



TO: Vedat Gashi, Chair of the Board Legislators, 4th District
Sunday Vanderberg, Clerk of the Board of Legislators

FROM: David Imamura, Legislator 12th District
Colin Smith, Legislator, 1st District

DATE: May 05, 2025

RE: The adoption of a LOCAL LAW amending the County of Westchester
Consumer Protection Code

Please place the attached proposal to recommend the adoption of a LOCAL LAW amending the County of Westchester Consumer Protection Code, on the agenda for the May 05, 2025 meeting of the Westchester County Board of Legislators so that it may be referred to the appropriate committees.

Thank you.

cc: Marcello Figueroa, Legislative Director
Dylan Tragni, Chief of Staff

TO: BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends the adoption of "A LOCAL LAW amending the County of Westchester Consumer Protection Code."

Your Committee is advised that the Consumer Protection Code (the "Code") was enacted in 1975, together with subsequent amendments, to establish an Office of Consumer Protection for the protection of all consumers in the County of Westchester, to establish just and uniform enforcement procedures, and to provide a method of administering all consumer complaints. Since that time, the Code has protected Westchester County residents from merchants engaging in deceptive or unconscionable trade practices, as defined by the Code, to ensure a level playing field between merchants and consumers.

Your Committee is further advised, for example, the Code prohibits a merchant from using false or misleading statements of fact to encourage a consumer to do business with that merchant, mandates clearly stamped or tagged pricing and expiration dates for perishable food, requires the posting of a merchant's refund or exchange policy, requires provision of an easily accessible scale for pre-packaged foods and produce, provides for a cap on charges for towing a vehicle less than a mile, as well as other protections regarding consumer products and services. The Code also prohibits unconscionable trade practices in regards to the sale, lease, or rental of goods, products, or services, which seeks to take unfair advantage of a consumer.

Your Committee is informed that, in the twenty-first century, law-breakers have become more innovative in the ways in which they seek to take advantage of consumers. In response, the federal government in 2010, enacted a law prohibiting abusive conduct, in addition to deceptive practices, in the wake of the financial crises in 2007-08. Moreover, last year, New York State Governor Kathy Hochul unveiled her proposal to strengthen protections for consumers against unfair and abusive business practices, while noting that New York remains one of only eight states in the nation whose law fails to protect against such practices. While the County prohibits deceptive and unfair practices in the consumer industry, we believe that it is necessary for our local law to go further and also ban abusive practices to keep current with federal and state authorities.

You Committee is further informed that, according to Title 12, Section 5531 of the Federal Consumer Financial Protection Act, abusive practices concern situations where a merchant:

(1) materially interferes with the ability of a consumer to understand a term of condition of a product; or (2) takes unreasonable advantage of (i) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service, (ii) the inability of the consumer to protect their interests in selecting or using a consumer product or services, or (iii) the reasonable reliance by the consumer on a merchant to act in the interest of the consumer.

According to guidance issued by the Federal Consumer Financial Agency, materially interfering may include actions that obscure, withhold, de-emphasize, render confusing, or hide information relevant to the ability of the consumer to understand terms and conditions. Evaluating whether a merchant is taking unreasonable advantage of a consumer involves an evaluation of the facts and circumstances to determine whether a particular transaction was unreasonable under the circumstances—in other words, a merchant should not receive a windfall due to a gap in understanding of the consumer, unequal bargaining power, or a consumer's reliance on a merchant to act in the consumer's best interest.

Your Committee notes that interference can take numerous forms, such as buried disclosures, physical or digital interference, overshadowing, and various other means of manipulating consumers' understanding. Taking unreasonable advantage of a consumer, for example, occurs when there are gaps in understanding which affect the consumer's decision in regards to the product or service, unequal bargaining power where a consumer lacks the practical ability to switch providers, seek more favorable terms, or make other decisions to protect their interests. In addition, interference may also include a consumer's reasonable reliance on a merchant to make a decision for them or advise them on how to make a decision where such merchant has communicated to the public that they will act in their best interest.

Your Committee further notes that the proposed amendments to the Code would close the gap between the deceptive acts and practices, against which the Code already protects, and abusive and unfair acts and practices referenced above. The proposed amendments would seek to ensure that there is no gap in understanding between a merchant and consumer as to the material terms or conditions of a product or service, that a consumer can adequately protect their own interest despite unequal bargaining power between a merchant and a consumer, and that a consumer may reasonably rely on a merchant who holds themselves out as acting in the best interest of consumers.

Your Committee further notes that the proposed amendments work to update the Code, recognizing the experience gained by the Office in the last several years in regards to enforcement and the changes within the field of consumer protection. For example, the proposed amendments strengthen the Office's ability to enforce the Code, by authorizing the Office to promulgate rules and regulations to streamline the process for enforcement (currently, the Code allows for rules and

regulations in some areas and not others), raising the minimum and maximum penalties for violations, and closing gaps in regulation—the goal being to deter violations and, alternatively, have the ability to seek redress for consumers. The proposed amendments also modernize the Code’s existing language in recognition of the changes within the consumer protection industry.

Your Committee is advised that the proposed amendments do not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 8, 2025, which is on file with the Clerk of the Board of Legislators.

Your Committee recommends adoption of this Local Law.

Dated: _____, 2025
White Plains, New York

COMMITTEE ON

RESOLUTION NO. ____ - 2025

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2025, entitled, "A LOCAL LAW amending the Westchester County Consumer Protection Code." The public hearing will be held at ____m. on the ____ day of _____, 2025 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.