

STATE OF NEW YORK

679--B

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. NIOU, STECK, BARRON, KIM, DINOWITZ, EPSTEIN, FRONTUS, RICHARDSON, D'URSO, FALL, REYES, SIMOTAS -- Multi-Sponsored by -- M. of A. SAYEGH -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to standing for persons affected by prohibited or unlawful business practices

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 349 of the general business law, as added by chapter 43 of the laws of 1970, subdivision (h) as amended by chapter 157 of the laws of 1984, and subdivision (j) as added by section 6 of part HH of chapter 55 of the laws of 2014, is amended to read as follows:

§ 349. ~~[Deceptive acts]~~ Prohibited acts and practices unlawful. (a) ~~[Deceptive]~~ This section prohibits any unfair, deceptive or abusive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service ~~[in this state are hereby declared unlawful]~~.

(1) For the purposes of this section, an act or practice is unfair when:

(i) it causes or is likely to cause substantial injury, the injury is not reasonably avoidable, and the injury is not outweighed by countervailing benefits; or

(ii) it takes unreasonable advantage of the inability of a person to protect his or her interests because of the person's infirmity, illiteracy or inability to understand the language of an agreement.

(2) For the purposes of this section, an act or practice is deceptive when the act or practice misleads or is likely to mislead a person and the person's interpretation is reasonable under the circumstances.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets ~~[-]~~ is old law to be omitted.

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1 (3) For the purposes of this section, an act or practice is abusive
2 when:

3 (i) it materially interferes with the ability of a person to under-
4 stand a term or condition of a product or service; or

5 (ii) takes unreasonable advantage of:

6 (A) a person's lack of understanding of the material risks, costs, or
7 conditions of the product or service;

8 (B) a person's inability to protect his or her interests in selecting
9 or using a product or service; or

10 (C) a person's reasonable reliance on a person covered by this section
11 to act in his or her interests.

12 (b) Whenever the attorney general shall believe from evidence satis-
13 factory to him or her that any person, firm, corporation or association
14 or agent or employee thereof has engaged in or is about to engage in any
15 of the acts or practices stated to be unfair, unlawful, deceptive or
16 abusive, he or she may bring an action in the name and on behalf of the
17 people of the state of New York to enjoin such unlawful acts or prac-
18 tices and to obtain restitution of any moneys or property obtained
19 directly or indirectly by any such unlawful acts or practices. In such
20 action preliminary relief may be granted under article sixty-three of
21 the civil practice law and rules. Such actions may be brought regard-
22 less of whether or not the underlying violation is directed at individ-
23 uals or businesses, is consumer-oriented, or involves the offering of
24 goods, services, or property for personal, family or household purposes.

25 (c) Before any violation of this section is sought to be enjoined, the
26 attorney general shall be required to give the person against whom such
27 proceeding is contemplated notice by certified mail and an opportunity
28 to show in writing within five business days after receipt of notice why
29 proceedings should not be instituted against him or her, unless the
30 attorney general shall find, in any case in which he or she seeks
31 preliminary relief, that to give such notice and opportunity is not in
32 the public interest.

33 (d) In any such action it shall be a complete defense that the act or
34 practice is, or if in interstate commerce would be, subject to and
35 complies with the rules and regulations of, and the statutes adminis-
36 tered by, the federal trade commission or any official department, divi-
37 sion, commission or agency of the United States as such rules, regu-
38 lations or statutes are interpreted by the federal trade commission or
39 such department, division, commission or agency or the federal courts.

40 (e) Nothing in this section shall apply to any television or radio
41 broadcasting station or to any publisher or printer of a newspaper,
42 magazine or other form of printed advertising, who broadcasts,
43 publishes, or prints the advertisement.

44 (f) In connection with any proposed proceeding under this section, the
45 attorney general is authorized to take proof and make a determination of
46 the relevant facts, and to issue subpoenas in accordance with the civil
47 practice law and rules.

48 (g) This section shall apply to all [~~deceptive~~] prohibited acts [~~or~~]
49 and practices [~~declared to be unlawful~~], whether or not subject to any
50 other law of this state, and shall not supersede, amend or repeal any
51 other law of this state under which the attorney general is authorized
52 to take any action or conduct any inquiry.

53 (h) (1) In addition to the right of action granted to the attorney
54 general pursuant to this section, any person who has been injured by
55 reason of any violation of this section may bring an action in his or
56 her own name to enjoin such unlawful act or practice, an action to

1 recover his or her actual damages [~~or fifty~~] and statutory damages of
2 two thousand dollars, [~~whichever is greater,~~] or both such actions. Such
3 actions may be brought regardless of whether or not the underlying
4 violation is consumer-oriented or has a public impact. The court may, in
5 its discretion, increase the award of damages [~~to an amount not to~~
6 ~~exceed three times the actual damages up to one thousand dollars,~~] if
7 the court finds the defendant willfully or knowingly violated this
8 section. The court [~~may~~] shall award reasonable attorney's fees and
9 costs to a prevailing plaintiff.

10 [~~(j)~~] (i) For purposes of this section, a "person" is defined as an
11 individual, firm, corporation, partnership, cooperative, association,
12 coalition or any other organization's legal entity, or group of individ-
13 uals however organized;

14 (ii) Given the remedial nature of this section, standing to bring an
15 action under this section, including but not limited to organizational
16 standing and third-party standing, shall be liberally construed and
17 shall be available to the fullest extent otherwise permitted by law.

18 (2) Any person entitled to bring an action under this article may, if
19 the prohibited act or practice has caused damage to others similarly
20 situated, bring an action on behalf of himself or herself and such
21 others to recover actual, statutory and/or punitive damages or obtain
22 other relief as provided for in this article. Thus, any action brought
23 under this subdivision shall comply with article nine of the civil prac-
24 tice law and rules.

25 (3) An organization may bring an action under this section, on behalf
26 of itself or any of its members, or on behalf of those members of the
27 general public who have been injured by reason of any violation of this
28 section, including a violation involving goods or services that the
29 organization purchased or received in order to test or evaluate quali-
30 ties pertaining to use for personal, household, or family purposes. An
31 organization may seek the same remedies and damages that a person may
32 seek under paragraph one of this subdivision.

33 (i) Notwithstanding any law to the contrary, all monies recovered or
34 obtained under this article by a state agency or state official or
35 employee acting in their official capacity shall be subject to subdivi-
36 sion eleven of section four of the state finance law.

37 § 2. This act shall take effect on the sixtieth day after it shall
38 have become a law.