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Complex Disputes Alert

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New York's FAIR Business Practices Act revamps consumer protection law

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Businesses and nonprofits operating in New York should prepare to comply with recently enacted consumer protection measures.



What's the impact?

- New York's FAIR Act bans unfair and abusive business practices, expanding beyond just deceptive acts, which may lead to an uptick in attorney general enforcement and private litigation.
- The law now covers business-to-business and nonprofit disputes in addition to consumer matters.
- Recent hiring in the NYAG's office coupled with the law's provision of broader enforcement powers may signal increased scrutiny and the need for robust, proactive compliance strategies.

The New York Legislature has passed the first major overhaul of the state's consumer protection law in more than forty-five years. New York Governor Kathy Hochul has until mid-July 2025 to decide whether to sign the bill. The revamped law—known as the "Fostering Affordability and

Integrity through Reasonable Business Practices Act” (FAIR Act)¹—would significantly alter the landscape for consumers and businesses in New York State. In particular, the FAIR Act:

- / creates liability for the first time for “unfair” and “abusive” acts and practices,
- / abrogates case law limiting the scope of the statute to allegedly consumer-oriented deception,
- / expands the enforcement authority of the New York attorney general to cover allegedly unlawful acts and practices against businesses and nonprofits, and
- / may lead to an increase in the volume of enforcement and private litigation.

The law’s passage had been championed by New York Attorney General Letitia James who has recently sought to position her office as a counterweight to the federal retreat in the areas of consumer protection and unlawful business practices.

New York catches up with modern consumer protection law

Prior to the FAIR Act, New York’s consumer protection statute was among the least stringent in the nation. GBL § 349 had a limited reach, prohibiting only “deceptive” acts and practices. Courts had further limited the scope of the statute to cover only “consumer-oriented” acts, meaning those directed to the general public and not arising in the context of a private agreement or course of dealing.² The FAIR Act, however, takes its place among the more robust consumer protection statutes, and businesses should consider taking note of several important changes and innovations.

FAIR Act prohibits unfair and abusive acts and practices

For the first time, New York law prohibits unfair and abusive acts and practices. The FAIR Act grants the New York attorney general authority to institute enforcement proceedings to remedy allegedly unfair, deceptive, or abusive acts and practices by a business against individual consumers, businesses, or nonprofit organizations. The Fair ACT definitions of “unfair” and “abusive” are based on the corresponding definitions in the federal Consumer Financial Protection Act (CFPA), expanding the scope of those terms to prohibit unfair and abusive conduct toward businesses as well as individuals.³

Accordingly, the FAIR Act states that an act or practice may be considered “unfair” when it “causes or is likely to cause substantial injury that is not reasonably avoidable and is not

¹ N.Y. Gen. Bus. Law §§ 348, et seq.

² *Oswego Laborers’ Local 214 Pension Fund v. Marine Midland Bank, N.A.*, 85 N.Y.2d 20, 25 (1995).

³ 12 U.S.C. § 5531(c)-(d).

outweighed by countervailing benefits to consumers or to competition.” An act or practice may be considered “abusive” when it “materially interferes with the ability of a person to understand a term or condition of a product or service, or where it takes unreasonable advantage of (a) a lack of understanding on the part of a person of the material risks, costs, or conditions of a product or service; (b) the inability of a person to protect such person’s interests in selecting or using a product or service; or (c) the reasonable reliance by a person on a person engaging in the act or practice to act in the relying person’s interests.”

For reference, under the unfair and abusive prongs of the CFPA, the federal Consumer Financial Protection Bureau (CFPB) took an aggressively broad view of its authority by, for example, seeking to regulate depository banks’ practices in opening checking and savings accounts and to dictate that lenders must demonstrate an understanding of how third-party appraisal algorithms operate. And while the CFPB’s authority extends to entities and affiliates offering consumer financial products or services, the FAIR Act purports to apply to “any person conducting any business, trade, or commerce or furnishing a service,” and thus its scope is not limited to the financial services industry. Further, the scope of the reasonable reliance subpart of the CFPA’s abusive prong has been heavily litigated, and the scope of the analogous language in the FAIR Act may also face significant litigation before its parameters are clearly defined.

FAIR Act authorizes attorney general enforcement

The New York attorney general may enforce the Act against unlawful acts and practices directed to businesses and nonprofits as well as to individuals. While the former iteration of GBL § 349 was limited to protecting individuals, the FAIR Act authorizes the New York attorney general to bring enforcement suits on behalf of businesses and nonprofits in addition to individual consumers. The preamble to the bill states that “[t]here is no reason to believe that a small business or nonprofit is any better able to defend itself from unfair, abusive, and deceptive conduct than a consumer, or that small entities need the protections of this article any less than individuals do.”

FAIR Act purports to have extra-territorial reach

The FAIR Act purports to authorize the New York attorney general to enforce any violation of the Act by (1) “any person conducting any business, trade, or commerce or furnishing a service,” in New York regardless of where the person is located, and (2) any business in New York, regardless of whether the allegedly unlawful act or practice was directed to an individual or business in a state other than New York. These provisions may raise questions about the authority of the New York legislature to provide relief to non-New York residents through the enforcement powers of the state attorney general. Defendants may also have a basis to challenge suits concerning out-of-state parties or activities on jurisdictional grounds.

The FAIR Act disposes of judicially imposed limitations of its scope

With respect to enforcement actions by the New York attorney general, the FAIR Act abrogates the prior judicially imposed limitations on GBL § 349. Courts had held that § 349 suits could only obtain redress for unlawful acts that supposedly impacted consumers generally. That limitation effectively barred suits concerning one-off private disagreements over a contractual or business relationship. The FAIR Act states that “[a]n act or practice made unlawful by this section is actionable by the attorney general regardless of whether or not that act, or practice is consumer-oriented.”

NYAG’s office boosts its roster

The New York Attorney General’s Office has hired a number of former CFPB attorneys, including Christopher D’Angelo the former Associate Director, Supervision, Enforcement and Fair Lending at the CFPB. Mr. D’Angelo is now the Chief Deputy Attorney General for Economic Justice in the New York Attorney General’s Office. Additionally, New York Attorney General Letitia James has recently expressed that her office will seek to step into the shoes of the CFPB, which has faced a curtailment of activity under the second Trump administration.

How to comply with New York’s FAIR Act

The FAIR Act would provide the New York attorney general with an expansive enforcement mechanism, at least with respect to activities within the attorney general’s jurisdiction. Entities doing business in New York and businesses based in New York should consider consulting their counsel about the impact of the FAIR Act on business practices and for advice on compliance with the scope of the revamped statute. Businesses’ counsel and industry groups may also want to consider seeking declaratory relief regarding the permissibility of the jurisdictional reach of the Act and the precise meaning of the Act’s language to provide clarity for compliance.

Nixon Peabody will continue to monitor FAIR Act developments as they occur. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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