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## MEMORANDUM IN OPPOSITION

February 8, 2010

**S4893 Nozzolio (ON SENATE CALENDAR #77)  
A637 Dinowitz (Assembly Governmental Operations Committee)**

***AN ACT to amend the executive law, in relation to prohibiting any negative impact on a crime victim's credit rating from a lien created under section 634 of such law***

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association. The Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 250,000 New Yorkers and hold more than \$9 trillion in assets.

This legislation is unnecessary, would add significantly to the cost of consumer credit and would unfairly impose new costs and burdens on credit grantors as a result of weaknesses in the New York crime victim's compensation system.

Under current law, thousands of crime victims who receive awards from the Crime Victim's Board are penalized by having liens placed on their homes. Designed to protect the State against the possibility that the crime victims will not repay the amount of the award in the handful of cases when the victim is successful in recovering damages from his or her attacker, the liens remain as blots on the consumers' title to real property in perpetuity. As measured against the likelihood of repayment, the cost and inconvenience of the lien is disproportionate to any benefit to the state.

This legislation would compound the unfairness of the current system by imposing on title attorneys, title insurers, lenders and credit reporting agencies the cost of distinguishing and disregarding liens in favor of the Crime Victims' Board from all other liens. And, just as other liens may be exercised to affect the value of the collateral, liens by the Crime Victims' Board, existing without time limitation, can legitimately reduce the net worth of consumers.

A more appropriate response, we believe, to the need to protect the fiscal integrity of the crime victims' compensation process, would be to amend the CPLR to mandate that civil awards to crime victims from their attackers be subject to attachment in favor of the State of New York to the extent of the value of any awards provided by the State to the victim. Plaintiffs' attorneys, who are officers of the court, could be required to determine prior to subjecting the defendant's assets to an attachment, whether their clients received an award from the State, the amount of the award, and the assets of the defendant necessary to repay the award prior to the balance of the court-ordered judgment being provided to the victim. Such a procedure would be fairer than the current system because it would relieve the many thousands of crime victims who never receive any compensation from their victimizers of the cost, inconvenience and potential embarrassment of a lien on their property.

For these reasons, the New York Bankers Association *opposes* this legislation and urges that it be held.

**Respectfully Submitted,**

**WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**