy will continue to be a primary concern for the Committee as major companies and governments continue to suffer breaches of consumers' personal data, and more and more devices are connected to the internet. The Committee will work to protect consumers' data, inform consumers of breaches of confidential data in a timely manner, and provide redress and additional protection to consumers who have been harmed by a breach of their private information.

The Committee is also committed to defending consumers from fraudulent and predatory business practices, and will continue to advance legislation that protects consumers' health, safety, and financial well-being while not unduly burdening businesses. In addition, the Committee will look to further address the growing concern regarding robocalls and nuisance calls in order to protect the consumer from the burden of dealing with these calls on a daily basis. Consumers deserve the peace of mind that comes with the knowledge that their government is protecting them from scams, requiring stringent safety standards for consumer products, and advocating for their best interests.

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 2020**

Chapter 62	Lavine	Relates to providing notice of a home heating system conversion
Chapter 90	Rozic	Relates to price gouging
Chapter 208	Paulin	Relates to denial of access to an employee toilet facility
Chapter 266	Jacobson	Prohibits the imposition of any charge or fee on the telephone bill of a consumer when such fee is imposed by a third party, without the consent of the consumer
Chapter 267	Dinowitz	Prohibits certain practices by businesses making an automatic renewal or continuous service offer to consumers in the state

**APPENDIX B**

**2020 BILLS PASSED BY THE ASSEMBLY**

A.362	Paulin	Directs the department of state to study, evaluate, and make recommendations concerning safety standards at baseball stadiums.
A.711	Niou	Requires debt collectors to inform debtors that written communications are available in large print format.
A.2611-E	Dinowitz	Prohibits the disclosure of consumer credit history in hiring, employment and licensing determinations.
A.3173-A	Dinowitz	Prohibits certain practices by businesses making an automatic renewal or continuous service offer to consumers in the state.
A.3318	Zebrowski	Authorizes the attorney general to bring an action for violation of the prohibitions concerning unlawful selling practices and specifies damages awardable.
A.3327	Dilan	Relates to the expiration of minutes purchased with prepaid cellular telephone cards.
A.5147-A	Galef	Relates to the manufacture and sale of seasonal and decorative lighting products containing lead.
A.5194	DenDekker	Requires motor vehicles dealers to search for recalls and make certain repairs prior to selling used motor vehicles.
A.5306	Gunther	Relates to the use of voice recognition features on certain products.
A.6884	Cook	Require persons offering weight loss services to provide notice of certain weight loss and dieting information.
A.9070	Gottfried	Relates to removing certain provisions relating to pre-need funeral services.
A.10043	DenDekker	Relates to including electronic messaging texts as a form of telemarketing communication.

APPENDIX C

2020 SUMMARY OF ACTION ON ALL BILLS REFERRED TO  
THE ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION

TOTAL NUMBER OF COMMITTEE MEETINGS HELD: 4

	<u>ASSEMBLY</u>	<u>SENATE</u>	<u>TOTAL</u>
	<u>BILLS</u>	<u>BILLS</u>	<u>BILLS</u>
<b>BILLS REPORTED FAVORABLE TO:</b>			
Codes	15	0	15
Judiciary	0	0	0
Ways and Means	3	0	3
Rules	6	0	6
Floor	2	0	2
TOTAL	23	0	23

**COMMITTEE ACTION**

Held For Consideration	7	0	7
Defeated	0	0	0
Enacting Clause Stricken	7	0	6
<b>REMAINING IN COMMITTEE</b>	191	6	197

**BILLS REFERENCE CHANGED TO:**

**Children and Families 1**

**Corrections 1**

TOTAL	2	0	2
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