



State Attorneys General Powers and Responsibilities

Edited by
Emily Myers
National Association of Attorneys General



FOURTH EDITION
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Courtesy Chapter

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*This book is dedicated to Attorneys General
and the men and women who work for them in the
56 jurisdictions. They continue to make an important
contribution to state government and the American legal
system. Without them, there would be no book to write.*

Courtesy Chapter

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This book is a collaborative effort, in which different authors with expertise in each substantive area contribute their time and talent. The principal authors are noted on each chapter, but we would like to thank them again here for their hard work and dedication. Many thanks to the following authors:

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CHAPTER 13

Consumer Protection

By Abigail Stempson, Director, NAGTRI Center for Consumer Protection

Attorneys general deal with issues that range from health care to automobiles to privacy, often working together across the states and territories to protect citizens from unfair, misleading, unconscionable, and deceptive acts and practices. Consumer protection staff are among the most visible and active people in an attorney general office. Because consumer protection is uniquely “people law,” it is often the place where citizens of the state have the closest contact with not only the attorney general’s office, but with state government. Citizens have come to expect help from their state attorney general in a variety of ways—mediation of individual complaints, consumer alerts about unsafe products or the latest scams through both traditional press outlets and social media such as Twitter and Facebook, educational presentations on how consumers can better protect themselves, and websites dedicated solely to protecting consumers. This is in addition to traditional law enforcement activities that include the investigation, settlement, and litigation of cases involving unfair, misleading, unconscionable, or deceptive acts or practices.¹

Attorneys general are a leading consumer protection force in the country, generally receiving their authority from state consumer protection statutes² giving the attorney general primary enforcement responsibility within their states or territories. Attorneys general also bring consumer protection actions pursuant to *parens patriae* authority³ as well as authority from federal statutes (see below).

1 Albert Norman Shelden, *The Role of the Chief of a Consumer Law Section*, NAAG Management Series, 1996.

2 For a complete list of state consumer protection statutes, see Chart 13-1 at the end of this chapter.

3 “This prerogative of *parens patriae* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature [and] is a most beneficent

In addition, most attorneys general, pursuant to state consumer protection statutes, have the authority to perform pre-litigation discovery through investigative subpoenas, often termed “civil investigative demands.” Many attorneys general can require sworn statements, answers to interrogatories, and the production of documents under this statutory authority. Moreover, some attorneys general have the authority to require a violator to “cease and desist” from continuing violations. Furthermore, attorneys general can enter into settlements pursuant to state consumer protection statutes without filing a corresponding complaint. The settlements are often termed an “assurance of discontinuance,” or an “assurance of voluntary compliance.” These settlements are often filed in court. Of course, attorneys general can also enter into consent judgments in which complaints are filed against alleged violators of consumer protection statutes.

RESOURCES AND PRIORITIES⁴

Most state attorney general offices have a segment of the office solely dedicated to consumer protection to help meet the challenges of the marketplace and the high expectations of their state citizens. These segments are often titled the Consumer Protection Division, Unit, Section, or Bureau (CPD). A key player is the Consumer Protection Chief. This is the individual charged with ensuring that the responsibilities of the CPD are met.

These CPDs are organized in different ways, and how each operates is a function of many different factors. Among these are the number of people assigned to the CPD; whether investigators, accountants, attorneys, mediators, outreach personnel, or others are assigned to the CPD; whether the CPD handles mediation and/or complaint intake functions; whether the CPD represents various state agencies or only the attorney general in his/her role as protector of the public; and the areas of responsibility of the CPD, which often fall outside of what is traditionally thought of as consumer protection.

The individual attorney general’s management style and his or her interest in the activities of the CPD are also important factors. Some attorneys general

function . . . often necessary to be exercised in the interests of humanity, and for the prevention of injury to those who cannot protect themselves.” *Mormon Church v. United States*, 136 U. S. 1, 57 (1890).

4 Much of this discussion is reprinted from Shelden, *The Role of the Chief of a Consumer Law Section*.

believe that because of the high visibility of the CPD cases, they should be more involved in the day-to-day functioning than they are with the functioning of other segments of the office. Other attorneys general treat the CPD no differently than any other segment of the office, with the same chain of command and reporting responsibility for the CPD. The model which will be chosen is a function of a given attorney general's temperament, management style, and interest in consumer law matters, as well as the size of the office. CPDs across the country can range from two people to a staff of 45.

The set-up of CPDs varies greatly across the country. There are three basic models on which most offices rely: classical model, expanded classical model, and client agency model. Each CPD takes a little bit from each of the models and creates its own operating procedures and policies.

Under the classical model, the CPD is responsible only to the attorney general and does not represent any state agency clients, the governor, a consumer protection section within the governor's office, a rate setting board (such as a department of insurance, public utilities commission, or other agency) or any other entity. The CPD's responsibility is to enforce the state's consumer protection laws. The actions and activities of the CPDs are totally within the control of the attorney general. Because the CPD represents no state agency clients, the budget comes from the attorney general's "general" budget appropriations or from a consumer protection settlement fund that receives funds from successful consumer protection cases. The CPD typically contains attorneys sufficient to enforce state consumer protection laws as well as investigative staff sufficient to provide back-up resources to the attorneys in the CPD.

When an office uses the expanded classical model, the CPD is responsible for enforcement of traditional state consumer protection laws and state laws regarding antitrust, securities, utilities, charities, tobacco, and/or other matters. The CPD may also have criminal responsibility. In addition, CPD attorneys may be responsible for the handling of consumer complaint mediation.

Finally, some offices use the client agency model, under which the CPD not only reports to the attorney general but also has responsibility for representing various state agencies as clients. Some offices are responsible for representing a governor's office of consumer protection, departments of insurance, securities divisions, departments of health, food and drug and others. In this model, the CPD is responsible for both fostering the goals of the attorney general and representing the interests of these state clients. Under this model, the work which the CPD does for state agency clients may be reimbursable and thus not within an attorney general's "general" or consumer protection settlement fund

appropriation. The budget may have a specified number of budgeted positions for client representational work.

There is no standard way to structure a CPD. Rather, history, legislative expectations, legal requirements, and funding, among other factors, affect how each CPD is structured.

Resources are limited in any governmental entity, and CPDs are no exception. Therefore, priorities must be set to expend those resources in the best way possible to protect consumers from harm. Factors that may be taken into account when determining priorities include:

- The extent of the office's jurisdiction over the matter;
- The number of consumers affected;
- The impact on consumers;
- The case's legal value, including its effect on law in the state;
- The type of consumers that are affected by the case under consideration, e.g., vulnerable populations
- The case's beneficial publicity, especially with regard to public education;
- Investigation and litigation alternatives;
- Alternative remedies available to consumers affected by the illegal activities.

When examining these and other factors, CPDs also need to take into account the attorney general's views of what is important and recognize the consumer problems that are affecting a given jurisdiction's citizens.

Multistate Actions

Multistate matters can arise in many areas within an attorney general's office, including consumer protection. Attorneys general often work together, through working groups, joint investigations, and settlement discussions, as well as preparing for litigation against a particular entity, business, industry, or business practice. Multistate cooperation has greatly enhanced the consumer protection enforcement work of attorneys general in halting practices found in more

than one jurisdiction by maximizing their effectiveness and avoiding unnecessary duplication of effort and waste of public resources.

Other than having more than one attorney general office involved, there is no official minimum required for a multistate case. Multistate matters often include one or more of the following circumstances:

- An important problem that is a priority for the states and is appropriate for collective enforcement by several attorneys general
- Development of the law in a given area of importance to the attorneys general
- The opportunity to draw upon their collective resources to address the breadth or magnitude of the problem, and to ensure consistent enforcement or standards across state lines
- Avoidance of unnecessary duplication of effort or redundant investigation and/or litigation
- Efficient and effective resolution of a matter
- Consumer benefit from injunctive or other relief that may otherwise be unavailable
- Ensuring a level playing field on a regional or national basis for legitimate business practices
- Requests by the defendants or other parties to resolve all state and/or federal claims related to an issue at the same time.

Consumer protection multistate actions generally have a governance/leadership structure divided between lead states, executive committee states, and participating states, with the lead and executive committee states expending the most resources, time, and energy on the matter. Multistate working groups have also been established to monitor specific consumer protection issues including in the areas of health, telecommunications, and telemarketing. These working groups are typically led by attorneys general office(s) who are active and have expertise in the matter at issue. Quite often, multistate investigations and enforcement actions, legislative and rulemaking commentary, and NAAG resolutions

grow out of these working groups. In other instances, multistate enforcement efforts are the result of ad hoc groups of states convened for the limited purpose of the enforcement effort.

Consumer settlements, whether multistate or single state, typically take one of two forms: (1) assurance of voluntary compliance/assurance of voluntary discontinuance/assurance of compliance/assurance of discontinuance (AVC); or (2) consent decree. If the settlement is done through an AVC, no complaint is filed, but many states require the AVC be filed in court. A violation of an AVC is typically *prima facie* evidence of a violation of the consumer protection laws at issue. If the settlement is done through a consent decree, the state also files a complaint, often simultaneously. A contempt action can generally be brought if an entity violates a consent decree. In a multistate settlement, unless there is a federal partner or some other reason for federal court jurisdiction, separate settlements are filed in court in each state. Remedies obtained through consumer protection actions may include injunctions, consumer restitution, and a payment to the states.

Cooperation with Federal Agencies

Congress has expanded attorneys general enforcement authority by passing federal statutes that grant the attorneys general power to enforce federal law. For instance, the Dodd-Frank Wall Street Reform and Consumer Protection Act⁵ significantly changed the American financial regulatory environment and granted attorneys general substantial authority to enforce the Act's substantive provisions.⁶ Similarly, the Children's Online Privacy Protection Act (COPPA)⁷ imposes certain requirements on operators of websites or online services that collect personal information of children under 13. COPPA authorizes an attorney general to bring a civil action on behalf of the residents of his or her states in a district court of the United States when the attorney general has reason to believe that COPPA has been violated.⁸ In addition to Dodd-Frank and COPPA, a number of federal consumer protection laws authorize dual enforcement by the federal government and the attorneys general.⁹

5 12 U.S.C.S. § 5301 *et seq.*

6 12 U.S.C.S. § 5552.

7 15 U.S.C.S. § 6501 *et seq.*

8 15 U.S.C.S. § 6504.

9 The Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2607; The Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. § 1639; The Credit Repair Organizations Act (CROA), 15 U.S.C. § 1679h; The Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*; Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. § 2071; Professional Boxing Safety

Attorneys general routinely work collaboratively with federal agency partners to protect and educate consumers. This collaboration includes joint investigations, enforcement actions, and creating educational materials that will allow members of the public to be more informed consumers. The attorneys general work with, among other agencies, the Commodity Futures Trading Commission, Consumer Financial Protection Bureau (CFPB), Department of Housing and Urban Development, Consumer Protection branch of the U.S. Department of Justice, Federal Bureau of Investigation, Federal Communications Commission (FCC), Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Federal Trade Commission (FTC), Food and Drug Administration, Office of the Comptroller of the Currency, Postal Inspection Service, Securities and Exchange Commission, United States Secret Service, and the Veterans Administration.

International Association of Prosecutors-Prosecutors Consumer Protection Network

NAAG staff are active members of the International Association of Prosecutors (IAP), an international community of prosecutors committed to setting and raising standards of professional conduct and ethics for prosecutors worldwide; promoting the rule of law, fairness, impartiality and respect for human rights; and improving international cooperation to combat crime.¹⁰ Many harms committed against consumers transcend our borders. Globally, jurisdiction over consumer fraud and deceptive trade practice schemes differs in each country and is often handled by multiple parts of government. Some nations generally prosecute consumer protection cases civilly, others criminally, and many nations do so through a mixture of both, depending on the type and severity of the scheme being prosecuted.

With jurisdiction over these schemes varying so greatly, NAAG and the CCP leadership worked collaboratively with the countries of Argentina, Brazil, and Mauritius to propose an IAP network of prosecutors to assist in protecting consumers worldwide. In 2017, IAP leadership approved the new network, titled

Act (Boxing Safety), 15 U.S.C. § 6309; The Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM), 15 U.S.C. § 7706; The Freedom of Access to Clinic Entrances Act (FACE), 18 U.S.C. § 248; The Nutrition Labeling and Education Act (Nutrition Labeling Act), 21 U.S.C. § 337; The Health Insurance Portability and Accountability Act (HIPPA), 42 U.S.C. § 1320d-5; Restore Online Shoppers Confidence Act (ROSCA), 15 U.S.C. 8401 *et seq.*; The Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227; The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 49 U.S.C. § 14710; The Odometer Disclosure Act, 49 U.S.C. § 32709; The Telemarketing Sales Rule (TSR), 16 C.F.R. § 310.7 .

10 International Association of Prosecutors brochure, May 2018.

“Prosecutor’s Consumer Protection Network” (PCPN), which will work to provide a much-needed forum for practitioners to communicate, exchange ideas and experiences, stay informed and collectively innovate and problem solve to advance approaches and techniques, and undermine fraudulent enterprises that harm consumers in the United States and worldwide.

CONSUMER PROTECTION ENFORCEMENT—AREAS OF INTEREST

The consumer protection jurisdiction of state attorneys general is wide and varied. The following are just a few of the numerous topics addressed by the attorneys general.

Annuities

CPDs have developed an increasing interest in the area of annuity sales. These annuities may have a fixed, variable or indexed rate but they generally can be described as an investment vehicle whereby a consumer pays a certain amount up front and then by the contract terms is entitled to a stream of income for a fixed number of years. These periodic payments may be for the remainder of the consumer’s life and there is often a death benefit. The products are complex and the tax consequences need to be fully explored. Moreover, there may be penalties for early withdrawal as well as other fees.

These products are sometimes sold by insurance agents but in recent years the concern has grown that they are being sold in connection with what may be termed a “living trust mill.” In this instance, salespeople, often insurance agents, organize outreach events or dinners directed toward seniors which tout the benefits of a “living trust” over the disadvantage of having a will (i.e. a will needs to be probated in many jurisdictions while a trust does not). Often, these agents are involved in the sale of a living trust to the consumer, either with or without any meaningful involvement of an attorney.¹¹ In other instances, salespeople

11 See *People ex rel. Lockyer v. Fremont Life Ins. Co.*, 104 Cal. App 4th 508, 128 Cal. Rptr. 2d 463 (Cal. Ct. App. 2002) (appellants’ life insurance agent would persuade the consumer to purchase an annuity and did not advise the prospective purchaser that the ultimate goal was to sell annuity policy and earn a commission.) See also *Commw. ex rel. Fisher v. Weinstein*, No. 576 M.D. 2001, slip op (Pa. Commw. Ct. 2014) (evidence showed that annuity company willfully participated in a large-scale financial operation that so co-mingled the functions of the lawyer and salesperson as to necessarily cause likelihood of confusion or misunderstanding.).

have touted their ability to enroll a consumer into a veterans benefit program. The concern is that either the veterans program or the living trust is merely a “pretext” to gain access to the consumer’s information in order to sell an annuity (that comes with a commission) that may not be appropriate for a consumer, especially an elderly consumer, where all the benefits of a long-term annuity may not be realized. The states have determined that these types of sales may be in violation of state consumer protection laws. The states have also examined whether any sales conducted are in compliance with their door-to-door right to cancel requirements.

Automobiles

Historically, automobile-related cases have been local in nature, and were rarely the subject of multistate enforcement. More recently, however, states have pursued cases that are well suited for multistate investigations. In 2013, for example, 30 state attorneys general reached a settlement with Toyota Motor Sales U.S.A., Inc. to resolve their investigation of instances of sudden, uncontrolled acceleration in Toyota vehicles. The attorneys general asserted that Toyota had failed to inform regulators or warn consumers about the problem, thereby putting consumers at risk. The settlement prohibited Toyota from reselling vehicles with safety defects, and prohibited general misrepresentations as to vehicle safety. Toyota was also required to make other changes to monitor and ensure the safety of its “certified pre-owned” vehicles and to pay additional consumer restitution and \$29 million to the states.¹²

In 2015, more than 40 attorneys general launched a joint consumer protection and environmental investigation of Volkswagen Group of America, Inc. following the disclosure that the companies had installed illegal emissions “defeat devices” on over half a million diesel passenger vehicles. That investigation culminated in a 2016 settlement of the consumer protection claims under which Volkswagen agreed to pay the states a \$1,100 per vehicle civil penalty; to offer consumers the option of an emissions fix or a vehicle buy-back, along with significant restitution; and to adopt practices and procedures to ensure that the conduct is not repeated. Notably, Volkswagen’s state consumer protection settlement was one part of a comprehensive federal and state settlement of consumer protection and environmental claims. The subsequent agreements called for Volkswagen to establish multi-billion-dollar funds for environmental mitigation and to support

12 Chris Woodyard, “Toyota recall nightmare results in deal with 29 states,” *USA Today* (Feb. 14, 2013).

the development of zero-emission vehicles, as well as paying significant additional environmental civil penalties to the states.¹³

Thirty-three states and the District of Columbia also reached a \$41.2 million settlement with auto manufacturers Hyundai and Kia to resolve allegations that the companies had, at a time of abnormally high fuel prices, misrepresented the fuel economy ratings for numerous models of cars and SUVs.¹⁴ Regulators discovered the misstatements after consumer complaints prompted an investigation of Hyundai and Kia's emissions testing procedures. The consumer protection settlement vindicated the states' interests in ensuring that consumers are given accurate information, particularly when they are making a substantial investment in a new vehicle.

General Motors and 49 states entered into a \$120 million settlement over the company's failure to warn consumers about thousands of defective ignition switches that allowed the ignition to slip out of the "on" position, thereby deactivating electrical and safety systems. General Motors was aware of the ignition switch problem, but it delayed issuing a recall for years despite the significant safety risk to consumers. The settlement prohibits General Motors from, among other things, selling certified pre-owned vehicles that are subject to open safety recalls, or misrepresenting the safety of its vehicles.¹⁵

Safety defect cases such as *Toyota* and *General Motors* are commonly based on the theory that the companies have failed to warn consumers of a known defect.¹⁶ The attorneys general have also prosecuted state consumer protection law claims against manufacturers and dealers for, among other things: a) misrepresentations about vehicle's features, quality, environmental impact or fuel economy; b) unfair lending practices; c) deceptive advertising practices such as refusal to sell a car at the advertised price; d) odometer fraud; e) failing to disclose lease and financing terms; f) charging much more than initial estimates for repair

13 See, e.g., Press Release, Office of the Attorney General of Illinois, "Attorney General Madigan Reaches \$275 Million Settlement with Volkswagen Over Diesel Emissions Scandal" (June 28, 2016); Press Release, Office of the Attorney General of Maryland, "Attorney General Frosh Announces Compensation for Maryland Consumers Under Settlements with Volkswagen Over Emissions Fraud," (Jun. 28, 2016).

14 Mark Huffman, "Hyundai and Kia settle inflated fuel economy complaint," *Consumer Affairs*, Oct. 28, 2016).

15 See, e.g., Press Release, Office of the Attorney General of Nebraska, "Attorney General Doug Peterson Reaches Settlement with General Motors Company Over Defective Ignition Switch," Oct. 19, 2017).

16 See *In the Matter of International Harvester Co.*, 104 F.T.C. 949, 1984 WL 565290, at *85-*89 (1984) (an omission of a material fact may be either unfair or deceptive).

work; g) providing illegal warranties for used cars; h) failing to fulfill warranty obligations; and i) improperly repairing consumers' vehicles and charging them as if the repairs had been made.

Debt Relief

Debt relief companies are entities that offer assistance to consumers in order to help reduce or eliminate different types of debt. Attorneys general have brought a number of actions to enforce state and federal laws that regulate these companies. Generally, the fraudulent practices alleged by attorneys general include misrepresentations of the nature of the services the company provides and whether any services they provide are available for free; misrepresentation of the nature of the payments consumers make, including failure to disclose large upfront fees; and misrepresentation of the company's success rate.

The types of debt that are included in these programs and the nature of the services themselves vary depending on the company type. For example, credit counseling services are frequently non-profit charitable entities offering advices to consumers and enrolling them in a debt management plan (DMP) through which a consumer consolidates all of their unsecured debts into a lump sum paid to the credit counselor who redistributes it to the consumer's creditors. Issues with these businesses include companies that failed to clearly disclose their fees and misrepresented their structure to obtain charitable status from the IRS, charging consumers monthly service fees for managing DMPs and a low success rate with DMPs overall.¹⁷

Another type of debt service is debt settlement companies, which are for-profit entities that encourage consumers to stop paying their monthly debts, and instead save those payments to help negotiate a lump sum payoff amount with the creditor for a significantly reduced principal amount. Some of these companies misrepresent their success rate and the savings for consumers and failure to disclose significant upfront fees.¹⁸

17 See, e.g., Consent Judgment, *Washington v. AscendOne Corporation*, No. 10-2-38712-9 (Wash. Super. Ct., King Cty. Nov. 4, 2010); see also Daniel T. Brown et al., *The Success and Failure of Counseling Agency Debt Repayment Plans*, 38 E. Econ. J. 99, 102 (2012).

18 See, e.g., *People of New York v. Nationwide Asset Services*, 26 Misc 3d 258 (N.Y. S. Ct. 2010); Press Release, Office of the Attorney General of Illinois, "Attorney General Files Lawsuit, Proposes Legislation to Prohibit Abusive Practices by Firms Promising to Reduce Credit Card Debt," (Sept. 30, 2009). In the wake of these problems, many states passed laws that banned or capped upfront fees and required businesses to register with the state. See, e.g., 225 ILL. COMP. STAT. 429/1 *et seq.*; MD. CODE ANN., FIN. INST. §§ 12-1001 *et seq.*; TEX. FIN. CODE ANN. §§ 394.201 *et seq.*; and WASH. REV. CODE § 18.28.010 *et seq.* The FTC amended the Telemarketing Sales Rule to specifically

Another type of debt-relief is mortgage relief companies. These entities specifically target consumers who are struggling to pay their mortgages and may be at risk of foreclosure. They offer to help consumers qualify for government or private programs that may refinance or otherwise reduce amounts owed. Companies may promise services they cannot deliver or that are otherwise available for free, and may charge high upfront fees.¹⁹ Some states have passed laws to regulate the industry,²⁰

Attorneys general have been active in protecting against abuses in a variety of other debt relief services including tax relief²¹ and student loan debt relief.²² Many of the underlying state consumer protection law allegations mirror the issues consumers face in the other forms of debt relief services.

Dietary Supplements and Pharmaceuticals

Attorneys general continue to vigorously safeguard consumers from potentially harmful products that threaten the health, safety, and welfare of their constituents. Many enforcement actions in the health fraud arena center on false or deceptive claims relating to the safety and/or efficacy of drugs, medical devices, and dietary supplements. For example, attorneys general reached a 2015 settlement with Amgen resolving allegations that it engaged in deceptive

prohibit advance fees. 16 C.F.R. § 310.4(a)(5) (2010).

19 In 2014, as part of *Operation Mis-Modification*, fifteen State Attorneys General and two state regulatory agencies, in collaboration with the FTC and the CFPB, announced thirty-two actions against mortgage assistance relief service companies. See, e.g., *Florida v. Law & Associates*, No. 08-4900C1-13 (Fla. Cir. Ct., Sixth Cir. June 4, 2014); Pres Release, Office of the Attorney General of Florida, “North Palm Beach Law Firm Sued for Scamming Distressed Homeowners,” (July 23, 2014).

20 E.g., 765 ILL. COMP. STAT. 940/1 *et seq.*; IND. CODE § 24-5.5-1-1 *et seq.*; and OR. REV. STAT. § 50, Ch. 646A.700 *et seq.* The FTC also implemented the Mortgage Assistance Relief Services Rule that bans upfront fees and requires mandatory disclosures before a consumer can enter into a contract for mortgage relief services. 12 C.F.R. § 1015 *et seq.*

21 See, e.g., Press Release, Office of the Attorney General of Virginia, “Attorney General Herring Announces Lawsuit Against Virginia-Based Tax Debt Settlement Company” (Sept. 15, 2017); Press Release, Office of the Attorney General of Texas, “Attorney General Abbott Charges JK Harris With Misrepresenting Its Ability to Reduce Unpaid Tax Debts (Apr. 13, 2009); Press Release, Office of the Attorney General of Illinois, “Madigan Settles with Tax Resolution Company Falsely Promising Tax Settlements for ‘Pennies on the Dollar’” (June 12, 2008).

22 In 2017, as part of *Operation Game of Loans*, twelve Attorneys General, in collaboration with the FTC, announced thirty-six actions against student loan debt relief companies. Press Release, Office of the Attorney General of Illinois, “Attorney General Madigan Files Lawsuit Against Student Loan Debt Relief Scam in National Crackdown by 12 Attorneys General & the FTC,” (Oct. 13, 2017).

practices when it marketed Aranesp and Enbrel for unapproved or off-label uses and dosage frequencies without competent and reliable scientific evidence to substantiate its claims.²³ Also, attorneys general settled claims in 2017 against Johnson and Johnson relating to misrepresentations it made about adhering to the federally-mandated current Good Manufacturing Practices when manufacturing over-the-counter drugs.²⁴ Several attorneys general formed a multistate to investigate the role of opioid manufacturers and distributors in the opioid epidemic and a number of attorneys general have filed suit, alleging the manufacturers’ “aggressive” marketing campaign concealed the risks of treating chronic pain with opioids.²⁵

Health fraud investigations center on violations of state consumer protection statutes; however, state versions of the federal Food, Drug, and Cosmetic Act and state Racketeer Influenced Corrupt Organization Acts can also be implicated. There is an evolving body of federal case law relating to the First Amendment as a defense to off-label promotion.²⁶ Although targets frequently cite these cases, they are distinguishable from attorneys general investigations as they relate to truthful, non-misleading claims rather than the false and deceptive claims attorneys general typically investigate.

One specific area of health-related fraud that is a focus of attorney general action is dietary supplements, which include products such as vitamins, minerals, herbs, and amino acids. Consumers encounter them as pills, powders, and even as liquids, often incorrectly assuming that the FDA reviewed the product for safety and effectiveness.²⁷ The advertising used to sell dietary supplements and the labels on these products are thus critical to ensuring consumer safety.

23 Press Release, Office of the Attorney General of Alaska, “Attorneys General Reach Settlement with Amgen Concerning Illegal Marketing of Medications,” (August 17, 2015); Press Release, Office of the Attorney General of Nevada, “Attorney General Laxalt Announces \$71 Million Consumer Settlement with Amgen Inc. for Deceptive Labeling,” (Aug. 19, 2017).

24 See e.g., *State of Wisconsin v. Johnson & Johnson Consumer Inc.*, No. 17CX30 (Wisc. Cir. Ct. Dane Cty. May 24, 2017); *State of Texas v. Johnson & Johnson Consumer Inc.*, No. CD-17-06193 (Tex. Dist. Ct. Dallas Cty. May 24, 2017).

25 See, e.g., *State of North Dakota ex rel. Stenehjem v. Purdue Pharma L.P.*, (N.D. Dist. Ct. Burlingame Cty. May 15, 2018); *State of Tennessee v. Purdue Pharma, L.P.*, No. 1-173-18 (Tn. Cir. Ct. Knox Cty. 6th Dist. May 15, 2018).

26 See *Sorrell v. IMS*, 564 U.S. 552 (2011); *United States v. Caronia*, 703 F.3d 149 (2d. Cir. 2012); *Amarin Pharma, Inc. v. FDA*, 119 F. Supp. 3d 196 (S.D.N.Y. 2015).

27 The FDA does not, and cannot under federal law, review dietary supplement products for safety and effectiveness. The manufacturers and distributors of dietary supplements are responsible for making sure their products are safe before they go to market. See FDA, DIETARY SUPPLEMENTS: WHAT YOU NEED TO KNOW.

Under state consumer protection laws, dietary supplements must be advertised in a manner that is both truthful and non-misleading. These laws give the attorneys general broad regulatory and enforcement authority over the solicitations for these products, with some state laws providing for both civil and criminal penalties for violations.²⁸ Specifically, state consumer protection laws prohibit: 1) the use of false or misleading statements in any advertisement;²⁹ 2) the omission of material facts;³⁰ or 3) the making of claims without competent and reliable scientific evidence.³¹ These requirements are similar, in fact, to federal regulations applicable to the advertising of dietary supplements under the Dietary Supplement Health and Education Act (DSHEA). DSHEA requires that dietary supplement claims be “truthful and not misleading.”³²

In recent years, attorney general enforcement actions proved critical to ensuring transparency in the advertising of dietary supplements. In 2014, the Washington attorney general brought an enforcement action against Living Essentials LLC and Innovation Ventures LLC, the manufacturers of the 5-Hour Energy drink.³³ That case went to trial in 2016, and in 2017, the Washington attorney general obtained a \$4.3 million judgment against the defendants.³⁴ Similar cases were brought by the attorneys general of Hawaii, Idaho, Indiana, Oregon, and Vermont with mixed results.³⁵

28 Compare Kansas Consumer Protection Act, KAN. STAT. ANN. § 50-623 *et seq.* with Nebraska Consumer Protection Act, NEB. REV. STAT. § 59-1601 *et seq.* and Tennessee Consumer Protection Act, TENN. CODE ANN. § 47-18-101 *et seq.*

29 See, e.g., HAWAII REV. STAT. chs. 480 and 481A; KY. REV. STAT. ANN. § 367.110 *et seq.*; Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 PA. CONS. STAT. § 201-1 *et seq.*; Virginia Consumer Protection Act, VA. CODE ANN. § 59.1-196 through 59.1-207.

30 Indiana Deceptive Consumer Sales Act, IND. CODE § 24-5-0.5 *et seq.*; Maryland Consumer Protection Act, MD. CODE ANN. COM. LAW § 13-101 *et seq.*

31 CALIFORNIA BUS. & PROF CODE § 17500 *et seq.*; Connecticut Unfair Trade Practices Act, CONN. GEN. STAT. §§ 42-110a *et seq.*; Kansas Consumer Protection Act, KAN. STAT. ANN. 50-623 *et seq.*; Oregon Unlawful Trade Practices Act, OR. REV. STAT. § 646.608.

32 21 U.S.C. § 343(r)(6)(B). This means the supplement marketer must have “competent and reliable scientific evidence” to support those claims. See FTC, DIETARY SUPPLEMENTS: AN ADVERTISING GUIDE FOR INDUSTRY at 3 (April 2001). Federal law also prohibits the marketing of dietary supplements for the purpose of treating, diagnosing, preventing, or curing diseases. See FDA, DIETARY SUPPLEMENTS: WHAT YOU NEED TO KNOW, *supra*.

33 *State of Washington v. Living Essentials LLC*, No. 14-2-19684-9 (Wash. Super. Ct. King Cty. Jul. 17, 2014).

34 Press Release, Office of the Attorney General of Washington, “AG: 5-Hour Energy® Makers Ordered to Pay Nearly \$4.3 Million for Consumer Violations,” (Feb. 8, 2017).

35 Josh Long, *5-Hour Energy Wins and Loses Court Battles with State AGs*, Natural Products Insider, Nov. 1, 2016; Press Release, Office of the Attorney General of Idaho, “Attorney General

In 2015 and 2016, the New York attorney general reached agreements with GNC, Nature's Way, and NBTY, Inc. to improve the integrity of the companies' herbal dietary supplements.³⁶ These agreements followed an investigation by New York that revealed certain supplements sold by these manufacturers failed to contain the ingredients listed on their labels or, in some cases, contained ingredients not identified on the labels. In 2017, the Iowa attorney general filed a consumer fraud lawsuit against a set of companies selling "drinkable sunscreen" and water purportedly enhanced by radio waves. The case settled after the defendants agreed to reform their business practices and make consumer restitution.³⁷

Other enforcement actions are the result of joint investigations between attorneys general and the FTC. In early 2017, New York and the FTC filed an enforcement action against Quincy Bioscience, LLC and its affiliates, alleging they lacked substantiation for their advertised claims related to the supplement Prevagen.³⁸ The Maine attorney general also filed a joint enforcement action with the FTC against XXL Impressions, LLC and its affiliates for violating a variety of consumer protection laws in the promotion of their dietary supplements Cogni-Prin and FlexiPrin.³⁹ The parties reached a settlement in that case and a similar settlement with Health Research Laboratories, LLC, regarding the supplements BioTherapex and NeuroPlus.⁴⁰

Do-Not-Call and Telemarketing Fraud

Since the creation of the National Do Not Call Registry in 2003,⁴¹ telemarketers and fraudsters have adapted to no-call regulations by employing various

Reaches Settlement with Makers of 5-hour Energy Products," (Jan. 8, 2016).

36 Press Release, Office of the Attorney General of New York, "A.G. Schneiderman Announces Major Nationwide Agreement with NBTY, Herbal Supplement Maker for Walgreens and Walmart," (Sept. 28, 2016).

37 Press Release, Office of the Attorney General of Iowa, "'Drinkable Sunscreen' Seller to Change Marketing Practices Following Consumer Fraud Lawsuit," (Oct. 24, 2017).

38 Press Release, Office of the Attorney General of New York, "A.G. Schneiderman and FTC File Lawsuit Against Major Dietary Supplement Maker That Marketed Fraudulent Memory Loss Pill To Seniors," (Jan. 9, 2017). In October 2017, the U.S. District Court for the Southern District of New York granted the defendants' motion to dismiss.

39 *FTC and State of Maine v. XXL Impressions, LLC et al.*, No. 1:17-cv-00067 (D.Me. Aug. 23, 2017).

40 *Federal Trade Commission and State of Maine v. Health Research Laboratories LLC*, No. 2:17-cv-000467 (D.Me. Nov. 30, 2017).

41 Thirty-one states (Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota,

techniques to avoid prosecution: robocall mass-dialing software, voice-over-internet protocol telephony, overseas call centers, and caller ID spoofing. The result is an estimated average 2.6 billion robocalls per month.

The FCC has addressed the proliferation of illegal robocalls through an Omnibus Ruling on call-blocking and related topics.⁴² Subsequent countermeasures against robocalls include the formation of the industry-led Robocall Strike Force, and the FCC's 2017 Report and Order and Further Notice of Proposed Rulemaking,⁴³ which allowed providers to place certain numbers on a Do Not Originate list.

Significant multi-state enforcement cases include *United States, et al. v. Dish Network, LLC*,⁴⁴ where an Illinois District Court imposed a \$280 million judgment against Dish for violations of the Telephone Sales Rule (TSR)⁴⁵ and the Telephone Consumer Protection Act.⁴⁶ This case established that a seller is vicariously liable for its agents' telemarketing calls to numbers on the no-call list.⁴⁷ Cruise solicitations thinly disguised as political surveys gave rise to *FTC et al. v. Caribbean Cruise Line, et al.*⁴⁸ The FTC and ten states⁴⁹ reached settlements with all defendants, including suppliers of caller ID numbers who "assisted and facilitated" the scheme in violation of the TSR.

For-Profit Colleges

Attorneys general have been very active in investigating problematic for-profit colleges that have engaged in large-scale deceptive advertising and false promises to students. These for-profit colleges have targeted students through

Ohio, Oregon, South Dakota, Utah, Vermont, Virginia, and Wisconsin) have officially adopted the federal list as their No-Call list, while 12 states (Colorado, Florida, Indiana, Louisiana, Massachusetts, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Texas, and Wyoming) maintain separate lists.

42 *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 30 FCC Rcd. 7961 (2015). Thirty-nine attorneys general sent a letter encouraging the FCC to address the proliferation of illegal robocalls. Letter to Honorable Tom Wheeler from 39 Attorneys General, Sept. 9, 2014.

43 *See, In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, 33 FCC Rcd. 9706 (2018).

44 The states involved were California, Illinois, Ohio and North Carolina.

45 16 C.F.R. § 310.1 *et seq.*

46 47 U.S.C. § 227.

47 256 F. Supp.3d 810, 936 (C.D. IL 2017); Appeal pending, 7th Cir. Case no. 17-3111.

48 *FTC et al. v. Caribbean Cruise Line, Inc.*, No. 15-60423 (S.D. Fla. Mar. 3, 2015)

49 Colorado, Florida, Indiana, Kansas, Mississippi, Missouri, North Carolina, Ohio, Tennessee, and Washington.

boiler-room operations, pressuring consumers to “make your family proud of you” and luring them into programs that are patently unsuited to them or lack the necessary accreditation in the particular field. The programs are remarkably expensive on a per class basis. Students often spend all of their non-dischargeable federal financial student loans, in addition to incurring private student loan or institution debt. Students are left with debt loads that can run well into the tens of thousands of dollars and receive no new marketable skill or job.

Attorneys general have looked into several of these for-profit institutions. In November 2015, 40 attorneys general entered into a Consent Judgment with Education Management Corporation (EDMC).⁵⁰ The judgment mandates new, interactive disclosures, bars misrepresentations to prospective students, prohibits enrollment in unaccredited programs, and institutes an extended refund period whereby students can leave the program with no financial obligation. In addition, EDMC forgave over \$102.8 million in outstanding loan debt for over 80,000 former students. Two other for-profit colleges being investigated by attorneys general have declared bankruptcy. Both Corinthian Colleges, Inc.⁵¹ and ITT Technical Institute have ceased enrolling students. A group of attorneys general is continuing to pursue debt relief for students of these shuttered schools.

Other work by attorneys general includes participating in the Department of Education’s “negotiated rulemaking” regulatory process to pass stronger regulations to protect consumers from predatory for-profit schools, specifically the “Gainful Employment” and “Borrower Defense” regulations. Some states have sued the Department of Education to prohibit the federal government from ignoring its obligations under these rules.⁵² Some states have also participated in Department of Education proceedings seeking to prevent the recertification of an

50 Settlement Agreement between United States, 13 states and EDMC, cited in Press Release, Office of the Attorney General of Florida, “Settlement Secures \$6.5 Million in Student Loan Forgiveness for Florida Students,” (Nov. 17, 2015). *See, also, State of Iowa ex rel. Miller v. Education Management Corporation et al.*, No. EQCE079220 (Iowa Dist. Ct. Polk Cty. Nov. 17, 2015); Press Release, Office of the Attorney General of Georgia, “EDMC to Change Practices, Forgive Loans through Agreement with Attorney General Sam Olens” (Nov. 16, 2015).

51 *See, e.g.*, Press Release, Office of the Attorney General of Nebraska, “AG Peterson Announces Outreach Effort to Nebraskans Qualifying for Student Loan Forgiveness,” (Aug. 23, 2016; Press Release, Office of the Attorney General of Iowa, “Former Corinthian Colleges Students Notified about Federal Student Loan Cancellation,” (Apr. 20, 2017).

52 *Maryland et al. v. U. S. Department of Education*, No. 1:17-cv-02139 (D.D.C. Oct. 17, 2017) (Gainful Employment Rule); *Massachusetts et al. v. U.S. Department of Education*, No. 1:17-cv-01331 (D.D.C. July 6, 2017) (Borrower Defense Rule).

accreditor (ACICS) which the Department found had failed to enact and implement sufficiently protective standards.⁵³

Government Imposters

Government imposter scams mislead consumers by creating the false impression the scammer is affiliated with the government. The scams often involve mailings, disguised as official-looking government documents. The mailings or other marketing materials usually target newly-formed businesses. These mailings create the false impression that they originate from the government, and that a government agency requires the business to take some action, and, in some cases, that the payment required is a government-imposed fee or fine. In fact, the mailings are just solicitations for optional products, or solicitations for products at substantially inflated rates.

Variations of these scams have been occurring for decades. A common iteration involves sending businesses mailings for “posters” relating to compliance with various state and federal labor laws. Although required postings are usually completely free and can be obtained at the United States Department of Labor’s website or various other locations at no cost, the mailings include vague statutory references and falsely threaten civil or criminal penalties for noncompliance that induce businesses to purchase the posters. Purchasers may also be led to believe they will receive a poster tailored to the requirements of their industry, when in fact all consumers receive the same poster.

The Florida attorney general has obtained consent judgments against numerous entities operating government imposter scams in Florida.⁵⁴ As a result of these efforts, the Florida attorney general has been able to return hundreds of thousands of dollars to Florida consumers. In 2017, the Washington attorney general brought an enforcement action against the Mandatory Poster Agency, Inc., for sending deceptive solicitations like those described above, and obtained \$1.2 million in summary judgment, which was later upheld by the Washington Court of Appeals.⁵⁵

53 See, e.g., Press Release, Office of the Attorney General of North Carolina, “Attorney General Stein to Secretary Devos: Reject Accrediting Agency That Approved Failing For-Profit Schools,” (Feb. 20, 2018).

54 Stipulated Final Consent Judgment, *Attorney General v. L Seven Development, LLC, et al.*, No. 2013 CA 1746 (Fla. Cir. Ct. Leon Cty. Dec. 3, 2014); Stipulated Final Consent Judgment, *Attorney General v. SMBA, LLC, et al.*, No. 2014-ca-000869 (Fla. Cir. Ct. Leon Cty. June 19, 2015); see also Press Release, Office of the Attorney General of Florida, “Attorney General Bondi Shuts Down three Scams Targeting Florida Businesses,” (Aug. 10, 2015).

55 Order on Amount of Civil Penalty and Procedure for Restitution, *State of Washington v. The*

The New Hampshire attorney general obtained a consent judgment against the Mandatory Poster Agency, Inc.⁵⁶ which included injunctive provisions, \$12,625 in consumer restitution, and \$80,000 in civil penalties and investigative costs. Numerous other actions have been brought by attorneys general against Mandatory Poster Agency, Inc. and other similar entities.

While these scams have been around for decades, they have seen a resurgence in recent years, because of their low-tech nature and low cost of operations. Because forming a business can be daunting, newly formed businesses are anxious to comply with state and federal laws and are therefore more likely to mail payments to scammers.

Mortgage Servicing

Mortgage servicing has been a primary area of emphasis for the state attorneys general for more than a decade. State attorneys general partnered with the state banking regulators in 2007 to create the State Foreclosure Prevention Working Group. This pioneering group was the first group of government officials, state or federal, to collect and publish extensive data regarding the burgeoning foreclosure crisis. This Group publicly released multiple reports examining foreclosure data and suggesting policy responses.

The Group found that mortgage servicing suffered from a number of issues and deficiencies, centered around the inability of servicers to properly process the volume of borrower loan modification requests and other loss mitigation alternatives to foreclosures. Mortgage servicers were completely unprepared for the demands placed upon them by the Great Recession and the foreclosure crisis and the attorneys general worked to change the day-to-day operation of servicers.

The work of the Group shifted to an enforcement emphasis after public reports emerged of mortgage servicers “robo signing” documents. The states created a partnership with the U.S. Department of Justice and the U.S. Department of Housing and Urban Development (along with many other state and federal agencies) to negotiate a settlement with the five largest mortgage servicers that ultimately became known as the “National Mortgage Settlement.”⁵⁷ This groundbreaking settlement ultimately provided over \$50 billion in relief, established

Mandatory Poster Agency, Inc. No. 14-2-18438-3 (Wash. Super. Ct. King Cty. Mar. 2, 2016).

56 Press Release, Office of the Attorney General of New Hampshire, “Attorney General Brings Enforcement Action Against Michigan Company For Unfair Or Deceptive Business Practices,” (Feb. 10, 2017).

57 Consent Judgments, *United States of America, et al. v Bank of America Corp., et al.*, No. 1:12-cv-00361 (D.D.C. Apr. 4, 2012).

for the first time a comprehensive set of mortgage servicing rules known as the “servicing standards” and helped to stabilize a troubled national mortgage market. After the National Mortgage Settlement, the attorneys general negotiated large settlements with multiple other large banks and servicers such as Ocwen,⁵⁸ SunTrust,⁵⁹ HSBC,⁶⁰ and PHH.⁶¹ The work of the attorneys general in mortgage servicing helped to transform the industry.

Natural Disasters

Fraud often follows the normal perils that a natural disaster can bring. Types of post-disaster fraud include price gouging, charity scams, imposter scams, home repair scams, and flood-car fraud.

Approximately 36 states, including the District of Columbia, have price-gouging statutes that forbid charging consumers increased prices for various goods or services during declared states of emergency, times of disaster, or market disruptions.⁶² Although these statutes vary by state, the prohibited sales price increases generally fall within one of the following three categories: (1) an increase that exceeds an increase in the wholesale cost;⁶³ (2) an increase above a specified percentage;⁶⁴ or (3) an increase that is unconscionable, excessive, exorbitant, or a gross disparity with average prices.⁶⁵ The relief available also differs among the states and includes various types of injunctive relief, administrative penalties such as license suspension or revocation, civil monetary penalties, and criminal penalties.⁶⁶

58 Consent Judgment, *Consumer Financial Protection Bureau, et al. v. Ocwen Financial Corp., et al.*, No. 1:13-cv-02025 (D.D.C. Feb. 26, 2014).

59 Consent Judgment, *United States, et al. v. SunTrust Mortgage, Inc., et al.*, No. 1:14-cv-01028 (D.D.C. Sept. 30, 2014).

60 Consent Judgment, *United States, et al. v. HSBC North America Holdings, Inc., et al.*, No. 1:16-cv-0199 (D.D.C. Mar. 14, 2016).

61 Consent Judgment, *State of Alabama, et al. v. PHH Mortgage Corporation*, No. 1:18-cv-00009 (D.D.C. May 10, 2018).

62 See, e.g., FLA. STAT. ANN. § 501.160; N.Y. GEN. BUS. L. § 396-r; TEX. BUS. & COMM. CODE § 17.46(b)(27).

63 See, e.g., GA. CODE § 10-1-393.4; LA. REV. STAT. ANN. 29:732; MISS. CODE ANN. § 75-24-25(2).

64 See, e.g., ARK. CODE § 4-88-303; CAL. PENAL CODE § 396; OKLA. ST. tit. 15 § 777.4.

65 See, e.g., FLA. STAT. ANN. § 501.160; 940 MASS. CODE. REGS. 3.18; MICH. COMP. LAWS § 445.903(1)(z); TEX. BUS. & COMM. CODE § 17.46(b)(27). Note that some state statutes define terms like unconscionable, excessive, exorbitant, or gross disparity while others do not.

66 See, e.g., D.C. CODE § 28-4103; IDAHO CODE ANN. § 48-606; ALA. CODE § 8315; CAL. PENAL CODE § 396.

Price gouging laws typically apply to prices of essential items needed in the emergency such as fuel, lodging, food, storage, transportation, and supplies or services necessary to protect lives or property.⁶⁷ Enforcement actions commonly include price increases in fuel, lodging, and food. For example, after Hurricane Ike struck in 2008, the North Carolina attorney general's office investigated price increases at fourteen gas stations, yielding over \$71,000 in consumer refunds.⁶⁸ Following Hurricane Matthew in 2016, Florida and North Carolina investigated thousands of price gouging complaints relating primarily to gas, hotel rooms, and bottled water.⁶⁹ Florida filed four lawsuits against hotel operators and obtained 17 settlements with hotel and retail gasoline operators, recovering over \$250,000.⁷⁰

The record-breaking storm activity in 2017 also resulted in numerous price gouging investigations. After Hurricane Harvey, the Texas attorney general received thousands of price gouging complaints, and, as of January 2018, has filed 5 lawsuits alleging price gouging related to motor fuel and lodging and investigated over 120 retail fuel stations.⁷¹ In Florida, Hurricane Irma's impact resulted in over 14,000 consumer reports leading to a review of roughly 8,000 price gouging complaints.⁷² As of January 2018, the Florida attorney general's office has issued over 25 investigative subpoenas relating to prices of gasoline, hotel rooms, bottled water, and propane, and resolved one investigation with a hotel recovering over \$17,000 in refunds.⁷³

Post-disaster charity scams also pose a risk of significant consumer harm, particularly in light of the growing use of crowd-funding and other social media

67 See, e.g., ALA. CODE § 8-31-3; N.C. GEN. STAT. § 75-38; W. VA. CODE § 46a-6J3.

68 Press Release, Office of the Attorney General of North Carolina, "Gas Stations in Troy, Yadkinville to Pay for Price Gouging" (October 23, 2009).

69 Press Release, Office of the Attorney General of North Carolina, "Cooper's Office Subpoenas Retailers for Costly Bottle Water in Fayetteville, Gas in Rocky Mount" (October 11, 2016).

70 Press Release, Office of the Attorney General of Florida, "Attorney General Bondi Takes Action Against Alleged Price Gougers Following Hurricane Matthew" (Dec. 22, 2016).

71 Press Release, Office of the Attorney General of Texas, "AG Paxton Warns Gas Stations Against Fraud in Wake of Hurricane Harvey" (August 31, 2017); Press Release, Office of the Attorney General of Texas, "AG Paxton Files Suit Against Three Businesses for Price Gouging During Hurricane Harvey" (September 12, 2017); Press Release, Office of the Attorney General of Texas, "AG Paxton Files More Lawsuits Against Businesses Accused of Price Gouging During Hurricane Harvey" (November 13, 2017); Press Release, Office of the Attorney General of Texas, "AG Paxton Issues Formal Demands to 127 Businesses Accused of Price Gouging During Hurricane Harvey Disaster" (October 30, 2017).

72 Melissa Holsman, "Price-gouging complaints during Hurricane Irma top 14,000 in Florida" TCPalm, Oct. 11, 2017.

73 Assurance of Voluntary Compliance, *In the matter of Miami International Airport Hotel, Inc.*, AG Case No. L17-3-1155 (Nov. 7, 2017).

sites that allow fundraisers access to consumers worldwide. For a complete discussion of these issues, see Chapter 12.

Negative Options

Attorneys general have increased enforcement efforts in the area of negative options advertising, marketing and sales. The existing FTC rule entitled “Trade Regulation Rule Concerning Use of Prenotification Negative Option Plans” regulates a specific type of negative option, the so-called prenotification negative option plan for the sale of goods.⁷⁴ For the most part, the states have not proceeded under this rule because of its limited scope and instead used their respective consumer protection laws to target negative option plans that are deceptive or otherwise unfair.⁷⁵ This may include whether the initial communication to the consumer clearly and conspicuously discloses all material terms of the offer before the consumer is called upon to affirmatively accept. States have also examined what constitutes “affirmative consent” before the consumer is obligated to make any sort of monetary payments. States also have closely scrutinized the language of these offers as “risk-free” or “free” or “free trial.” These companies often tout a liberal cancellation policy, but consumers encounter difficulties in canceling before the initial term expires. Consequently, the states have looked to see that the avenues for cancellation are made widely available to consumers including by phone, email, and U.S. Mail.

The federal Restore Online Shoppers Confidence Act (ROSCA)⁷⁶ was passed in 2010 to prohibit any person from charging or attempting to charge any consumer for goods or services sold in an internet transaction through any negative option features including trial conversions, continuity plans, and automatic renewals, unless certain requirements are met. ROSCA expressly gives enforcement authority to attorneys general.⁷⁷

⁷⁴ 16 C. F. R. Part 425.

⁷⁵ See, e.g., Consent Decree, *State of Washington v. Internet Order LLC*, No. 2:14-cv-01451 (W.D. Wash. Aug. 31, 2015). Press Release, Office of the Attorney General of Ohio, “Attorney General DeWine Spearheads \$3.8 Million Multistate Settlement with Sirius XM” (Jan. 14, 2015); Press Release, Office of the Attorney General of Maine, “Attorney General Mills and Federal Trade Commission announce settlement with supplement sellers on false advertising charges” (Nov. 30, 2017); Press Release, Office of the Attorney General of New York, “A.G. Schneiderman Announces \$1 Million Settlement With Online Marketer That Deceptively Enrolled Consumers Into High Cost Pimsleur Language Courses” (Sept. 1, 2015).

⁷⁶ 15 U. S. C. 8401 *et seq.*

⁷⁷ 15 U. S. C. 8405.

Predatory Leasing

Attorneys general have frequently challenged predatory lending practices in the “fringe” financial sector, including rent-to-own, check cashing, and payday/title lending. There is a growing trend of new “fintech” companies engaging in retail financing and, like fringe institutions, preying upon the most financially vulnerable. These companies enter partnerships with retailers to offer lease contracts on retail purchases. These leases resemble traditional retail credit or installment contracts but differ significantly from the traditional model by denying consumers actual ownership over the purchases. Unsuspecting consumers with bad or no credit, through periodic lease payments and buyout fees, pay well over the original purchase price to terminate these “lease” contracts. While traditional leases involve tangible goods that can be returned to terminate the lease, these contracts often cover items that are impossible or difficult to return to the lessor (e.g. auto repair services, family pets, wedding dresses, contact lenses). Arguably, these consumer “leases” should be classified as credit sales with a security interest and would violate state and federal consumer credit requirements and interest caps.⁷⁸

The process by which consumers enter these contracts also raises potential state consumer protection law concerns. When consumers with poor credit apply for traditional financing from a retailer and are rejected for the retailer’s prime options, they “waterfall” (a term used by the industry) down through options until they are approved for the leasing company’s “tertiary,” “no credit,” or “nonprime” lease option. This occurs after a single application with the retailer for traditional financing. The consumer, therefore, believes they have entered a credit transaction rather than a lease. The responsibility for explaining the terms of the lease falls on retail sales clerks who may have inadequate training or who receive financial incentives from the leasing company to complete the transactions, which may lead to affirmative misrepresentations. In many cases, consumers never see a copy of the contract before agreeing to the terms on a small screen next to the cash register. Attorneys general continue to investigate these predatory leasing practices and monitor developments in the industry.

⁷⁸ The Uniform Commercial Code § 1-203 addresses the aspects of a transaction that distinguish a lease from financing with a security interest. Courts have also indicated that substance should be considered over the form of the contract when determining whether a transaction is a true lease or a financing arrangement with a security interest. *See, e.g., United Airlines, Inc. v. HSBC Bank USA, N.A.*, 416 F.3d 609, 613-614 (7th Cir. 2005). *See, also, LeBakken Rent-To-Own v. Warnell*, 223 Wis. 2d 582, 593 (Ct. App. 1998).

Privacy and Identity Theft

The attorneys general have long vigorously defended consumer privacy. Many states have enacted statutes requiring those who collect sensitive personal information to safeguard it.⁷⁹ Many states have also enacted statutes requiring those who possess personal information to notify the state attorneys general and all potentially affected consumers in the event of a data breach.⁸⁰ Attorneys general frequently work together to enforce those state laws and federal laws implicating privacy rights, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Children's Online Privacy Protection Act, and the Fair Credit Reporting Act. Attorneys general also use their consumer protection laws to address businesses that fail to take adequate measures to protect consumers' personal information and privacy.

Types of personal information frequently affected by data breaches include the consumer's name in combination with any one or more of the following: driver's license number, Social Security number, account number or credit or debit card number, account numbers with access PINs, medical information,

79 See ALASKA STAT. § 45.48.010 *et seq.*; ARK. CODE ANN. § 4-110-101 *et seq.*; COLO. REV. STAT. § 6-1-101 *et seq.*, COLO. REV. STAT. § 6-1-716; CONN. GEN. STAT. § 42-471; FLA. STAT. ANN. § 501.171; GEORGIA CODE ANN. § 10-1-910-915; HAW. REV. STAT. ch. 487J; 815 ILL. COMP. STAT. 530/1 *et seq.*; IND. CODE § 24-4.9-3-3.5; KAN. STAT. ANN. § 50-6, 139b; MD. CODE ANN., COM. LAW § 14-3501 *et seq.*; MASS. REGS. CODE tit. 201, § 17.00 *et seq.*; MINN. STAT. § 325E.59, MINN. STAT. § 325E.64; MO. REV. STAT. § 407.1500.1(9); MONT. CODE ANN. § 30-14-170 1 *et seq.*; NEV. REV. STAT. § 603A.010 *et seq.*; N.C. GEN. STAT. § 75-60 *et seq.*; N.D. CENT. CODE § 51-31; OR. REV. STAT. § 646A.600 *et seq.*; R.I. GEN. LAWS § 11-49.3-1 *et seq.*; S.C. CODE ANN. § 30-2-10 *et seq.*; TEX. BUS. & COM. CODE ANN. ch. 521; UTAH CODE § 13-44-101 *et seq.*; W. VA. CODE ANN. § 46A-2A-101 *et seq.*

80 See 2018 ALA. ACTS 396; ALASKA STAT. § 45.48.010 *et seq.*; ARIZ. REV. STAT. § 18-545; ARK. CODE ANN. § 4-110-105; COLO. REV. STAT. § 6-1-716; CONN. GEN. STAT. § 36a-701b; D. C. CODE § 28-3851 *et seq.*; DEL. CODE ANN. tit. 6 § 12B-101 *et seq.*; FLA. STAT. § 50 1.171; GA. CODE ANN. § 10-1-910 *et seq.*; HAW. REV. STAT. ch. 487N; 815 ILL. COMP. STAT. 530/1 *et seq.*; IND. CODE § 24-4.9; IOWA CODE § 715C; KAN. STAT. ANN. § 50-7a01 *et seq.*; KY. REV. STAT. § 365.732; LA. REV. STAT. § 51:3071 *et seq.*; LA. ADMIN. CODE tit. 16, pt. 3, § 701; 10 ME. REV. STAT. ANN. § 1346 *et seq.*; MD. CODE ANN., COM. LAW § 14-3501 *et seq.*; MASS. GEN. LAWS ch. 93H; MICH. COMP. LAWS § 445.6 1 *et seq.*; MINN. STAT. § 325E.61; MISS. CODE ANN. § 75-24-29; MO. REV. STAT. § 407.1500; MONT. CODE ANN. § 30-14-1704; NEB. REV. STAT. § 87-801 *et seq.*; NEV. REV. STAT. § 603A.220; N.H. REV. STAT. ANN. § 359-C:19-21; N.J. STAT. ANN. § 56:8-161 to -166; N.Y. GEN. BUS. LAW § 899-aa; N. C. GEN. STAT. § 75-65; N.D. CENT. CODE ch. 51-13; OHIO REV. CODE ANN. § 1349.19 *et seq.*; OKLA. STAT. tit. 24 § 161 *et seq.*; OR. REV. STAT. § 646A.600 *et seq.*; 73 PA. CONS. STAT. § 2301 *et seq.*; R.I. GEN. LAWS § 11-49.3-4; S.C. CODE ANN. § 1-11-490 *et seq.*; S. D. CODIFIED LAWS § 22-40; TENN. CODE ANN. § 47-18-2107; TENN. CODE ANN. § 47-18-2101 *et seq.*; TEX. BUS. & COM. CODE ANN. ch. 521; UTAH CODE ANN. § 13-44-10 1 *et seq.*; VT. STAT. ANN. tit. 9, § 2435; VA. CODE ANN. § 18.2-186.6; WASH. REV. CODE § 19.255.010; W. VA. CODE § 46A-2A-10 1 *et seq.*

health insurance information, biometric data, and username and email address when combined with a password or security question answer. As unencrypted personal information is captured and used by wrongdoers, the risk of identity theft and prolonged financial harm increases exponentially. The use of one unique identifier, such as a Social Security number or driver's license number, potentially allows for the opening of new credit lines, access to existing credit and financial accounts, and the alteration of one's credit report, all of which can wreak havoc on consumers' daily lives. Notable recent multistate investigations and actions that have yielded significant civil penalties and added protections for affected consumers involve Target,⁸¹ Google Safari,⁸² Google Streetview,⁸³ and Nationwide.⁸⁴

Scams

People and businesses with ill-intent use many types of fraudulent and deceptive schemes against consumers to take their money or personal information. These are often referred to as consumer scams or simply scams, and are the most common type of consumer protection problem addressed by attorneys general. There are many different types of scams, of which the following are only an example

Tech scams: Malware, phishing, tech support scams, and refund scams all are used to get the consumer's money, get access to their computer and sensitive information, or both. Malware includes viruses, spyware, or other unwanted programs that are installed on a computer or mobile device without the user's consent. These programs, often bundled in with free downloads, can cause a device to crash or can be used to steal personal and sensitive information, send

81 See, e.g., Assurance of Voluntary Compliance, *In the Matter of: Target Corporation*, CPU Case No. 17-17-17002172 (Delaware Attorney General, May 23, 2017); Assurance of Discontinuance, *In the Matter of: Target Corporation Data Breach Incident*, Case No. 17-381-CP (Mich. Cir. Ct. 30th Jud. Cir. May 23, 2017).

82 See, e.g., Press Release, Office of the Attorney General of New York, "A.G. Schneiderman Announces \$17 Million Multistate Settlement with Google Over Tracking of Consumers (Nov. 18, 2013). Press Release, Office of the Attorney General of Washington, "Google to Pay Washington State \$610,600 to Settle Consumer Tracking Allegations (Nov. 18, 2013).

83 Assurance of Voluntary Compliance executed by 42 states and Google Inc., attached to Press Release, Office of the Attorney General of Alaska, "Alaska Joins \$7 Million Multistate Settlement Over Google Street View," (Mar. 12, 2013).

84 Assurance of Voluntary Compliance, *In re: Nationwide Mutual Insurance Company and Allied Property & Casualty Insurance Company*, attached to Press Release, Office of the Attorney General of the District of Columbia, "Attorney General Racine Announces \$5.5 Million Multistate Settlement with Nationwide Insurance over Data Breach" (Aug. 9, 2017).

spam, and commit fraud. Phishing occurs when a scammer deceives the consumer into sharing sensitive or personal information such as account numbers, Social Security numbers, or login IDs and passwords, often by means of email messages disguised as an email from a legitimate company, or a friend or family member. Scammers use this information to steal the consumer's identity, money or both.

A tech support scam refers to a scammer who contacts the consumer and deceptively claims to be a computer tech associated with a well-known company such as Microsoft or Apple. Through a phone call or pop-up message on the consumer's screen, the scammer will tell the consumer that they have detected viruses or other malware on their computer or device, and that they need to gain remote access to the computer or device to diagnose the problem. They then install malware and/or ask the consumer for money to "fix" the problem. Refund scams occur when scammers buy and sell "sucker lists" with names and contact information for people who have already lost money to tech scams. Scammers will call the consumers on these lists promising to recover the money that was lost or merchandise that was never delivered—for a fee.

Grandparent scams: Although these scams are not new,⁸⁵ they have become more sophisticated with the increase in digitally-available information. Typically, a grandparent receives a call from someone who identifies themselves as their grandchild. The scammer claims to have been arrested while traveling, often in another country, and asks that money be wired quickly to pay bail or other legal expenses. The scammer tells the grandparent not to tell the child's parents, in order to avoid upsetting them.

Pet Scams: Scammers will use websites such as Craigslist, newspapers, or Facebook to advertise rare or expensive pets for sale. Often, the pet image is accompanied by a sad story about why the pet is available. Expensive pets like bulldogs or toy breeds are offered for a low price, or for adoption at no cost, as long as the customer pays for shipping. Once the consumer pays, the scammer may ask for additional money for vet bills, crating, or inspection costs. Of course, these pets do not actually exist, and the consumer never receives the pet they paid for.

Lottery & Sweepstakes Scams: In a lottery scam, the consumer will get an email, phone call, or mailing telling them that they have won a large sum of money in a lottery or sweepstakes. These mailings often use the name of a legitimate lottery organization, or a government agency such as the FTC. The

⁸⁵ The FBI reports that their Internet Crime Complaint center has been receiving reports about grandparent scams since 2008.

consumer is instructed to contact an agent to claim their winnings. The agent will ask them to pay “processing fees” or “transfer charges” to receive their prize. The victim either receives no payment or receives a check that bounces. Scammers ask the victim to keep their winning a secret in order to avoid having the victim ask for additional information or advice from others.

Housing Security Deposit Scams: Scammers advertise a rental property online, usually below market rate. In order to view or rent the property, the consumer is asked to pay a security deposit up front. The scammer will tell the consumer that they cannot view the property ahead of time because it is occupied, or under construction. Or, they may claim that there is high demand for the unit, but if the consumer pays the deposit immediately, it will be reserved for the consumer. Once the consumer pays the deposit, the scammer ceases contact. Usually, the address provided to the consumer is not a real address or one that is not actually for rent.

Employment Scams: Scammers post a job, usually the same place that a legitimate employer will. These jobs often sound too good to be true—they require no experience or pay much more than market rate. They advertise a job available, or guarantee placement to the potential employee, as long as they pay a fee for certification, training materials, or other expenses. However, after the potential employee pays, the job never materializes.

Seniors

As older individuals make up an increasing share of America’s population, “senior protection” is an increasingly significant concern for attorneys general.⁸⁶ Currently, attorney general offices are developing and implementing senior protection priorities in several ways.

In developing senior protection priorities, CPDs face several significant questions. For example, who precisely are the “seniors” CPDs should be focused on protecting? And how do CPDs determine what consumer protection efforts would best help them? CPDs are developing senior protection priorities through, among other means, (1) participation in cross-division senior protection initiatives, (2) undertaking community outreach and stakeholder engagement, and (3) engaging with office public outreach divisions that focus, in part, on identifying senior consumer priority concerns.

⁸⁶ See, e.g., Press Release, National Association of Attorneys General, “NAAG President Launches National Effort to Combat Elder Abuse,” National Association of Attorneys General (August 17, 2017). (announcing NAAG Presidential Initiative of “Protecting America’s Seniors”).

CPDs are implementing senior protection priorities through enforcement, legislation and community engagement. CPDs are suing individuals and entities alleged to have caused unlawful harms to seniors including businesses (including charities) targeting veterans,⁸⁷ paid fundraisers targeting the elderly,⁸⁸ home health care providers,⁸⁹ and nursing homes.⁹⁰ Some are bringing civil actions for damages on behalf of seniors (or vulnerable adults) financially exploited by individuals.⁹¹ CPDs are undertaking cases in collaboration with other divisions of the attorney general's office, state agencies, other attorney general offices, and federal agencies.

In terms of legislation, CPDs are supporting the enactment of state laws that, among other things, enhance penalties for legal violations against "seniors" or "vulnerable adults";⁹² require financial institutions to report suspected elder

87 See *People of the State of Illinois v. American Association for Wartime Veterans, LLC, et al.*, Circuit Court of Cook County, Illinois, Case No. 2017-CH-13919 (alleging that defendant deceived veterans into purchasing annuities as a precondition to qualifying for VA pension benefits, failed to disclose that their seminars are conducted by insurance salespeople seeking commissions, and, *inter alia*, misrepresented their VA accreditation status); *People of the State of Illinois v. Vietnow National Headquarters, Inc., et al.*, Circuit Court of Cook County, Illinois, Case No. 2017-CD-14718 (enforcing charitable solicitations act against an alleged non-profit corporation that, among other things, falsely claimed to help veterans overcome joblessness and post-traumatic stress disorder).

88 See *In the Matter of: Corporations for Character, L.C.*, AG No. 2015-0122558-A (Mich.) (alleging deceptive solicitations of elderly donors by paid fundraiser).

89 See *Ohio v. Beth Meyers*, Case No. 17CR110 (Ohio Ct. Comm. Pleas, Ross Cty October 18, 2017) (Home health aide pled guilty to identity fraud against a person of a protected class, theft from elderly person from a protected class and misuse of credit card, and was ordered to pay restitution and serve 3 years of community control, 60 days in jail and 200 hours of community service).

90 See *State of Texas v. Hinton Home*, No. D-1-GN-17-002165 (345th Dist.Ct. Travis Cty. Texas May 19, 2017) (Nursing home allowed medication aide with no training to insert feeding tube into abdomen of nonverbal woman in her 80s. Tube was inserted in the peritoneal cavity, and resident died. Home paid \$87,000 in civil penalties and agreed not accept any more residents who required feeding tubes.); *Commonwealth v. Golden Gate Nat'l Senior Care, LLC*, 158 A.3d 203 (Pa. Commw. Ct. 2017), *appeal pending*, No. 16 MAP 2017 (Pa.) (alleging, *inter alia*, that nursing facilities and their corporate parents engaged in unfair and deceptive marketing practices).

91 See, e.g., MD. CODE ANN., COM. LAW § 13-204(15) (providing that the Consumer Protection Division may bring a civil action for damages on behalf of the victim or victim's estate against a person who commits certain financial crimes against "vulnerable adults").

92 See, e.g., KAN. STAT. ANN. § 50-677 (Additional civil penalties for violations of the Kansas consumer protection against "protected consumer[s]," including "elder person[s]"); MONT. CODE ANN. § 30-14-144 (Additional civil penalties for unfair or deceptive act committed against older person); NEV. REV. STAT. ANN. § 598.0973 (Civil penalty for engaging in deceptive trade practice directed toward elderly person or person with disability; NEV. REV. STAT. ANN. § 599B.280 (Additional penalty in action for solicitation by telephone where court finds a person has engaged in unlawful solicitation toward elderly or disabled person).

fraud to law enforcement and Adult Protective Services;⁹³ and create civil actions enabling seniors and vulnerable adults—or attorneys general on behalf of such individuals—to sue and recover assets and damages from individuals who have financially exploited them.⁹⁴ CPDs are also providing comments on proposed federal regulations likely to impact senior consumers.⁹⁵

CPDs are providing presentations and trainings to seniors and related organizations and associations; leading or participating in statewide coalitions focused on senior protection; collaborating with organizations and associations to develop and implement senior protection strategies; implementing statewide scam alert systems; running elder hotlines; and providing consumers with call-blocking technology.

Servicemembers and Veterans

The attorneys general are active in protecting military personnel, their families, and veterans from scams and predatory practices. These communities can be particularly vulnerable to 1) affinity and government lookalike scams that prey on their trust for fellow servicemembers and military institutions; 2) illegal debt collection scams that exploit fears that a servicemember might lose a security clearance or be prosecuted under the Uniform Code of Military Justice over a debt; 3) education scams seeking easy access to GI Bill funds, and 4) scams that promise to make veterans eligible for veterans benefit programs. Frequent deployments can make members of the reserve components, including the National Guard, targets of lenders who may seek to conduct illegal foreclosures or reposessions in violation of the Servicemembers Civil Relief Act⁹⁶ and counterpart state laws.⁹⁷

Attorneys general have responded to these challenges through a combination of enforcement, outreach, and education. For example, states have pursued retailers that targeted servicemembers with illegal credit sales and debt collection

93 See N.C. GEN. STAT. ANN. § 108A-115 (requiring that financial institutions with “reasonable cause to believe that a disabled adult or older adult is the victim or target of financial exploitation” to report such information to law enforcement and Adult Protective Services, among others).

94 See, e.g., MD. CODE ANN., COM. LAW § 13-204 (Consumer Protection Division may bring civil action for damages on behalf of the victim or victim’s estate against a person who commits certain financial crimes against “vulnerable adults”).

95 See Press Release, Office of the Attorney General of Maryland, “Attorney General Frosh Leads Coalition of States in Comments to CMS to Maintain Pre-Dispute Arbitration Clauses in Nursing Home and Long-Term Care Contracts,” (Aug. 7, 2017).

96 50 U.S.C.S. §§ 3901–4043.

97 See, e.g., CAL. MIL. & VETS. CODE §§ 400 *et seq.*; 330 IL. COMP. STAT. ANN. 63/1.

practices using both civil⁹⁸ and criminal enforcement tools.⁹⁹ Some states have obtained judgments against privatized military housing operators who engaged in eviction-related misconduct,¹⁰⁰ along with for-profit schools that target service-members and veterans.¹⁰¹

Many of these cases were developed through partnerships with and referrals from JAG legal assistance attorneys and military financial counselors. A number of states regularly conduct outreach and educational campaigns at local installations, through their state national guards, and for their veterans and military retirees. Some states have also partnered with legal services providers to provide direct legal representation to veterans.

Federal law contains important protections for active duty servicemembers. The Servicemembers Civil Relief Act (SCRA)¹⁰² contains important protections for servicemembers in their roles as consumers, borrowers, homeowners, tenants, and taxpayers to ease economic and legal burdens on servicemembers and their dependents while on or as a result of active duty status. The SCRA provides many protections for servicemembers and their families, including interest rate caps on debts, preventing evictions without a court order, limiting foreclosures and staying judicial proceedings.

The Military Lending Act (MLA)¹⁰³ is another important consumer protection for servicemembers. The MLA imposes an interest rate cap on nearly all consumer credit and prohibits creditors from imposing a prepayment penalty, from requiring servicemembers to submit disputes to arbitration, or from creating a voluntary military allotment as a condition of obtaining a loan or credit.

Although neither of these statutes authorizes enforcement by attorneys general, some state laws mirror the protections granted under the SCRA and, in some cases, extend or broaden the SCRA's protections.¹⁰⁴ Attorneys general in

98 Craig Fox, *Attorney general arranges for soldiers' compensation*, WATERTOWN DAILY TIMES, Dec. 22, 2015; Associated Press, *USA Discounters retailer agrees to settlement with states*, WASHINGTON TIMES, Oct. 1, 2016.

99 Press Release, Office of the Attorney General of California, *Attorney General Becerra Charges San Diego Jeweler And Wife With Unlawful Financing And Debt Collection Practices Targeting Active Military Families* (October 3, 2017).

100 *State Settles With Contractors, Lawyers Who Allegedly Evicted Military Families Illegally* METROPOLITAN NEWS, Aug. 11, 2016.

101 Matt Hamilton, *Corinthian Colleges must pay nearly \$1.2 billion for false advertising and lending practices*, L.A. TIMES (March 23, 2016).

102 50 U.S.C.S. §§ 3901–4043.

103 10 U.S.C.S. § 987.

104 See, e.g., ALA. CODE §§ 35-10-70 *et seq.*; ALASKA STAT. § 26.05.135; ARIZ. REV. STAT. § 26-168; ARK. CODE ANN. § 12-62-716; CAL. MIL. & VET. CODE §§ 400 *et seq.*; COLO. REV. STAT.

some states may also be able to enforce the protections of the SCRA, the MLA, and other military consumer protection laws through their state consumer protection laws, if liability under those state laws can be triggered through violations of applicable federal laws.¹⁰⁵

Sharing Economy

The sharing economy, also known as the gig or platform economy, is rapidly growing as more consumers engage with online platforms to purchase goods and services. Because sharing economy companies (such as Uber, Airbnb, TaskRabbit, and Instacart) often claim to fall outside states' regulatory regimes, they present new challenges for law enforcement. Nevertheless, attorneys general may rely on traditional consumer protection laws that prohibit unfair and deceptive acts and practices to protect consumers. Regardless of whether a good or service is being offered on a sharing economy platform, if a company advertises a good without the intent to sell it or if it misrepresents the quality of the services it sells, that company may be liable under state consumer protection laws.

For example, state enforcers have addressed representations made by companies regarding the screening procedures used to hire contractors. Sharing economy companies' peer-to-peer platforms ask consumers (who, for example,

§ 28-3-1406; DEL. CODE ANN. tit. 6, §§ 2501D *et seq.*; FLA. STAT. ANN. §§ 250.5201 *et seq.*; HAW. REV. STAT. §§ 657D-1 *et seq.*; IDAHO CODE § 46-409; 735 ILL. COMP. STAT. ANN. 5/15-1501.5 *et seq.*; IND. CODE § 10-16-7-23; IOWA CODE § 29A.103; KY. REV. STAT. ANN. § 38.510; ME. REV. STAT. ANN. tit. 37-B, § 389-A; MD. CODE ANN., PUB. SAFETY § 13-704; MICH. COMP. LAWS § 600.3285; MINN. STAT. ANN. § 190.055; MONT. CODE ANN. §§ 10-1-902 *et seq.*; N.H. REV. STAT. ANN. § 110-C-2; N.J. STAT. ANN. §§ 38:23C-1 *et seq.*; N.M. STAT. ANN. § 20-4-7.1; N.Y. MIL. LAW §§ 301 *et seq.*; N.C. GEN. STAT. §§ 45-21.12A, 45-21.16; OHIO REV. CODE ANN. §§ 5919.29, 5923.12; OKLA. STAT. tit. 44, § 208.1; OR. REV. STAT. §§ 646.605, 646.608(LL), and 408.440; 51 PA. CONS. STAT. ANN. § 4105; R.I. GEN. LAWS §§ 30-7-10 *et seq.*; S.D. CODIFIED LAWS § 33A-2-9; TENN. CODE ANN. § 26-1-111; TEX. CIV. PRAC. & REM. CODE § 16.022; UTAH CODE ANN. §§ 39-7-102, 39-7-115; VT. STAT. ANN. tit. 12, § 553; VA. CODE ANN. § 44-102.1; WASH. REV. CODE §§ 38.42.010 *et seq.*; WIS. STAT. § 321.62; WYO. STAT. ANN. § 19-11-122.

¹⁰⁵ See, e.g., ALASKA STAT. §§ 45.50.471 *et seq.*; ARIZ. REV. STAT. ANN. §§ 44-1521 *et seq.*; ARK. CODE ANN. §§ 4-88-101 *et seq.*; CAL. BUS. & PROF. CODE §§ 17200 *et seq.*; CONN. GEN. STAT. §§ 42-110a *et seq.*; FLA. STAT. §§ 501.201 *et seq.*; GA. CODE ANN. §§ 10-1-390 *et seq.*; HAW. REV. STAT. ANN. §§ 480-1 *et seq.*; IDAHO CODE §§ 48-601 *et seq.*; 815 ILL. COMP. STAT. ANN. 505/1 *et seq.*; LA. REV. STAT. ANN. §§ 51:1401 *et seq.*; ME. REV. STAT. tit. 5, §§ 205-A *et seq.*; MD. CODE ANN., Com. Law §§ 13-101 *et seq.*; MASS. ANN. LAWS ch. 93A, §§ 1 *et seq.*; MICH. COMP. LAWS SERV. §§ 445.901 *et seq.*; MONT. CODE ANN. §§ 30-14-101 *et seq.*; N.H. REV. STAT. ANN. §§ 358-A:1 *et seq.*; OHIO REV. CODE ANN. §§ 1345.01 *et seq.*; S.C. CODE ANN. §§ 39-5-10 *et seq.*; TENN. CODE ANN. §§ 47-18-101 *et seq.*; TEX. BUS. & COM. CODE §§ 17.41 *et seq.*; UTAH CODE ANN. §§ 13-11-1 *et seq.*; VT. STAT. ANN. tit. 9, §§ 2451 *et seq.*; W. Va. Code §§ 46A-6-101 *et seq.*

may be getting into a car with a stranger) to trust that the individuals providing services have been adequately screened. Many sharing economy companies, however, rely on rudimentary online background checks conducted by third party vendors. At least two state enforcement actions have been brought against sharing economy platforms for misrepresenting the accuracy and quality of their background check processes, resulting in settlements including injunctive relief.¹⁰⁶

Attorneys general can also use consumer protection laws to regulate entities that are operating outside of an existing regulatory framework. If a company is selling a service (e.g., a short-term apartment rental or a for-hire car service) that does not comply with local laws or regulations, failing to disclose that the service violates those laws or regulations may be a misrepresentation prohibited under state consumer protection laws.¹⁰⁷ In sum, although sharing economy companies raise new issues for regulators and law enforcement, traditional consumer protection principles still apply and can be effective in forcing companies to invest in consumer protection.

Student Loan Servicing

Attorneys general have been active in the area of student loan servicing. Student loan servicers assist borrowers who are paying back their student loans by helping them identify the best repayment options and by processing borrower payments, among other things. Illinois, Washington, Pennsylvania and Massachusetts have filed suit against student loan servicers.¹⁰⁸

When borrowers struggling with their federal student loans contact their servicers for help selecting the right repayment option, servicers may steer borrowers into temporary and expensive plans that are quick and easy for the

106 See *District of Columbia v. Handy Technologies, Inc.* No. 2016 CA 006729 B D.C. Super. Ct.); Press Release, Office of the Attorney General for the District of Columbia, Handy Technologies to Pay Restitution to D.C. Consumers Harmed by Company Providing App-Based Cleaning Services (June 28, 2017); see also, *People of the State of California v. Uber Technologies, Inc. et al.*, No. CIV-14-543120 (Cal. Super. Apr. 7, 2016) (suit by California district attorneys alleging misleading advertising results in \$25 million settlement with Uber).

107 See, e.g. *District of Columbia v. Ginosi USA Corporation, et al.*, No. 2017 CA 002823 B (D.C. Super. Ct.); Press Release, Office of the Attorney General for the District of Columbia, Attorney General Racine Sues Company that Offers Rent-Controlled Apartments as Hotel Rooms (April 25, 2017).

108 See *People of the State of Illinois v. Navient Corp. et al.*, No. 2017Ch00761 (Ill. Cir. Ct. Cook Cty. Jan. 18, 2017); *Pennsylvania v. Navient Corp.*, No. 3:17-cv-01814 (M.D.Pa. Oct. 5, 2017); *State of Washington v. Navient Corp.*, No. 17-2-01115-1 SEA, (Wash. Super. Ct. King Cty Jan. 8, 2017); *Massachusetts v. Penn. Higher Education Assistance Agency*, No. 1784cv02682 (Mass. Super. Ct. Suffolk Cty Aug. 23, 2017).

servicers to process, rather than offering borrowers income-driven repayment plans tailored to borrowers' incomes. Even when they are able to enroll in income-driven repayment plans, servicers may not provide them with the assistance they need to stay enrolled in those plans every year and avoid costly and unaffordable increases to their payments. Finally, borrowers who are employed in public service occupations can achieve forgiveness of their student loans in ten years if they make qualifying payments under the right repayment plans.¹⁰⁹ Servicers who are supposed to help borrowers navigate the public service loan forgiveness program have instead provided borrowers with the wrong information, causing them to lose months or sometimes years of progress towards forgiveness. Many attorney general offices continue to work to ensure that student loan servicers obey the law and consumers get the help they need to repay their student loans.

Telecommunication

The 1996 Telecommunications Act¹¹⁰ relaxed regulation of the telecommunications industry. Congress believed that increased competition would result in lower prices and better services for consumers, and would spawn more technological development in emerging arenas such as cellular and satellite telecommunications services. But with the relaxed regulation came high numbers of consumer complaints about slamming (the illegal practice of changing a consumer's telephone service without permission), cramming (the illegal practice of placing unauthorized, misleading, or deceptive charges on a consumer's service bill), and misleading advertising and other deceptive acts and practices. Moreover, the proliferation of cellular telephones and other wireless services (including satellite television and radio), along with Internet services, has resulted in increased consumer complaints regarding misleading or deceptive advertising, billing, disclosures, and cancellation policies.

Attorneys general, through the enforcement of various state unlawful and unfair practices statutes, have investigated and taken action against various service providers and others in the telecommunications industry to correct and resolve the allegations of misleading and deceptive acts and practices. This has included, but is not limited to, coordinated investigations and settlements

109 34 CFR 685.219.

110 *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56, codified throughout Title 47 of the United States Code.

involving DIRECTV,¹¹¹ America Online,¹¹² Dish Network,¹¹³ AT&T Mobility,¹¹⁴ Verizon Wireless,¹¹⁵ T-Mobile,¹¹⁶ Sprint,¹¹⁷ SiriusXM,¹¹⁸ and Vonage¹¹⁹. These efforts have improved advertising and disclosures to tens of millions of consumers and have noticeably reduced relevant consumer complaints. In addition to the coordinated efforts among attorneys general, coordination on many of these and related matters occurs with the FCC, the FTC, the CFPB, and with local prosecutors.

For example, in 2014 and 2015, attorneys general for all 50 states and the District of Columbia, in cooperation with the FTC, the FCC, and the CFPB, reached settlements with major wireless carriers with respect to the practice of “cramming,” in which the carriers placed on consumers’ mobile phone bills charges for third-party services that were not authorized by those consumers.¹²⁰

111 See, e.g., *State ex rel. Goddard v. DirecTV, Inc.* No. CV2010-033208 (Ariz. Super. Ct. Maricopa Cty. Dec. 28, 2010); *People v. DirecTV, Inc.*, No. 37-2010-00106109 (Cal. Super. Ct. San Diego Cty. Dec. 16, 2010).

112 See, e.g., Order Approving Assurance of Voluntary Compliance, *In the Matter of: State of Texas and AOL LLC*, No. D-1-CV-07-001406 (Tex. Dist. Ct. Travis. Cty. July 11, 2007).

113 Press Release, Office of the Attorney General of Arizona, “Attorney General Goddard Announces \$5 Million Settlement with DISH Network,” June 16, 2009) attaching Assurance of Voluntary Compliance, *In the Matter of: Dish Network, L.L.C.* (June 16, 2009).

114 See, e.g., Press Release, Office of the Attorney General of New Jersey, “New Jersey Joins Multi-State, Federal Settlement with AT&T Mobile Over Phone Bill Charges for Unsolicited Text Subscription Services,” (Oct. 8, 2014), attaching Assurance of Voluntary Compliance, *In the Matter of: AT&T Mobility, LLC*, (N.J. Div. of Consumer Affairs, Oct. 8, 2014).

115 See, e.g., Assurance of Voluntary Compliance, *In the Matter of: Third-Party Charges on Mobile Telephone Bills: Verizon Wireless*, No. 508571 (Office of the Ohio Attorney General Consumer Protection Section May 12, 2015).

116 See, e.g., Assurance of Discontinuance Pursuant to G.L. 93A § 5, *In the Matter of T-Mobile USA, Inc.*, No. 14-3988 (Mass. Super. Ct. Suffolk Cty. Dec. 19, 2014).

117 See, e.g., Assurance of Voluntary Compliance, *In the Matter of: Third-Party Charges on Mobile Telephone Bills: Sprint Corporation*, No. 508545 (Office of the Attorney General Consumer Protection Section May 12, 2015).

118 Press Release, Office of the Attorney General of Colorado, “Colorado Attorney General’s Office Announces Sirius XM Customers Eligible for Restitution (Dec. 4, 2014), attaching Assurance of Voluntary Compliance, *State ex rel. Suthers v. Sirius XM Radio Inc.*, Colo. Dist. Ct. Denver Cty. Dec. 4, 2014).

119 See, e.g., Press Release, Office of the Attorney General of Maine, “Attorney General Announces Settlement with Vonage Regarding Cancellation Issues” (Nov. 16, 2009).

120 See Press Release, Office of the Attorney General of Virginia, “Herring Announces \$158 Million in Mobile “Cramming” Settlements with Sprint and Verizon” (May 12, 2015); Press Release, Office of the Attorney General of Wisconsin, “A.G. J.B. Van Hollen Announces \$90 Million Cramming Settlement with T-Mobile” (Dec. 19, 2014) Press Release, Office of the Attorney General of New York, “A.G. Schneiderman Announces \$105 Million National “Cramming” Settlement with

Third Party Money Transmitters

Money service businesses and specifically, money transmitters (MTs) are used by hundreds of thousands of consumers each day to pay bills and to send funds to family members and friends within the United States and abroad.¹²¹

Perpetrators of a wide array of predatory scams often rely on and prefer money transfers to obtain payment from consumers. This is because when a payment via this type of transfer is made by a consumer, he/she is, in effect, sending cash and is unable to recoup that cash when she later discovers that he/she was defrauded. Further, certain features of how most MT systems operate make these payments very difficult to trace. For example, the recipient of the money can pick up funds at any one of multiple locations and can circumvent requirements to provide correct identification.

Perhaps the most notorious and well publicized of these predatory scams involving fraud induced wire transfers is the “person in need” scam—often referred to as the “grandparent scam”¹²²—in which a fraudster calls a consumer claiming that money is urgently needed and must be wired via a money transmitter to assist with an emergency. Other types of fraud induced wire transfers include lottery scams, employment scams and imposter scams.¹²³

In addressing the problem of fraud induced wire transfers, attorneys general have relied primarily on the state’s authority pursuant to either its little FTC Act (patterned after Section 5 of the Federal Trade Commission Act) or other state consumer protection laws. In their reliance on state consumer protection laws, states effectively have taken a position that wire transfer companies which fail to implement adequate and effective policies and procedures to detect and prevent fraud have engaged in actionable violations by operating their wire transfer services in a manner which facilitated fraud induced wire transfers. Examples included permitting fraudsters to pick up victim’s monies even after a transaction was identified as fraud induced and failing to act to halt the conduct of agents involved in fraud schemes or to terminate those agents.

Other potential sources of attorney general enforcement authority include the federal Telemarketing Act and companion Telemarketing Sales Rule¹²⁴ which

AT&T Mobility” (Oct. 8, 2014).

121 See, United States Department of Treasury, National Money Laundering Risk Assessment, June 12, 2015.

122 See discussion *supra*.

123 See, e.g., Complaint, *FTC v. The Western Union Company*, No. 1:17-cv-00110 (M.D. Pa. January 19, 2017) and discussion *supra*.

124 15 U.S.C. § 6108 *et seq.* and 16 C.F.R. Part 310.

include prohibitions on telemarketers making a false or misleading statement to induce any person to pay for goods or services¹²⁵ or to ask consumers to pay an outbound and inbound telemarketing transaction with a “cash to cash” money transfer. Further, it is a violation of the TSR to provide “substantial assistance or support” to any seller or telemarketer when that person “knows or consciously avoids knowing” that the seller or telemarketer is engaged in other violations of the TSR.¹²⁶

In cases involving international money transfers, the Electronic Funds Transfer Act (as amended by the Dodd Frank Act) and its implementing rules provide certain consumer protections including that remittance service providers disclose all costs which will affect the consumer’s transaction and give consumers a thirty-minute window to cancel a transaction.¹²⁷ MTs are also subject to the licensing and regulatory authority of state financial supervisors whose goal is to ensure that these MT companies—which range in size from small local entities to publicly traded corporations—abide by licensing and bonding standards and requirements. A few states go beyond that to incorporate consumer protection elements and several states have enacted the Uniform Money Services Act, adopted by the Uniform Law Commission.¹²⁸

In recent years, states, in cooperation with federal partners obtained settlements against two of the largest operators of money transfer businesses in the United States: MoneyGram and Western Union.

In 2015, 49 states and the District of Columbia concluded a multiyear investigation by entering into assurances of compliance/discontinuance with MoneyGram. The settlement included compliance terms and a payment of thirteen million dollars to fund a restitution program and to recover the states’ costs.¹²⁹ The restitution program provided refunds to consumers who had filed complaints that they were victims of fraud induced money transfers involving wire transfers made through MoneyGram from the United States to payees located in foreign countries (other than Canada). Consumers who had filed complaints regarding U.S. to U.S. and U.S. to Canada transmissions had received

125 16 C.F.R. § 310.3(a)(4).

126 16 C.F.R. § 310.3(b).

127 15 U.S.C. § 1693 o-1.

128 See, e.g., HAW. REV. STAT. ch. 489D; IOWA CODE ch. 533C; N.M. STAT. ANN. § 58-32-101 *et seq.*; S.C.CODE ANN. § 35-11-100 *et seq.*

129 See, e.g., *State ex rel. Slatery v. Moneygram Payment Systems, Inc.*, No. 16C585 (Tenn. Cir. Ct. Davidson Cty. Mar 2, 2016).

restitution through previous settlements between MoneyGram and the FTC and the U.S. Department of Justice.¹³⁰

To address compliance issues, the settlement required MoneyGram to enhance and maintain a comprehensive and robust anti-fraud compliance program, which at a minimum must include 1) mandatory and documented compliance training for agents; 2) establishment of a hotline system—telephonic and electronic—where employees and agents report noncompliance; and 3) continued efforts to utilize and enhance technology solution to help the company identify fraud.

In 2017, fifty states and the District of Columbia entered a similar settlement with The Western Union Company¹³¹ which included compliance terms intended to rectify compliance issues identified during the investigation including requiring the company to: take action to identify and avoid doing business with agents involved in or complicit in processing fraud induced money transfers; perform due diligence on prospective and existing agents; and take appropriate disciplinary action against noncompliant agents and developing systematic controls to detect and prevent fraud induced transfers. Restitution for consumers was not included in this settlement but rather provided in related federal settlements which included a \$586 million payment for restitution for consumers including those who had filed complaints with states' attorneys general.¹³²

As enforcement and compliance oversight of MTs has increased, fraudsters are pushing consumer victims to send payments via alternative methods such as gift cards from big box retailers like WalMart and Target, iTunes cards and reloadable cards like MoneyPak. In addition, the money transfer industry which traditionally operated through a network of agents based at brick and mortar locations such as convenience and retail stores is in the process of evolving utilizing mobile phone technology to transfer funds and in some instances, partnering with fintech companies to offer online transfers to mobile money accounts.

130 See, *Federal Trade Commission v MoneyGram International, Inc., Stipulated Order for Permanent Injunction and Final Judgment*, filed October 19, 2009, *In the United States District Court for the Northern District of Illinois, Eastern Division, Civil Action No. 09-cv-6576*.

131 Press Release, Office of the Attorney General of Delaware, "Delaware Attorney General Matt Denn Announces Settlement With Western Union (Jan. 31, 2017); Press Release, Office of the Attorney General of Texas, "AG Paxton: 39,000 Texans Eligible for Restitution in \$5 Million Western Union Consumer Protection Settlement; (Jan. 31, 2017).

132 See *United States of America v The Western Union Company*, No. 1:17-cr-00011 (M.D.Pa. Jan. 20, 2017); and *Federal Trade Commission v. The Western Union Company*; No. 1:17-CR-000100 (M.D. Pa. Jan 20, 2017).

CLASS ACTION FAIRNESS ACT

The Class Action Fairness Act (CAFA) allows class actions involving parties located in more than one state to be filed in or removed to federal court.¹³³ It also imposes substantive and procedural requirements regarding class action settlements. For example, CAFA limits attorneys' fees in cases where the benefit consists of coupons, requires written findings where class members suffer a net loss, and prohibits discrimination based on geographic location.¹³⁴ As part of the class action settlement approval process, CAFA also requires defendants to provide notice of proposed class action settlements to the "appropriate state official" no later than 10 days after it is filed in court.¹³⁵ The appropriate state office is often the attorney general.¹³⁶ States often receive hundreds of such notices per year but are under no affirmative obligation under CAFA to take any action regarding these notices. An attorney general's silence in response to such a notice, therefore, should not be interpreted as approval or support of a proposed settlement.

While the CAFA imposes no affirmative duty on attorneys general, consumer protection staff from attorney general offices discuss proposed settlements received by their offices that have been flagged by group members as potentially concerning. These discussions may lead to communications with the parties who may in turn make adjustments to the agreement before it is approved by the court. If the settlement appears to be disadvantageous to consumers, attorneys general may file an amicus brief with the court expressing their concerns. These amicus briefs can be influential.¹³⁷ While representatives of the attorneys general will often discuss their concerns with the parties prior to filing, and while these discussions will often result in the parties voluntarily making changes to the settlement, such communications are not a necessary predicate to one or more attorneys general filing an amicus brief. Amicus briefs challenging the adequacy of a proposed class action settlement have been filed by attorneys general in both district courts and the courts of appeal.

In *California v. IntelliGender, LLC*, the Ninth Circuit held that once a class action has been finally approved, a state enforcement action cannot obtain additional monetary relief for the class members, although it can continue an action

133 28 USC § 1332(d).

134 28 USC §§ 1712-1714.

135 28 USC § 1712(b).

136 28 USC § 1712(a)(2).

137 See *True v. American Honda Motor Co.*, 749 F. Supp. 2d 1052, 1082 (C.D. Cal. 2010) (views of amici attorneys general one of three factors cited by Court in denying settlement approval).

seeking injunctive relief or penalties.¹³⁸ Even if a state is not within the Ninth Circuit, *IntelliGender* may impact prosecution of a defendant who has settled a class action alleging a similar factual predicate. If the settlement has been approved in a district court in the Ninth Circuit, the judge could be required by *IntelliGender* to enjoin a state attorney general action for monetary relief.¹³⁹ Although parties to a private class action cannot stipulate to a putative limitation on attorney general investigative and prosecutorial authority, they often try to do so, by, for example, purporting to prohibit consumers' cooperating with other actions, which could include law enforcement actions, or prohibit class members' receiving "any benefits" in other actions, which could include injunctive relief obtained by an attorney general. This type of language is one of the issues frequently raised with the parties by attorneys general.

138 *California v. IntelliGender, LLC* 771 F.3d 1169, 1182 (9th Cir. 2014).

139 *Id.* (ordering district court to enjoin public enforcement action to the extent it sought restitution for consumers).

TABLE 13-1—State Consumer Protection Statutes

State	Statutes
Alabama	Alabama Deceptive Trade Practices Act, ALA. CODE § 8-19-1 <i>et seq.</i>
Alaska	Alaska's Unfair Trade Practices and Consumer Protection Act, ALASKA STAT. 45.50.471 through 561
American Samoa	AM. SAMOA CODE ANN. §§ 27.0401 through 0406; AM. SAMOA CODE ANN. 27.0601 through 0616; AM. SAMOA CODE ANN. 27.0901 through 0905; AM. SAMOA CODE ANN. 22.1501 through 1504; AM. SAMOA CODE ANN. 22.1701 through 1711
Arizona	Arizona Consumer Fraud Act, ARIZ. REV. STAT. § 44-1521 <i>et seq.</i>
Arkansas	Deceptive Trade Practices Act, ARK. CODE ANN. § 4-88-101 <i>et seq.</i>
California	CAL. BUS. & PROF CODE §§ 17200 <i>et seq.</i> and 17500 <i>et seq.</i> ;
Colorado	Colorado Consumer Protection Act, COLO. REV. STAT. § 6-1-101 <i>et seq.</i>
Connecticut	Connecticut Unfair Trade Practices Act, CONN. GEN. STAT. §§ 42-110a <i>et seq.</i>
Delaware	Consumer Fraud Act, DEL. CODE ANN. tit. 6, §§ 2511 through 2527; Uniform Deceptive Trade Practices Act, DEL. CODE ANN. tit. 6, §§ 2531 through 2536
District of Columbia	District of Columbia Consumer Protection Procedures Act, D.C. CODE §§ 28-3901 <i>et seq.</i>
Florida	Florida Deceptive and Unfair Trade Practices Act, FLA. STAT. ANN. § 501.201 through 213
Georgia	Fair Business Practices Act, GA. CODE ANN. § 10-1-390 <i>et seq.</i>
Guam	Trade Practices and Consumer Protection, 5 GUAM CODE ANN. § 32101 <i>et seq.</i>
Hawaii	Uniform Deceptive Trade Practice Act, HAW. REV. STAT. § 481A ; HAW. REV. STAT. § 480-2
Idaho	Consumer Protection Act, IDAHO CODE ANN. §§ 48-601 <i>et seq.</i>
Illinois	Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 <i>et seq.</i> ; Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 <i>et seq.</i>
Indiana	Deceptive Consumer Sales Act, IND. CODE 24-5-0-5 <i>et seq.</i>
Iowa	Iowa Consumer Fraud Act, IOWA CODE § 714.16
Kansas	Kansas Consumer Protection Act, KAN. STAT. ANN. § 50-623 <i>et seq.</i>
Kentucky	Kentucky Consumer Protection Act, KY. REV. STAT ANN. § 367.110 <i>et seq.</i>

TABLE 13-1—State Consumer Protection Statutes

State	Statutes
Louisiana	Unfair Trade Practices and Consumer Protection Law, LA. REV. STAT. ANN. 51:1401 <i>et seq.</i>
Maine	Unfair Trade Practices Act, ME. REV. STAT. tit. 5 §§ 205-A through 214;
Maryland	Maryland Consumer Protection Act, MD. CODE ANN., Com. Law § 13-101 <i>et seq.</i>
Massachusetts	MASS. GEN. LAWS ch. 93A, §§ 2 and 4;
Michigan	Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901 <i>et seq.</i>
Minnesota	Minnesota Deceptive Trade Practices Act, MINN. STAT. §§ 325D.43 through 48; Minnesota False Advertising Act, MINN. STAT. § 325F.67; Minnesota Consumer Fraud Act, MINN. STAT. §§ 325F.68 through 70; Minnesota Deceptive Trade Practices Against Senior Citizens or Disabled Persons Act, MINN. STAT. § 325F.71
Mississippi	MISS. CODE ANN. 75-24-1 <i>et seq.</i>
Missouri	Merchandising Practices Act, MO. REV. STAT. §§ 407.010 <i>et seq.</i>
Montana	MONT. CODE ANN. §§ 30-14-101 <i>et seq.</i>
Nebraska	Nebraska Consumer Protection Act, NEB. REV. STAT. §§ 59-1601 <i>et seq.</i> ; Uniform Deceptive Trade Practices Act, NEB. REV. STAT. §§ 87-301 <i>et seq.</i>
Nevada	Deceptive Trade Practices Act, NEV. REV. STAT. §§ 598.0903 <i>et seq.</i>
New Hampshire	New Hampshire Consumer Protection Act, N.H. REV. STAT. ANN. § 358-A
New Jersey	New Jersey Consumer Fraud Act, N.J. STAT. ANN. §§ 56:8-1 <i>et seq.</i>
New Mexico	New Mexico Unfair Practices Act, N.M. STAT. ANN. §§ 57-12-1 <i>et seq.</i>
New York	N.Y. General Business Law Art. §§ 349 through 50, and Executive Law § 63(12)
North Carolina	North Carolina Unfair and Deceptive Trade Practices Act, N.C. GEN. STAT. §§ 75-1.1 <i>et seq.</i>
North Dakota	Unlawful Sales or Advertising Practices, N.D. CENT. CODE § 51-15-01 <i>et seq.</i>
Northern Mariana	Consumer Protection Act, 4 N. MAR. I. CODE §§ 5101 <i>et seq.</i> ; Disaster Price Freeze Act, 4 CMC §§ 5141 <i>et seq.</i> ; Assistive Technology Warranty Act, 4 CMC §§ 5161 <i>et seq.</i> ; Alien and Immigrant Consumer Protection Act, 4 CMC §§ 5181 <i>et seq.</i> ; Unfair Trade Practices 4 CMC §§ 5201 <i>et seq.</i>
Ohio	Ohio Consumer Sales Practices Act, OHIO REV. CODE ANN. §§ 1345.01 <i>et seq.</i>

TABLE 13-1—State Consumer Protection Statutes

State	Statutes
Oklahoma	Oklahoma Consumer Protection Act, Okla. Stat. tit. 15 §§ 751 <i>et seq.</i>
Oregon	Oregon Unlawful Trade Practices Act, OR. REV. STAT. §§ 646.605 <i>et seq.</i>
Pennsylvania	Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 PA. CON. STAT. §§ 201-1 <i>et seq.</i>
Puerto Rico	P.R. LAWS ANN. tit. 3, §§ 2101 <i>et seq.</i>
Rhode Island	Rhode Island Deceptive Trade Practices Act, R.I. GEN. LAWS §§ 6-13.1-1 <i>et seq.</i>
South Carolina	South Carolina Unfair Trade Practices Act, S.C. CODE ANN. §§ 39-5-10 <i>et seq.</i>
South Dakota	South Dakota Deceptive Trade Practices and Consumer Protection, S.D. CODIFIED LAWS §§ 37-24-1 <i>et seq.</i>
Tennessee	Tennessee Consumer Protection Act, TENN. CODE ANN. § 47-18-101 <i>et seq.</i>
Texas	Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. AND COM. CODE §§ 17.41 <i>et seq.</i>
Utah	Utah Consumer Sales Practices Act, UTAH CODE ANN. §§ 13-11-1, <i>et seq.</i>
Vermont	Consumer Protection Act, VT. STAT. ANN. tit. 9, §§ 2451 <i>et seq.</i>
Virgin Islands	The Consumer Fraud and Deceptive Business Practices Act, V.I. CODE ANN. tit. 12A, § 301 <i>et seq.</i> ; V.I. CODE ANN. tit. 12A § 101 <i>et seq.</i>
Virginia	Virginia Consumer Protection Act, VA. CODE ANN. §§ 59.1-196 through 207
Washington	Unfair Business Practices/Consumer Protection Act, WASH. REV. CODE §§ 19.86 <i>et seq.</i>
West Virginia	West Virginia Consumer Credit and Protection Act, W.VA. CODE § 46A-1-101 <i>et seq.</i>
Wisconsin	WIS. STAT. § 100.182; WIS. STAT. § 100.18; WIS. STAT. § 100.20
Wyoming	Wyoming Consumer Protection Act, WYO. STAT. ANN. §§ 40-12-101 <i>et seq.</i>