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Memorandum of Support

Make NY's Unfair Deceptive Acts And Practices Laws Fair Amend New York General Business Law Section 349 (A.679/S.2407)

Empire Justice Center strongly supports A.679(Niou)/S.2407(Comrie) which amends New York General Business Law, section 349, in relation to standing for persons affected by prohibited or unlawful business practices.

This bill is very important because it strengthens and brings New York in line with a majority of states' laws generally referred to as unfair deceptive acts and practices, or "UDAP" statutes. While New York has long been a leader in providing consumer protections and prohibiting specific conduct in many areas of law, NY General Business Law section 349 has fallen woefully short of protecting New Yorkers generally from nefarious business practices. One of the weakest aspects of our law as compared to other states is that it has lacked an "unfair" standard. Case law which has evolved has interpreted deceptive to mean that the complainant need prove intent to deceive more than one individual. A.679/S.2407 puts the "U" in New York's UDAP statute.

Most importantly, the bill adds to the statute a prohibition of "unfair, unlawful, deceptive or abusive" acts or practices by businesses. The bill provides clear, common sense definitions for what is considered unfair, unlawful, deceptive and abusive conduct. The bill also increases very outdated damage awards from fifty dollars to two thousand dollars per violation, and mandates the award of attorneys' fees and costs to a prevailing plaintiff. A.679/S.2407 also enhances the ability of organizations to bring claims on behalf of itself or its members and makes technical fixes to the current gender-specific language of the law, referring to the Attorney General as "him."

NY GBL sec. 349 applies to the "acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service." The law has considerable applicability, across a great number of different fields, and a many of Empire Justice's areas of practice. To name just a few examples, the bill would prohibit unfair, unlawful, deceptive and abusive practices in mortgage lending and servicing, debt collection, rent to own transactions, automobile sales and

financing, student lending and servicing, higher education instruction, insurance practices, health care services, landlord conduct, and negligence by the financial services industry such as recent data breaches and the creation of false accounts and wrongful foreclosures.

There are many actions today by industries that are not specifically prohibited by law, but which are unfair and abusive to consumers. Scams, misconduct, and targeting changes and evolves over time and though it is impossible for New York State to keep up with prohibiting every unfair practice to come along. This bill and the amendments to New York's UDAP statute provides a critical protection for consumers against ever-evolving business practices and scammers nefarious conduct.

For these reasons, Empire Justice strongly support A.679/S2407 and urges the New York State Legislature to pass these overdue amendments this session.

This memorandum was prepared by:

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May 2019