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New York’s FAIR Business Practices Act: State Regulators Begin Expansion of Consumer Protection Authority

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On March 13, 2025, New York State took a significant step towards bolstering its consumer and small business protections with the introduction of the Fostering Affordability and Integrity Through Reasonable (FAIR) Business Practices Act. This proposed legislation, championed by New York Attorney General Letitia James, aims to modernize and significantly strengthen the state's existing consumer protection framework, primarily by amending the General Business Law (GBL) §349.

This legislation is likely to be just one example of what we expect to be a coming wave of state regulators attempting to fill the void left by the Consumer Financial Protection Bureau’s recent pullback in financial services enforcement under its current leadership.

The FAIR Act, also known as the "Consumer and Small Business Protection Act" seeks to broaden the scope of prohibited business practices beyond the current focus on "deceptive" acts to include "unfair" and "abusive" practices as well. The emphasis on updating the decades-old General Business Law reflects the New York AG’s recognition that the current regulations may not adequately address the complexities of today's financial products and business environment, nor adequately offer consumers protection in the absence of robust federal enforcement over financial services providers.

The timing of the FAIR Act's introduction is noteworthy. As federal consumer protection efforts face potential stagnation or even rollbacks under the Trump administration, New York State is proactively stepping in to fill this potential void. This proactive stance highlights a growing trend among states to take a more assertive role in safeguarding their residents and businesses against potential unfair or abusive practices. The Attorney General's strong backing of this bill further emphasizes its importance and suggests a likely increase in enforcement actions should it become law.

New York’s Rationale for the FAIR Business Practices Act

New York's existing consumer protection law, primarily governed by GBL §349, currently focuses on "deceptive" business acts and practices. Attorney General James argues that this framework is no longer sufficient to adequately protect New Yorkers from the increasingly sophisticated and varied forms of consumer finance products and unfair practices that exist today, including issues like deed theft, AI-based schemes, and online phishing scams. The FAIR Act seeks to address this inadequacy by closing loopholes that could allow businesses to engage in harmful conduct as long as they technically avoid making explicitly false claims.

Furthermore, the explicit consideration of potential federal rollbacks highlights a proactive and independent approach by New York State to consumer protection, that may lead other states to follow suit.

Key Provisions of the Proposed Act

The FAIR Business Practices Act introduces several key provisions designed to strengthen consumer and small business protections in New York State.

A central element of the proposed legislation is the amendment of Section 349 of the General Business Law to prohibit not only "deceptive" acts but also "unfair" and "abusive" acts or practices in the conduct of: any business, trade, or commerce, or in the furnishing of any service within the state. This expansion brings New York's consumer protection framework more in line with the federal Consumer Financial Protection Act (CFPA), which also prohibits unfair, deceptive, or abusive acts and practices (UDAAP).

The Act provides specific definitions for these terms:

- Unfair: An act or practice is considered unfair when it causes or is likely to cause substantial injury to a person, the injury is not reasonably avoidable by such person, and the injury is not outweighed by countervailing benefits to consumers or competition.
- Deceptive: An act or practice is deceptive when the act or practice misleads or is likely to mislead a person and the person's interpretation of the act or practice is reasonable under the circumstances.
- Abusive: An act or practice is abusive when it materially interferes with the ability of a person to understand a term or condition of a product or service, or it takes unreasonable advantage of (A) a person's lack of understanding of the material risks, costs, or conditions of the product or service; (B) a person's inability to protect such person's interests in selecting or using a product or service; or (C) a person's reasonable reliance on a person covered by this section to act in such person's interests.

Furthermore, the FAIR Act explicitly states that its prohibitions apply regardless of whether the act or practice is "consumer-oriented," has a "public impact," or is part of a "broader pattern of conduct". This provision effectively overturns previous court interpretations that had imposed such limitations on the scope of GBL §349, broadening the reach of the law to cover a wider range of potentially harmful actions. Importantly, the protections of the FAIR Act extend beyond individual consumers to also include small businesses that are harmed by unfair, deceptive, or abusive practices, recognizing that these entities are also vulnerable to such misconduct.

The inclusion of clear definitions for "unfair" and "abusive" practices reduces ambiguity and allows for the identification and challenge of a broader spectrum of harmful business conduct that may not have been explicitly covered under the previous definition of "deceptive" practices. Moreover, the explicit rejection of the "consumer-oriented," "public impact," and "broader pattern" requirements signifies a substantial expansion of the law's applicability. This change means that even isolated instances of unfair or abusive conduct that cause harm to an individual or a small business may now be actionable, regardless of whether the conduct affects a large number of people or is part of a widespread pattern.

Targeted Business Practices

Attorney General James has specifically identified several types of business practices that the FAIR Act is intended to address, including:

- Lenders, including auto lenders, mortgage servicers, and student loan servicers, deceptively steering people into higher-cost loans.
- Companies making it unreasonably difficult for consumers to cancel subscriptions.
- Student loan servicers deceptively steering borrowers into more expensive repayment plans.
- The imposition of unnecessary and hidden "junk fees" in various industries.
- Car dealerships refusing to return a customer's photo ID until a deal is finalized and charging for add-on warranties that the customer did not actually purchase.
- Companies taking advantage of consumers with limited English proficiency by obscuring pricing information and fees.
- Debt collectors improperly seizing Social Security benefits from seniors, despite these benefits being exempt from debt collection.

This detailed list of targeted practices provides concrete examples of the types of conduct that the Attorney General's office anticipates pursuing under the expanded authority of the FAIR Act. This specificity offers

businesses clear indications of areas where their practices may come under scrutiny and allows them to proactively review and potentially modify their operations to ensure compliance.

Enhanced Enforcement and Penalties

The FAIR Act significantly strengthens the enforcement powers available to both the Attorney General's office and private individuals and small businesses. It dramatically increases the statutory damages for violations of GBL §349 from a mere $50 to $1,000. This substantial increase aims to make it more economically viable for individuals and their attorneys to pursue legal action, even in cases involving smaller amounts of monetary harm. In addition to statutory damages, the Act allows for the recovery of actual and punitive damages where appropriate. Furthermore, a key provision mandates the recovery of attorney's fees and costs by prevailing plaintiffs in private actions.

The legislation also introduces significant civil penalties for violations. Businesses found to have engaged in unfair, deceptive, or abusive practices could face penalties of up to $5,000 per violation. For violations that are determined to be knowing or willful, the penalties are even more severe, set at the greater of $15,000 or three times the amount of restitution for each violation.

Recognizing the particular vulnerability of certain segments of the population, the FAIR Act includes enhanced civil penalties for practices targeting "vulnerable persons," defined as those under 18 or over 65, active duty servicemembers and veterans, physically or mentally impaired persons, and individuals with limited English proficiency. Finally, the Act explicitly authorizes class action lawsuits for parties who have been similarly affected by a prohibited act or practice. This signals a heightened level of scrutiny and potential liability for businesses that engage in practices that harm these protected groups.

Potential Impact and Implications

The proposed FAIR Business Practices Act has the potential to significantly impact both businesses and consumers in New York.

- For Businesses and Financial Services providers:

Businesses operating in New York will need to carefully review their current practices to ensure they align with the broader definitions of "unfair" and "abusive" conduct introduced by the FAIR Act. This review should particularly focus on areas such as subscription cancellation processes, the clarity and transparency of fee disclosures, lending terms and practices, debt collection methods, advertising and marketing materials, and interactions with vulnerable consumer groups.

The increased risk of litigation stemming from enhanced statutory damages and the mandatory awarding of attorney's fees necessitates a proactive approach to compliance and may require businesses to invest in legal counsel and robust compliance programs. Businesses must also be particularly vigilant about practices that could be perceived as targeting vulnerable persons, given the potential for significantly higher penalties in such cases.

While the Act primarily aims to strengthen consumer protection, it does include several affirmative defenses that businesses may be able to assert in legal proceedings. However, it is crucial to understand that compliance with federal rules alone may not be sufficient to shield businesses from liability under the FAIR Act, indicating a potential need to meet specific New York State standards.

- For Consumers and Small Businesses:

  Consumers and small businesses in New York will have greater recourse against a wider range of harmful business practices that may not have been covered under the previous law and that may not be subject to enforcement action on the federal level during the current administration.

  The increased statutory damages and the ability to recover attorney's fees will make it more feasible to seek legal remedies for grievances, particularly in cases where the individual financial harm might not have justified litigation under the old framework. Furthermore, the explicit authorization of class action lawsuits will provide a more efficient mechanism for consumers to bring actions claiming widespread harm. The emphasis on empowering individual consumers and small businesses to seek legal redress suggests a shift towards a more proactive enforcement environment.

Conclusion

The proposed New York FAIR Business Practices Act represents a significant step towards strengthening consumer and small business protection in New York, which may signal a coming push by other state attorneys general and financial services regulators towards enacting state-level consumer protection laws in the absence of robust federal-level enforcement by the CFPB and other federal agencies.

By expanding the definition of unlawful business practices to include unfair and abusive acts, in addition to deceptive ones, the Act aims to prohibit a wider range of conduct. The enhanced enforcement mechanisms and penalties are intended to deter violations and expand the scope of remedies for consumers.

Businesses operating in New York should closely monitor the progress of this legislation and proactively prepare to adapt their practices to comply with its requirements if it is enacted into law. As of the latest information, the Senate version of the bill, Senate Bill S105 (also known as the "Consumer and Small Business Protection Act"), is currently active and under consideration in the Senate Committee on Consumer Protection. The introduction of companion bills in both the Senate and the Assembly signals a strong legislative effort to advance this legislation.