



New York FAIR Business Practices Act Bolsters State's Consumer Protection Framework

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Not quite a year after the Consumer Financial Protection Bureau (CFPB) issued its [January 2025 report](#) urging states to strengthen state-level consumer protections, New York enacted the Fostering Affordability and Integrity through Reasonable (FAIR) Business Practices Act into law. The FAIR Act amends New York's general business law to prohibit unfair and abusive business acts and practices beyond deceptive conduct.

New York appears to have adopted some of the CFPB's recommendations to expand the general business law's coverage and strengthen the New York Attorney General's (NYAG's) enforcement powers. For example, echoing the CFPB's sentiments that consumer protection laws require updates to account for new technologies, the FAIR Act incorporates a new Section 348 into the New York general business law declaring a legislative intent to "protect New Yorkers and the New York economy from unfair, deceptive, and abusive business practices," including those based on "new and emerging technologies."

Section 348 also explicitly recognizes the NYAG's "special responsibility" to create a fair marketplace for all, including nonprofits and businesses. This provision spotlights small businesses in particular, reasoning that "[t]here is no reason to believe that . . . small entities need the protections of this article any less than individuals do."

The FAIR Act next revises Section 349 to define an "unfair" act or practice as one that causes or is likely to cause substantial injury that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. This provision expressly adopts the meaning of "substantial injury" as used in the Federal Trade Commission Act and extends it to injuries suffered by non-consumers.^[1]

Section 349 also defines an "abusive" act or practice as one which (1) materially interferes with a person's ability to understand a term or condition of a product or service, or (2) takes unreasonable advantage of a person's lack of understanding of material risks, costs, or conditions of a product or service; a person's inability to protect their interests in selecting or using a product or service; or a person's reasonable reliance on another party to act in the person's interests while engaging in the act or practice. This definition of "abusive" acts or practices closely tracks that of the Consumer Financial Protection Act, which the CFPB had recommended states consider incorporating into their own consumer protection statutes last January.

The FAIR Act also materially expands the NYAG's enforcement capabilities. For example, it removes judicially imposed limits confining actionable conduct to "consumer-oriented" acts or practices. Thus, the NYAG may bring an action for

violation of Section 349, “regardless of whether or not that act or practice is consumer-oriented.” The NYAG’s authority also extends to out-of-state persons operating within New York and in-state actors serving markets outside of New York. The FAIR Act clarifies that “person” includes, but is not limited to, individuals, firms, corporations, companies, partnerships, associations, or agents or employees of such persons.

This expansion of the NYAG’s authority aligns with the CFPB’s January 2025 recommendations that states should expand consumer protection authority to protect businesses as well as individuals, and that state attorneys general should have a relatively unimpeded process to initiate consumer protection investigations.

Still, the private right of action outlined in Section 349 remains limited to “deceptive” acts or practices and does not create a private right of action for unfair or abusive acts or practices. The FAIR Act similarly omits the CFPB’s recommendation to add causes of action for individual consumer claims despite arbitration clauses.

Despite these few limitations, the FAIR Act plainly increases the scope of New York’s consumer protection laws and gives a corresponding boost to the NYAG’s ability to enforce those laws. In particular, including unfair and abusive acts or practices as actionable conduct adds a swath of new avenues for enforcement. Such changes at the state level have been juxtaposed with significant changes to the consumer protection sphere in the United States, largely driven by the Trump Administration’s hobbling of the CFPB through [layoffs and a looming funding crisis](#).^[2] Financial institutions should remain mindful of state-level consumer protections to ensure compliance.

If you have any questions regarding this subject or related subjects, or if you need assistance, please contact [Caitlin Mandel](#) (Partner, White Collar & Government Investigations Practice), [Patrick Doerr](#) (Partner, White Collar & Government Investigations Practice), or your Winston & Strawn relationship attorney. Winston & Strawn Associate [Hollie Albin](#) contributed to this alert. You can visit our [Financial Services Industry Group](#) page for more information.

[1] Courts interpreting the Federal Trade Commission Act have found “substantial injury” where the practice “raises a significant risk of concrete harm” or does “small harm to a large number of people.” See *Fed. Trade Comm’n v. RCG Advances, LLC*, 695 F. Supp. 3d 368, 387 (S.D.N.Y. 2023).

[2] In another step taken by New York earlier this year, the New York State Department of Financial Services appointed Gabriel O’Malley (former CFPB Deputy Director of Policy & Strategy for the Division of Enforcement) to lead its Consumer Protection and Financial Enforcement Division.

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