

MOVING THE METAL: THE AUTO FINANCE PODCAST**HOSTS: BROOKE CONKLE AND CHRIS CAPURSO****GUESTS: BILL FOLEY AND JOE DEFazio****AIRD: 2/25/26****EMPIRE STATE OF SCRUTINY: THE NEW YORK FAIR ACT AND AUTO LENDING****Brooke Conkle ([00:09](#)):**

Welcome to Moving the Metal, the Premier Legally focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Chris Capurso ([00:19](#)):

And I'm Chris Capurso of Council in Troutman Pepper Locke's consumer financial Services practice group.

Brooke Conkle ([00:24](#)):

Today we'll be joined by two of our esteemed colleagues, Bill Foley and Joe DeFazio to discuss a recent development in New York law, the FAIR Act. But before we jump in, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you, [troutman financial services.com](http://troutmanfinancialservices.com) and [consumer financial services law monitor.com](http://consumerfinancialserviceslawmonitor.com). And also we have a bevy of other podcasts that you might find interesting. The Consumer Finance Podcast, which as you might guess is all things consumer finance related, the Crypto Exchange, devoted to trends, challenges, and legal issues in Bitcoin, blockchain, FinTech and RegTech, FCRA Focus, a podcast dedicated to all things credit reporting, and finally, Payments Pros, a great podcast focused exclusively on the payments industry. All of these insightful shows are available on your favorite podcast platform, so check 'em out. And speaking of those platforms, if you like what you hear, please leave us a review and let us know how we're doing.

([01:22](#)):

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download. Simply go to your iOS or Android app store and search for Troutman Pepper Locke. Not only does our app have all of our blog content and podcast episodes in one handy place, it also has a listing of all of the firm's financially focused attorneys. So check it out and see what you think. For today, as I mentioned, we'll be discussing the New York FAIR Act with two of our resident New Yorkers, Bill Foley and Joe DeFazio. Bill and Joe, welcome to the podcast.

Bill Foley (02:06):

Thanks, Brooke. Great to be here. Thanks for having us.

Brooke Conkle (02:09):

Bill, can you provide some background on the New York FAIR Act? What's going on here and what does this require?

Bill Foley (02:15):

Sure, Brooke. This is a law that was actually passed late last year on December. It was proposed earlier in the year. It is an acronym for a fostering affordability and integrity through Reasonable Business Practices Act. It's essentially an expansion of New York's Deceptive Practices Act. Essentially the New York UDAAP statute, this is the first major update to the statute in nearly 45 years. It expands the protection of New York's current Deceptive Practices Act to a broader range of potential harms. It's covering not only deceptive acts, which is what the UDAAP statute covered previously, but it's now expanded to unfair and abusive acts. The unfair and abusive acts actually track language from the FT and the CFPB. It also expands protections not only to individuals, but also small businesses and nonprofits. And it also actually eliminates the consumer oriented conduct, which was previously the aim of the Deceptive Practices Act to now protect the public at large, and it covers a substantially wider array of potentially alleged harmful transactions.

Chris Capurso (03:24):

Great. And this is the time of the podcast where I can say how nice it is to have a 75% New York based podcast. We won't have any fights about whether upstate or downstate is better. We all know which one is better, I won't say which, and also where upstate begins. That's right. The line of demarcation is up in the air and open for interpretation. But Joe, how do we expect to see the New York FAIR Act play out in the litigation context?

Joe DeFazio (03:54):

It's a great question, Chris, and I think for your listeners, this isn't an abstract risk. New York officials have already pointed to auto dealers and lenders as prime examples of the problem conduct they're attempting to address with this act. So I would expect on the ag side, them to target subprime borrowers are being steered into loans that they can't afford, income being inflated are not reasonably verified. Lending models that look like we'll get the car back and resell it. Those are type of things the ags have already talked about. So when I say it's not an abstract risk, that's what I mean because there are articles where the ags have already alluded to these types of products that they'll be looking at. The other big example would be add-on products, gap service contracts, extended warranties, protection packages, add-ons that are treated as required to get a surge rate or financing contracts that don't match how the product was described either in a showroom or on an ad.

(04:57):

And then I think anything related to coercive sales tactics and junk fees, those are natural fits under the fair and abusive labels that I think the AG will look to prosecute as this act goes into effect. In terms of private litigation, that question is obviously interesting because even though private plaintiffs don't get unfair and abusive as standalone claims, the law will still influence private litigation. And what I mean by that is I would expect to see more class actions against dealers and indirect lenders still grounded in deception, but modeled after any kind of ag press releases or settlements or cases that the AG brings. I would look for these complaints to look like unfair and abusive cases, but more framed as misrepresentations or omissions. For example, we weren't told add-ons were optional. They advertised the price that didn't reflect mandatory fees. The dealer misled us about the monthly payments and the total cost. Those are some things you already see in the auto space in litigation, but I think this law will add more litigation around these terms and as they kick up through the courts, I think will get clearer definitions of what is unfair,

Bill Foley (06:18):

Abusive, and deceptive. Chris and Brooke, if I can just add on to what Joe just said, because they're all excellent points. As this act was making its way through the legislature, right? Actually before it was passed, there had been a private right of action included in the bill, which was not included in the final bill because we think that the state had initially intended for this statute to

have incredibly broad reach and for private litigants to utilize it. We anticipate that that's exactly what these private litigants are going to do. They're going to take advantage of this and try and push it as much as possible. And we're curious to see how the pushback comes from the courts because while this was passed at the end of December last year, it actually did not go into effect until February 17th, which is tomorrow from the day of recording this podcast.

Brooke Conkle (07:14):

Well, bill, we've talked a little bit about private litigation, but how does the ACT expand the Attorney General's power to enforce the state UDAAP regime?

Bill Foley (07:24):

It is kind of just what we had discussed previously, expanding the scope from just deceptive, which private litigants still have that right? But now putting it into unfair and abusive, again, unfair being acts of practices that cause or are likely to cause a substantial injury to consumers and abusive being acts of practices that materially interfere with a person's understanding of terms or conditions. So these are two, again, this is language modeled off of the FTC and the CFPB. And also another very interesting piece of this litigation is that the FAIR Act is going to authorize the ag to enforce any violation of the ACT by any person conducting any business trade or commerce or furnishing a service in New York, regardless of where that person is located. And also any business in New York, regardless of whether the allegedly unlawful act or practice was directed to an individual in a state other than New York. So there is an extra territorial reach of this statute that's going to give the ag. Again, this is something that Joe and I have been discussing and discussing on another podcast. This is really BAG is going to look to step into where the CFUB has backed away a little bit under this current regime.

Chris Capurso (08:40):

You discussed in your response to the last question, some of the areas that dealers and finance companies need to be on the lookout for in the FAIR Act. But kind of at a high level, what is the general takeaway that dealers and auto finance companies should have about the FAIR Act as it goes into effect?

Joe DeFazio (08:58):

The FAIR Act doesn't reinvent auto finance litigation overnight. It gives the attorney general powerful new tools and a clear mandate and auto loans and car dealers are front and center in that story. So for the industry, the best defense is a disciplined, well, well-documented sales and underwriting process that would look reasonable not just to a court, but to any regulator reading a complaint for the first time. So then you would probably ask, well, what does that mean? And I think it means, are your ancillary products clearly optional? Are prices disclosed clearly upfront? Are they separate? Do advertising and sales scripts line up with the final product or final contract I should say? Is there a documented reasonable basis to believe the consumer can afford the loan beyond just the value of the car? Are there practices that look like systemic income inflation or collateral driven lending?

[\(09:54\)](#):

The third would be behavior on the sales floor prohibit holding IDs and keys as leverage. We've seen those type of cases before, standardize the checklist. So disclosures are consistent things that a lot of the clients are probably already doing, but to my first point, they really need to be buttoned up on because as I already said, the AG is going to look to auto lenders and dealers with this new power, and the industry should be aware that the ag is already noted then, and that these private litigants will likely also use this law to broaden the litigation we've already seen in this field.

Brooke Conkle ([10:34](#)):

Really interesting stuff, and as Chris and I are sitting here listening, we're hearing shades of the FTC's car's rule that ultimately did not go into effect, but here we are seeing it in sort of patchwork compliance requirements in New York. Joe and Bill, can you give our listeners any sort of recommended compliance strategies to reduce the risk in New York understanding, as you all mentioned, that it really is not necessarily limited to New York. This is a statute that's going to have a really sort of wide ranging scope and reach.

Bill Foley ([11:04](#)):

Again, it's right now we're kind of still at the very beginning of the phase here. So monitoring case law developments, making sure that internal compliance procedures are just, as Joe said, as buttoned up as possible. One interesting thing is in the purpose section of the FAIR Act, there is a mention of new and emerging technologies. So as clients are now utilizing AI more

and more, we want to make sure that these automated data collection and underwriting techniques are kind of kicking the tires to make sure that they're not going a little bit too far to verge into this broadened scope of how the ag can come down on it. And one other thing that I should have mentioned previously is that the penalties under the new law have gone up from 50 to a thousand dollars per violation.

Joe DeFazio ([12:01](#)):

One big thing I would say Chris and Brooke, that would probably help clients, particularly clients that are doing any kind of volume business in New York, is a sign a clear New York FAIR Act compliance or legal person with authority to review either the lender or the dealer's practices in New York because as Bill said, this law is very new, so somebody's going to need to be monitoring the cases that come out, press release and statements from the ag. And if you have somebody dedicated to dealing with this, I might go a long way in helping strategize on compliance as you go forward. Because like I said, I know I've said it a few times now, but I do think that agc's, this area in particular is one that they will definitely be taking a cultural look at. So if you have somebody dedicated to making sure that you're compliant with this new law, that'll go a long way in keeping out of the crosshairs of the ag and private litigants.

Bill Foley ([12:59](#)):

Or of course, you could just call your trusted advisors at Troutman Pepper Locke to assist you with that.

Joe DeFazio ([13:05](#)):

Of course.

Chris Capurso ([13:06](#)):

That's right. You can't get any better of a sales pitch than that. And with that, we'll wrap it up for today's podcast. Thank you to our audience for tuning in, and thank you to Bill and Joe for joining us today. Don't forget to check out our blogs where you can subscribe to the entire blog or just the specific content you find most helpful. That's the consumer financial services law monitor.com and the trauma troutman financial services.com blogs. While you're at it, why don't you head on over to troutman.com and sign up for our consumer financial services mailing list so that you can stay abreast of current issues, whether insightful alerts and advisories, and

receive invitations to our Industry Insider webinars. And of course, please mark your calendars for this podcast moving the metal, which we will be releasing every two weeks in 2026. That will be generally on the second and fourth Tuesdays of each month. If you have any questions or if we can help in any way, like Bill said, please reach out to us. Until next time.

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