



# 2018 ANNUAL REPORT

New York State Assembly

**Carl E. Heastie**

*Speaker*

*Committee on*

**Consumer Affairs and Protection**

**Matthew Titone**

*Chair*





THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

MATTHEW J. TITONE  
Assemblyman 61<sup>st</sup> District  
Richmond County

CHAIR  
Committee on  
Consumer Affairs and Protection

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

December 15, 2018

Dear Speaker Heastie:

It is my pleasure to forward to you the 2018 Annual Report of the Assembly Standing Committee on Consumer Affairs and Protection.

The work accomplished during the 2018 Legislative Session reflects the Committee's dedication to and concern for consumers' basic rights, safety, and interests. This year, the Committee advanced legislation addressing a wide range of consumer issues. Several of these pieces of legislation have been enacted into law, including bills comprehensively overhauling New York's rental car statute, giving New Yorkers the right to free credit freezes, and prohibiting auto lenders from remotely disabling consumers' vehicles without prior notice.

During the upcoming 2019 legislative year, the Committee plans to build upon the foundations established during the 2018 year by continuing to engage consumers, advocates, governmental agencies, and businesses in a dialogue as we explore innovative and effective ways to address the consumer protection issues facing our residents.

I would like to take this opportunity to thank the Committee members for their contributions to this past year's achievements. I would also like to express my appreciation for the assistance that the Committee received from the Committee staff in the course of our work. Finally, Mr. Speaker, I commend you for your continued leadership and support of our legislative initiatives to better protect New York State consumers.

Sincerely,

Matthew Titone, Chair

**2018 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 to protect consumers’ rights and ensure the public’s ability to make informed choices in the marketplace. Generally, the Committee has jurisdiction over legislation that amends certain sections of the General Business Law, Personal Property Law, parts of the Agriculture and Markets Law and Education Law. The broad interests of the Committee reflect the fact that today’s consumers can be victims of fraud, misinformation, or lack of information that is vital to their health, safety, and welfare in many facets of life.

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

In addition, the Committee works to help consumers through the development of legislation under the jurisdiction of other Assembly standing committees. Such committees include the Committees on Banks; Transportation; Corporations, Authorities, and Commissions; Economic Development, Job Creation, Commerce and Industry; Agriculture; and Insurance.

## **II. 2018 COMMITTEE ACCOMPLISHMENTS**

### **Protecting Personal Privacy**

Protecting the privacy of consumer data has become an even more critical mission for government throughout the past decade, as consumers' personal information is increasingly shared with financial institutions, consumer reporting agencies, health care entities, employers, utilities, internet service providers, social media companies, advertisers, marketers, and many others.

The Committee continues to pursue and advance legislation that will protect consumers' personal information and prohibit companies from distributing such information without consumers' consent.

#### **Regulating Voice Recognition Features in Internet-Connected Devices (A.724-B, Gunther)**

There have been many instances of consumers' voices being recorded by various internet-connected devices such as cell phones, smart TVs, personal assistant devices, children's toys, and other devices equipped with voice recognition software, and then sold or used in advertisements or promotional materials without the consumers' consent.

This bill would protect consumers' privacy by prohibiting this practice and requiring products employing voice recognition software to prominently inform the consumer that their voice may be recorded and stored. **(Passed the Assembly)**

#### **Prohibiting the Sale of Consumer Employment Information (A.859-A, Braunstein)**

There have been instances of consumer credit reporting agencies selling employment records, including detailed health insurance and payroll information, to third parties such as debt collectors and other financial service corporations. Often this happens without the employees' knowledge or consent.

This bill would prohibit the sale of consumer data and employment information without express written consent. **(Passed the Assembly)**

#### **Prohibiting Lenders and Consumer Reporting Agencies from Considering Consumers' Internet Viewing History or Social Network (A.3565 and A.5106, Crespo)**

A consumer's credit score is one of the most crucial metrics by which they are judged in many important life situations. In addition to determining the credit worthiness of a consumer when applying for loans or lines of credit, consumer credit scores are also used by some employers to screen potential employees, by landlords in housing determinations, and even by certain graduate schools for students applying for degrees.

Certain representatives of consumer lending institutions have discussed taking a consumer's social network or internet viewing history into consideration when determining their credit score.

These bills would prohibit lenders and consumer reporting agencies from invading a consumer's privacy by engaging in such practices. **(Passed the Assembly)**

**Prohibiting Collection or Sale of Personal Information Without Consent (A.7191-B, Wallace)**

In 2017, Congress voted to repeal FCC regulations that were set to take effect that would have forced internet service providers (ISPs) to allow consumers to choose whether to opt in to the collection of sensitive information, including browsing data.

This bill, partially based on existing law in the state of Minnesota, would prohibit telecommunications providers and ISPs that have entered into franchise agreements, right of way agreements, or other contracts with New York State or any political subdivision thereof from collecting or disclosing a consumer's personally identifiable information without the consumer's express consent. The bill would give New Yorkers more control over their personal information in an era where data privacy is increasingly paramount. **(Passed the Assembly)**



## **Addressing Data Security Breaches**

On September 7, 2017, consumer credit reporting agency Equifax made the public aware of a security breach in its database which resulted in the exposure of the sensitive personal information of approximately 143 million American consumers, including names, Social Security numbers, birth dates, addresses, and more. Such a massive breach of security will pose problems for consumers for years to come, and the exposure of consumers' personal information could lead to identity theft and make them targets for scams and other fraudulent conduct.

The Committee reported several bills during the 2018 legislative session that were aimed at lessening the impact of data breaches on consumers, providing consumers whose personal information has been breached with increased protections, and strengthening New York's security breach notification laws.

### **Making Credit Security Freezes Free for All New Yorkers (A.8672-B, Buchwald)**

One of the most common recommendations by security experts in the days following the Equifax breach was for consumers to place a freeze on their credit files, making it more difficult for unauthorized individuals to open up new accounts under a victimized consumer's name, which can ruin the consumer's credit rating.

Under current New York State law, consumers are not charged for the initial placement of a security freeze. However, they can be charged up to \$5 for seeking a second or subsequent freeze, or for temporarily lifting a freeze in order to apply for a new line of credit. A federal law that took effect in September 2018 enacted a nationwide right to a free credit freeze. However, this bill would codify such protections in New York State Law as well. **(Passed both Houses)**

### **Requiring Free Identity Theft Prevention/Mitigation Services after a Data Breach (A.8695-A, Dinowitz)**

This bill would require consumer reporting agencies that suffer data breaches to offer identity theft prevention and mitigation services for no charge for a period of up to five years after the breach. The bill would provide significant benefits and remediation to consumers in the event that their personal information is compromised by a data breach. Consumers should not bear the cost of protecting themselves from identity theft due to the lax data security practices of a credit reporting agency. **(Passed the Assembly)**

### **Strengthening New York's Data Breach Notification Laws (A.8884-B, Titone)**

Article 39-F of New York's General Business Law currently requires notification to the public and to affected consumers directly in the event that consumers' personal data is breached. This bill updates Article 39-F to require notification to consumers if their biometric data (such as a fingerprint or a retina scan) is compromised. Additionally, the bill adds new data security requirements for all businesses which own or license computerized data which includes the private information of a New York State resident. Such businesses would be required to develop reasonable technical, physical, and administrative safeguards, appropriate to the size and

complexity of the business, in order to protect consumers' private information from unauthorized access or acquisition.

The bill would take strong steps toward requiring a reasonable statewide data security standard, and ensure that businesses and government entities take more steps to protect consumers' private information. **(Passed the Assembly)**

## **Improving Business Practices**

The Committee considers it a top priority to protect consumers from fraudulent, unfair, predatory, and coercive business practices, and to ensure that consumers are clearly informed of their rights and responsibilities when entering into contracts for goods or services. The Committee will continue to advance legislation to accomplish these goals, and to fight for the rights of consumers across the state.

### **Increasing Penalties for Unlawful Delivery of Unordered Goods (A.1401, 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 laws that provide that consumers who receive unordered goods may treat the merchandise as a free gift that does not have to be returned. Despite these existing protections, consumers continue to report instances in which they received unordered goods.

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

### **Unauthorized Telephone Charges ("Cramming") (A.2426-A, Skartados)**

This bill would prohibit telephone corporations from permitting the practice of cramming. "Cramming" is defined in the bill as the imposition of any charge or fee on a consumer's telephone bill when such charge or fee is imposed by a third party or billing aggregator without the consumer's authorization or with authorization that is obtained through deceptive means. Any third-party charges or fees that are included without consent would be deemed void and unenforceable and would have to be removed upon notice from the consumer.

In order for a telephone corporation to authorize a charge by a third party, the third party would have to provide the telephone corporation with proof that the consumer consented to the charge after being informed of all the terms and conditions of the product or service offered. The Public Service Commission would be authorized to enforce the bill's provisions and would have the authority to promulgate any necessary rules and regulations. **(Passed the Assembly)**

### **Unconscionable Terms in Standard Form Contracts (A.2855, Steck)**

Certain provisions that can be included in standard form contracts are demonstrably unfair to consumers, particularly those requiring consumers to waive certain legal rights, settle disputes in inconvenient venues, or pay exorbitant fees to bring claims.

This bill would define these contract terms as unconscionable, meaning that they are so unfair to consumers as to prevent them from taking advantage of their full legal rights, and would stipulate

that the inclusion of those terms in a contract constitutes an unfair and deceptive trade practice. The bill would protect consumers from predatory contract practices and seek to ensure that contracts between consumers and businesses are fair, open, and honest. **(Passed the Assembly)**

### **Clear Disclosure of the Expiration Date of Prepaid Cellular Minutes (A.2892-A, Dilan)**

Although current law requires the disclosure of the expiration date of cellular minutes purchased with prepaid cards, the date is often included in very small print on the back of a card, making it difficult for consumers to ascertain.

Consumers have a right to the clear and conspicuous disclosure of the basic terms of the minutes they are purchasing. This bill would require the expiration date to be printed on the face of the prepaid card in bold, large-type font. **(Passed the Assembly)**

### **Home Improvement Contract Protections (A.3246-B, Brindisi)**

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

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

### **Protecting Family Members of Deceased Debtors (A.4903-A, Rosenthal)**

The federal Fair Trade Commission (FTC) issued a policy statement in 2011 clarifying that it is permissible for debt collectors to contact a deceased debtor's family in order to request payment of debts from the deceased's estate. However, in most circumstances, the deceased's family members are not liable for such debts.

This bill would prohibit debt collectors from making misrepresentations about a person's obligations to pay the debts of a deceased family member in a way that contravenes the federal Fair Debt Collection Practices Act (FDCPA) and make violations of such provisions a misdemeanor. **(Passed Both Houses)**

### **Requiring Magazine Publishers to Provide Customer Service Telephone Numbers (A.5228, Dinowitz)**

Consumers are often sent unwanted and unsolicited magazine subscriptions as a result of other subscriptions they may have ordered, or simply because another individual filled out a subscription card which can be easily found in most magazine publications and sent it to the publisher. Some consumers have reported receiving numerous subscriptions they did not request and then are left to reach the publisher, which can often prove difficult.

This bill would require magazine publishers to include a customer service telephone number on the billing statement or invoice of every magazine sent to a consumer. **(Passed Both Houses)**

### **Unauthorized Changes to Gas or Electric Services (“Slamming”) (A.5235, Dinowitz)**

There have been reported instances of consumers being forced to accept changes to their natural gas and electrical service, of which they have not been apprised. This type of change is commonly known as “slamming.” Slamming is the practice of changing a utility provider without a consumer's express consent. While there are some consumer protections relating to energy services companies, or ESCOs, which include instances of "slamming," such non-consumer-friendly practices would only be considered a "deceptive act and practice," which carries little force and deterrence.

This bill would prohibit any supplier of gas or electric service or any person, firm or corporation, from acting as such supplier's agent or representative, on behalf of a customer, from making or directing any change in a supplier of gas or electric service unless such supplier, agent, or representative complies with the requirements to authorize and verify such change. This bill would also outline the procedures and penalties for violating this legislation. **(Passed the Assembly)**

### **Expanding Protections Afforded to Renters of Motor Vehicles (A.5270-C, Morelle)**

This bill comprehensively updates New York's statute governing rental vehicle protections to provide increased protection to consumers while also taking into account modern technological advances which have changed the business practices of the rental car industry.

Specifically, the bill would require rental car companies to provide consumers with important notices disclosing their rights and responsibilities, and clearly outline in statute what information such notices must contain. The bill would also simplify the inspection process in the event that a rental vehicle is damaged, and would allow rental vehicle companies to make incident report forms available online. It would also prohibit companies from engaging in pricing discrimination based on the geographical location of a New York consumer's residence.

Additionally, the bill would allow rental car companies to deliver the disclosures required by this section of law to the consumer electronically, provided that the consumer has given his or her expressed consent to receive the disclosures in such a manner. This will better reflect the current practices of the industry, where consumers often bypass rental counters to proceed directly to

their vehicles due to the prior execution of a rental agreement online. **(Chapter 109 of 2018)**

### **Prohibiting Use of Credit History in Hiring/Licensing Determinations (A.5310-A, Dinowitz)**

There is little evidence to suggest that a consumer's credit history has any correlation with his or her job performance. A poor credit history can be the result of many different factors, such as economic downturn, unexpected medical bills, high housing costs, or other issues completely unrelated to the consumer's job performance or capabilities. Additionally, a recent Federal Trade Commission (FTC) study indicated that as many as one in four consumers may have a "material error" in their credit reports, which could put them in a lower tier and decrease their chances of getting hired or promoted, causing even more economic hardship.

This bill would prohibit an employer from using, and a consumer credit reporting agency from disclosing, a consumer's credit history for the purposes of making hiring or licensing determinations. This bill would provide a significant consumer protection that would remove a barrier to employment for many New Yorkers. **(On Third Reading)**

### **Prohibiting Non-Disparagement Clauses in Consumer Contracts (A.5718-B, Skoufis)**

There have recently been instances where companies have sued consumers after the consumers wrote disparaging online reviews of the company's product, in violation of a non-disparagement clause that the consumer was forced to sign, whether knowingly or unknowingly. Consumers should not be forced to sign away their ability to complain about a service or product. Negative reviews of products help consumers make informed decisions about which product or service to purchase.

This bill would make it unlawful to include non-disparagement clauses in contracts for consumer goods or services, and to threaten or seek to enforce such a clause. It would make violators of this prohibition subject to a civil penalty of not more than \$500 for the first violation, and not more than \$1,000 for any subsequent violation. It would also impose a civil penalty not to exceed \$5,000 for seeking to enforce a non-disparagement agreement. **(Passed the Assembly)**

### **Labeling of Electric-Assisted Bicycles (A.6960-B, Seawright)**

Although electric bicycles are allowed to be sold in New York State, the Vehicle and Traffic Law deems them to be "motor vehicles" and technically prohibits their operation without license plates and registration, which is not a feasible alternative at the current time. As operation of a motor vehicle is illegal on a public sidewalk, electric bicycles are currently in a legal gray area that makes it unclear whether they are allowed to be operated on roads or sidewalks.

Unless the Vehicle and Traffic Law is changed to regulate electric bicycles in a different manner, consumers should be warned of the potential illegality of operating such vehicles. This bill would require electric bicycles offered for sale to come with a warning label advising consumers to check their state and local laws before purchasing such a vehicle. **(Passed the Assembly)**

### **Prohibiting Businesses from Pricing on the Basis of Gender (A.7165-A, Rozic)**

A recent study by the New York City Department of Consumer Affairs found that on average, products for women cost seven percent more than similar products for men. The results of the study indicate that women spend significantly more money over the course of their lifetimes due to discriminatory pricing practices on products marketed towards women. It is inherently unfair to charge more for a product simply because it is a different color or it is marketed towards women, even though the materials are the same and it does not cost the business any more to produce.

This bill would attempt to curtail this practice by prohibiting businesses from charging a different price for substantially similar products, which share the same brand, same functional components, and ninety percent of the same materials or ingredients. This would go a long way towards ending a regressive policy that harms women and creating a level playing field for all genders. **(On Third Reading)**

### **Creating the State Office of the Utility Consumer Advocate (A.7293-A, Dinowitz)**

More than 40 states have an independent state agency that represents the interests of residential utility customers. New York is one of a few states, and by far the largest, without such an independent office. States that have implemented these agencies have secured substantial savings on utility costs for consumers. For example, in California, it is estimated that for every \$1 spent representing and advocating on behalf of public utility customers in the 2012 report year, the average customer saved \$153 per year.

This bill would create the State Office of the Utility Consumer Advocate to serve as an independent advocate and appear on behalf of New York residential utility consumers in state and federal regulatory proceedings, as well as in judicial review proceedings concerning rates and conditions of public service utilities. **(On Third Reading)**

## **Protecting Consumer Health and Safety**

The Committee has continually taken steps to ensure that consumer products are safe to use and do not pose a danger to consumers, and that consumers are informed of potential risks when using a product or service. We will continue to advance legislation which will protect consumers from harm, require manufacturers and sellers of consumer products to take appropriate measures to preserve consumer safety, and warn consumers of potential risks so they can make informed choices regarding their purchases and activities.

### **Protecting Domestic Violence Victims in Wireless Service Contracts (A.946-A, Rozić)**

Wireless telephone companies have created consumer-friendly contract options such as “shared minutes” and “family plans” that allow consumers to save money by consolidating costs. However, some consumers remain subject to high fees when trying to cancel contracts due to emergencies.

For instance, victims of domestic violence who share a telephone contract with their batterer are often left with enormous fees for early contract cancellation. Providing an escape clause in such shared minutes and family plan contracts for victims of domestic violence is good public policy and is consistent with the Committee’s support of domestic violence victims.

This bill would allow victims of domestic violence who are under a shared or family contract with their batterer to opt out of such plans without penalty. **(Passed the Assembly)**

### **Studying the Effects of Potentially Harmful Ultraviolet Nail Dryers (A.2276, Rosenthal)**

Ultraviolet drying lamps used in nail salons across New York State are not currently required to carry warnings detailing the increased risk of skin cancer and other conditions that could potentially result from their use. The American Cancer Society considers exposure to UV radiation to be a risk factor for most skin cancers. However, the short duration and limited area of exposure to UV nail dryers as compared to UV tanning beds has resulted in inconclusive findings regarding the risk that such devices pose to consumers.

This bill would require the New York State Department of Health to study the effects of UV nail dryers and consult with public health experts to determine whether such devices pose health hazards to the public, and to make recommendations concerning their use. **(Passed Both Houses)**

### **Warning Labels for Decorative Lighting Products Containing Lead (A.4345, Galef)**

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



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

#### **Requiring Persons Offering Weight Loss Services to Provide Notice of Risks (A.6767, Cook)**

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

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

#### **Price Gouging of Prescription Drugs (A.7087, Crespo)**

There have been several reported instances of disreputable distributors hoarding prescription drugs during a shortage and offering such drugs to hospitals and pharmacies at grossly inflated prices.

This bill, which is modeled on the existing price gouging statute applicable to the offering of goods and services during times of emergency and market disruptions (General Business Law, §396-r), would prohibit selling a drug reported as being subject to a shortage by the U.S. Food and Drug Administration at an unconscionably high price. **(Passed the Assembly)**

#### **Tip Restraint Devices for Clothing Storage Furniture (A.7516-C, Zebrowski)**

According to the Consumer Product Safety Commission, there were 195 fatalities between 2000 and 2016 and 65,200 injuries between 2006 and 2016 related to furniture tipping over. These tragedies often involve young children, as over 86% of reported deaths were under the age of 18, and a majority of those were under the age of 6.

This bill would require retailers of certain furniture with a particular risk of tipping over to maintain in stock and offer for sale tip restraint devices compatible with such furniture. It would also require such retailers to post a notice warning of the dangers of furniture tipping and the efficacy of tip restraint devices. The bill would encourage consumers to purchase and install these inexpensive, yet potentially lifesaving devices, and would help protect our youngest and most vulnerable citizens. **(Passed the Assembly)**

### **Informed Choice Regarding Non-Regulated Children's Camps (A.10123, Abinanti)**

Parents and guardians who enroll their children in camp programs may not be aware that not all camps are required to obtain a permit from the New York State Department of Health (DoH) and therefore are not subject to its regulations. Children's day camps which are either single purpose camps based around one activity or camps which focus on passive activities with no significant risk of injury are not required to be inspected, check their employees against the sex offender registry, maintain minimum staffing ratios, hire medical personnel, or report injuries to DoH.

This bill would require such camps to provide notice of their non-regulated status on application and enrollment forms, on their websites, and at campsites. This information will help make parents and guardians aware that they need to obtain additional information about a non-regulated camp in order to make an informed decision about enrolling their child in such a camp. **(Passed the Assembly)**

### **Prohibiting Remote Disabling of Vehicles Without Prior Notice (A.10160, Pheffer Amato)**

Auto lenders are currently allowed to install devices in cars that serve as both GPS tracking devices and remote ignition disablers. This allows these lenders to track their cars and, if the borrower is delinquent on payments, remotely disable the car. This can present a serious safety issue for borrowers, as there have been reports of consumers' vehicles being disabled while in motion. Additionally a consumer not given prior notice that his or her vehicle was scheduled to be disabled due to nonpayment could drive his or her vehicle to a destination, turn off the vehicle, and then find him or herself stranded away from home due to the disabling of the vehicle.

This bill requires auto lenders to give written notice of the possible disabling of a vehicle to debtors no less than ten days prior to the date on which the lender acquires the right to disable the vehicle. This requirement would help protect consumers without unduly burdening auto lenders. **(Chapter 312 of 2018)**

## **Arbitration**

As mandatory arbitration clauses become more and more commonplace, the Assembly has taken several different approaches to protecting the rights of consumers when entering into contracts for employment or for consumer goods or services. The bills below focus primarily on clear disclosure of the presence of a mandatory arbitration clause in a contract.

### **Prohibiting Mandatory Arbitration Agreements in Consumer/Employment Contracts (A.5240, Dinowitz)**

Questions continue to be raised about the fairness of mandatory arbitration clauses, specifically whether they are inherently biased in favor of businesses at the expense of consumers. Private arbitration companies have a financial incentive to rule in favor of the business that is paying for their services. Studies have shown that private arbiters rule in favor of businesses in over 90 percent of cases.

Given the fundamental questions about the fairness of the arbitration process, this bill would prohibit mandatory arbitration clauses in consumer contracts, certain employment contracts, and insurance contracts in any instance where such contracts are not governed by federal law. This would allow more consumers and employees to have their grievances addressed in a more equitable and less biased manner. **(On Third Reading)**

### **Presentation of Mandatory Arbitration Clauses in Large Print (A.5246, Dinowitz)**

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

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

### **Disclosure of Mandatory Arbitration Clauses in Consumer Contracts (A.5248, Dinowitz)**

Mandatory arbitration clauses have both costs and benefits to society, but many consumers will admit that they do not fully understand the process of arbitration. In fact, arbitration has become

so common in contracts that many consumers have signed an arbitration clause without knowing that they have signed away their right to a court proceeding. It is important that consumers are made aware of the effects of signing an arbitration clause. The intention of this legislation is to ensure that all New Yorkers are capable of making informed decisions regarding how they will be able to dispute a claim when signing contracts for goods and services.

This bill would require that when a contract containing a mandatory arbitration clause is presented to a consumer either in person, through the mail, or electronically, that the representative of the company supervising the execution of the contract disclose to the consumer that the contract contains a mandatory arbitration clause. The business would also be required to explain to a consumer what a mandatory arbitration clause is in the event that the consumer asks for an explanation. This is an attempt to raise awareness of mandatory arbitration clauses to consumers of this state who may not know that they are signing away their right to a fair court proceeding. **(On Third Reading)**

### **III. HEARINGS AND ROUNDTABLES**

#### **Public Hearing on the Practices of the Student Loan Industry**

On November 27, 2018, the Assembly Standing Committee on Consumer Affairs and Protection joined with the Assembly Standing Committee on Banks to gain insight on the student loan industry and determine whether legislative action is necessary to guard students from rising loan debt.

According to a 2016 report by the New York State Comptroller, New York student loan debt is over \$82 billion and growing. Over the past decade, student loan debt in New York has grown by 112%, creating financial challenges for many New Yorkers. With just under 3 million borrowers in New York State, it is clear that the student loan industry has a significant impact on New Yorkers and needs to be examined with greater urgency.

Those presenting testimony at the hearing included Maria Vullo, Superintendent of the New York State Department of Financial Services; Lorelei Salas, Commissioner of the New York City Department of Consumer Affairs; Winfield Criger, Executive Director of the Student Loan Servicing Alliance; Seth Frotman, former Student Loan Ombudsman at the Consumer Financial Protection Bureau; and other attorneys, consumer protection advocates, and experts in the field of student loan servicing.

The Committees received a significant amount of useful and pertinent testimony regarding this industry, and will continue to monitor issues related to student lending in the future and take all necessary and appropriate steps to protect New York's consumers from predatory practices in this area.

#### **IV. OUTLOOK AND GOALS FOR 2019**

The 2019 Legislative Session promises to present many challenges to the Consumer Affairs and Protection Committee.

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 towards enacting strong protections into law 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 the people of the State of New York.

**APPENDIX A**

**CHAPTERS OF 2018**

Chapter 28	Abbate	Relates to licensure of automobile brokers; manufacturers and distributors
Chapter 31	Dinowitz	Relates to the frequency of inspections of articles of bedding
Chapter 39	Titone	Relates to certain contracts
Chapter 108	Morelle	Extends provisions relating to rental vehicle protections
Chapter 109	Morelle	Expands protections afforded to renters of motor vehicles
Chapter 312	Pheffer Amato	Prohibits auto lenders from remotely disabling a vehicle without first giving notice of the disabling to the debtor

**APPENDIX B**

**2018 BILLS PASSED BY THE ASSEMBLY**

A.724-B	Gunther	Relates to the use of voice recognition features on certain products
A.859-A	Braunstein	Bans the use of employer data information
A.946-A	Rozic	Requires wireless telephone companies that offer shared or family plans to allow victims of domestic violence to be released from the account without penalty in instances of domestic violence
A.1401	Zebrowski	Authorizes the attorney general to bring an action for violation of the prohibitions concerning unlawful selling practices and specifies damages awardable
A.2276	Rosenthal	Relates to ultraviolet nail dryers
A.2426-A	Skartados	Prohibits the imposition of any charge or fee on the telephone bill of a consumer when such fee is imposed by a third party, without the consent of the consumer
A.2855	Steck	Defines certain terms in standard form contracts as unconscionable
A.2892-A	Dilan	Relates to the expiration of minutes purchased with prepaid cellular telephone cards
A.3246-B	Brindisi	Relates to home improvement contract provisions
A.3565	Crespo	Prohibits a consumer reporting agency or lender from using an individual's internet viewing history to determine such individual's credit worthiness
A.4345	Galef	Relates to the manufacture and sale of seasonal and decorative lighting products containing lead
A.4903-A	Rosenthal	Requires disclosure by principal creditors and debt collection agencies of the legal obligations of a deceased debtor's family and household members
A.5106	Crespo	Prohibits a consumer reporting agency or lender from using certain information to determine an individual's credit worthiness
A.5228	Dinowitz	Requires publisher of magazine subscriptions to disclose on the billing statement or invoice a customer service telephone number
A.5235	Dinowitz	Prohibits the unauthorized change of a natural gas or electric service provider
A.5270-C	Morelle	Expands protections afforded to renters of motor vehicles



A.5718-B	Skoufis	Prohibits the use of non-disparagement clauses in consumer contracts
A.6767	Cook	Requires persons offering weight loss services to provide notice of certain weight loss and dieting information
A.6960-B	Seawright	Relates to labeling requirements for electric assisted bicycles
A.7087	Crespo	Relates to price gouging of medicine
A.7191-B	Wallace	Prohibits the disclosure of personally identifiable information by an internet service provider without the express written approval of the consumer
A.7516-C	Zebrowski	Enacts "Harper's Law" requiring tip restraint devices on certain furniture
A.8672-B	Buchwald	Relates to fee assessments for security freezes following consumer credit reporting agency data breaches; repealer
A.8695-A	Dinowitz	Relates to requiring a consumer credit reporting agency to offer identity theft prevention and mitigation services in the case of a breach of the security of such agency's system
A.8884-B	Titone	Relates to a notification of a security breach
A.8939	Dinowitz	Relates to the frequency of inspections of articles of bedding
A.8999	Titone	Relates to certain contracts
A.9002	Abbate	Relates to licensure of automobile brokers; manufacturers and distributors
A.10123	Abinanti	Relates to notices pertaining to children's non-regulated camp
A.10160	Pheffer Amato	Prohibits auto lenders from remotely disabling a vehicle without first giving notice of the disabling to the debtor
A.11097	Morelle	Extends provisions relating to rental vehicle protections

APPENDIX C

2018 SUMMARY OF ACTION ON ALL BILLS REFERRED TO  
THE ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION

**TOTAL NUMBER OF COMMITTEE MEETINGS HELD: 5**

	<u>ASSEMBLY</u> <u>BILLS</u>	<u>SENATE</u> <u>BILLS</u>	<u>TOTAL</u> <u>BILLS</u>
<b>BILLS REPORTED FAVORABLE TO:</b>			
Codes	16	0	16
Judiciary	0	0	0
Ways and Means	0	0	0
Rules	4	0	4
Floor	2	0	2
<b>TOTAL</b>	<b>22</b>	<b>0</b>	<b>22</b>

**COMMITTEE ACTION**

Held For Consideration	10	0	10
Defeated	0	0	0
Enacting Clause Stricken	6	0	6
<b>REMAINING IN COMMITTEE</b>	<b>156</b>	<b>4</b>	<b>160</b>

**BILLS REFERENCE CHANGED TO:**

<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>
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