STATE OF NEW YORK

8427

2025-2026 Regular Sessions

IN ASSEMBLY

May 15, 2025

Introduced by M. of A. LASHER -- (at request of the Attorney General) -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to enacting the "fostering affordability and integrity through reasonable (FAIR) business practices act"

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

Section 1. This act shall be known and may be cited as the "fostering affordability and integrity through reasonable (FAIR) business practices act".

§ 2. Article 22-A of the general business law is amended by adding a new section 348 to read as follows:

§ 348. Purpose and intent of article. The legislature declares that the state has a responsibility to protect New Yorkers from unfair, deceptive and abusive business acts and practices (known as UDAP statutes). The legislature recognizes the limitations of the current state law, which prohibits only the use of deceptive business acts and practices, and has proven insufficient to satisfy the state's responsibilities to protect New Yorkers and the New York economy from unfair, deceptive, and abusive business practices. For too long, New Yorkers, especially New Yorkers with limited income, communities of color, seniors, veterans, and immigrant populations, have been left vulnerable to unscrupulous business practices ranging from wasting a customer's time as a business tactic to avoid giving customers the products or services they are entitled to receive, to misleading or harmful practices by employers, including deceptive marketing or contract terms, forcing workers into undesirable work conditions, to distributing and selling toxic and otherwise harmful products during public health emergencies and natural disasters. It is time for New York to move forward and join all but a handful of New York's fellow states and the District

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

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of Columbia, by adopting a comprehensive UDAP statute that gives government and private parties the tools to address these harms. The state must achieve the goal of deterring and remedying a broad range of unfair, deceptive, and abusive business practices, and leveling the playing field for the state's many honest businesses and non-profits who treat their customers fairly. To that end, this article defines unfair and abusive acts and practices expansively to reach harmful conduct that is unfair or abusive but arguably not deceptive.

The state must also ensure the most meaningful and effective protection to New Yorkers against harmful commercial conduct. This article therefore eliminates atextual exceptions imposed by courts over the last five decades that have limited prohibited conduct to acts that are "consumer oriented" conduct that has an impact on the public at large, or acts that are part of a broader, or recurring, pattern. These court-imposed limitations have been used to bar relief to New Yorkers victimized by deceptive acts and practices in a variety of contexts, including small businesses tricked into predatory loans, individuals defrauded in landlord-tenant transactions, vulnerable communities victimized by toxic or otherwise harmful products, and victims of conduct that affected a single individual or concerned a single transaction, product, or service.

The legislature confirms that this article protects businesses and non-profits as well as individuals. Businesses and non-profits, particularly small businesses and non-profits, are themselves a class of consumers. There is no reason to believe that a small entity is any better able to defend itself from unfair, abusive, and deceptive conduct than a consumer, or needs the protections of this article any less than a consumer does. The market and wider society is harmed by the negative consequences that flow from unfair, deceptive, and abusive practices even if those acts and practices have not been understood as "consumer oriented".

The underlying concern motivating the courts to create the narrower "consumer oriented" doctrine in the first place--a desire to ensure that the statute is not misapplied to high-value sophisticated private commercial disputes for which New York is one of the world's premiere forums--is addressed by new provisions that provide a defense excluding the application of such section from deals made by large businesses and high-value sophisticated transactions made between individuals and small entities without affecting the broad protections New Yorkers need against unfair, deceptive, and abusive business acts and practices. It is the intention of the legislature that this article be applied expansively, with limits imposed only in accordance with its text, without additional restrictions.

§ 3. The article heading of article 22-A of the general business law, as amended by chapter 43 of the laws of 1970, is amended to read as follows:

[~~CONSUMER~~] PROTECTION FROM
UNFAIR, DECEPTIVE, OR ABUSIVE ACTS AND
PRACTICES

§ 4. 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~~] Unfair, deceptive, or abusive acts and practices unlawful. (a) [~~Deceptive~~] 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. **For the purposes of this section:**

(1) An act or practice is unfair when it causes or is likely to cause a person substantial injury which is not reasonably avoidable by such person and is not outweighed by countervailing benefits to consumers or to competition.

(2) An act or practice is deceptive when the act or practice misleads or is likely to mislead a reasonable person in the relevant market acting reasonably under the circumstances.

(3) An act or practice is abusive when:

(i) it materially interferes with the ability of a person to understand a term or condition of a product or service; or

(ii) it takes unreasonable advantage of:

(A) a lack of understanding on the part of a person of the material risks, costs, or conditions of a product or service;

(B) the inability of a person to protect their interests in selecting or using a product or service; or

(C) the reasonable reliance by a person on a person covered by this section to act in the relying person's interests.

(4) An unlawful act or practice is actionable under this section regardless of whether or not that act or practice is consumer-oriented, has a public impact or impact on consumers, poses a risk of harm to the public health or interest, is only or primarily directed at or only or primarily affects businesses or not-for-profit organizations, affects the consuming public at large, concerns employment or the furnishing of goods or services, is unique to the parties, or involves an economically modest transaction, consumer goods or their equivalent, or the offering of goods, services, or property for personal, family, or household purposes.

(5) For purposes of this article, the term "injury" means any impairment of a person's interests, and the term "substantial injury" means any substantial impairment of a person's interests, whether or not such impairments or substantial impairments to interests are quantifiable, economic, or monetary in nature, including but not limited to loss of time, loss of privacy, or loss of security.

(b) Whenever the attorney general shall believe from evidence satisfactory to [~~him~~] **the attorney general** that any person, **including but not limited to an individual,** firm, corporation**, company, partnership** or association**,** or agent or employee thereof**,** has engaged in or is about to engage in any of the acts or practices stated to be [~~unlawful he~~] **unfair, deceptive, or abusive, the attorney general** may bring an action **or proceeding** in the name and on behalf of the people of the state of New York to enjoin such unlawful acts or practices and to obtain restitution of any moneys or property obtained directly or indirectly by any such unlawful acts or practices. In such action **or proceeding,** preliminary relief may be granted under article sixty-three of the civil practice law and rules. **The attorney general may bring such an action or proceeding against any person conducting any business, trade or commerce or furnishing a service in this state, whether or not the person is without the state, and any person in the state conducting any business, trade, or commerce or furnishing a service, whether or not the business or service is conducted or furnished without the state.**

(c) Before [~~any violation of this section is sought to be enjoined~~] **commencing an action or proceeding pursuant to this section**, the attorney general shall be required to give the person against whom such proceeding is contemplated notice by certified mail and an opportunity

to show in writing within five business days after receipt of notice why [~~proceedings~~] an action or proceeding should not be instituted against [~~him~~] such person, unless the attorney general shall find, in any case in which [~~he~~] the attorney general seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

(d) In any such action or proceeding it shall be [~~a complete~~] an affirmative defense that the act or practice is[~~, or if in interstate commerce would be, subject to and complies with~~] required or specifically authorized by the rules and regulations of, and the statutes administered by, the federal trade commission or any official department, division, commission or agency of the United States [~~as such rules, regulations or statutes are interpreted by the federal trade commission or such department, division, commission or agency or the federal courts~~] or this state.

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

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

(g) This section shall apply to all [~~deceptive~~] unfair, deceptive, or abusive acts or practices [~~declared to be unlawful~~], whether or not subject to any other law of this state, and shall not supersede, amend or repeal any other law of this state under which the attorney general or any other party is authorized to take any action or conduct any inquiry. This section shall be liberally construed, and its exceptions and defenses narrowly construed, so as to effectuate its remedial and protective purposes. This section is intended to expand and not take away any statutory or common law rights.

(h) (1) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in [~~his~~] such person's own name to enjoin such unlawful act or practice, an action to recover [~~his actual damages or fifty dollars, whichever is greater, or both such actions~~] one thousand dollars in statutory damages and the person's actual damages, if any. The court [~~may, in its discretion,~~] shall increase the award of damages to [~~an amount not to exceed~~] three times the [~~actual~~] damages [~~up to one thousand dollars,~~] awarded if the court finds the defendant willfully or knowingly violated this section. The court [~~may~~] shall award reasonable attorney's fees, expenses including expert witness fees, and costs to a prevailing plaintiff.

[~~(j)~~] (2) (i) It shall be an affirmative defense to any action brought pursuant to this subdivision that the plaintiff is a person other than an individual or small entity. For purposes of this subparagraph, a "small entity" shall mean a person other than an individual, including but not limited to a business or professional corporation or company, a not-for-profit corporation, an unincorporated association, or a partnership, that: (A) is independently owned and operated;(B) is not dominant in its field; (C) is either a not-for-profit corporation or employs three hundred or fewer persons; (D) received in the past fiscal year gross revenue and support in an amount less than five hundred million dollars; and (E) possessed total assets in the last fiscal year of not more than two hundred fifty million dollars.

(ii) It shall be an affirmative defense to any action brought pursuant to this subdivision that the act or practice complained of is redressable pursuant to federal securities or intellectual property laws, or that the act or practice arose in the course of a high-value experienced commercial transaction and was directed exclusively to the parties to that transaction. This defense shall not apply to acts or practices that arise in the context of a residential housing matter.

For purposes of this subparagraph:

(A) an act or practice is "redressable pursuant to federal securities or intellectual property laws" only if: (I) the plaintiff may remedy the injury arising or alleged to arise from the act or practice by use of the private rights of action contained in the Securities Act of 1933, 15 U.S.C. Section 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C. Section 78a et seq., or regulations promulgated thereunder; or (II) the plaintiff may remedy the injury arising or alleged to arise from the act or practice by use of the private rights of action contained in title 35 of the United States Code, or the Trademark Act of 1946, 15 U.S.C. Section 1051 et seq., or the Defend Trade Secrets Act of 2016, 18 U.S.C. Section 1836, et seq., of the Copyright Act of 1976, 17 U.S.C. Section 101 et seq., or regulations promulgated thereunder;

(B) a "high-value experienced commercial transaction" is a transaction the value of which exceeds one million dollars and where all parties to the transaction have extensive commercial experience with the subject matter of such transaction; provided that the experience or otherwise of the defendant shall not be considered in making this determination;

(C) a person other than an individual has "extensive commercial experience" in the subject matter of the transaction if the individuals who control that person have extensive commercial experience in the subject matter of the transaction;

(D) "residential housing" means any residential real property, including but not limited to rental housing, one-to-four family dwellings, condominium units, cooperative apartments, lots in manufactured home parks, or securities that entitle the holders thereof to possession or occupancy of such housing; and

(E) a "residential housing matter" is one that concerns the construction, renovation, sale or rent of residential housing used, occupied, or intended to be occupied as a home or residence by one or more parties to the transaction or individuals owning or controlling one or more parties to the transaction, or credit extended to one or more persons to purchase, refinance, repair, or improve such residential housing, or credit secured by a person's equity in such residential housing.

(3) (i) Standing to bring an action under this section, including but not limited to organizational standing and third-party standing, shall be liberally construed and shall be available to the fullest extent otherwise permitted by law.

(ii) A court may enjoin an act or practice found to be unlawful in an action brought pursuant to this subdivision notwithstanding the plaintiff or plaintiffs' failure to demonstrate that they will suffer future harm as a result.

(4) (i) Notwithstanding section nine hundred one of the civil practice law and rules or any other applicable provision of law, any person entitled to bring an action under this article may, if the prohibited act or practice has caused damage to others similarly situated, bring an action on behalf of such person and others similarly situated to recover actual, statutory or punitive damages or obtain other relief as provided for

in this article. Statutory damages under this section shall be limited to (i) such amount for each named plaintiff as could be recovered under paragraph one of this subdivision; and (ii) such amount as the court may allow for all other class members without regard to a minimum individual recovery, not to exceed the lesser of one million dollars or two per centum of the gross value of the defendant.

(ii) As applied to a class action or proposed class action, the term "plaintiff" as used in the defenses provided by paragraph two of this subdivision shall mean only the named or representative plaintiff or plaintiffs and not the proposed or certified members of the class.

(5)(i) At least thirty days before bringing an action pursuant to this subdivision, a complainant must send the respondent notice in writing to the respondent's place of business. Such notice must reasonably describe the unfair, deceptive, or abusive acts or practices at issue, state a demand for relief, and include the complainant's mailing address or e-mail address. For the purposes of this paragraph, the term "complainant" shall mean a person who may bring an action pursuant to this subdivision. For the purpose of this paragraph, the term "respondent" shall mean a person against whom an action is contemplated.

(ii) A respondent receiving a notice required to be sent pursuant to this paragraph may, within ten days of delivery of such notice, make a written tender of settlement by postal mail or by e-mail, if provided in the notice. If such tender is rejected, in any subsequent action by the complainant arising out of the conduct described in the complainant's notice, the respondent may file the written tender of settlement with an affidavit concerning its rejection and proof that the tender was filed with the attorney general. If such settlement is deemed complete relief by the court, the court shall limit any recovery to the relief tendered therein.

(iii) A tender of settlement shall be deemed complete only if the respondent unconditionally: (A) tenders an amount equal to actual and statutory damages, as applicable, (B) makes a binding undertaking to correct and permanently cease such acts or practices described in the notice as to the complainant and all other impacted persons, and (C) files the notice and tender of settlement with the attorney general in accordance with paragraph six of this subdivision.

(iv) In making such a tender of settlement, a respondent shall not be deemed to have conceded any factual or legal matter stated in the notice or to have undertaken any obligations other than, if the tender is accepted or the court so orders, the payment of the monetary amounts specified in the tender and the correction and permanent cessation of the acts or practices described in the notice. Except as this paragraph otherwise provides, a tender of settlement shall be deemed an offer to compromise subject to article forty-five of the civil practice law and rules.

(v) An accepted tender of settlement shall be deemed a settlement of an action to recover damages for purposes of article fifty of the civil practice law and rules.

(vi) For the purposes of computing the period of limitation under article two of the civil practice law and rules, an action pursuant to this subdivision shall be deemed timely if the complainant's notice to the respondent was sent on or before the date on which the statute of limitations would have expired without regard to the date of that notice or any other notice made pursuant to this paragraph, and the action is commenced no later than forty days following the date on which the complainant's notice was sent to the respondent.

(vii) A notice pursuant to this paragraph shall not be required prior to the filing of an action if:

(A) such action is brought as a counterclaim or crossclaim;

(B) the sending of such notice would cause immediate and irreparable injury, loss, or damages;

(C) the person bringing the action is not represented by an attorney;

(D) a mailing address for the respondent is not reasonably discernible;

(E) the respondent, or any entity owned or controlled by the one or more of the same persons that own or control or ultimately own or control the respondent, has previously been the subject of an action or proceeding by the attorney general for substantially similar conduct;

(F) the respondent, or any entity owned or controlled by one or more of the same persons that own or control or ultimately own or control the respondent, has already received a notice pursuant to this paragraph for substantially similar conduct; or

(G) there are other exigent circumstances or the court otherwise finds that the notice requirement should be waived in the interests of justice.

(6) (i) Any respondent that delivers a tender of settlement pursuant to paragraph five of this subdivision shall file with the attorney general a prescribed form that includes a copy of the complainant's notice and the respondent's written tender of settlement. The attorney general shall publish all such filings.

(ii) The attorney general may commence an action or proceeding against any respondent who fails to make a filing required by paragraph six of this subdivision within thirty days of the acts giving rise to the requirement. A failure to file the required statement on time shall be subject to a civil penalty not to exceed five hundred dollars for each day such violation continues, in addition to any other penalties or remedies provided under this section or any other section of this chapter or the executive law.

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

§ 5. Section 349-c of the general business law, as added by chapter 687 of the laws of 1996 and renumbered by chapter 189 of the laws of 1999, is amended to read as follows:

§ 349-c. Additional civil penalty for [~~consumer frauds~~] unfair, deceptive, or abusive practices against [~~elderly~~] vulnerable persons. 1. Definition. As used in this section [~~elderly person means~~] "vulnerable person" means (a) a person who is under eighteen years of age or sixty-five years of age or older; (b) a person who is on active duty in, or a veteran of, the United States Armed Forces; (c) a person who has a physical or mental impairment that substantially limits one or more major life activities; or (d) a person with limited English proficiency.

2. Supplemental civil penalty. [~~(a)~~] In addition to any liability for damages or a civil penalty imposed pursuant to sections three hundred forty-nine, three hundred fifty-c and three hundred fifty-d of this [~~chapter~~] article, regarding unfair, deceptive, or abusive practices and false advertising, and subdivision twelve of section sixty-three of the executive law, regarding proceedings by the attorney general for equitable relief against fraudulent or illegal [~~consumer fraud~~] acts, a person or entity who engages in any conduct prohibited by said provisions of law, and whose conduct is perpetrated against one or more [~~elderly~~]

vulnerable persons, [~~may~~] shall be liable for an additional civil penalty not [~~to exceed~~] less than five thousand dollars or greater than ten thousand dollars[~~, if the factors in paragraph (b) of this subdivision are present~~] for each such vulnerable person substantially injured by the unlawful conduct.

[~~(b) In determining whether to impose a supplemental civil penalty pursuant to paragraph (a) of this subdivision, and the amount of any such penalty, the court shall consider, in addition to other appropriate factors, the extent to which the following factors are present:~~

~~(1) Whether~~] 3. Rebuttal of supplemental civil penalty. The additional penalty provided by subdivision two of this section shall not be imposed on a defendant who proves that, with respect to each violation to which the penalty would otherwise apply:

(a) the defendant [~~knew~~] did not know or have reason to know that the defendant's conduct was [~~directed to one or more elderly~~] perpetrated against vulnerable persons; or [~~whether~~]

(b) the [~~defendant's~~] defendant used its best efforts, within the limits of economic feasibility and commercial reasonability, to ensure that vulnerable people were not disproportionately affected by the conduct [~~was in willful disregard of the rights of an elderly person;~~].

[~~(2) Whether the defendant's conduct caused an elderly person or persons to suffer severe loss or encumbrance of a primary residence, principal employment or source of income, substantial loss of property set aside for retirement or for personal and family care and maintenance, substantial loss of payments received under a pension or retirement plan or a government benefits program; or assets essential to the health or welfare of the elderly person or whether one or more elderly persons were substantially more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability, and actually suffered physical, emotional, or economic damage resulting from the defendant's conduct.~~

~~3.~~] 4. There is hereby established in the state treasury a special fund to be known as the [~~elderly~~] vulnerable victim fund, which shall consist of and into which shall be paid all moneys derived from supplemental civil penalties imposed pursuant to this section. The moneys in such fund shall be administered by the department of law and shall be expended solely for the investigation of and prosecution of [~~consumer frauds~~] unfair, deceptive, or abusive acts against [~~elderly~~] vulnerable persons. The moneys in the fund shall be paid out on the audit and warrant of the comptroller on vouchers certified or approved by the attorney general. Notwithstanding any other provision of law to the contrary, any balance in the said fund on March thirty-first of any fiscal year shall not revert to the general fund of the state.

[~~4.~~] 5. Restitution to be given priority. Restitution ordered pursuant to the provisions of law listed in subdivision two of this section shall be given priority over the imposition of civil penalties designated by the court under this section.

§ 6. Section 350-c of the general business law, as amended by chapter 65 of the laws of 1989, is amended to read as follows:

§ 350-c. Notice of proposed action. Before the [~~attorney-general~~] attorney general commences an action or proceeding pursuant to section three hundred fifty-d of this article [~~he~~] the attorney general shall be required to give the person against whom such action or proceeding is contemplated [~~appropriate~~] notice by certified mail and an opportunity to show[~~, either orally or~~] in writing[~~,~~] within five business days after receipt of notice why such action should not be commenced, unless

the attorney general shall find, in any case in which the attorney general seeks preliminary relief, that to give such notice and opportunity is not in the public interest. In such showing, said person may present, among other things, evidence [~~that the advertisement is subject to and complies with the rules and regulations of, and the statutes administered by, the Federal Trade Commission or any official department, division, commission or agency of the state of New York~~] probative of any affirmative defense said person may raise in such an action or proceeding.

§ 7. Section 350-d of the general business law, as amended by chapter 803 of the laws of 2022, is amended to read as follows:

§ 350-d. Civil penalty. [~~(a)~~] 1. Any person, firm, corporation or association or agent or employee thereof who engages in any of the acts or practices stated in this article to be unlawful shall be liable to a civil penalty of not more than five thousand dollars for each violation[~~, which~~] or the greater of fifteen thousand dollars or three times the gross value of restitution for each violation if the court finds either that the defendant willfully or knowingly violated this article, or violated this article in connection with or during an abnormal disruption of the market, as defined by section three hundred ninety-six-r of this chapter, or both. Such penalty shall accrue to the state of New York and may be recovered in a civil action or proceeding brought by the attorney general.

2. In any such action or proceeding it shall be [~~a complete~~] an affirmative defense that the advertisement, act or practice is [~~subject to and complies with~~] required or specifically authorized by the rules and regulations of, and the statutes administered by, the Federal Trade Commission or any official department, division, commission or agency of the United States or this state [~~of New York~~].

[~~(b) Notwithstanding subdivision (a) of this section, any firm, corporation or association or agent or employee thereof who engages in any of the acts or practices stated in section three hundred forty-nine of this article to be unlawful in connection with or during an abnormal disruption of the market shall be liable to a civil penalty of not more than fifteen thousand dollars for each violation or three times the actual restitution needed, whichever is greater, which shall accrue to the state of New York and may be recovered in a civil action brought by the attorney general. In any such action it shall be a complete defense that the advertisement is subject to and complies with the rules and regulations of, and the statutes administered by the Federal Trade Commission or any official department, division, commission or agency of the state of New York. For the purposes of this subdivision, "abnormal disruption of the market" shall mean any change in the market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor.~~]

§ 8. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature

that this act would have been enacted even if such invalid provisions had not been included herein.

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