

STATE OF NEW YORK

105

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

January 8, 2025

Introduced by Sens. COMRIE, BAILEY, BRISPORT, BROUK, CLEARE, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KAVANAGH, KRUEGER, LIU, MAY, MAYER, MYRIE, PALUMBO, PARKER, RAMOS, RIVERA, RYAN S, SALAZAR, SANDERS, SEPULVEDA, SERRANO, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to enacting the "Consumer and Small business Protection Act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "Consumer
2 and Small business Protection Act (CSPA)".
3 § 2. Legislative findings and intent. The Legislature declares that
4 the State has a responsibility to protect individuals and businesses
5 within the State from unfair and abusive business acts and practices.
6 The Legislature further declares that the State's law, which guarded
7 only against deceptive business acts and practices, has been insuffi-
8 cient to meet this responsibility and has become out of date as other
9 states' laws provide far greater protections. Consumers and small busi-
10 nesses have long been vulnerable to unscrupulous business practices that
11 are unfair and abusive without being expressly deceptive. The State must
12 not allow bad actors to peddle predatory products and services as long
13 as they are clever enough not to get caught in a lie. To that end, and
14 to better level the playing field for the State's many honest busi-
15 nesses, this legislation defines unfair and abusive acts and practices
16 expansively.
17 The State must also ensure that this protection covers small busi-
18 nesses, which are frequent targets of predatory loans and other forms of
19 exploitation, along with all consumer transactions. This legislation
20 therefore rejects the limitation, imposed by courts, that prohibited

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 conduct be "consumer oriented," have an impact on the public at large,
2 or be part of a broader pattern. Consumers and small businesses are
3 entitled to redress whenever they are harmed by deceptive, unfair, or
4 abusive conduct.

5 Finally, for any of these protections to be meaningful, the State must
6 ensure that the remedies for prohibited conduct provide an effective
7 deterrent. This legislation therefore updates the statutory damages for
8 violations for the first time in decades, from \$50 to \$1,000, and allows
9 meaningful punitive damages for particularly egregious behavior. The
10 Legislature recognizes that unfair, deceptive, and abusive practices
11 have a particular impact on poor individuals, people of color, and those
12 affected by natural disasters and health emergencies, including the
13 COVID-19 pandemic. For this reason, the State must ensure that limited
14 resources not prevent individuals and small businesses from seeking
15 remedies. This legislation therefore opens access to justice by making
16 recovery of attorney's fees mandatory for a prevailing plaintiff and
17 authorizing class actions.

18 § 3. Section 349 of the general business law, as added by chapter 43
19 of the laws of 1970, subdivision (h) as amended by chapter 157 of the
20 laws of 1984, and subdivision (j) as added by section 6 of part HH of
21 chapter 55 of the laws of 2014, is amended to read as follows:

22 § 349. [~~Deceptive acts~~] Prohibited acts and practices unlawful. (a)
23 [~~Deceptive~~] This section prohibits any unfair, deceptive or abusive acts
24 or practices in the conduct of any business, trade or commerce or in the
25 furnishing of any service [~~in this state are hereby declared unlawful~~].

26 (1) For the purposes of this section, an act or practice is unfair
27 when it causes or is likely to cause substantial injury, the injury is
28 not reasonably avoidable, and the injury is not outweighed by counter-
29 vailing benefits.

30 (2) For the purposes of this section, an act or practice is deceptive
31 when the act or practice misleads or is likely to mislead a person and
32 the person's interpretation is reasonable under the circumstances.

33 (3) For the purposes of this section, an act or practice is abusive
34 when:

35 (i) it materially interferes with the ability of a person to under-
36 stand a term or condition of a product or service; or

37 (ii) it takes unreasonable advantage of:

38 (A) a person's lack of understanding of the material risks, costs, or
39 conditions of the product or service;

40 (B) a person's inability to protect such person's interests in select-
41 ing or using a product or service; or

42 (C) a person's reasonable reliance on a person covered by this section
43 to act in such person's interests.

44 (b) Whenever the attorney general shall believe from evidence satis-
45 factory to [~~him~~] such attorney general that any person, firm, corpo-
46 ration or association or agent or employee thereof has engaged in or is
47 about to engage in any of the acts or practices stated to be unfair,
48 unlawful [~~he~~], deceptive or abusive, such attorney general may bring an
49 action in the name and on behalf of the people of the state of New York
50 to enjoin such unlawful acts or practices and to obtain restitution of
51 any moneys or property obtained directly or indirectly by any such
52 unlawful acts or practices. In such action preliminary relief may be
53 granted under article sixty-three of the civil practice law and rules.
54 Such actions may be brought regardless of whether or not the underlying
55 violation is directed at individuals or businesses, is consumer-orient-

1 ed, or involves the offering of goods, services, or property for
2 personal, family or household purposes.

3 (c) Before any violation of this section is sought to be enjoined, the
4 attorney general shall be required to give the person against whom such
5 proceeding is contemplated notice by certified mail and an opportunity
6 to show in writing within five business days after receipt of notice why
7 proceedings should not be instituted against [~~him~~] such person, unless
8 the attorney general shall find, in any case in which [~~he~~] such attorney
9 general seeks preliminary relief, that to give such notice and opportu-
10 nity is not in the public interest.

11 (d) In any such action it shall be a complete defense that the act or
12 practice is, or if in interstate commerce would be, subject to and
13 complies with the rules and regulations of, and the statutes adminis-
14 tered by, the federal trade commission or any official department, divi-
15 sion, commission or agency of the United States as such rules, regu-
16 lations or statutes are interpreted by the federal trade commission or
17 such department, division, commission or agency or the federal courts.

18 (e) Nothing in this section shall apply to any television or radio
19 broadcasting station or to any publisher or printer of a newspaper,
20 magazine or other form of printed advertising, who broadcasts,
21 publishes, or prints the advertisement.

22 (f) In connection with any proposed proceeding under this section, the
23 attorney general is authorized to take proof and make a determination of
24 the relevant facts, and to issue subpoenas in accordance with the civil
25 practice law and rules.

26 (g) This section shall apply to all [~~deceptive~~] prohibited acts [~~or~~]
27 and practices [~~declared to be unlawful~~], whether or not subject to any
28 other law of this state, and shall not supersede, amend or repeal any
29 other law of this state under which the attorney general is authorized
30 to take any action or conduct any inquiry.

31 (h) (1) In addition to the right of action granted to the attorney
32 general pursuant to this section, any person who has been injured by
33 reason of any violation of this section may bring an action in [~~his~~]
34 such person's own name to enjoin such unlawful act or practice, an
35 action to recover [~~his actual damages or fifty dollars, whichever is~~
36 ~~greater, or both such actions~~] one thousand dollars and such person's
37 actual damages, if any, or both such actions. Such actions may be
38 brought regardless of whether or not the underlying violation is consum-
39 er-oriented, has a public impact or involves the offering of goods,
40 services or property for personal, family or household purposes. The
41 court may, in its discretion, increase the award of damages [~~to an~~
42 ~~amount not to exceed three times the actual damages up to one thousand~~
43 ~~dollars,~~] if the court finds the defendant willfully or knowingly
44 violated this section. The court [~~may~~] shall award reasonable attorney's
45 fees and costs to a prevailing plaintiff.

46 [~~(j)~~] (i) For purposes of this section, a "person" is defined as an
47 individual, firm, corporation, partnership, cooperative, association,
48 coalition or any other organization's legal entity, or group of individ-
49 uals however organized;

50 (ii) For purposes of this section "non-profit organization" is defined
51 as an organization that is (A) not an individual; and (B) is neither
52 organized nor operating in whole, or in significant part, for profit;

53 (iii) Given the remedial nature of this section, standing to bring an
54 action under this section, including but not limited to organizational
55 standing and third-party standing, shall be liberally construed and
56 shall be available to the fullest extent otherwise permitted by law.

1 (2) Any individual or non-profit organization entitled to bring an
2 action under this article may, if the prohibited act or practice has
3 caused damage to others similarly situated, bring an action on behalf of
4 such individual or non-profit organization and such others to recover
5 actual, statutory and/or punitive damages or obtain other relief as
6 provided for in this article. Statutory damages under this section will
7 be limited to (i) such amount for each named plaintiff as could be
8 recovered under paragraph one of this subdivision; and (ii) such amount
9 as the court may allow for all other class members without regard to a
10 minimum individual recovery, not to exceed the lesser of one million
11 dollars or two per centum of the net worth of the business. Thus, any
12 action brought under this subdivision shall comply with article nine of
13 the civil practice law and rules.

14 (3) A non-profit organization may bring an action under this section,
15 on behalf of itself or any of its members, or on behalf of those members
16 of the general public who have been injured by reason of any violation
17 of this section, including a violation involving goods or services that
18 the non-profit organization purchased or received in order to test or
19 evaluate qualities pertaining to use for personal, household, or family
20 purposes. A non-profit organization may seek the same remedies and
21 damages that a person may seek under paragraph one of this subdivision.

22 (4) Before any violation of this section is sought to be enjoined, the
23 person bringing the action shall be required to give the person against
24 whom such action is contemplated notice by certified mail, to the place
25 where the transaction occurred or to the principal place of business
26 within the state of the person against whom such action is contemplated,
27 and an opportunity to show in writing within ten business days after
28 mailing of notice why proceedings should not be instituted against such
29 person, unless, in any case in which the person seeks preliminary
30 relief, the giving of such notice and opportunity would cause immediate
31 and irreparable injury, loss or damages.

32 (i) Notwithstanding any law to the contrary, all monies recovered or
33 obtained under this article by a state agency or state official or
34 employee acting in their official capacity shall be subject to subdivi-
35 sion eleven of section four of the state finance law.

36 (j) This section is intended to expand and not take away existing
37 consumer rights.

38 § 4. This act shall take effect on the sixtieth day after it shall
39 have become a law.