

Governor Hochul Signs New York FAIR Business Practices Act, Greatly Enhancing Attorney General Enforcement Authority

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On December 19, 2025, approximately six months after its approval by the New York State Legislature, Governor Kathy Hochul signed the Fostering Affordability and Integrity Through Reasonable Business Practices Act (the “FAIR Business Practices Act”) into law as Chapter 708 of the 2025 Session Laws. The FAIR Business Practices Act greatly enhances the Attorney General’s enforcement authority by expanding its scope to include unfair and abusive acts and practices.

In connection with her approval of the FAIR Business Practices Act, Governor Hochul issued an Approval Memorandum stating that she had reached an agreement with the Legislature to enact changes required to: (i) “ensure that the bill does not override existing case law concerning the ‘consumer oriented standard’”; and (ii) clarify that the private right of action . . . applies only to deceptive practices and deceptive acts, with the Attorney General solely having the power to bring claims for unfair and abusive acts and practices, with such terms defined and to be interpreted in a manner consistent with federal law.”^[1]

Even with the agreed-upon changes summarized in the Approval Memorandum, the FAIR Business Practices Act will expand in several significant respects the enforcement authority of the Attorney General under the New York State consumer protection law proscribing deceptive acts and practices. Most notably, the FAIR Business Practices Act enhances the enforcement authority of the Attorney General in the following ways:

- Adding authority to bring actions based on “unfair” and “abusive” acts and practices
- As with the existing deception authority, the new unfairness and abusiveness authority is not limited to acts and practices relating to consumer financial products and services
- Adding language authorizing the Attorney General to bring actions against New York businesses based on acts affecting non-New York residents, and against non-New York businesses based on acts affecting New

York residents

- Adding language authorizing the Attorney General to bring a “proceeding” pursuant to the statute. According to the sponsor’s memorandum, this language “clarifies that the Attorney General may enforce the statute by plenary action or by using more efficient Article 4 special court proceedings, the Attorney General is already authorized to use under Executive Law § 63(12), among other statutes.”

Enhancements of the Attorney General’s Enforcement Authority

New State Proscriptions Against “Unfair” and “Abusive” Acts and Practices

Codified in Article 22-A of the New York General Business Law, the deceptive practices statute is a generic consumer protection law that is commonly referred to as a “mini-FTC Act” or a “state UDAP statute.” It was enacted in 1970 to enable private parties and the state attorney general to challenge deceptive acts and practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in the State of New York. Unlike Section 5 of the Federal Trade Commission Act (the “FTC Act”) and the mini-FTC Acts of many states, it did not also proscribe unfair acts and practices, likely because of concerns regarding the lack of a consensus definition of “unfairness” under the FTC Act.

Congress eventually added a statutory definition of “unfairness” to Section 5 of the FTC Act in 1984. See 15 U.S.C. § 45(n). For decades thereafter, the unfairness and deception proscriptions under the FTC Act were thought to provide an adequate level of generic consumer protection at the federal level.

In the aftermath of the financial crisis of 2008, Section 1031 of the Consumer Financial Protection Act of 2010 (the “CFPA”) was enacted to authorize the CFPB to use its enforcement authorities to prevent a covered person from committing or engaging in an unfair, deceptive, or abusive act or practice in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. § 5531(a). Thus was born the acronym “UDAAP” with the additional “A” denoting a new type of unlawful act or practice, namely one that was “abusive.”

In the waning days of the Biden Administration, the CFPB issued a report recommending that states strengthen their mini-FTC Acts by adding an “abusiveness” proscription to existing proscriptions against unfairness and deception. See CFPB, *Strengthening State-Level Consumer Protections* (Jan. 2025). Additionally, the CFPB previously lobbied the Governor of New York to expand the scope of the New York deceptive practices statute to include proscriptions against “unfair” and “abusive” acts and practices and to eliminate a consumer-oriented limitation on the deceptive acts and practices that were actionable. *Letter to Gov. Hochul from Brian Shearer, CFPB Office of Policy Planning & Strategy* (Mar. 11, 2024).

The FAIR Business Practices Act adopts those CFPB recommendations, amending Section 349(a) of the General Business Law to add “unfair” and “abusive” acts and practices to the existing proscription against deceptive acts

and practices. In doing so, it added the following definitions of “unfairness” and “abusiveness” to Section 349(a) of the General Business Law:

- An act or practice is “unfair” if it causes (or is likely to cause) substantial injury that is not reasonably avoidable and not outweighed by countervailing benefits to consumers or to competition. The term “substantial injury” has the same meaning as used in interpreting Section 5 of the FTC Act. Although the legislation signed by the Governor further provided that “the substantial injury of a person or persons other than consumers shall also be a ‘substantial injury’ for purposes of” N.Y. Gen. Bus. Law § 349, the Approval Memorandum says that the agreed-upon changes to the FAIR Business Practices Act will clarify that an unfair act or practice will be defined and interpreted “in a manner consistent with federal law.”

While it remains to be seen precisely how that clarification will be made, this statement suggests at a minimum that the legislative bill drafted to implement the agreed upon changes likely will delete the following provision from the state unfairness standard because it has no counterpart in the federal unfairness standard: “provided that the substantial injury of a person or persons other than consumers shall also be deemed a ‘substantial’ injury for purposes of this section.”^[2] See 15 U.S.C. § 45(n); 12 U.S.C. § 5531(c).

- An act or practice is “abusive” if it: (i) materially interferes with a person’s ability to understand a term or condition of a product or service; or (ii) takes unreasonable advantage of (a) a lack of understanding by a person of the material risks, costs, or conditions of a product or service, (b) the inability of a person to protect their interests in selecting a product or service, or (c) a person’s reasonable reliance that the person engaging in the act or practice is acting in their interest.

Breadth of Coverage and Enforcement Authority Limitation

Unlike the CFPA “abusiveness” and “unfairness” proscriptions, the counterpart FAIR Business Practices Act proscriptions are not limited to acts and practices relating to consumer financial products or services. That is undoubtedly by design because the existing law is a generic consumer protection law that is a state analogue to Section 5 of the FTC Act.

Additionally, the FAIR Business Practices Act “unfairness” and “abusiveness” standards in the bill signed by the Governor refer, respectively, to injury to “a person or persons other than a consumer” and to a “person” rather than a “consumer.” Conversely, the federal “unfairness” and “abusiveness” standards refer, respectively, to a “substantial injury to consumers which is not reasonably avoidable by consumers” and to certain abusive acts or practices that impact “a consumer” or “the consumer.” See 15 U.S.C. § 45(n); 12 U.S.C. §§ 5531(c)(1), (d)(1), (2). It remains to be seen whether and, if so, how these differences will be addressed by the clarifying amendments deemed to be necessary.

Notably, only the Attorney General is authorized to proceed against a person with respect to an unfair or abusive act or practice. Private parties remain limited to bringing an action or proceeding for deceptive acts and practices.

Although this limitation was evident in the bill signed by Governor Hochul, the Approval Memorandum indicates that the agreed-upon changes will further clarify this limitation for the avoidance of doubt.

Additional Enhancements of Attorney General Enforcement Authority

The FAIR Business Practices Act also significantly expands the enforcement authority of the Attorney General in the following respects.

- **Extraterritorial Scope:** Section 349(a) of the General Business Law provides that the unlawful acts and practices proscribed thereby are those that occur “in the conduct of any business, trade or commerce or in the furnishing of any service *in this state*.”

The FAIR Business Practices Act states that the attorney general may bring an action or proceeding against any person conducting any business, trade, or commerce or furnishing a service “*in this state, whether or not the person is without the state.*” N.Y. Gen. Bus. Law § 349(b)(2). Conversely, the attorney general may bring an action or proceeding against any person “*within the state* conducting a business, commerce, or trade or furnishing any service, whether or not the business, trade, commerce, or service is conducted or furnished *without the state.*” *Id.*

According to the sponsor’s supporting memorandum, these amendments “reaffirm[] the Attorney General’s authority to enforce the law against New York businesses that victimize non-New York residents, and non-New York businesses that victimize New Yorkers . . .” N.Y.S. 8416, *New York State Senate Introducer’s Memorandum in Support*, at 5.

- **Enforcement by Plenary Action or Special Proceeding:** The FAIR Business Practices Act clarifies that the Attorney General may enforce the statute either by a plenary action “or by using more efficient Article 4 special court proceedings that the Attorney General is already authorized to use under” Section 63(12) of the Executive Law. N.Y.S. 8416, *New York State Senate Introducer’s Memorandum in Support*, at 5.

The FAIR Business Practices Act, signed by the Governor, provides that “an act or practice made unlawful by [Section 349 of the General Business Law] is actionable by the attorney general regardless of whether or not that act or practice is consumer-oriented.” N.Y. Gen. Bus. Law § 349(b)(3). This amendment was intended to “eliminate atextual exceptions imposed by courts . . . that have limited the attorney general’s power to enforce the statute to acts that are ‘consumer-oriented’ or that have an impact on the public at large.” *Id.* § 348; see, e.g., *Genesco Entertainment v. Koch*, 593 F. Supp. 743, 752-53 (S.D.N.Y. 1984); *Oswego Laborers Loc. 214 Pension Fund v. Marine Midland Bank, N.A.*, 85 N.Y.2d 20, 25-26 (1995).

Notably, however, the elimination of the requirement that the conduct challenged by the Attorney General be “consumer-oriented” in nature apparently generated significant opposition while the bill was awaiting executive action. As a result, the Approval Memorandum issued by the Governor states that “changes were necessary to

ensure that the bill does not override existing case law concerning the ‘consumer-oriented standard.’” The implementation of this change likely will require the repeal of Section 349(b)(3) of the General Business Law as added by the bill signed by the Governor and an amendment to or repeal of Section 348, which references the elimination of the “consumer-oriented” conduct standard and an expansion of the statute to include “businesses and non-profits as well as individuals.”

Impact of the FAIR Business Practices Act

The FAIR Business Practices Act will take effect 60 days after Governor Hochul signed it into law. While it does not affect the private right of action for deceptive acts and practices, it greatly expands and enhances the enforcement authority of the Attorney General under N.Y. Gen. Bus. Law § 349 at a time of significantly diminished UDAAP enforcement by the CFPB.

State attorneys general have federal UDAAP enforcement authority under Section 1042 of the CFPB, but that authority is limited to consumer financial products or services. Moreover, the CFPB has issued (and subsequently withdrawn) conflicting policy statements regarding the abusiveness jurisdiction of the CFPB and when it should be invoked.^[3] The FAIR Business Practices Act affords the Office of the Attorney General the opportunity to adopt its own perspective and policy on the use of its abusiveness jurisdiction, which likely would be comparable to that adopted by the CFPB under former Director Chopra.

In a press release heralding the signing of the FAIR Business Practices Act into law, New York Attorney General Letitia James provided the following examples of unfair and abusive acts that she believes the new law will address:

- Student loan servicers that steer borrowers into the most expensive repayment plans;
- Car dealers that refuse to return a customer’s photo ID until a deal is finalized and charge for add-on warranties that the customer did not actually purchase;
- Nursing homes that routinely sue relatives of deceased residents for their unpaid bills, despite not having any basis for alleging liability;
- Companies that take advantage of consumers with limited English proficiency and obscure pricing information and fees;
- Debt collectors that collect and refuse to return a senior’s Social Security benefits, even though they are exempt from debt collection; and
- Health insurance companies that use long lists of in-network doctors who turn out not to accept the insurance.

See Attorney General Press Release, [Attorney General James, Senator Comrie, and Assemblymember Lasher Celebrate Signing of Historic Consumer Protection Law](#) (Dec. 20, 2025). The press release thus foreshadows potential Attorney General enforcement activities in these areas and others, concluding that, “[w]ith the federal

government rolling back protections for consumers and small businesses, the FAIR Business Practices Act authorizes [the Attorney General] to take action to protect vulnerable New Yorkers from exploitative practices.”

Finally, once the changes referenced in the Approval Memorandum are enacted, the FAIR Business Practices Act will render unfair and abusive acts or practices actionable by the Attorney General and place an extraterritorial gloss on the scope of the statute in Attorney General enforcement actions or proceedings.

Conclusion

Given the short period of time before the FAIR Business Practices Act takes effect, the changes referenced in the Approval Memorandum presumably will be implemented in the not-too-distant future. While the particular amendments remain to be seen, we anticipate, in any event, considerable UDAAP enforcement activity from the Attorney General, the scope of which will be expanded as a result of the significant enforcement authority enhancements made by the FAIR Business Practices Act.

[1] Approval Memorandum No. 83 Chapter 708 of 2025.

[2] The above-quoted provision encompassing injury to persons other than consumers apparently was intended to make the state definition of “unfairness” applicable to businesses and non-profits as well as consumers. See N.Y.S. 8416, *New York State Senate Introducer’s Memorandum in Support*, at 2.

[3] See [Statement of Policy Regarding Prohibition on Abusive Acts or Practices](#), 88 Fed. Reg. 21833 (Apr. 12, 2023) (establishing an analytical framework for an expansive application of the abusiveness standards), *withdrawn by Interpretive Rules, Policy Statements, and Advisory Opinions; Withdrawal*, 90 Fed. Reg. 20084 (May 12, 2025); [Statement of Policy Regarding Prohibition on Abusive Acts or Practices](#), 85 Fed. Reg. 6733 (Feb. 6, 2020) (limiting abusiveness to acts or practices that result in demonstrated consumer harm and are predicated on factual allegations distinct from those alleged to be unfair and/or deceptive), *rescinded in Statement of Policy Regarding Prohibition on Abusive Acts or Practices; Rescission*, 86 Fed. Reg. 14808 (Mar. 19, 2021) (emphasizing full enforcement of the abusiveness standard consistent with the statutory text).

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