STATE OF NEW YORK

8427--A

2025-2026 Regular Sessions

IN ASSEMBLY

May 15, 2025

Introduced by M. of A. LASHER, DINOWITZ, SEAWRIGHT, FORREST, WEPRIN, SCHIAVONI, STECK, SIMON, SHIMSKY, VALDEZ, GALLAGHER, TORRES, P. CARROLL, HEVESI, EPSTEIN, R. CARROLL, ROSENTHAL, REYES, ALVAREZ, RAJKUMAR, BURROUGHS, SIMONE, GLICK, SOLAGES, COLTON, GONZALEZ-ROJAS, LUNSFORD, TAPIA, TAYLOR, CUNNINGHAM, O'PHARROW, DE LOS SANTOS, MITAYNES, CLARK, LEVENBERG, BORES, GIBBS, CRUZ, STIRPE, WIEDER, PAULIN, McMAHON, MEEKS, LEE, SHRESTHA, WRIGHT, JACKSON, BRONSON, CONRAD, ROMERO -- (at request of the Attorney General) -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. 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, children, veterans,

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

LBD03277-23-5

and immigrant populations, have been left vulnerable to unscrupulous business practices. It is time for New York to join all but a handful of New York's fellow jurisdictions by adopting a comprehensive unfair, deceptive, and abusive business acts and practices 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 that treat their customers fairly. It must also anticipate future unfair, deceptive, and abusive acts, including from new and emerging technologies. To that end, this article defines unfair and abusive acts and practices expansively to reach 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 unfair, deceptive, and abusive business practices. This article therefore eliminates atextual exceptions imposed by courts over the last five decades that have limited the attorney general's power to enforce the statute to acts that are "consumer-oriented" or that have an impact on the public at large. The attorney general has a special responsibility to the public to create a fair marketplace for all. That responsibility extends to protecting businesses and non-profits as well as individuals. There is no reason to believe that a small business or non-profit is any better able to defend itself from unfair, abusive, and deceptive conduct than a consumer, or that small entities need the protections of this article any less than individuals do. The market and wider society is harmed by the negative consequences that flow from unfair, deceptive, and abusive business practices even if those acts and practices have not been understood as "consumer-oriented".

§ 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 substantial injury which is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. The term "substantial injury" as used in this subdivision shall have the same meaning as the term "substantial injury" in the federal trade commission act, 15 U.S.C. Section 41 et seq., provided that the substantial injury of a person or persons other than consumers shall also be deemed a "substantial injury" for purposes of this section.

(2) 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 such person's interests in selecting or using a product or service; or

(C) the reasonable reliance by a person on a person engaging in the act or practice to act in the relying person's interests.

(b) (1) 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.

(2) 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. The attorney general may also bring such an action or proceeding against any person within the state conducting any business, trade, or commerce or furnishing a service, whether or not the business, trade, commerce, or service is conducted or furnished without the state.

(3) An act or practice made unlawful by this section is actionable by the attorney general regardless of whether or not that act or practice is consumer-oriented.

(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 action or 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 brought pursuant to this section it shall be a complete defense that the act or practice is, or if in interstate commerce would be, 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 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.

(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.

(h) 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~~] **deceptive act or practice made unlawful by** this section may bring an action in [~~his~~] **such person's** own name to enjoin such [~~unlawful~~] **deceptive** act or practice, an action to recover [~~his~~] **such person's** actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

[~~(j)~~] **(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. 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.

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