

NEW YORK STATE ASSEMBLY

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Committee On Consumer Affairs and Protection

Carl E. Heastie • Speaker
Nily Rozic • Chair



ANNUAL REPORT

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Consumer Affairs and Protection

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December 15, 2022

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

Dear Speaker Heastie:

It is my pleasure to forward to you the 2022 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2022 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 protections. Several of these pieces of legislation involve important consumer issues such as prohibiting price-gouging, ensuring product safety, and protections for consumers related to mandatory arbitration agreements and financial service products.

During the upcoming legislative year, the Committee plans 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 all New Yorkers.

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 consumers.

Sincerely,

A handwritten signature in black ink that reads "Nily Rozic".

Nily Rozic

**2022 ANNUAL REPORT
OF THE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION**

Nily Rozic, CHAIR

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I. COMMITTEE RESPONSIBILITIES AND GOALS

The Assembly Consumer Affairs and Protection Committee (the “Committee”) is responsible for developing legislation to protect consumers’ rights and ensure the public’s ability to make informed choices in the marketplace. Generally, the Committee has jurisdiction over legislation that amends certain sections of the General Business Law, Personal Property Law, parts of the Agriculture and Markets Law and Education Law. The broad interests of the Committee reflect the fact that today’s consumers can be victims of fraud, misinformation, or lack of information that is vital to their health, safety, and welfare in many facets of life.

To protect consumers’ rights and help them to make informed choices, the Committee works with consumer groups and state and federal agencies. At the state level, these agencies include the Department of State; the Department of Law; the Department of Financial Services; the Department of Education; the Department of Environmental Conservation; the Department of Health; and the Department of Agriculture and Markets. The federal government agencies with which the Committee works include the Federal Trade Commission (FTC); the Consumer Financial Protection Bureau (CFPB); the Food and Drug Administration (FDA); the Federal Communications Commission (FCC); the Consumer Product Safety Commission (CPSC); and the National Highway Traffic Safety Administration (NHTSA). The Committee also works with local agencies, such as the New York City Department of Consumer Affairs, local consumer affairs offices, numerous Better Business Bureaus, and bar associations throughout the State.

II. 2022 COMMITTEE ACCOMPLISHMENTS

Increasing Penalties for Unlawful Delivery of Unordered Goods (A.1067, 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 New York 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. **(Chapter 689 of the Laws of 2022)**

Expanding Price Gouging Prohibition to Cover Medicines in Short Supply (A.5860-B, Reyes)

In recent years, the Committee has sought to enhance the current price gouging statutes in New York State to protect consumers, businesses, and the State from being taken advantage of in the purchase of certain goods and services. This bill would specifically prohibit the price-gouging of medicines that are listed as being in short supply by the U.S. Food and Drug Administration (US FDA). Expanding the protections afforded to individuals from price gouging, by specifically providing for protection from unscrupulous actors who would try to take advantage of a shortage for their own personal financial gain is a necessary step to protect the residents of the state of New York. **(Passed Both Houses)**

Raising Fines for Violators of Telemarketing Restrictions (A.83, Quart)

The Do Not Call Registry has been an effective tool in curbing the number of unwanted calls most households receive from companies wishing to solicit information or business. However, there are increasing numbers of actors who are violating this law in the hopes of gaining business from unwitting participants. The penalty for such violations has remained the same since 2004. This bill would renew deterrence, aiming to further curb entities from violating the Do Not Call Registry by increasing the fine per violation from a maximum of \$11,000 to \$20,000, thereby encouraging greater compliance with the law. **(Passed the Assembly)**

Increasing Penalties for Fraud during an Abnormal Market Disruption (A.9193-B, Rozic)

Conduct that defrauds and otherwise victimizes vulnerable people during a declared state of emergency should not be tolerated. To address these concerns, this bill would empower the New York Attorney General to bring action on behalf of the people of the state of New York to recover three times the actual damages proved or \$15,000, whichever is greater. **(Chapter 803 of the Laws of 2022)**

Prohibiting Sales of Weight-Loss and Muscle-Building Dietary Supplements to Minors (A.431-C, Rozic)

Eating disorders are a serious public health problem affecting youth and adults of all races, ages, and genders. Diagnosis is based on a variety of criteria, including the presence of what clinicians call unhealthy weight control behaviors (UWCBs). One UWCB of particular concern is the use of pills or powders to lose weight or build muscle, which are often sold as dietary supplements. Although they

are sold alongside multivitamins and other supplements largely regarded as safe, these products often contain unlisted, illegal pharmaceutical ingredients that pose serious risk.

Under the Dietary Supplement Health and Education Act of 1994 (DSHEA), the U.S. Food and Drug Administration (FDA) does not have the authority to require proof of safety or efficacy prior to the sale of these products. In order to protect persons under 18 years-of-age from the unclear risks of using these weight-loss and muscle-building supplements, this bill would prohibit their sale to anyone under the age of 18 unless prescribed or ordered by a health care provider. **(Passed Both Houses)**

Motor Vehicle Dealers Repairing Recalled Vehicles Before Sales (A.6041, Rajkumar)

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 consumer's worry that a car they are purchasing may not be safe and would help to keep unsafe cars off the roads. **(Passed the Assembly)**

Requiring Warnings and Sensor Devices for Vehicle Child Restraint Systems (A.381-A, Paulin)

Fifty-four children died from being left in hot cars in 2018, and fifty-three children died in hot cars in 2019. New York State must take action to avoid such tragedies from happening again. Technology exists to help prevent such avoidable deaths, and New York State must ensure that such technology is available with the sale of all car seats sold in New York State. While a number of car seats currently manufactured are sold with sensor technology, other car seat warning devices are available to be added to existing car seats. This bill would require retailers to maintain in stock and prominently display within the store the child restraint alarms for sale that are compatible with a child restraint system, and post a notice warning about the danger of heat stroke for children. **(Passed Both Houses)**

Prohibiting the Sale of Infant Walkers (A.564-A, Paulin)

According to a study done by Pediatrics in 2018, 230,000 children under 15 months old were treated in U.S. hospital emergency departments for skull fractures, concussions, broken bones and other injuries related to infant walkers from 1990 through 2014 with many doctors and medical groups calling for bans. Despite additional safety requirements placed on manufactures in 2010 by the US Consumer Product Safety Commission, there are still just over 2,000 injuries of children each year directly attributed to infant walkers. This bill would ban the sale of infant walkers in the state and restricts their use in certain settings such as a childcare facility, except when medically necessary. **(Passed the Assembly)**

Increasing Food Allergy Awareness in Food Service Establishments and Online Food Ordering (A.2344-A, Rosenthal L)

For those suffering with severe food allergies, dining out at a restaurant can be a risky experience. Restaurant personnel may not be properly trained in food allergy awareness, thus increasing the possibility of a dangerous reaction and potentially deadly anaphylaxis.

This law directs the creation of a notice containing information on food allergies to be posted in food service establishments, including procedures to be followed when a customer notifies staff of an allergy, how to prevent cross-contact, and instruction to call 911 if a customer has an allergic reaction. Every food service establishment will be required to display this poster in an area accessible to all employees involved in the preparation and service of food. Additionally, food service establishments

must include a food allergy notice on their physical and on-line menus. (**Chapter 623 of the Laws of 2022**)

Ensuring Consumers' Rights in Repairing Electronic Products (A.7006-B, Fahy)

Repairs of digital items are often intentionally limited by manufacturers who require consumers to pay for repair services exclusively through their repair division or manufacturer-authorized repair providers. The practices by manufacturers essentially create a monopoly on these repair services. These limited authorized channels result in inflated, high repair prices, poor service or non-existent service in rural areas and unnecessarily high turnover rates for electronic products. Lack of competition in the digital repair industry creates high costs for consumers, businesses, and government operations, limits used equipment markets and results in the early retirement of equipment with a remaining useful life. This bill would open the digital repair market up to competition and all its consumer, entrepreneurial and environmental benefits by requiring original equipment manufacturers to make diagnostic and repair information for electronic parts and equipment that are available to authorized repair providers also available to independent repair providers and consumers. (**Chapter 810 of the Laws of 2022**)

Requiring Fire-Preventive Features for Electric Space Heaters (A.9181-B, Burgos)

The use of space heaters in residential and other settings during cold months is widespread. Sadly, these products have too great of a risk of causing dangerous fires. This bill seeks to increase protections from accidentally starting a fire by requiring the inclusion of the following: a thermostat; an automatic shut-off; and certification by a testing and certification body recognized and approved by the US Department of Labor, Occupational Safety and Health Administration (OSHA). (**Chapter 664 of the Laws of 2022**)

Alerting Customers of Potential Gift Card Scams (A.266-A, Paulin)

The use of gift cards as a mechanism by scammers to obtain money is steadily growing. A common example of such a scam is when phone calls are made to targeted consumers, particularly the elderly and immigrants, stating that they owe money and payment is required by gift card. This bill would require stores where gift cards are sold to post a notice alerting customers to protect themselves from gift card scams, with a goal of reducing the success rate of these scammers. The warning message will help all customers be more aware of gift card scams and encourage vulnerable customers to alert law enforcement if they believe they are being scammed. (**Chapter 725 of the Laws of 2022**)

Requiring Mandatory Arbitration Clauses in Certain Consumer Contracts to be Printed in Large Font Type (A.1865, Dinowitz)

Consumers are sometimes presented with a contract to sign for a good or service that contains a mandatory and, in many cases, non-negotiable arbitration clause. Signing a contract with such a clause can remove the consumer's right to dispute a claim in a court of law and instead move any dispute with the business to an arbitration proceeding. In many cases these mandatory arbitration clauses are buried in the fine print of contracts and go unnoticed by the average consumer.

Regulation of arbitration clauses in contracts is limited in the State of New York and therefore making consumers aware of the effects of signing an arbitration clause is important. By requiring that mandatory arbitration clauses in consumer contracts be printed in large font type this bill would address the concern by increasing the chance that the consumer would recognize the importance of understanding this clause before signing. (**Passed the Assembly**)

Minimizing Chances that an Imitation Weapon is Mistaken for a Real Firearm (A.3998, Abinanti)

Hundreds of crimes have been committed in New York City with toy guns, many of which have resulted in bodily injury and death. While current state law regulates the composition of imitation weapons, these products are still widely available and dangerous. This bill would change the definition of an imitation weapon, providing that permissible imitation weapons must be entirely brightly colored or be constructed entirely of transparent or translucent materials, making it consistent with the New York City Administrative Code. Doing so would clarify and strengthen the definition of an imitation weapon, leading to tighter restrictions and reduced chances of their sales, use, and being mistaken as real firearms. **(Chapter 501 of the Laws of 2022)**

Requiring that Telemarketers Announce the Do-Not-Call Option at Call Outset (A.8319-C, Paulin)

Current law requires telemarketers to inform contacted individuals that they may request to be added to their company's do-not-call list, but it does not specify at what point in the call such notice must be given. Since many contacted people hang up before a telemarketer or recording has informed them about the do-not-call list, they do not learn how to register for it, thus allowing telemarketers to continue calling them. This bill would require that telemarketers give customers the option to be added to their company's do-not-call list right after the telemarketer's name and the person on whose behalf the solicitation is being made are provided. It would help to safeguard consumers from continuous unwanted calls. **(Chapter 660 of the Laws of 2022)**

Prohibiting the Sale of Infant Inclined Sleepers and Restricting their Use in Child Care Facilities (A.256, Paulin)

The Consumer Product Safety Commission and the American Academy of Pediatrics (AAP) recently issued warnings alerting parents to the dangers of the use of infant inclined sleepers. The warnings stressed that these sleepers are not a safe sleep place for babies and their use has in fact been linked to a number of infant deaths. They pose a risk because babies can suffocate if they are in a position on the sleeper which may obstruct their airways. AAP and other advocates recommend that the safest way for babies to sleep is firmly and flat on their backs, and since these sleepers are inclined, their heads may fall slightly forward when asleep, potentially causing airway compression. Since the risks of using infant inclined sleepers greatly outweigh any benefits, the products should no longer be available for sale in New York. This bill would ban the sale of infant inclined sleepers and restrict their use in child care facilities and is important to avoid any future tragedies. **(Passed the Assembly)**

Prohibiting Fees and Expiration Dates on Gift cards and Certificates and Providing that Gift Cards and Certificates may be redeemed in Cash when the Remaining Value is less than Five Dollars (A.8745, Sayegh)

The Federal Credit CARD Act of 2009 placed some restrictions on gift card fees by prohibiting dormancy fees unless a gift card is dormant for at least twelve months and by limiting the frequency of periodic fees to no more than once a month. The CARD Act also prohibits expiration dates prior to five years after issuance. However, permitted fees on gift cards can still be substantial. This bill would further protect consumers from excessive fees on gift cards by prohibiting all fees on gift cards and prohibiting gift cards that decline in value over time. To further eliminate loss of value to consumers, it would also prohibit expiration dates on gift cards and gift certificates and allow for redemption when the remaining balance is less than five dollars. **(Chapter 6 of the Laws of 2022)**

Warning Notices for Lead in Seasonal and Decorative Lighting Products (A.8746, Galef)

Decorative and seasonal holiday lights have been shown to contain potentially unsafe levels of lead, with some brands containing tens of times the levels regulators permit in children's products. The dangers of exposure to lead have been repeatedly proven to be attributed to serious health problems - including attacks on the brain and central nervous system, heart and kidney disease, reduced fertility and depression - with severe consequences for children.

While federal law bans the sale and manufacture of lead in house paint and gasoline and New York enacts stringent limits only on paint on children's toys and furniture and some glazed tableware, the sale of most other consumer products containing lead in the state are not as strictly regulated. This bill would require any products containing lead, sold in the State of New York, to have an explicit warning label advising that the product may expose the consumer to the substance with clear instructions to wash hands. **(Chapter 40 of the Laws of 2022)**

Adding Protections for Victims of Identification Theft (A.7487, Fall)

Identification theft victims are provided legal protections to suspend creditors' collection activities on debt obligations created in victims' names by identification thieves. Currently, in order to effectuate such a collection pause a debtor is required to present to a creditor a copy of the official crime report to law enforcement that the debtor was victimized by a thief who illegally assumed the debt using the victim's ID. Sometimes, however, such thefts are committed by a perpetrator known to a victim, such as in domestic or elder abuse cases, in which it might not be a safe or right choice for victims to pursue criminal charges. In order to afford protections that would cover such victims' situations, this bill would allow a debtor to provide a copy of a completed, signed ID theft victim's report filed with the Federal Trade Commission as an alternative to a criminal report filed with law enforcement. **(Chapter 238 of the Laws of 2022)**

Allowing Rental Vehicle Companies to Charge and Disclose Vehicle Cost Recovery Fees (A.9343-B, Magnarelli)

New York, unlike most states, currently does not allow rental vehicle companies to charge a fee reflecting their costs to title, register, inspect, and obtain license plates. This bill would allow the companies to charge and disclose to its renters a "vehicle cost recovery fee" based on the actual costs they incur to title, register, inspect, and plate their vehicles. Enabling this charge will provide, for renters, a better understanding of what they pay and, for rental companies, the chance to show such costs that they incur in providing their services. **(Passed Both Houses)**

III. 2022 PUBLIC HEARINGS AND ROUNDTABLES

Accuracy and Effectiveness of the Consumer Credit Reporting System

On December 6, the New York State Assembly Standing Committees on Consumer Affairs and Protection and Banks held a public hearing to examine the accuracy and effectiveness of the Consumer Credit Reporting System.

Studies from the Federal Trade Commission (FTC) have shown that as many as one in four consumers may have a “material error” in their consumer credit reports. Far too often, correcting such errors involves an arduous process that leaves many consumers frustrated and penalized by mistakes made by the credit bureaus. Additional challenges over the last several years from the COVID-19 pandemic, and more recently from soaring consumer prices, have exacerbated many of these difficulties for New Yorkers. The need to make credit reports and scores fairer and more transparent is becoming increasingly important as these reports are used in a variety of different ways and have a far-reaching impact on our daily lives, including decisions on loan applications, mortgages, interest rates, and employment. This hearing sought to solicit input on the accuracy and effectiveness of credit reports and the means by which New York State can improve and modernize the credit reporting system.

The Committees heard vital testimony from the New York State Office of the Attorney General. In addition, the Committees heard testimony from Consumer Reports, the Community Service Society of New York, and the Urban Resource Institute.

Privacy of Consumer Data in the Wake of the Supreme Court’s Decision in Dobbs vs. Jackson Women’s Health Organization

On November 29, the New York State Assembly Standing Committees on Consumer Affairs and Protection and Science and Technology hosted a roundtable discussion in Albany to examine potential impacts of the recent Supreme Court’s Dobbs decision on consumers’ personal data, particularly for those using web-based applications to track fertility, menstrual cycles, and other reproductive health issues. Groups in attendance were the New York State Office of the Attorney General, New York Civil Liberties Union, Microsoft Corporation, ACT/The App Association, Planned Parenthood Empire State Acts, Center for Democracy & Technology, and the Fourth Amendment Center of the National Association of Criminal Defense Lawyers. The participating representatives of these groups helped to facilitate a productive dialogue among stakeholders concerning developments as well as potential legislative solutions.

IV. OUTLOOK AND GOALS FOR 2023

The 2023 Legislative Session promises to present many challenges to the Consumer Affairs and Protection Committee.

Consumers across the state continue to be harmed by price gouging while markets are either generally or more specifically disrupted, and surely more needs to be done. The Committee will continue to examine areas where consumers have been affected by various market disruptions and pursue efforts to protect consumers' health, financial situation, and overall well-being.

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. 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 all New Yorkers.

APPENDIX A

CHAPTERS OF 2022

Chapter 6	Sayegh	Establishes that a gift certificate does not include a fare payment card or electronic payment device used to pay for travel on a public transportation authority system.
Chapter 40	Galef	Moves the section relating to the manufacture of seasonal and decorative lighting products containing lead from the public health law to the general business law.
Chapter 238	Fall	Expands which documents can be used to show identity theft in certain circumstances relating to debt collection.
Chapter 501	Abinanti	Clarifies the definition of imitation weapons.
Chapter 545	Rozic	Postpones the effectiveness for grace periods for the use of credit card reward points
Chapter 623	Rosenthal L.	Requires food allergy awareness in food establishments and online food ordering services.
Chapter 660	Paulin	Adds telephone numbers to a do-not-call list at the outset of certain telemarketing calls.
Chapter 664	Burgos	Requires that electric space heaters have thermostats and automatic shut-offs, and be certified by a testing and certification body recognized and approved by the United States Department of Labor, Occupational Safety and Health Administration.
Chapter 689	Zebrowski	Authorizes the attorney general to bring an action for violation of the prohibitions concerning unlawful selling practices; specifies damages awardable.
Chapter 725	Paulin	Requires notice of potential scams when selling gift cards.
Chapter 803	Rozic	Increases penalties for fraud which occurs in connection with an abnormal disruption of the market.
Chapter 810	Fahy	Requires original equipment manufacturers to provide diagnostic and repair information to consumers and independent repairers.

APPENDIX B

2022 BILLS PASSED BY THE ASSEMBLY
(excludes bills chaptered in 2022)

A.83	Quart	Raises the maximum fine for persons who violate the law regulating telemarketing to twenty thousand dollars.
A.256	Paulin	Prohibits the sale of infant inclined sleepers; restricts the use of such inclined sleepers in certain settings.
A.381-A	Paulin	Requires any person, firm, partnership, association, limited liability company, corporation, or other entity that sells new motor vehicle child restraint systems to also sell motor vehicle child restraint system warning devices.
A.431-C	Rozic	Prohibits the sale of over-the-counter diet pills or dietary supplements for weight loss or muscle building to people under 18 unless properly prescribed by a health care provider; exempts certain protein powders, protein drinks and foods.
A.564-A	Paulin	Prohibits the sale of infant walkers and restricts the use of such infant walkers in certain settings.
A.1370	Seawright	Relates to the personal information of a credit or debit card holder; adds zip code, e-mail address and home, cell and work telephone numbers to the personal information protected.
A.1450	Dinowitz	Requires mandatory arbitration clauses in certain consumer contracts to be disclosed and explained to the consumer.
A.1865	Dinowitz	Requires mandatory arbitration clauses in certain consumer contracts to be printed in large font type.
A.4855	Gunther	Relates to the use of voice recognition features on certain products.
A.5860-B	Reyes	Prohibits selling a drug subject to a shortage for an unconscionably excessive price.
A.6041	Rajkumar	Requires motor vehicle dealers to search for recalls and make certain repairs prior to selling a used motor vehicle.
A.6458	Galef	Mandates that any article of merchandise advertised, and not available throughout advertised period, must be supplied at advertised price by seller within sixty days from the date the purchaser of such article is notified of its availability.
A.9343-B	Magnarelli	Provides for an allowable disclosure of recovery by a rental vehicle company from its renters for actual costs incurred to title, register, plate and inspect rental vehicles as determined by an annual audit conducted by the rental vehicle company.

APPENDIX C

**2022 SUMMARY OF ACTION ON ALL BILLS REFERRED TO THE ASSEMBLY
COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION**

TOTAL NUMBER OF COMMITTEE MEETINGS HELD: 5

	Assembly Bills	Senate Bills	Total Bills
Bills Reported Favorable to:			
Codes	11	0	11
Judiciary	0	0	0
Ways and Means	0	0	0
Rules	2	0	2
Floor	3	0	3
TOTAL	16	0	16
Committee Action			
Held for Consideration	5	0	5
Defeated	0	0	0
Enacting Clause Stricken	1	0	1
Remaining in Committee	171	12	183
Bills Reference Changed to:			
TOTAL	0	0	0