

New York State Assembly
2011 ANNUAL REPORT

committee on
**CONSUMER
AFFAIRS AND
PROTECTION**

Jeffrey Dinowitz
Chair



Sheldon Silver
Speaker

December 15, 2011

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 2011 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2011 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 measures passed the Assembly, and legislation that would significantly enhance protections for consumers that enlist the services of automobile brokers was enacted into law (Chapter 579 of the Laws of 2011).

Twelve initiatives aimed at protecting consumers' rights and ensuring consumer safety passed the Assembly, including legislation that would prohibit any third party from adding charges to a landline telephone service bill without the informed consent of the consumer. Legislation that would largely prohibit "caller ID masking," whereby a business alters its caller identification with the intent to defraud or harass the recipient of the call, and a measure that would increase the amount of the surety bond required to be maintained by employment agencies also passed.

I look forward to the upcoming 2012 Legislative Session, during which I plan to introduce several new pieces of consumer protection legislation and explore innovative and effective ways to address a number of issues the Committee has been working on for several years, including debt collection practices reform and overhauling the State's regulation of debt management firms.

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,

A handwritten signature in black ink, appearing to read "Jeffrey Dinowitz". The signature is fluid and cursive, with a large, stylized initial "J".

Jeffrey Dinowitz, Chair

2011 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 State; the Department of Law; 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. 2011 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.52-A, Paulin)

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

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

Reducing the Unnecessary Disclosure of Social Security Numbers (A.846-A, Pheffer)

The purpose of this bill is to restrict the dissemination and collection of Social Security numbers in order to increase consumer privacy and prevent identity theft. This bill would prohibit any person or business entity from requiring an individual to disclose his or her Social Security number, or to refuse any service, privilege or right based on an individual's refusal to disclose such number. The bill would not apply if disclosure of the Social Security number is required by law or covered under one of several exemptions provided for legitimate uses, including collecting child or spousal support, opening a deposit account, interacting with a law enforcement agency, a credit transaction initiated by the consumer, and tax compliance. **(Passed Assembly)**

B. Improving Business Practices

Regulation of Auto Brokers (Chapter 579 of the Laws of 2011, Bing)

The purpose of this new law is to protect consumers by enhancing the regulation of automobile brokerage businesses in New York State. This law will require automobile brokers to obtain a surety bond in the amount of \$75,000. The law will also require brokers to disclose in contracts all fees, the dealer from which the automobile was purchased, and if the broker received a commission or other valuable consideration from the dealer. Lastly, the law will require brokers to disclose in advertisements that the broker is not a licensed dealer, any fees that may be imposed for services, and that warranty repair services are not provided by the broker.

Employment Agencies (A.8183-A, Camara)

Under current law, employment agencies are required to maintain a surety bond in the amount of \$5,000 to protect consumers in the event that an agency goes out of business or violates the law.

According to a governmental agency that has recently brought several successful enforcement actions against unscrupulous employment agencies, in some instances, bond funds can be exhausted before restitution is provided to all aggrieved consumers.

The purpose of this bill is to ensure that in cases involving fraud committed against multiple consumers the bond amount would be large enough to allow government enforcement agencies to obtain restitution for all affected consumers. It would raise the required amount from \$5,000 to \$20,000. The bill would also require enhanced disclosure of the right to a refund of deposits and fees, and require contracts to be printed in both English and the language in which they are negotiated. **(Passed Assembly)**

Private Arbitration Organizations (A.1036, Pheffer)

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

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

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

Improving New York's Membership Campground Law (A.940, Pheffer)

Membership campgrounds provide members with access to convenient, family-friendly vacation destinations with a host of amenities and benefits, including the ability to camp at a network of campgrounds across the nation. While these arrangements are very popular, some consumers have complained about being trapped in lengthy multi-year, and even lifetime, contracts. This bill would provide campground members the ability to cancel their membership under certain circumstances, including when the purchaser enters a nursing home or suffers a serious injury or illness. **(Passed Assembly)**

Protecting the Relatives of Deceased Debtors from Aggressive Collection Efforts (A.1845-A, Rosenthal)

Recent investigations have shown that some debt collectors pursue payments from the relatives of deceased debtors. Relatives of deceased debtors are not required by law to assume their loved ones' debts, but unscrupulous collection agencies often omit this information when they ask the relatives to make payments on alleged debts. This bill would require any creditor or debt collector attempting to collect a debt incurred by a deceased debtor from a person who is not obligated to pay such debt to disclose such fact to the person contacted. Creditors and debt collectors would also be prohibited from making any misrepresentation about such person's obligations to pay such debt. **(Passed Assembly)**

Unordered Goods (A.2213, Zebrowski)

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

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

Cramming/Unauthorized Telephone Charges (A.3224-B, Bing)

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 billing 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 Assembly)**

C. Protecting Consumer Health and Safety

Important Information Regarding Weight Loss Services (A.1953, 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)**

Labeling Sunscreen Products (A.4435, Weisenberg)

According to the American Cancer Society, over 800,000 new skin cancer cases of curable basal cell or squamous cell cancers are diagnosed each year. Since 1973, the incidence of skin cancer has increased about four percent per year. Many consumers use sunscreen products to prevent the risk of skin cancer. In light of how important these products are in combating skin cancer, it is important that the consumer be aware that sunscreen does not protect against the sun's rays after a certain shelf life. This legislation would increase consumer awareness of sunscreen product effectiveness by requiring all products to be labeled with a “best if used before date” and storage recommendations. **(Passed Assembly)**

D. Increasing Consumer Recourse

Victims of Price Gouging (A.8340, Dinowitz)

Price gouging occurs when businesses take unfair advantage of consumers during abnormal market disruptions caused by natural or man-made disasters by charging grossly excessive prices for essential consumer goods and services. Unscrupulous businesses that gouge consumers during difficult times must be held accountable. Currently, only the State Attorney General is empowered to bring legal action against violators of the price gouging statute. This bill would leave the Attorney General's powers intact, but would also permit individual victims of price gouging to sue the price gougers directly. **(Advanced to Third Reading Calendar)**

III. HEARINGS AND ROUNDTABLES

A. Hearing on Child Product Safety

On October 31, 2011, the Committee held a joint public hearing with the Committee on Children and Families to examine various child product safety issues. In recent years, several new child product safety laws have been enacted, including the federal Consumer Product Safety Improvement Act and the state Children's Product Safety and Recall Effectiveness Act of 2008. While these new laws significantly raised child product safety standards and improved the nation's product recall system, there have been recent reports of hazardous products, such as children's clothing with unsafe drawstrings, remaining on store shelves.

Several child product safety issues were discussed at the hearing, including the effectiveness of state and federal product safety laws and how the State can further protect children from hazardous products. The Committees also reviewed several bills that have been introduced in the Committee on Consumer Affairs and Protection, including legislation that would regulate the sale of novelty lighters and a measure that would require manufacturers of certain household consumer products to attach a warning to the products alerting consumers to the danger of tipping.

The Committees heard testimony from the Department of State, child safety advocates, consumer advocacy groups, the retail industry, and manufacturers of juvenile products. The hearing marked a successful dialogue on advancing child product safety. The Committees plan to continue the dialogue with government, consumer, and industry participants.

B. Hearing on the Regulation of Toxic Chemicals in Children's Products

On December 5, 2011, the Committee held a joint public hearing with the Committees on Environmental Conservation and Health to examine issues related to the regulation of toxic chemicals in children's products.

The federal Toxic Substances Control Act (TSCA), which was enacted in 1976, provides the Environmental Protection Agency with the ability to regulate certain chemical substances. Despite the passage of over thirty years, the significant growth in the number of new chemicals, and the development of new health information indicating that certain populations, such as children, are subject to additional risks from chemical exposure, the TSCA has remained largely unchanged. Laws governing children's products were modified when Congress passed the Consumer Product Safety Improvement Act of 2008 that provided the Consumer Product Safety Commission with additional powers and included mandatory third party testing for certain children's products, standards for durable nursery products, and a prohibition on the sale of certain products containing specified phthalates.

An increasing number of states have begun their own chemical regulation programs. Some states, such as California, Maine and Washington, have adopted a regulatory framework in which all chemicals that meet certain health and environmental criteria are banned. Other states, including New York, have adopted a chemical-by-chemical approach, focusing primarily on children's products. New York has most recently prohibited the use of the chlorinated flame retardant TRIS (TCEP) in certain children's products.

Several issues were discussed at the hearing, including the potential health impacts associated with the use of certain chemicals in infant mattresses and the regulation of cadmium and other heavy metals in children's jewelry. The Committees received valuable testimony from the National Conference of State Legislatures, environmental health advocates, consumer safety advocates, toy industry representatives, and manufacturers and retailers of non-toxic juvenile products.

IV. OUTLOOK AND GOALS FOR 2012

The 2012 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 2011 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 2011

A.7767-A	Bing	Would require automobile brokers to maintain a surety bond and make certain disclosures in contracts and advertisements. Chapter 579 of the Laws of 2011
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APPENDIX B

2011 BILLS PASSED BY THE ASSEMBLY

A. 52-A	Paulin	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.
A.846-A	Pheffer	Would restrict the ability of businesses to refuse any service, privilege, or right to an individual because such individual refuses to disclose or furnish his or her Social Security number.
A.940	Pheffer	Would allow purchasers of campground memberships to cancel such memberships under limited circumstances.
A.1036	Pheffer	Would require private arbitration organizations to make certain information regarding the outcomes of consumer arbitrations available to the public on its website.
A.1845-A	Rosenthal	Would require debt collectors attempting to collect a debt incurred by a deceased debtor from a person not obligated to pay such debt to disclose such fact to the person.
A.1953	Cook	Would require weight loss programs to disclose the risks of rapid weight loss.
A.2213	Zebrowski	Would authorize the Attorney General to bring an action for violation of the prohibitions concerning unlawful selling practices.
A.3224-B	Bing	Would prohibit telephone companies from permitting third parties or billing aggregators to impose charges on telephone bills without the consent of the consumer.
A.4435	Weisenberg	Would require sunscreen products to be labeled with expiration dates and storage recommendations.
A.8183-A	Camara	Would increase the amount of the surety bond an employment agency is statutorily required to maintain from \$5,000 to \$20,000, enhance existing disclosure requirements, and require contracts to be printed in the language in which they are negotiated.

APPENDIX C

VETOES of 2011

A.7714	Abbate	Would require a warning to be printed on baby-bottle and sippy cup packaging concerning tooth decay. Veto Memo 79
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APPENDIX D

**2011 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			
To Floor; Recommitted and Died			
To Ways and Means	2		2
To Codes	24		24
To Rules	2		2
To Judiciary			
Total	28		28
<u>Bills Having Committee Reference Changed</u>			
To Judiciary	2		2
To Environmental Conservation	2		2
To Corporation, Authorities & Commissions	3		3
To Health	1		1
To Codes	1		1
To Government Operations	1		1
To Education	1		1
To Higher Education	1		1
Total	12		12
<u>Senate Bills Substituted or Recalled</u>			
Substituted		3	3
Recalled			
Total		3	3
Bills Defeated in Committee			
Bills Never Reported, Held in Committee	180	2	182
Bills Never Reported, Died in Committee			
Bills Having Enacting Clause Stricken	35		35
Motions to Discharge Lost			
Total Bills in Committee	255	3	258
Total Number of Committee Meetings Held	7		