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Brian Turetsky Examines How NYC's Proposed POWER Act Could Expand Private UDAAP Claims

In a *Law360* "Expert Analysis"

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Hinshaw partner Brian Turetsky has authored a *Law360* "Expert Analysis" article looking at New York City's proposed People and Organizations Winning Economic Relief (POWER) Act, which could significantly increase litigation risk for businesses that operate in, sell to, or otherwise engage with city residents.

If approved, the proposed POWER Act would take effect immediately and create a broad private right of action covering unfair, deceptive, abusive, and "unlawful" practices, with $2,500 per violation, no aggregate cap, and mandatory attorneys' fees for prevailing plaintiffs. It would also eliminate reliance and consumer-oriented conduct requirements and allow qualifying nonprofits to sue.

Adapted from his prior *Consumer Crossroads* blog post, Brian's analysis answers the following questions about the POWER Act and includes practical steps companies should take to assess their compliance practices.

NYC's Proposed POWER Act: Key Questions and Answers for Businesses

What is the POWER Act, and Where Does it Stand?

The People and Organizations Winning Economic Relief (POWER) Act is a proposed New York City local law that would "prohibit unfair methods of competition and unfair, deceptive, abusive or unlawful acts or practices in or affecting business, trade, or commerce," and would be enforced through a broad private right of action.

Introduced on October 8 at the request of Mayor Zohran Mamdani and sponsored by Committee Chair Harvey D. Epstein and 20 other Council members, it remains before the Committee on Consumer and Worker Protection. **If**

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enacted, it would take effect immediately.

How Does it Compare With Federal UDAAP Law?

- Its **unfairness** standard tracks the Federal Trade Commission (FTC) Act and the Consumer Financial Protection Act (CFPA): conduct must cause or be likely to cause substantial injury that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition.
- Its **"abusive"** definition also tracks the CFPA.
- The term **"deceptive"** is not separately defined in the bill.

The bill's scope and enforcement, however, are far broader. The CFPA covers only consumer financial products and services and is enforced by regulators and state attorneys general; the FTC Act relies principally on FTC enforcement and creates no general private damages action under Section 5. The POWER Act would extend a private right of action to individuals and qualifying nonprofits across all sectors of business, trade, and commerce.

The bill also incorporates two federal policy statements:

- the FTC's November 2022 Policy Statement on unfair methods of competition under Section 5; and
- the CFPB's April 2023 Policy Statement on Abusive Acts or Practices.

These apply even if later superseded or rescinded, and the bill directs liberal construction, which could preserve broad benchmarks at the city level even as federal agencies narrow their approach.

The bill also prohibits "unlawful" acts or practices without defining the term. Similar language in California's Unfair Competition Law has, in some circumstances, allowed violations of other laws to serve as predicates, even where those laws create no private right of action. Whether New York courts would follow suit is an open question.

Who Could Sue, and for What?

An injured person could sue individually under the POWER Act, for similarly situated persons, or for the general public. Nonprofits could sue on their own behalf or for members or injured members of the public and, subject to a sufficient-nexus requirement, for an injured person or class without pursuing any independent organizational interest.

Remedies include compensatory, injunctive, and declaratory relief, including actual damages and $2,500 per violation with no aggregate cap, plus mandatory reasonable attorney fees and costs for a prevailing plaintiff. That combination is most significant where a standardized practice, such as a disclosure, fee, website flow,

communication, or contract provision, affects many people. California's Unfair Competition Law, by contrast, generally limits private plaintiffs to restitution and injunctive relief.

What Would Plaintiffs Have to Show, and What Procedural Rules Apply?

Plaintiffs do not need to plead or prove reliance, though they must have been "injured as a result of" the violation. Claims would not be limited to personal, family, or household use, public impact, or consumer-oriented conduct, eliminating limits on private claims under New York General Business Law Section 349.

The three-year limitations period runs from when the plaintiff "knew or should have known of the alleged violation." Most plaintiffs must give notice and allow 10 business days for a written explanation of why suit should not be filed, subject to exceptions, but the bill does not say that a cure during that period bars the action.

Are There Exemptions or Defenses?

No private action lies against the city, its agencies or employees, or a small business, narrowly defined as one that is:

- independently owned and operated;
- not dominant in its field;
- employing four or fewer people; and
- under $5 million in gross revenue in the preceding fiscal year.

The bill provides a "complete defense" for conduct *required* by statutes, rules, or regulations administered by the FTC or other federal agencies, as interpreted by those agencies or federal courts, but not for conduct merely compliant with or permitted by federal or state law.

How Does the Bill Relate to New York's FAIR Act?

The state's Fostering Affordability and Integrity Through Reasonable Business Practices (FAIR) Act amended Section 349 to prohibit unfair, abusive, and deceptive practices.

But it did not extend the private right of action to unfair or abusive practices, and the governor's chapter amendments retained the consumer-oriented requirement. The POWER Act's legislative findings expressly cite that gap and would fill it at the city level.

Which Industries Could be Affected?

Because the bill is not limited to consumer financial services or consumer transactions, claims could reach:

- business-to-business transactions;
- commercial financing;
- employment and worker disputes;
- housing;
- digital platforms; and
- other commercial relationships.

The administration and supporters have already identified landlord-tenant disputes as an intended application.

What Key Questions Remain Unresolved?

- ***Preemption.*** New York's home-rule framework gives cities substantial authority, but only for local laws not inconsistent with the state constitution or any general law. Preemption arguments may be strongest where federal or state law does more than set a floor, such as by affirmatively permitting conduct, creating exceptions or safe harbors, limiting enforcement to specified regulators or plaintiffs, or prescribing particular remedies.
- ***Extraterritorial reach.*** The bill does not specify when out-of-city conduct has a sufficient nexus to New York City, potentially exposing businesses outside both the city and the state that engage with city residents, particularly online.
- ***Divergent standards.*** Conduct subject only to Section 349's narrower private remedy elsewhere in the state could face the POWER Act's broader remedy when sufficiently connected to the city, which could renew pressure to revisit the FAIR Act's compromises.

What Should Businesses Do Now?

The bill may change in committee and should be monitored. But given its breadth and the administration's support, companies doing business with New York City residents should begin assessing their UDAP/UDAAP and regulatory compliance practices now in light of the added exposure the bill would create.

Read the full article

- *Law360:* "How NYC Consumer Bill Could Expand Private Claims" (November 9, 2026)

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