

Governor Hochul Signs Chapter Amendment to the New York FAIR Business Practices Act

5 min read

Apr 2, 2026

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In a prior [Consumer Crossroads blog post](#), we reported that Governor Hochul had 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.^[1]

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 state legislature to enact amendments that would:

- “ensure that the bill does not override existing case law concerning the ‘consumer oriented standard’”; and
- “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.”^[2]

Recently, on March 27, 2026, Governor Hochul signed into law, as Chapter 94 of the 2026 Session Laws, a “chapter amendment” that implements the agreed-upon amendments.^[3]

Changes Implemented by the Chapter Amendment

Repeal of Purpose and Intent Section

The chapter amendment repeals Section 348 of the General Business Law, which had been added by the FAIR Business Practices Act to state the purpose and intent of Article 22-A of the General Business Law. Among other things, the purpose and intent section repealed by the chapter amendment included language: (i) stating that the article “eliminates textual exceptions imposed by the courts .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”;^[1] and (ii)

asserting that “[t]he attorney general has a special responsibility to create a fair marketplace for all” including “businesses and non-profits as well as individuals.”^[2]

Amendment to the Definition of an Unfair Act or Practice

Relatedly, the chapter amendment deleted the following language from the New York definition of an unfair act or practice: “*provided, however, that the substantial injury of a person or persons other than consumers shall also be deemed a ‘substantial injury’ for purposes of*” Section 349 of the General Business Law.^[3]

This amendment ensures that the New York definition of an unfair act or practice will be defined and interpreted in a manner consistent with the definition of an unfair act or practice in Section 5 of the FTC Act. See 12 U.S.C. § 45(n). As amended, Section 349(1) of the General Business Law now defines an act or practice as unfair “when it causes or is likely to cause substantial injury which is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. The term ‘substantial injury’ as used in this subdivision shall have the same meaning as the term ‘substantial injury’ in the federal trade commission act, 15 U.S.C. Section 41 et seq.”

Preservation of Consumer-Oriented Conduct Limitation; Private Right of Action Clarification

Consistent with the Approval Memorandum, the chapter amendment also repealed General Business Law Section 349(b)(3), which had stated that “[a]n act or practice made unlawful by this section is actionable by the attorney general regardless of whether or not such act or practice is consumer-oriented.”^[4]

The Approval Memorandum also sought clarification that the private right of action is limited to deceptive practices and deceptive acts. To this end, the chapter amendment amends Section 349(h) of the General Business Law by adding the word “deceptive” before “practice” wherever it appears so that the private right of action provision now refers to “any deceptive act or deceptive practice.”^[5]

Miscellaneous

Finally, the chapter amendment increases the waiting period before the attorney general may commence an action or proceeding from five business days to ten calendar days.^[6] Specifically, except in cases where the attorney general seeks preliminary relief and finds that prior notice is not in the public interest, the attorney general must notify a prospective defendant of her intent to commence an action or proceeding under Section 349 and afford the prospective defendant an opportunity to show in writing, within ten calendar days after receipt of the notice, why an action or proceeding should not be instituted against such person.

Key Takeaways

Even with the substantive changes made by the chapter amendment, the FAIR Business Practices Act has significantly expanded the enforcement authority of the Attorney General under the New York State law proscribing deceptive acts and practices. Most notably, the FAIR Business Practices Act has enhanced 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; and
- Adding language purportedly 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.

Now that the dust has settled and the chapter amendment has been enacted, we anticipate considerable UDAAP enforcement activity from the New York State Attorney General. The scope of future enforcement activity will be expanded as a result of the enforcement authority enhancements made by the FAIR Business Practices Act.

[1] 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).

[2] N.Y. Gen. Bus. Law § 348, *repealed by* 2026 N.Y. Laws Ch. 94, § 1.

[3] 2026 Laws 2026 Ch. 94, § 2. According to the introducer’s memorandum in support of the New York FAIR Business Practices Act, 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 2025 N.Y.S. 8416, *New York State Senate Introducer’s Memorandum in Support*, at 2.

[4] N.Y. Gen. Bus. Law § 349(b)(3), *repealed by* 2026 N.Y. Laws Ch. 94, § 3.

[5] 2026 N.Y. Laws Ch. 94, § 2 (amending N.Y. Gen. Bus. Law § 349(h)).

[6] 2026 N.Y. Laws Ch. 94, § 2 (amending N.Y. Gen. Bus. Law § 349(c)).

[1] 2025 N.Y. ALS 708, 2025 N.Y. Laws 708, 2025 N.Y. Ch. 708.

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

[3] 2026 N.Y. ALS 94, 2026 N.Y. Laws 94, 2026 N.Y. Ch. 94 (hereinafter cited as “2026 N.Y. Laws Ch. 94”).

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