



May 15, 2024

Dear Governor Hochul and Members of the New York State Legislature:

We, the undersigned business advocates and associations representing nearly every aspect of New York's economy, write to express our strong opposition to S.795 (Comrie) / A.7138 (Weinstein), a potentially disastrous bill which proposes to amend and dramatically expand the General Business Law (GBL), the state's consumer protection statute. Ironically, the proposal, marketed as the Consumer and Small business Protection Act, is likely to harm both consumers and our local businesses.

While we share a commitment to protecting consumers and supporting small businesses, we believe that this proposal, as currently drafted, risks serious unintended consequences that could harm the very businesses and residents it seeks to assist.

The inclusion of "unfair" and "abusive" practices in the general business law, coupled with the nearly 2000% increase in statutory damages and the mandate for courts to award attorney's fees threatens to dramatically increase extortionate litigation. The expansion proposed here is overly broad and relies heavily on subjective interpretations. This could lead to a surge in lawsuits against businesses of all sizes. Our concern is not just hypothetical. Research indicates that there continues to be a significant rise in consumer class action filings in New York's federal courts, a trend that will almost certainly intensify if these amendments are enacted.

New Yorkers already face the highest risk of litigation and the highest litigation costs. This proposal will make the Empire State even more litigious, burdening companies with increased risk of catastrophic liability. While the bill purports to offer remedies to small businesses, local firms already have a vast body of contract law to protect against misrepresentations and unfair practices. The potential for excessive damages and increased litigation costs will not only harm these businesses but lead to higher prices for consumers. This is particularly concerning for small businesses that operate on narrow margins and are still recovering from the economic impact of the pandemic.

Furthermore, the bill supersedes the discretion of the Office of Attorney General, transferring significant power to private lawyers who stand to benefit financially from increased filings and windfall payouts. Rather than unleashing a torrent of speculative lawsuits, we propose a more targeted approach that focuses on genuinely harmful practices without opening the floodgates to opportunistic litigation. This could include refining the definitions of "unfair" and "abusive" practices to be more specific and objective, capping statutory damages at a more reasonable level, and reconsidering the mandatory awarding of attorney's fees and costs, which incentivizes litigation over resolution.

Our suggestion also includes codifying in the consumer protection law that statutory damages do not apply in class actions, a step that aligns with the Legislature's intent as expressed in CPLR § 901(b). The Legislature never intended for minimum statutory damages to be applied in the class action context and enacted CPLR § 901(b) to expressly prohibit the combination of these remedies. Unfortunately, the US Supreme Court's *Shady Grove* decision nullified the application of the CPLR in federal courts. In *Shady Grove*, Justice Ruth Bader Ginsberg sharply dissented writing that the Court's majority holding "would make federal courts a mecca for [...] claims that would have been barred from class treatment in the State's own courts." Indeed, as Justice Ginsberg noted, what might otherwise have been a \$500 case now has the potential for a \$5 million award.

We commend efforts by Gov. Hochul and the Legislature to protect consumers and support small businesses, but the current bill and the proposed amendments could lead to a catastrophic surge in litigation and create an environment that is more hostile to business operations, particularly for small enterprises. **We urge you to reject this bill and work towards a solution that truly balances the needs of protecting consumers without unduly burdening businesses and the state's economy.**

Thank you for considering our views on this critical issue. We are committed to a constructive dialogue and are willing to work collaboratively towards a solution that benefits all stakeholders.

Sincerely,

American Property Casualty Insurance Association
Bronx Chamber of Commerce
Brooklyn Chamber of Commerce
Buffalo Niagara Partnership
Business Council of Westchester
Capital Region Chamber
Chamber Alliance of New York State
Financial Services Institute
Food Industry Alliance of New York State

Greater Binghamton Chamber of Commerce
Greater Rochester Chamber
Lawsuit Reform Alliance of New York
Life Insurance Council of New York
Long Island Association
Long Island African American Chamber of Commerce
National Federation of Independent Business/NY
New York Bankers Association
New York Health Plan Association
New York Insurance Association
New York Restaurant Association
New York State Creditors Bar Association
New York State Farm Bureau
Northeastern Retail Lumber Association
Partnership for New York City
Queens Chamber of Commerce
Retail Council of New York State
Rockland Business Association
Securities Industry and Financial Markets Association
SKI NY
The Big I
The Business Council of New York State
Upstate United