

Proposed Expansion of New York's Business Law Could Have Significant Detrimental Effects

Businesses operating in New York state should be concerned about the potential impact of proposed legislation now under consideration in the New York legislature.

The so-called Consumer and Small Business Protection Act (CSPA) would amend Section 349 of New York's General Business Law, resulting in a vast expansion of legal liability for businesses operating in the Empire State.

Here are several provisions that could be problematic for businesses:

Expanded Prohibition on any "Unfair" or "Abusive" Acts

The CSPA would revise Section 349 of New York's General Business Law, which currently prohibits only deceptive acts and practices, to prohibit "unfair, deceptive, or abusive" acts or practices. The proposed definitions of "unfair" and "abusive" acts are intentionally broad — the legislative findings state that the intent is to cover those "unscrupulous business practices" that are not deceptive but are otherwise unfair and abusive.

This means that despite having accurate representations to consumers, businesses may still face risk based on how they otherwise engage with the consumer. For example, businesses that engage in actions that "take unreasonable advantage" of a person's lack of understanding of the risks, costs, or conditions of a product or service or of a person's inability to protect their interests in using a product or service could be at risk of an enforcement action and/or litigation.

Nonprofit Suits Based on Test Purchases

The CSPA would allow third parties and organizations with the power to bring a class action suit on behalf of others similarly situated to bring suit. Significantly, a nonprofit organization could bring a test suit on behalf of the general public if it purchases or receives goods or services in order to evaluate their "qualities pertaining to use for personal, household, or family purposes." Businesses could expect to face an uptick in lawsuits prompted by these test purchases, which, unlike consumer-complaint-driven lawsuits, may develop without any canary in the coal mine-type warnings.

Business Disputes Without Consumer Impact Would Face Exposure

Currently, only business activities that are consumer-oriented or have a public impact are exposed to risk under Section 349. If these new bills are enacted into law, they will extend liability to cover business disputes with no consumer impact, expanding the scope of the legislation beyond violations that involve a sale of a good, service, or property for personal, family, or household purposes.

Private Plaintiffs Incentivized With Increased Damages, Attorneys' Fees

In an effort to further deter unlawful behavior, the new legislation will allow private plaintiffs to seek statutory damages of \$1,000 per violation, as well as actual damages, and mandate an award of attorneys' fees to prevailing plaintiffs. It will also authorize class action suits.

Should the bills pass, they will almost certainly spark a flurry of litigation given the expanded liability they create, the increased number of plaintiffs and defendants who will be subject to the proposed legislation, and the greater incentive offered by the enhanced remedies.

The legislation is found in Senate Bill 795 (Comrie) and Assembly Bill 7138 (Weinstein). Both bills



Ann-Marie Luciano

Member

aluciano@cozen.com
Phone: (202) 471-3420
Fax: (202) 861-1905

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were in committee when the legislature adjourned earlier this month. The Assembly has reconvened, and the Senate is expected to reconvene this summer. If the bills are not enacted this summer, they will be deferred to the next legislative session, set to begin in January 2024.
