

Skadden

Antitrust and Competition Update

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New York City's Proposed POWER Act Would Create a Private Right of Action for Unfair, Deceptive, Abusive and Unlawful Practices – and Unfair Methods of Competition

Executive Summary

- **What's new:** The proposed POWER Act, introduced in the New York City Council at the mayor's request, would allow any injured person — and nonprofits suing on behalf of their members or the public — to sue businesses for unfair methods of competition and unfair, deceptive, abusive or unlawful acts or practices, including theories that New York law currently reserves to the state attorney general.
- **Why it matters:** The bill pairs $2,500 in statutory damages per violation with mandatory attorney's fees for prevailing plaintiffs. Because "violation" is undefined, damages are uncapped and the undefined "unlawful" prong could import rules that lack their own private right of action, companies could face significant exposure. The bill's broad definition of "injury" and its competition prong make algorithmic, surveillance and dynamic pricing practices likely early targets.
- **What to do next:** Companies doing business with New York City residents should consider mapping their arbitration clauses to nonprofit and public-representative claims, inventory pricing and AI tool claims.

Background

On October 6, 2026, New York Mayor Zohran Mamdani and Department of Consumer and Worker Protection (DCWP) Commissioner Samuel A.A. Levine announced the People and Organizations Winning Economic Relief Act (POWER Act), Int. No. 1105. Introduced in the New York City Council at the mayor's request, the POWER Act would allow any injured person — and nonprofits suing on behalf of their members or the public — to sue businesses for unfair methods of competition and unfair, deceptive, abusive or unlawful acts or practices, including theories that New York law currently reserves to the state attorney general. The bill would add a new Chapter 15 to Title 22 of the New York City Administrative Code and would take effect immediately upon enactment, with no required agency rulemaking, phase-in period or sunset.

The bill responds to the state's 2026 FAIR Act, which strengthened General Business Law (GBL) § 349 but did not give private plaintiffs a right to sue over unfair or abusive practices. Under GBL § 349, private plaintiffs may sue only over "deceptive" practices and must plead "consumer-oriented" conduct.

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What the POWER Act Would Prohibit

The POWER Act proposes prohibiting "[u]nfair methods of competition and unfair, deceptive, abusive or unlawful acts or practices in or affecting business, trade, or commerce." Its key terms are:

- **Unfair.** An act or practice that "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers" and is "not outweighed by countervailing benefits to consumers or to competition."
- **Abusive.** An act or practice that "materially interferes with the ability of a consumer to understand a term or condition of a good or service," or takes unreasonable advantage of a person's (i) lack of understanding of material risks, costs or conditions, (ii) inability to protect his or her interests, or (iii) reasonable reliance on the business to act in his or her interests.
- **Deceptive and unlawful.** The bill reaches deceptive practices without the reliance and consumer-orientation requirements that limit GBL § 349 claims. Critically, it never defines "unlawful," which would allow plaintiffs to use the POWER Act to privately enforce other city, state and federal requirements that lack their own private right of action — for example, city pricing and fee-disclosure rules, tip- and fee-transparency requirements, and Federal Trade Commission (FTC) Act standards.
- **Unfair method of competition.** "Coercive, exploitative, collusive, abusive, deceptive, predatory, restrictive, or exclusionary conduct" that "negatively affects or interferes with competitive conditions" through its impact on "consumers, workers, or other market participants." This prong would give private plaintiffs a municipal antitrust-style claim that, on its face, does not require the elements of a traditional Sherman Act claim.

"Injury" is defined as any impairment of a person's lawful interests, "whether or not … quantifiable, economic, or monetary," expressly including "loss of time, loss of privacy, loss of security." The definitions draw on the federal Consumer Financial Protection Act (12 U.S.C. § 5531) and Section 5 of the FTC Act (15 U.S.C. § 45), but go further: The legislative findings direct that the terms be "broadly interpreted" to include all conduct described in the FTC's November 2022 Policy Statement on unfair methods of competition and the CFPB's April 2023 Policy Statement on abusive acts or practices, "regardless of whether such policy statement is active, superseded, or rescinded," and the bill is to be "liberally construed."

Who Can Sue

Any person injured by a violation could sue on his or her own behalf, on behalf of a group of similarly situated persons or on behalf of the general public. Nonprofit organizations, including tenant unions, could sue on behalf of themselves, their members or the public, including over goods or services they purchased specifically to test them.

Remedies and Exposure

Prevailing plaintiffs could recover actual damages; $2,500 per violation; injunctive and declaratory relief; and attorney's fees and costs, which are mandatory rather than discretionary. Because the bill does not define "violation" or cap aggregate damages, plaintiffs are likely to argue that each transaction, consumer or day constitutes a separate violation.

Limits on Private Suits

- **Pre-suit notice.** A plaintiff generally must notify the business and give it 10 business days to show in writing why the action should not be commenced, subject to exceptions for counterclaims, irreparable injury and exigent circumstances.
- **Limitations period.** Claims must be brought within three years of when the plaintiff knew or should have known of the violation. Because the bill contains no prospective-only clause, conduct that predates enactment may be challenged.
- **Federal defense.** The bill provides a complete defense where the challenged conduct is required by federal statutes, rules or regulations administered by the FTC or another federal agency. Conduct that is merely permitted under federal law would not qualify.
- **Exemptions.** The bill creates no private right of action against the city or against small businesses — defined narrowly as independently owned entities that are not dominant in their field, employ four or fewer people and had less than $5 million in gross revenue in the prior year.

Algorithmic, Surveillance and Dynamic Pricing

Pricing technology is a likely early focus. DCWP Commissioner Levine has signaled interest in AI and algorithmic practices, and several features of the bill align with emerging theories:

- **Surveillance pricing.** Because "injury" includes loss of privacy and security and need not be monetary, plaintiffs could try to challenge individualized pricing based on personal data without proving that they paid more.

- **Dynamic and opaque pricing.** Plaintiffs could attempt to argue that pricing that changes in ways consumers cannot understand "materially interferes" with their ability to understand a term or condition, or takes unreasonable advantage of their lack of understanding of a product's costs, under the abusive prong.
- **Algorithmic coordination.** The unfair-methods-of-competition prong reaches "collusive" and "exclusionary" conduct affecting consumers, workers and other market participants and is to be read in line with the FTC's 2022 Section 5 policy statement. Plaintiffs may try to use it to pursue claims alleging that shared pricing algorithms facilitate coordination, including by arguing that they need not meet traditional antitrust requirements of agreement or market power.
- **Disclosure regimes as predicates.** Through the undefined "unlawful" prong, plaintiffs may seek to privately enforce existing pricing-disclosure requirements, such as New York's algorithmic pricing disclosure law (GBL § 349-a) and city price-display and fee rules.

Likely Legal Challenges

- **State preemption.** Under New York law, a local law is preempted if it directly conflicts with a state statute or if the Legislature intended to occupy the field. Challengers could argue that the POWER Act conflicts with GBL § 349, as amended by the FAIR Act, which reflects the state's choices about the scope of private enforcement — particularly because a proposed private right of action for unfair practices was removed during the FAIR Act legislative process.
- **CPLR 901(b).** That rule generally bars class actions seeking statutory penalties or minimum damages unless the statute expressly authorizes them, which may limit class treatment of the $2,500 award.
- **Due process.** Uncapped, aggregated statutory damages may invite due process challenges.
- **Extraterritoriality.** Applying the law to businesses outside the city or the state that deal with city residents may raise questions of municipal authority and the dormant Commerce Clause.

Conclusion

If enacted, the POWER Act would rank among the nation's most expansive private consumer protection and competition laws. Effective immediately and reaching well beyond consumer transactions, it could expose companies serving New York City residents to significant litigation with little lead time. While its path to enactment remains uncertain, companies should consider monitoring the legislative process, including any amendments that narrow key definitions and shape its scope. Companies doing business with New York City residents should also consider mapping their arbitration clauses to nonprofit and public-representative claims, inventory pricing and AI tool claims.