

# 2008 ANNUAL REPORT

NEW YORK STATE ASSEMBLY

COMMITTEE ON  
CONSUMER AFFAIRS AND PROTECTION



Sheldon Silver, Speaker

Audrey I. Pheffer, Chair

December 15, 2008

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 2008 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2008 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 into law, including omnibus identity theft legislation that, among other provisions aimed at preventing and helping consumers recover from this serious financial crime, establishes an Identity Theft Prevention and Mitigation Program within the Consumer Protection Board.

Several other laws were enacted this year to protect consumers' rights and ensure consumer safety. Chapter 553 of the Laws of 2008, the Children's Product Safety and Recall Effectiveness Act, will require retailers to remove recalled products from their shelves and websites and post recall notices and warnings in a conspicuous manner. The law will also require manufacturers of durable juvenile products, including cribs, car seats, high chairs, and playpens, to include a product safety owner card at the time of original purchase so the manufacturer can contact the consumer in the event of a recall. Chapter 432 of the Laws of 2008 will require paid tax preparers to provide customers with a bill of rights and provide important disclosures regarding high-cost refund anticipation loans. Legislation aimed at curbing abusive and unfair debt collection practices (Chapters 456 and 575 of the Laws of 2008) 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,

Audrey I. Pfeffer, Chair

**2008 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. 2008 COMMITTEE ACCOMPLISHMENTS**

### **A. Protecting Personal Privacy**

The Assembly has traditionally 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.

#### **Identity Theft Prevention (Chapter 279 of the Laws of 2008, Pheffer)**

Despite increasing public awareness of and restrictions on the use and display of sensitive personal information by public and private entities, identity theft continues to impact millions of New Yorkers each year. This new law enacts several new identity theft protections and enhances existing protections. Specifically, the law:

- establishes an identity theft prevention and mitigation unit within the Consumer Protection Board to provide assistance to identity theft victims, including acting as a liaison between the victim and public and private entities to facilitate recovery;
- improves the Security Freeze Law by allowing consumers to place freezes via telephone and secure websites, requiring credit reporting agencies (CRAs) to place a freeze within one business day (currently four), and requiring CRAs to temporarily lift a freeze within fifteen minutes of receiving a request via telephone or secure website;
- restricts the State or its political subdivisions' ability to communicate or publicly display an individual's Social Security number (SSN) and requires County Clerks to redact an individuals' SSN from any document publicly posted on the Internet upon request;
- strengthens existing law restricting private entities' authority to communicate or publicly display an individual's Social Security number by prohibiting such entities from encoding or embedding such number on a card or document and prohibiting any person from filing any document available for public inspection containing a Social Security number without the other person's consent, unless required by law, regulation, or court rule;
- prohibits an employer from publicly posting or printing an employee's Social Security number on an identification card or placing such numbers in files with open access; and

- amends the Penal Law and the Criminal Procedure Law to:
  - enable identity theft victims to obtain restitution for the time spent fixing their credit and financial history;
  - prohibit the possession of a skimmer device, which can obtain personal identifying information such as credit card numbers with intent to commit an identity theft crime; and
  - allow certain business records to be received at grand jury proceedings when the necessary foundation for their introduction is established by sworn written statements rather than by live testimony.

### **Allowing Victims of Domestic Violence to Obtain a Free Security Freeze (Chapter 406 of the Laws of 2008, Pheffer)**

A recent study performed by the Identity Theft Resource Center found that sixteen percent of identity theft victims were also victims of domestic harassment and/or abuse by the perpetrator. Domestic violence victims have a heightened risk of identity theft because the abuser may already have access to the victim's personal information. Abusers will often attempt to use the victim's personal information to maintain control over the victim. With the use of advancing technology to gather personal information, domestic abusers can easily use camera and GPS surveillance, monitoring of credit card usage, credit or financial interference or interruption, or other stalking measures to abuse their victims.

This new law will prohibit a consumer reporting agency from charging a fee to a domestic violence victim to place or lift a security freeze on their credit report.

### **Enhancing Consumers' Ability to Stop Unsolicited Faxes (Chapter 393 of the Laws of 2008, Pheffer)**

The purpose of this law is to further protect consumers from unsolicited faxes by requiring that every unsolicited telefacsimile message contain a notice regarding the ability of the recipient to inform the sender that he or she does not wish to receive further messages. Senders will be required to include a domestic contact telephone number and telefacsimile number for the recipient to transmit such a request to the sender. If neither of these numbers is a toll-free number, the sender must also include a cost-free contact method such as a website address, email address, or local phone number if the recipient is also local. Any mechanism for notifying the sender to cease further unsolicited telefacsimile messages provided to the recipient must be available twenty-four hours a day, seven days a week.

### **Radio Frequency Identification Systems Privacy Task Force (A.225-B, Pheffer)**

Radio frequency identification (RFID) systems use radio waves or other wireless means to transmit the identity of an object or person from a tag or chip to a reader. RFID tags are now small and inexpensive enough to be embedded in consumer products, and several major retailers are moving rapidly to add RFID tags to products they sell. This new technology has several privacy implications, including the potential for the tracking of movements of a person who possesses or handles objects containing RFID tags and the profiling of citizens without their consent.

This bill would establish a task force that would assess various privacy issues associated with the use of RFID by public and private entities and determine the need for the State to regulate this technology in order to ensure personal privacy. **(Passed Assembly)**

### **Reducing the Unnecessary Disclosure of Social Security Numbers (A.334, Greene)**

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 require all entities that request an individual's Social Security number to inform such individual if such disclosure is required under federal or state law or regulation and how the number is intended to be used. The bill would also prohibit entities from requiring an individual to disclose his or her Social Security number or from refusing any service, privilege or right based on an individual's refusal to disclose such number, unless such disclosure is required under federal or state law or regulation. **(Passed Assembly)**

### **Credit Card Confidentiality (A.576, Dinowitz)**

This bill would reduce the proliferation of unsolicited mail caused by the release or sale of cardholder information by granting consumers the choice of having personal information kept confidential.

Consumer resistance to unsolicited direct mail has been steadily increasing. Some responsible card issuers recognize the importance of consumer privacy and limit the release of cardholder information or notify their customers of the option not to have their personal data released. Unfortunately, not all consumers are aware of this option. **(Passed Assembly)**

## **B. Improving Business Practices**

### **Increase Penalty for Price Gouging (Chapter 224 of the Laws of 2008, Pheffer)**

Unscrupulous businesses that engage in price gouging during abnormal market disruptions due to natural or man-made disasters can reap thousands of dollars in ill-gotten gains. In times of disaster, consumers may have limited choices in the marketplace and are therefore more likely to be victimized by opportunistic businesses that mark up prices to unconscionable levels. The purpose of this new law is to ensure that the penalties for price gouging are sufficient to prevent businesses from exploiting emergencies in order to earn excessive profit by increasing the maximum civil penalty for price gouging from \$10,000 to \$25,000.

### **Enhancing Consumer Protections in the Tax Preparation Industry (Chapter 432 of the Laws of 2008, Pheffer)**

Many consumers rely on tax preparation professionals to prepare and file their taxes. The array of tax preparation services and financial products offered can confuse consumers, and some preparers have been known to misrepresent their qualifications and fail to disclose the services included in tax preparation contracts or the true costs of refund anticipation loans (RALs), which are sometimes advertised as “instant refunds.”

This new law will require paid tax preparers to provide customers with a “Consumer Bill of Rights Regarding Tax Preparers” to be created and distributed by the Department of Tax and Finance. The law will prohibit preparers from advertising RALs as a refund and require advertisements for RALs to conspicuously state that the product is a loan and that fees and interest will be charged. The law will also require tax preparers to provide a specified written disclosure to a consumer prior to entering into a RAL, including information on the nature of the loan, the estimated annual percentage rate of the loan, RAL costs and fees, and the estimated time the customer can expect to receive his or her refund under different circumstances, including if the taxpayer elects to file for and receive his or her refund electronically.

### **Enhancing Consumers’ Ability to Stop Debt Collection Efforts Related to Identity Theft (Chapter 456 of the Laws of 2008, Pheffer)**

The purpose of this bill is to require debt collectors to temporarily stop attempts to collect a debt upon notification by the consumer that the debt arose from identity theft.

This bill would require a debt collector to stop collecting a consumer debt if an alleged debtor provides the collector with a copy of a valid police report alleging he or she is a victim of identity theft crime and a written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector.

### **Protecting Consumers from Overpriced Record Retrieval Services (Chapter 485 of the Laws of 2008, Pheffer)**

The purpose of this new law is to ensure that consumers are able to make informed decisions regarding the purchase of certified copies of property deeds.

In recent months, consumers across New York have received dubious solicitations for so-called ‘record retrieval services.’ These solicitations offer to obtain certified copies of deeds related to the consumer’s property. One of these services operating in New York charges up to ninety dollars for a certified copy of a deed that can easily be obtained at the County Clerk’s office for significantly less, usually between four and twenty dollars. This new law will require any entity that sells or offers to sell any certified copy of a property deed to provide to the purchaser a notice in at least twelve-point boldface type prior to the time of sale stating that copies of such deeds are available from the County Clerk’s office for a small fee.

### **Clarifying New York’s Document Destruction Law (Chapter 516 of the Laws of 2008, Pheffer)**

The purpose of this new law is to clarify that New York’s Disposal of Personal Records Law applies to all corporations and associations, including not-for-profit corporations and non-profit organizations.

This new law clarifies the Document Destruction Law by removing the definition of ‘business person’ and specifying that the law does not apply to individuals disposing of records containing personal information, unless they are conducting business for profit. This serves to exempt consumers disposing of their own records or the records of family members, while capturing, for example, individuals that prepare taxes for profit that are not affiliated with a larger tax preparation firm.

### **Enhancing Employment Opportunities for Formerly Incarcerated Individuals (Chapter 465 of the Laws of 2008, Aubry)**

Upon return to the community following incarceration, individuals are expected to find and maintain gainful employment. Employment is critical to promoting public safety and curbing recidivism rates and the high costs of re-incarceration. Unfortunately, many employers maintain barriers to employment based solely on the fact of criminal conviction even when the conviction may be completely unrelated to the job sought and no threat to the public or property is present. New York State is one of the few states that has a law (Article 23-A of the Corrections Law) that outlines standards for the consideration of jobseekers with criminal records and makes it illegal to automatically deny employment based on a criminal conviction.

This new law will require employers to provide to job applicants a copy of Article 23-A of the Corrections Law when obtaining a consumer report containing criminal conviction information and require employers to post a copy of Article 23-A conspicuously in their workplace.

### **Preventing Adverse Financial Consequences Solely Due to Identity Theft (Chapter 628 of the Laws of 2008, Lafayette)**

The purpose of this new law is to prevent adverse credit determinations or other related actions based solely upon the fact that the consumer is a victim of identity theft, thereby helping him or her recover from the lingering effects of this crime.

This new law will prohibit any person, firm, corporation, partnership, or other association from denying credit, reducing the credit limit, or raising the cost of credit to a consumer solely because such consumer is a victim of identity theft.

### **Protecting Consumers from Unfair “Universal Default” Policies (Veto Memo 165, Rivera, P.)**

An increasing number of credit card issuers are including “universal default” clauses in their agreements, allowing them to raise a customer’s interest rate based on the customer’s indebtedness or late payments to other creditors. For instance, a late payment on a telephone bill could cause a card holder’s interest rate to increase. Notice of this policy is almost always buried in the fine print of the card agreement, leaving many customers unaware that their interest rate could be affected based on late payments to other creditors. This results in credit card holders being penalized, even if they have never been late on a payment to the credit card issuer imposing the penalty.

This bill would prohibit “universal default” policies and provide that any violation of the prohibition would be a criminal offense.

### **Debtor's Bill of Rights (A.221, 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. **(Passed Assembly)**

### **Requiring Debt Collectors and Buyers to Obtain a License (A.8153-A, Pheffer)**

While the majority 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 (DOS). Debt collection agencies and debt buyers would also be required to obtain surety bonding in an amount between \$10,000 and \$50,000, depending on the number of people employed by the agency. **(Passed Assembly)**

### **Increasing State Oversight of Debt Collectors (A.8612-A, Pheffer)**

This bill would provide the Consumer Protection Board with the authority to process debt collection complaints, promulgate regulations regarding debt collection correspondence, and bring administrative enforcement actions against creditors and debt collectors that violate the Board's regulations. The bill would also require such regulations to include a requirement that creditors and debt collectors provide certain historical information about the debt and the appropriate contact information for the creditor and/or debt collector with each correspondence sent to the consumer regarding a debt. **(Passed Assembly)**

### **Internet Dating Safety Act (A.9557-C, 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 bill would require 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 would be provided to users when they register for the service and via a link on the main website of the service. **(Passed Assembly)**

### **Unlawful Trial Offers (A.9647-B, Pheffer)**

The purpose of this bill is to improve New York's free trial offer law, which requires entities offering free trials to clearly and conspicuously disclose the terms of the offer, obtain the express consent of the consumer to accept the offer, and provide adequate notice to consumers regarding the deadline to cancel a free trial offer, after which a credit card is billed.

This bill would provide that entities offering free trials must provide the required notice regarding the deadline to cancel the offer regardless of payment method. Exception is made for free trial offers where a debit or credit card is not being charged, and an invoice is being sent to request payment with instructions on how to cancel the free trial offer. **(Passed Assembly)**

### **Ensuring Fairness in the Rental Car Industry (A.725-A, Gantt)**

The purpose of this bill is to prevent rental car agencies from discriminating against drivers who do not present a credit card. Current law prohibits agencies from requiring the primary driver of a rental vehicle to own a credit card, but this protection does not extend to non-primary drivers. Some agencies are now requiring all designated drivers to own a credit card.

This bill would prohibit rental car agencies from preventing any person from operating a rental vehicle solely on the requirement of ownership of a credit card. **(Passed Assembly)**

### **Important Information Regarding Weight Loss Services (A.3560, 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)**

### **Bank Account and Credit Card Account Information on the Internet (A.6889, Rivera, P.)**

Banking and credit card accounts and associated fees have become increasingly expensive, and choosing the right account can be very complex and time consuming.

This bill would enhance consumers' ability to make informed decisions related to financial services by requiring the Banking Department to establish a website containing information concerning bank account and credit card accounts offered to New York consumers, including account requirements, terms, and fees. **(Passed Assembly)**

### **Energy Service Company Bill of Rights (A.10180-B, 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 bill would 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, this bill would 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 would require the salesperson to explain that he or she does not represent a distribution utility.

The bill would 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 or twice the estimated bill for energy services for an average month. To charge a fee greater than \$100, an ESCO would be required to provide the customer or business with an estimated average monthly bill for energy services when the contract is offered. The ESCO would not be allowed to change the terms or duration of any contract for energy services without the express consent of the customer or business. **(Passed Assembly)**

### **Wireless Telephone Consumer Protection Act (A.2030-A, O'Donnell)**

Complaints related to wireless telephone service topped the list of nationwide consumer complaints received by the Council of Better Business Bureaus in 2005. With more consumers using wireless phones as their sole method of telecommunication and in the absence of meaningful federal oversight, it is important that the State take action to protect consumers.

The Wireless Telephone Consumer Protection Act would require wireless service providers to give customers detailed coverage maps, written disclosure of all fees and charges and clearly organized billing statements. The bill would also require wireless providers to allow consumers to cancel service without penalty up to fifteen days after receiving their first bill. This would provide consumers with the ability to review their first bill and determine if they are satisfied with the quality and monthly cost of service based on their actual usage. **(Passed Assembly in 2007; Advanced to Third Reading in 2008)**

## **C. Protecting Consumer Health and Safety**

### **Children's Product Safety and Recall Effectiveness Act (Chapter 553 of the Laws of 2008, Pheffer)**

Over 450 consumer products were the subject of a recall last year, including over 20 million toys, leading many consumer and product safety advocates to label 2007 as the “Year of the Recall.” In response, the Consumer Protection Board conducted toy recall sweeps to investigate compliance with the United States Consumer Product Safety Commission’s voluntary recalls. Many stores followed the safety commission’s directives, but there were also many who continued to stock recalled items, some who did not receive recall notices from the manufacturer, and others who posted recall signs out of sight for most consumers.

This new law will require retailers within one business day of receiving a recall notice to remove the recalled product from the shelves, prohibit sale of the recalled item to consumers, implement a mechanism to prevent item from being sold at points of sale, post recall or warning notices conspicuously for at least sixty days at physical locations, and provide a link to such on their websites.

This new law will require a product safety owner card to be included with all durable juvenile products, including cribs, car seats, high chairs, and playpens, and retention of information obtained from the return of such cards for no less than ten years. Such information cannot be used for any other purpose than to inform initial purchasers of recalls or warnings. In addition, manufacturers or importers of children’s products or durable juvenile products will be required to place a label on such products sold or distributed in New York that includes the manufacturer’s name and contact information, the importer’s name and contact information if different, and lot and batch number if applicable.

Commercial dealers will be required within twenty-four hours of issuing or receiving a recall or warning to contact purchasers of the product in writing, place a link to recall or warning information on their websites, provide notice directly to the initial purchaser if contact information is available, and provide notification to the Consumer Protection Board of such recall or warning.

Owners and operators of websites where children’s products and durable juvenile products are bought and sold by third parties through competitive bidding will be required to conspicuously post on its homepage a link to recall information available on the United States Consumer Product Safety Commission’s website with advisory language stating the importance of checking the recall lists. Lastly, this new law will require second hand dealers who sell children’s products and/or durable juvenile products will have to conspicuously post, at point of sale or other prominent location, instructions for consumers on how to obtain recall information and advisory language stating the importance of checking the recall lists.

### **Yo-Yo Waterballs (Chapter 498 of the Laws of 2008, Fields)**

Yo-yo waterballs consist of a liquid-filled ball on an elastic cord with a small finger loop at the end that allows children to throw the ball, stretch the cord, and bounce it back like a yo-yo. Since its emergence in 2003, consumer safety agencies around the world have received numerous complaints from parents reporting various injuries involving the toy, including strangulation, laceration, and eye injuries. The New York State Consumer Protection Board has issued two warnings calling yo-yo waterballs a serious hazard to children and the United States Consumer Product Safety Commission (CPSC) received over 400 complaints in the last three years. This new law will prohibit the sale, import, manufacture, or distribution of yo-yo waterball toys.

### **Labeling Sunscreen Products (A.77, Weisenberg)**

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

### **Magnet Warning Labels (A.5614-A, Fields)**

Small magnets found in children's toys can pose health risks to children if more than one magnet is swallowed. After ingestion these magnets can attach to each other in the intestines and can create obstructions or cause perforations in a child's intestines.

This bill would require any toy manufactured, sold, or offered for sale that contains a small magnet to have on the packaging or on a label affixed to the toy, a warning that the toy contains magnets and that the magnets, if swallowed, can cause serious or fatal injury. **(Passed Assembly)**

## **D. Enhancing Motor Vehicle Safety**

### **Extending Rental Vehicle Protections and Rental Vehicle Companies' Ability to Offer Collision Damage Waivers (Chapter 14 of the Laws of 2008, Morelle)**

Chapter 656 of the Laws of 2002 removed the existing \$100 cap on driver liability for loss or damage to a rental vehicle and allowed rental vehicle companies to offer renters optional vehicle protection to insure against loss or damage to the rental vehicle for which the renter would otherwise be responsible. The law also required companies to provide consumers with several disclosures regarding optional vehicle protection, increased civil fines for age or racial discrimination involving rental vehicle transactions, and capped the price of optional vehicle protection. These provisions were set to expire on February 24, 2008. This new law extended them until June 30, 2013.

### **Air Bags (A.323-A, Pheffer)**

This bill would require airbags to be sold without such sale being tied to the sale of other goods and services. The requirements under this bill are applicable to new motor vehicles only and would not apply to airbags required to be installed by federal law. A motor vehicle dealer would not be in violation of this section if the dealer, after due diligence, is unable to acquire from the manufacturer a vehicle equipped with airbags as an option without the purchase of a package of options. **(Passed Assembly in 2007; Advanced to Third Reading in 2008)**

## **E. Increasing Consumer Recourse**

### **Victims of Price Gouging (A.223, Pheffer)**

Price gouging occurs when businesses take unfair advantage of consumers during abnormal disruptions caused by natural or man-made disasters of the market 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 Household Scalding**

On April 30, 2008 the Committee held a joint public hearing with the Committee on Governmental Operations on the dangers of household scalding in Albany.

Hot water, including tap water in bath tubs and showers, is the leading cause of both scalds and hospital admissions for burns. It has been reported that 3,800 injuries and thirty-four deaths occur annually in the home due to scalding from excessively hot tap water. The majority of these injuries involve the elderly and children under the age of five. Since infants, young children, the elderly, and disabled may not be able to respond quickly to a situation involving contact with hot water, a constant safe water temperature may prevent scalds.

This hearing examined various legislative and policy options aimed at reducing the incidence of household scalding. Several witnesses commented on Assembly bill 10292, which would require a maximum water temperature of 120 degrees in any dwelling unit in a one-family, two-family, or multi-family, tenant occupied dwelling. The Committee intends to continue to work with the Committee on Governmental Operations to address this issue.

#### **B. Hearing on Aging Services Modernization in New York City**

On April 18, 2008, the Committee on Consumer Affairs and Protection, the Committee on Aging, the Committee on Cities, and the Subcommittee on Outreach and Oversight of Senior Citizen Programs held a joint public hearing on the aging services modernization process being carried out by the New York City Department for the Aging (DFTA).

The purpose of this hearing was to ensure that all due care has been taken to ensure that these modernization efforts proposed by the New York City Department for the Aging will not result in a reduction in benefits for the seniors who rely on these services. The Committee received testimony from City and State agencies, advocacy groups, service providers, and seniors receiving services. Several witnesses expressed concerns regarding isolation, difficulty traveling to senior centers, quality and type of services offered after consolidation of providers, and sensitivity to cultural differences and special dietary and other health needs.

#### **C. Hearing on Senior Scams**

On December 1, 2008, the Committee, along with the Committee on Aging, held a public hearing to examine how the State can best protect senior citizens from consumer scams. While all age groups are affected by fraud, several factors put seniors at particular risk of being targeted by scammers. Seniors are more likely to have large “nest egg” savings and are often more trusting than younger consumers. In addition, according to the Federal Bureau of Investigations, seniors are less likely to report a fraud, may be ashamed at having been scammed, or may be unaware that they have been scammed.

The Committee received testimony from the Consumer Protection Board, the Office for the Aging, the Queen's County District Attorney's Office, advocacy groups, and service providers. The Committee intends to explore the legislative proposals put forth at the hearing and will continue to work with the Committee on Aging to address this issue.

#### **IV. OUTLOOK AND GOALS FOR 2009**

The 2009 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 2008 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 2008**

<b>Bill #</b>	<b>Sponsor</b>	<b>Description</b>
A.70-A	Pheffer	Requires senders of unsolicited faxes to provide a way for receivers to opt-out of future faxes. <b>Chapter 393 of the Laws of 2008.</b>
A.425	Pheffer	Increases the penalty for price gouging. <b>Chapter 224 of the Laws of 2008.</b>
A.472	Fields	Prohibits the sale, import, manufacture, or distribution of yo-yo waterballs in New York State. <b>Chapter 498 of the Laws of 2008.</b>
A.6217-C	Pheffer	Requires the Department of Tax and Finance to develop a Taxpayer Bill of Rights to be provided to consumers by tax preparers prior to providing any services. <b>Chapter 432 of the Laws of 2008.</b>
A.8152	Pheffer	Requires debt collectors to stop temporarily attempts to collect a debt upon notification that the debt arose from identity theft. <b>Chapter 456 of the Laws of 2008.</b>
A.8634-D	Pheffer	Allows victims of domestic violence to obtain a free security freeze. <b>Chapter 406 of the Laws of 2008.</b>
A.9705	Morelle	Extends provisions allowing vehicle rental companies to offer collision damage waivers. <b>Chapter 14 of the Laws of 2008.</b>
A.10288-A	Aubry	Requires employers to provide to job applicants a copy of Article 23-A of the Corrections Law when obtaining a consumer report containing criminal conviction information and require employers to post a copy of Article 23-A conspicuously in their workplace. <b>Chapter 465 of the Laws of 2008.</b>
A.10625	Pheffer	Clarifies certain aspects of the document destruction law. <b>Chapter 516 of the Laws of 2008.</b>
A.11316-A	Pheffer	Establishes several requirements connected to juvenile product recalls to protect consumers and children from dangerous products. <b>Chapter 553 of the Laws of 2008.</b>
A.11544	Pheffer	Requires disclosure of a consumer's ability to purchase a copy of their property deed for a minimal fee from his or her County Clerk. <b>Chapter 485 of the Laws of 2008.</b>
A.11752	Pheffer	Establishes new identity theft protections and enhances existing protections. <b>Chapter 279 of the Laws of 2008.</b>

**APPENDIX B**

**2008 BILLS PASSED BY THE ASSEMBLY**

<b>Bill #</b>	<b>Sponsor</b>	<b>Description</b>
A.77	Weisenberg	Would require sunscreen products to be labeled with “best if used before” dates and storage recommendations.
A.221	Pheffer	Would require debt collectors to send consumers a written notice of their rights under state law along with their debt collection correspondence.
A.223	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.225-B	Pheffer	Would establish a task force on the privacy implications of radio frequency identification technology.
A.334	Greene	Would restrict the requirement that a person disclose his or her social security number.
A.425	Pheffer	Would increase the penalty for price gouging from \$10,000 to \$25,000.
A.472	Fields	Would prohibit the importation, manufacture, distribution, or sale of yo-yo waterball toys, define them, and provide for enforcement by the attorney general.
A.576	Dinowitz	Would authorize cardholders to prohibit credit, charge, and debit card issuers from renting, selling, exchanging, or otherwise making available cardholder information.
A.725-A	Gantt	Would prohibit motor vehicle rental agencies from discriminating against a person because any of the authorized operators do not have a credit card.
A.3560	Cook	Would require disclosures to consumers of weight loss services.
A.4278	Greene	Would increase the liability of creditors to consumers for credit billing errors.
A.5614-A	Fields	Would require a warning on toys containing magnets that they can cause injury if swallowed.
A.6279	Rivera, N.	Would require publisher of magazine subscriptions to disclose on the billing statement or invoice a customer service telephone number.

<b>Bill #</b>	<b>Sponsor</b>	<b>Description</b>
A.6889	Rivera, P.	Would require the State Banking Department to post information on its website about credit card and banking rates, charges, and other terms.
A.7657	Greene	Would prohibit any party from charging consumers for unordered or unrequested goods or services.
A.8152	Pheffer	Would require debt collectors to temporarily stop attempts to collect a debt upon notification by the consumer that the debt arose from identity theft.
A.8153-A	Pheffer	Would make it unlawful for any person to act as a debt collection agency without first having obtained a license.
A.8612-A	Pheffer	Would require third party debt collectors and debt buyers to obtain a license from the Department of State.
A.9557-C	Pheffer	Would require internet dating services to provide a safety awareness notice to consumers in New York.
A.9647-B	Pheffer	Would close loopholes relating to the law regarding unlawful trial offers.
A.10180-B	Gianaris	Would require energy services companies to provide customers with a consumers' bill of rights as well as other protections.
A.10640-C	Pheffer	Would update the law regarding social referral services.
A.11015-A	Lafayette	Would prohibit adverse actions against a consumer solely because the consumer was the victim of identity theft.

**APPENDIX C**

**VETOES of 2008**

<b>Bill #</b>	<b>Sponsor</b>	<b>Description</b>
A.10448-A	Rivera, P.	Would prohibit “universal default” policies. <b>Veto Memo 165.</b>

**APPENDIX D**

**2008 SUMMARY OF ACTION ON ALL BILLS REFERRED TO  
THE ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION**

<b>Final Disposition of Bills</b>	<b>Assembly Bills</b>	<b>Senate Bills</b>	<b>Total</b>
<b><u>Bills Reported With or Without Amendment</u></b>			
To Floor; Not Returning to Committee	3		3
To Floor; Recommitted and Died			
To Ways and Means	1		1
To Codes	35		35
To Rules	3		3
To Judiciary			
<b>Total</b>	<b>42</b>		<b>42</b>
<b><u>Bills Having Committee Reference Changed</u></b>			
To Judiciary	1		1
To Codes	1		1
To Banks	1		1
To Corporations Committee	1		1
<b>Total</b>	<b>4</b>		<b>4</b>
<b><u>Senate Bills Substituted or Recalled</u></b>			
Substituted		5	5
Recalled			
<b>Total</b>		<b>5</b>	<b>5</b>
<b><u>Bills Defeated in Committee</u></b>			
<b>Bills Never Reported, Held in Committee</b>	<b>23</b>		<b>23</b>
<b>Bills Never Reported, Died in Committee</b>	<b>212</b>	<b>9</b>	<b>221</b>
<b>Bills Having Enacting Clause Stricken</b>	<b>1</b>		<b>1</b>
<b>Motions to Discharge Lost</b>			
<b>Total Bills in Committee</b>	<b>282</b>	<b>14</b>	<b>296</b>
<b>Total Number of Committee Meetings Held</b>	<b>10</b>		