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### FREDRICK S. LEVIN ON UDAP REFORM: ALEC'S PROPOSED MODEL ACT

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In the 1960s and early 1970s, in response to concerns that the Federal Trade Commission had failed to adequately enforce the FTC Act's prohibition of "unfair and deceptive trade practices," numerous states passed consumer protection laws. Many of these state statutes were modeled on the FTC Act and have become known as "little FTC act[s]."



Since their enactment, claims arising under state unfair and deceptive acts and practices laws, or UDAP laws, have become ubiquitous. As such, there is a great deal of interest in the efficacy and reform of UDAP laws.

(Westlaw users: [Click here for the Consumer Financial Services Law Report.](#))

Fredrick S. Levin, a partner at BuckleySandler LLC, has taken a critical look at one such effort at reform that has come from the American Legislative Exchange Council. In seeking reform, ALEC drafted a "Model Act on Private Enforcement of Consumer Protection Statutes." Because ALEC's Model Acts have a tendency to influence state legislatures, often becoming law, a closer look is warranted.

Upon inspection, Levin says, ALEC's Model Act reveals three key changes from current law:

- A reasonable reliance requirement.
- An out-of-pocket loss limitation.
- A willfulness requirement for recovery of attorney fees.

In evaluating these proposed changes, ALEC's critics have complained that ALEC's proposal will unduly deter meritorious UDAP litigation. In contrast, Levin says, proponents of reform have argued for a long time that such deterrence is necessary to avoid the flood of frivolous litigation, which they claim occurs under the current regime.

Levin believes that in making these arguments, proponents and critics alike have largely failed to consider how changes to current law would (or would not) serve the public and private law purposes of the little FTC Acts; namely, the public law purpose of preventing future harm and the private law purpose of permitting recovery for an injured plaintiff.

It is through this lens that ALEC's proposal (or any attempt at UDAP reform for that matter) can truly be evaluated, in Levin's view. Moving forward, both sides would be wise to consider the public and private law purposes of the "little FTC acts" in assessing proposed changes.

*This article was authored by **Fredrick S. Levin**, a partner in **BuckleySandler LLP's** Los Angeles office. He focuses on representing lenders and financial service providers in complex civil and class-action litigation involving allegations of violations of consumer protection statutes and securities laws. Reach him at [flevin@buckleysandler.com](mailto:flevin@buckleysandler.com).*