IT’S TIME FOR NEW YORK TO PUT THE “U” IN “UDAP”:

MEMORANDUM IN SUPPORT OF A.679/S.2407

BILL NUMBER: A.679 / S.2407

SPONSOR: Assemblymember Yuh-Line Niou / Senator Leroy Comrie

TITLE OF BILL: “Relates to standing for persons affected by prohibited or unlawful business practices and expands prohibited acts to include unfair, unlawful, deceptive or abusive acts.”

STATEMENT OF SUPPORT: The National Association of Consumer Advocates (NACA) supports A.679/S.2407, which will bring New York State in line with the majority of states in banning unscrupulous business conduct that is not necessarily deceptive. The bill expands General Business Law § 349’s prohibition to include unfair, unlawful, and abusive business acts and practices, providing vital protections to consumers and honest businesses.

NACA is a nonprofit association of more than 1,500 attorneys and consumer advocates committed to representing the interests of consumers. Our members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. They have represented hundreds of thousands of consumers victimized by fraudulent, abusive, and predatory business practices. NACA’s mission is to promote a fair and open marketplace that protects the rights of consumers, particularly those of modest means.

New York State has long been a leader on consumer protection, but when it comes to our deceptive business practices statute, we lag far behind. Although groundbreaking when it was enacted in 1970, General Business Law § 349 is now limited and outdated. Since its passage, 39 states and the federal government have raised the bar with more expansive prohibitions.

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1 GBL § 349’s language was purposefully broad “to include all economic activity” and contend with evolving and unforeseeable practices that could potentially harm consumers. NYS Bar Association: A Proposed New State Law Making Deceptive Acts or Practices Unlawful, 1968 N.Y. St. B.A. Antitrust L. Symp. 114, 121 (CCH ed.); see N.Y. Dept. of Law, Mem to Governor, 1963 N.Y. LEGIS. ANN. at 105. It was recommended to “get[] at the root of the problem of unfair competition, which takes many more forms and reaches many more aspects of business operations” than what was already covered by existing laws. NYS Bar Association: in Support of its Report Dated Dec. 31, 1967 Proposing a New State Law Making Deceptive Acts or Practices Unlawful, 1970 N.Y. St. B.A. ANTITRUST L. SYMP. 71, 91-93 (CCH ed. 1970).
Without a ban on unfair, unlawful, and abusive acts and practices, bad actors can avoid consequences for taking advantage of consumers as long as they are smart enough not to expressly lie to them. As a result, honest companies are at a competitive disadvantage for treating their customers fairly.

For example, a debt collector should not be allowed to seize and refuse to return an elderly person’s social security even though it is exempt from collection, just because they are honest about their misconduct. On a broader scale, New Yorkers should be protected from companies like Equifax that recklessly expose their personal information to theft. But these acts are not currently banned by New York’s statute.

In addition, the proposed amendment would codify standing for non-profit organizations with relevant missions to represent the interests of consumers at large, enabling more vigorous defense of consumer rights while conserving scarce government resources.

For example, under DC’s Consumer Protection Procedures Act, non-profit organizations have broad standing to sue as “private attorneys general” on behalf of the general public. In Organic Consumers Association v. General Mills, Inc., three non-profit organizations sued General Mills for misleading consumers about the presence of harmful chemicals in its “natural” granola bar products.

**Now is the time for New York to catch up to speed.** Passing A.679/S.2407 will:

- Expand prohibited acts to include “unfair, unlawful, and abusive,” defining these terms as well as the term “deceptive.”
- Eliminate the judicial requirement of consumer-oriented conduct.
- Raise the fine to $2,000 and let courts set damages for willful or knowing violations.
- Make attorney’s fees mandatory, not discretionary, and includes costs.
- Repeal GBL § 349(d) concerning federal preemption as redundant.
- Permit class actions for actual, statutory, and punitive damages.
- Codify current law on organizational and third-party standing, and establish standing for individuals and organizations that test products and services for compliance.

As the federal government spurns its responsibility to protect consumers by weakening the Consumer Financial Protection Bureau, New Yorkers are looking to their State Legislature to prevent another financial crisis caused by unscrupulous and unwatched businesses.

**NACA urges you to support A.679/S.2407, and protect New Yorkers from unfair, unlawful, and abusive business acts and practices.**

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