

# CONSUMER PROTECTION IN THE STATES

## A 50-STATE EVALUATION OF UNFAIR AND DECEPTIVE PRACTICES LAWS

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### APPENDIX A

## CAPSULE SUMMARIES OF STRENGTHS AND WEAKNESSES OF EACH STATE'S UDAP STATUTE

#### *Alabama*

Alabama's UDAP statute includes strong prohibitions of unfair or deceptive acts. It is weakened by blanket exemptions for banks and other lending institutions, so it does not help stop predatory lending and mortgage fraud. Other serious weaknesses are blanket exemptions for insurers and utility companies, a special advance notice requirement that is imposed on consumers, and a prohibition against class actions. The statute would be stronger if the attorney general had the authority to adopt regulations prohibiting emerging forms of unfairness and deception, and if the civil penalty for initial violations (now just \$2,000) were increased.

#### *Alaska*

Alaska's UDAP statute includes strong prohibitions of unfair or deceptive acts, and gives the attorney general the authority to adopt regulations prohibiting emerging forms of unfairness and deception. It is significantly weakened by a blanket exemption for insurers, and by provisions that the state supreme court has interpreted as making the statute inapplicable to real estate transactions. Its remedies for consumers are undermined by a provision that allows courts to require consumers to pay a portion of the business's attorney fees if the consumer loses the case. The statute is also marred by a complicated series of overlapping exemptions for types of industries and practices, although it has been improved by an amendment clarifying that these exemptions do not immunize a business that commits one of a list of unfair or deceptive acts.

#### *Arizona*

Arizona's UDAP statute has significant weaknesses. It does not allow a court to order a seller to reimburse the consumer's attorney fees or award multiple damages. Nor does it allow the attorney general to adopt rules addressing emerging forms of deception. On the positive side, it includes broad prohibitions of both unfair and deceptive practices, and avoids blanket exemptions of entire industries.

## *Arkansas*

The Arkansas UDAP statute includes broad prohibitions of both deceptive and unconscionable acts. The statute would be stronger if it allowed consumers to recover multiple damages in appropriate cases and to bring class actions. It also has unusually restrictive provisions about the types of losses for which a business can be required to reimburse the consumer. It would be enhanced by giving rulemaking authority to a state agency.

## *California*

California's main UDAP statute, its Unfair Competition Law, broadly prohibits unlawful, unfair, or fraudulent business practices and deceptive advertising, and it is not undercut by exemptions for particular businesses. A weakness is that consumers can only seek restitution, not damages, and multiple damages are not allowed. Another weakness is that only a consumer who has "lost money or property" can enforce the statute, so consumers who have suffered an intangible injury such as invasion of privacy or who seek injunctive relief to prevent threatened harm are left out. The statute would also be enhanced by increasing the civil penalty for violations, currently just \$2,500, and by giving a state agency authority to adopt rules prohibiting emerging scams. California has a second UDAP statute that also provides useful remedies, but has a more restricted scope and requires a pre-suit notice.

## *Colorado*

The Colorado UDAP statute's substantive prohibitions are among the weakest in the country, prohibiting only certain specified acts without broad prohibitions of either deception or unfairness. Nor does it give a state agency the authority to adopt rules prohibiting emerging forms of unfairness or deception. In addition, court decisions create a significant impediment for consumers by denying them any remedy, even if they were cheated, unless the unfair or deceptive practice in question also has a significant impact on the public. Yet another weakness is language that courts have interpreted as preventing consumers from joining together in a class action. The civil penalty that the attorney general can seek for initial violations is relatively low (just \$2,000 per violation), and many of the statute's specific prohibitions require proof that the defendant acted knowingly. On the other hand, a significant strength of Colorado's law is that it does not create blanket exemptions for specific industries.

## *Connecticut*

Connecticut's UDAP statute broadly prohibits deceptive and unfair acts and practices. It would be enhanced by adding a minimum damages provision, making attorney fee awards to consumers mandatory so that if they prevail they are assured of being made whole, broadening the statute's applicability to insurance transactions, providing that violation of another state or federal consumer protection law is a per se UDAP violation, and allowing any consumer who has been damaged to bring suit, whether or not the damage is a loss of "money or property."

## *Delaware*

Delaware's UDAP statute has relatively weak prohibitions and private remedies. It broadly prohibits deceptive acts, but does not prohibit unfair acts or give the attorney general the authority to adopt regulations addressing new forms of deception. It does not allow consumers to recover their attorney fees, so when they win a case against a deceptive business they will still not be made whole. Another weakness is language that could be interpreted as a blanket exemption for utility companies and insurers. On the positive side, it appears to cover deceptive loan and credit practices. While the statute does not provide for multiple damages, the state supreme court has ruled that punitive damages are available.

## *District of Columbia*

The District of Columbia's UDAP statute broadly prohibits deceptive and unconscionable practices, and does not include blanket exemptions for entire industries. Public enforcement would be stronger if the civil penalties for violations were increased from their current low amounts (\$1,000 per violation—the lowest in the country). Another weakness is that courts have interpreted the statute as requiring consumers to meet a higher standard of proof—clear and convincing evidence—than is normally required in civil cases. The statute would be strengthened by making it clear that it applies to post-sale acts such as debt collection.

## *Florida*

Florida's UDAP statute broadly prohibits deceptive, unfair, and unconscionable acts, but provides only weak remedies for consumers and suffers from a constricted scope. A consumer who asserts an unsuccessful UDAP claim can be required to pay the business's attorney fees, even if the consumer asserted the claim in good faith. The statute exempts many lenders, even if they act unfairly or deceptively, so is of little use against predatory lending and mortgage fraud. It also provides blanket exemptions for insurers, utility companies, and holders of real estate licenses, and courts have differed about whether it can be applied to abusive debt collection and other post-sale practices. It would be enhanced by allowing consumers to recover multiple damages in appropriate cases. A strength of the statute is that it gives a state agency the authority to adopt rules specifying prohibited practices, but the state agency repealed almost all of its rules in 1996.

## *Georgia*

The broad prohibitions of Georgia's UDAP statute are undermined by procedural obstacles and a constricted scope. Georgia courts require consumers to show not just that they were cheated, but that the practice has an impact on the public. The statute also imposes a special advance notice requirement on consumers and prohibits consumers from joining together in a class action. Some courts have interpreted the statute not to apply to lending practices at all, which denies consumers a remedy for predatory lending and mortgage fraud, and at least one court has also interpreted the statute as providing a

blanket exemption for insurers. Georgia courts have also weakened the statute by denying consumers the right to sue regarding oral misrepresentations.

### *Hawaii*

Hawaii's UDAP statute broadly prohibits unfair and deceptive acts and gives the office of consumer protection the authority to adopt rules to address emerging scams. It does not carve out entire industries as exempt.

### *Idaho*

Idaho's UDAP statute is quite strong in some ways. It broadly prohibits deceptive and unconscionable acts and gives the attorney general relatively strong enforcement powers, including the authority to adopt regulations prohibiting emerging scams. It does not impose procedural hurdles on consumers seeking remedies, and allows consumers to recover their attorney fees. Significant weaknesses are a blanket exemption for insurance companies, and some ambiguities as to coverage of lenders and utility companies. Another weakness is that, while the statute provides for statutory damages, it limits the total award of statutory damages in a class action to just \$1,000. The statute would also be improved by allowing any consumer who has been damaged to bring suit, whether or not the damage is a loss of "money or property."

### *Illinois*

The main Illinois UDAP statute includes both broad and specific prohibitions, and allows the attorney general to adopt rules prohibiting emerging forms of deception and unfairness. Its main weakness is that court decisions have created significant gaps in coverage of creditors and credit transactions, making it less useful than it could be to stop predatory lending and mortgage fraud.

### *Indiana*

Indiana's UDAP statute has broad prohibitions of deceptive and unconscionable acts but does not give a state agency the authority to define these practices more specifically. Consumer enforcement is impeded by a pre-suit notice requirement. The statute also provides a blanket exemption for insurance transactions, and denies consumers the right to bring suit for unfair and deceptive acts that occur in real estate transactions. The statute would also be enhanced by specifically providing that a consumer who asserts a good faith but unsuccessful UDAP claim against a business cannot be required to pay the business's attorney fees.

### *Iowa*

The scope and prohibitions of Iowa's UDAP statute are broad, and it provides strong enforcement tools to the state. Iowa was formerly the only state in the nation that did not give consumers the right to go to court under the state UDAP statute. In 2009 it amended the statute to give consumers the right to enforce it, but not against insurance

companies, a wide variety of lenders, most utility service providers, real estate licensees, and many others. While Iowa consumers have much better protection now than they did before the amendment, these large gaps make Iowa's remedies for consumers one of the weakest in the nation.

### *Kansas*

The Kansas UDAP statute is quite strong in its prohibitions, its application to a broad range of businesses, and its public and private remedies. One weakness is that many of the specific prohibitions require a showing that the business acted knowingly or willfully. While the statute allows consumers to recover a \$10,000 civil penalty for violations, it would be enhanced if consumers could recover multiple damages in appropriate cases. It would also be improved if insurance transactions were covered, and if a state agency had authority to adopt rules to address emerging scams.

### *Kentucky*

The broad prohibitions of Kentucky's UDAP statute are undermined by a lack of clarity about its scope. Courts have held the statute applicable only to parties with which the consumer has contracted, a limitation that can make the statute inapplicable to parties such as abusive debt collectors or to wholesalers who launder the titles of rebuilt wrecks so that fraudulent car dealers can sell them without disclosure. Some courts have held that consumers cannot enforce the statute in real estate transactions. There is no provision for multiple damages. The statute would also be enhanced by specifically providing that a consumer who asserts a good faith but unsuccessful UDAP claim against a business cannot be required to pay the business's attorney fees. The statute would also be stronger if it granted rulemaking authority to a state agency and increased the civil penalty for initial violations, currently just \$2,000.

### *Louisiana*

The Louisiana UDAP statute's broad prohibitions would be far more valuable to consumers were its scope not so limited. It is of little use against predatory lending and mortgage fraud, as it exempts most practices, no matter how unfair or deceptive, by a wide range of financial institutions, as well as by insurers and utility companies. It also prohibits consumers from joining together in a class action, and allows a consumer to bring suit only if the consumer has suffered a loss of "money or movable property."

### *Maine*

Maine's UDAP statute has broad prohibitions and reasonably strong consumer remedies. The legislature narrowed the statute's exemptions in 2007, so it now applies broadly to most businesses. State-chartered banks and credit unions are exempt, however. Three other weaknesses are that consumers are required to send the business a notice before filing suit, the statute does not provide for multiple damages, and the statute does not allow a consumer who has been damaged in a way other than a loss of "money or property" to seek relief in the courts.

## *Maryland*

Maryland's UDAP statute broadly prohibits both deceptive and unfair acts. Private enforcement would be enhanced by a multiple damages provision. While the statute covers credit transactions, a significant weakness is that it excludes insurance companies, utility companies, and a long list of specific occupations such as real estate brokers, land surveyors, and certified public accountants. The statute would also be improved by increasing the civil penalty for initial violations, currently just \$1,000, and by clarifying that consumers need not prove reliance as a condition of recovery.

## *Massachusetts*

Massachusetts' UDAP statute has broad prohibitions and no significant exemptions. It gives the attorney general the authority to adopt regulations defining unfair and deceptive acts, and the attorney general has adopted a number of strong, specific regulations. Consumers can obtain injunctions, damages, multiple damages, and attorney fees against businesses for unfair or deceptive acts. A weakness is that Massachusetts' UDAP statute imposes a special advance notice requirement on consumers. It would also improve the statute if the legislature codified the attorney general's strong rule that violations of other consumer protection statutes are UDAP violations.

## *Michigan*

Michigan's UDAP statute has been gutted by rulings narrowing its scope. The courts have interpreted an exemption for "a transaction or conduct specifically authorized" under laws administered by a state or federal regulatory board so broadly that the statute now covers almost no businesses. If not for these rulings, it would provide relatively strong consumer protection, as it includes reasonably broad prohibitions, relatively strong public and private enforcement remedies, and few procedural hurdles for consumers to overcome. As it stands, however, the statute is of little or no use to consumers. Two other weaknesses are that it does not have a multiple damages provision and does not give a state agency the authority to adopt substantive regulations to address emerging forms of unfairness and deception.

## *Minnesota*

Minnesota's main UDAP statute has relatively weak substantive prohibitions, as it prohibits only deceptive, not unfair acts, and does not give the state agency the authority to adopt regulations to address new scams. An even greater weakness is that courts hold that a consumer who has been defrauded cannot obtain any remedy unless the suit benefits the public at large. These rulings have left many injured consumers without a remedy under the statute. The statute's public remedies are relatively strong and its private remedies, although they would be enhanced by a multiple damages provision, would be adequate if consumers could use them. The statute would also be improved by clarifying that it applies to post-sale acts such as unfair debt collection.

## *Mississippi*

Mississippi's UDAP statute has among the weakest consumer enforcement provisions in the nation. Consumers can bring suit only for a narrow subset of violations, and the statute allows consumers to claim only limited relief. In addition, a consumer who sues a business can be required to pay the business's attorney fees, but there is no provision for requiring the business to pay the consumer's attorney fees, even if the consumer wins the case. Mississippi does not allow consumers to join together in a class action to pursue deceptive practices claims. As a result of these and a number of other weaknesses, Mississippi's UDAP statute is of little use to consumers.

## *Missouri*

Missouri's UDAP statute broadly prohibits unfair and deceptive acts, and it allows the attorney general to adopt regulations addressing specific practices. The statute is weakened by gaps in the coverage of insurance companies, lenders, and other creditors. The statute would be improved by codifying a court ruling that a consumer who files an unsuccessful case under the statute can be required to pay the business's attorney fees only if the claim was frivolous and vexatious. It would also be improved by increasing the civil penalty amount, which is currently just \$1,000, the lowest in the country, and by allowing any consumer who has been damaged to bring suit, whether or not the damage is a loss of "money or property."

## *Montana*

Montana's UDAP statute broadly prohibits both deceptive and unfair acts, and it gives the state department of justice the authority to adopt regulations addressing specific practices. The state supreme court has ruled that the statute applies to consumer lending, and the statute does not impose significant procedural obstacles when consumers seek remedies for unfair or deceptive acts. However, the statute is weakened by a blanket exemption for insurance companies, ambiguity about its application to utility companies, and a prohibition of class actions. The statute would also be improved by allowing any consumer who has been damaged to bring suit, whether or not the damage is a loss of "money or property."

## *Nebraska*

The broad prohibitions of unfair and deceptive acts in Nebraska's UDAP statute are undermined by the statute's limited scope. Exemptions for lending practices and practices by utility companies and holders of real estate licenses exclude a wide range of acts even if they are unfair and deceptive. Another weakness is that courts hold that a consumer who has been defrauded cannot obtain any remedy unless the consumer also shows that the practice affects the public. The statute would also be enhanced by allowing consumers to recover multiple damages in appropriate cases, by giving a state agency the authority to adopt rules prohibiting emerging scams, and by increasing the civil penalty for initial violations, currently just \$2,000.

## *Nevada*

Nevada's substantive prohibitions are relatively narrow, as they only address deception, not unfairness, and generally require a showing that the business acted knowingly. Adding a prohibition of unfair acts, and deleting the requirement of a showing of knowledge, or at least defining it in a way consistent with the UDAP statute's consumer protection purposes, would significantly improve the statute. The statute would also be enhanced if consumers could recover multiple damages, such as treble damages, or at least a modest award of statutory damages, in appropriate cases. A strength of the statute is that it does not generally provide blanket exemptions for industries.

## *New Hampshire*

New Hampshire's broad prohibitions of unfair and deceptive acts and reasonably strong public and private remedies are undermined by the statute's limited scope. The statute does not apply to transactions with banks and other lenders, no matter how unfair or deceptive, so it does little to stop predatory lending and mortgage fraud. It also provides blanket exemptions for insurance and utility companies. The statute would be enhanced by giving a state agency the authority to adopt regulations prohibiting specific unfair and deceptive practices.

## *New Jersey*

New Jersey's UDAP statute includes both broad and specific prohibitions of unfair and deceptive acts, and it gives the attorney general authority to adopt rules prohibiting other specific practices. It exempts few businesses, and does not impose procedural obstacles on consumers seeking redress. The statute would be improved by overruling judicial decisions that have carved out learned professions from its scope, and by clarifying that it covers utility companies and unfair and deceptive insurance claims settlement practices. It would also be improved by allowing any consumer who has been damaged to bring suit, whether or not the damage is a loss of "money or property."

## *New Mexico*

New Mexico's UDAP statute includes both broad and specific prohibitions, and it gives the attorney general authority to adopt regulations prohibiting additional unfair or deceptive practices. The remedies afforded to the attorney general and consumers would be stronger if the statute did not require proof that the business acted knowingly. Courts have given an appropriately narrow reading to the statute's exemptions, declining to read them as blanket exemptions for particular industries, but the statute would be strengthened by clarifying that it applies to real estate transactions.

## *New York*

The scope of New York's UDAP statute is broad, but its prohibitions are relatively weak and courts have imposed procedural hurdles on consumers seeking remedies for deceptive practices. The statute broadly prohibits deceptive practices, but not unfair practices,

and its prohibition against unconscionable contract terms is found in a separate statute that is enforceable only by public officials, not by consumers. Nor does New York give a state agency the authority to adopt rules addressing emerging scams. A great weakness is that courts hold that a consumer cannot obtain any remedy for a deceptive practice without showing that the practice has a broader impact on consumers at large. These rulings have left many injured consumers without a remedy under the statute. The statute's treble damages remedies are undermined by outdated caps of \$1,000 and \$10,000.

### *North Carolina*

North Carolina's UDAP statute includes both broad and specific prohibitions of unfair and deceptive practices, provides reasonably strong remedies for both the attorney general and consumers, and covers most businesses. One weakness is a blanket exemption for learned professions. The statute would also be improved by giving a state agency the authority to adopt regulations addressing emerging scams.

### *North Dakota*

North Dakota's UDAP statute formerly prohibited only deception, not unfairness. It has been significantly improved by an amendment that expands its prohibitions to include unconscionable practices. Unlike most states, in North Dakota both the attorney general and consumers must not only show that a practice was deceptive, but also that the business acted with the intent that others rely on the deception. A strength of the law is that it allows the attorney general to adopt regulations specifying practices that are deceptive, but the attorney general has adopted only one rule. Although there are few decisions construing the statute's scope, it does not appear to create blanket exemptions for any types of businesses.

### *Ohio*

The strong prohibitions of Ohio's UDAP statute are undermined by its limited scope. It excludes most lenders, financial institutions, and real estate transactions, so is of little use to stop predatory lending and mortgage fraud. It also provides blanket exemptions for insurance and utility companies. In 2007 the state legislature weakened the statute by capping the damages consumers can recover, and in 2012 it further weakened it by singling out consumer protection claims for a burdensome "cure offer" procedure.

### *Oklahoma*

Oklahoma's main UDAP statute includes both broad and specific prohibitions of unfair and deceptive practices. The scope of the statute has not yet been definitively resolved, and the statute would be improved if it were clearer that it applies to all unfair and deceptive lending practices. The statute would also be improved by allowing consumers to recover multiple damages in appropriate cases, clarifying that it applies to unfair and deceptive acts by insurance and utility companies, overruling a series of poorly-reasoned decisions that refuse to apply it to unfair, deceptive, and abusive debt

collection tactics, and giving a state agency the authority to adopt rules to address emerging forms of deception.

### *Oregon*

A major weakness of Oregon’s UDAP statute is that it denies consumers the right to enforce its broad prohibitions of deception and unconscionable tactics. Another weakness is that only a consumer who has suffered a loss of “money or property” has the right to bring suit for a violation of the statute, so a consumer who has suffered an intangible injury such as an invasion of privacy, or who is seeking a court order to prevent a threatened injury, has no ability to seek relief under the statute. Although the statute currently applies to most businesses, it would be strengthened by deleting an exemption for insurance companies.

### *Pennsylvania*

A strength of Pennsylvania’s UDAP statute is its scope, as courts have not created blanket exemptions for specific industries. Another strength is its remedies for consumers, which include multiple damages and attorney fees. On the other hand, some Pennsylvania courts have weakened the statute by imposing burdensome requirements taken from common law fraud cases (such as proof of reliance and intent to defraud) and contract cases (such as prohibiting evidence of oral misrepresentations). Another weakness is that the statute’s broad prohibition of unfairness can, if read narrowly, be tied to a specific definition that forbids only a few relatively narrow examples of unfair acts. The attorney general’s enforcement remedies would be improved by increasing the low civil penalty (\$1,000—the lowest in the country) for violations.

### *Rhode Island*

The strong substantive prohibitions of the Rhode Island UDAP statute have been rendered virtually meaningless by court decisions creating blanket exemptions for a wide range of businesses. As it stands, the statute is of little or no use to consumers, because it applies to so few businesses. Rhode Island is also the only state that does not authorize the attorney general to seek a civil penalty when a business violates the UDAP statute.

### *South Carolina*

South Carolina’s UDAP statute includes both broad and specific prohibitions of unfair and deceptive practices. One weakness is that courts have required consumers to show not only that they were cheated, but also that the practice impacts the public interest. Another weakness is an exemption for insurers, although courts have not construed the statute to create blanket exemptions for other businesses. The statute would be enhanced by giving a state agency rulemaking authority and by deleting the prohibition of consumer class actions. It would also be improved by allowing any consumer who has been damaged to bring suit, whether or not the damage is a loss of “money or property.”

## *South Dakota*

South Dakota's UDAP statute has unusually narrow prohibitions. Only deceptive acts, not unfair acts, are prohibited, and consumers must prove that the deceptive act was both knowing and intentional. While the statute has strong criminal penalties, the remedies that consumers can invoke are weak: consumers can recover only compensatory damages, not multiple damages or even their attorney fees. Another weakness is the relatively low civil penalty (\$2,000) that the attorney general can seek for violations. On the positive side, the statute does not appear to provide blanket exemptions for entire industries, although it would be improved by clarifying that it applies to real estate transactions and post-sale acts such as debt collection and repossession.

## *Tennessee*

Tennessee's UDAP statute includes both broad and specific prohibitions, but it denies consumers the ability to enforce the broad prohibitions; consumer enforcement is limited solely to specific listed prohibitions. Other weaknesses are the low civil penalty (\$1,000—the lowest in the country) that the attorney general can seek for violations, a prohibition on class actions for damages, a blanket exemption for insurers, and significant gaps in coverage of unfair and deceptive lending practices that can leave consumers without a remedy under the statute for predatory lending or mortgage fraud. The statute would be enhanced by giving a state agency the authority to adopt regulations prohibiting emerging forms of unfairness and deception, and by clarifying that it applies to post-sale acts such as debt collection and repossession.

## *Texas*

The Texas UDAP statute has many weaknesses. Only the attorney general, not consumers, can bring suit under the statute's broad prohibition of deceptive acts. Other weaknesses are gaps in coverage of consumer credit transactions, and the statute's elaborate pre-suit notice requirements. On the other hand, the statute is strong in its broad prohibition of unconscionable acts, its coverage of insurance, utility service, real estate, and post-sale acts such as debt collection. Another strength is that it extends its protections to small businesses. The statute would be enhanced by giving a state agency the authority to adopt regulations prohibiting emerging forms of unfairness and deception.

## *Utah*

Utah's UDAP statute includes broad prohibitions of both deceptive and unconscionable practices. One significant weakness is its scope, as it excludes all insurance and utility companies and has significant gaps in coverage of unfair or deceptive consumer lending practices. Another weakness is a requirement, found in many of the statute's prohibitions, to show that the defendant's violation was knowing or intentional. The statute's remedies for consumers would be enhanced by authorizing multiple or punitive damages in appropriate cases.

## *Vermont*

Vermont's UDAP statute includes broad prohibitions of both unfair and deceptive acts, and it gives the attorney general the authority to adopt rules prohibiting additional forms of unfairness and deception. It also gives strong remedies to both the attorney general and consumers. It would be strengthened by clarification that it applies to unfair or deceptive practices by insurance companies.

## *Virginia*

Virginia's UDAP statute is relatively weak. It prohibits deceptive practices, but not unfair practices, and it exempts insurance companies, utility providers, and almost all consumer lenders. It also creates a broad exemption for any aspect of a transaction that is subject to certain federal consumer laws, and exempts holders of real estate licenses from any liability. Its consumer remedies are undermined by Virginia's failure to allow consumers to join together in a class action. The statute would be enhanced by giving a state agency the authority to adopt regulations prohibiting emerging forms of deception.

## *Washington*

Washington's UDAP statute broadly prohibits unfair and deceptive acts, and violations of many other consumer protection laws are considered to be UDAP violations. Major weaknesses of the statute are a complicated public interest test, the failure to give a state agency the authority to adopt regulations prohibiting emerging forms of deception, and the limitation of \$25,000 in additional damages that a court may award to deter future misconduct. Another weakness is the relatively low civil penalty (\$2,000) that the attorney general can seek for violations.

## *West Virginia*

West Virginia's UDAP statute broadly prohibits both unfair and deceptive acts. It also includes a number of specific prohibitions, and gives the attorney general the authority to adopt regulations defining unfair and deceptive acts more specifically. It is weakened by a requirement that the consumer send a special pre-suit notice that is not required in other types of cases. The statute would be enhanced by clarification that it applies to debt collection, unfair and deceptive practices by utility companies, real estate transactions, and all forms of consumer lending; by repealing an exemption for sales of insurance; by allowing any consumer who has been damaged to bring suit, whether or not the damage is a loss of "money or property"; and by allowing consumers to recover multiple damages.

## *Wisconsin*

One of Wisconsin's patchy UDAP statutes broadly prohibits unfair trade practices, but consumers can enforce this requirement only if the defendant violated one of the specific rules that the state has adopted. This is a significant limitation even though the state has adopted a strong series of UDAP regulations, as those regulations only address specific

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industries or practices. In addition, Wisconsin's UDAP statutes prohibit deception only in advertisements and other misrepresentations to the general public. On the positive side, the statutes give consumers relatively strong remedies if the claim falls within one of these unnecessarily narrow substantive prohibitions. The statutes would be enhanced by clarification that they cover unfair lending practices and by deletion of the false advertising statute's exemption for insurance companies.

### *Wyoming*

The prohibitions of unfair and deceptive practices in Wyoming's UDAP statute may appear broad, but they apply only if the business acted knowingly. The statute does not allow consumers to recover their attorney fees in individual suits, so a consumer who wins a case against a deceptive business will still not be made whole. The statute would be enhanced by making it clear that it applies to insurance companies, deleting the special advance notice requirement imposed on consumers, allowing any consumer who has been damaged to bring suit, whether or not the damage is a "pecuniary loss," giving rulemaking authority to a state agency, and allowing consumers to recover multiple damages in appropriate cases.

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