

# CONSUMER PROTECTION IN THE STATES

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

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### APPENDIX C

## STATE-BY-STATE SUMMARIES OF STATE UDAP STATUTES

### CONSUMER PROTECTION IN THE STATES

#### ALABAMA

Ala. Code §§ 8-19-1 through 8-19-15  
 Deceptive Trade Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Ala. Code § 8-19-5(27)
b. Broadly prohibits deceptive acts	Strong	Ala. Code § 8-19-5(27)
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Weak	Trade or commerce is broadly defined to include “distribution of . . . any . . . thing of value.” Ala. Code § 8-19-3(8). <i>Deerman v. Fed. Home Loan Mortgage Corp.</i> , 955 F. Supp. 1393 (N.D. Ala. 1997). However, Ala. Code § 8-19-7(3) exempts any bank or affiliate regulated by a state or federal agency, thereby significantly limiting the statute’s application to credit transactions. In addition, the UDAP statute’s private cause of action is limited to those who buy goods or services for personal, family, or household use, Ala. Code § 8-19-3, and a federal court held that a mortgage loan was not goods or services.
b. Insurance	Weak	Ala. Code § 8-19-7(3) exempts “[a]ny person or activity which is subject to the provisions of the Alabama Insurance Code.”
c. Utilities	Weak	Ala. Code § 8-19-7(3) exempts “the regulated activities of any utility, telephone company, or railroad which is regulated by the Alabama Public Service Commission.”

d. Post-sale acts (debt collection, repossession)	Undecided	Alabama courts have not addressed the question whether the UDAP statute covers debt collection. In light of the broad definition of “trade or commerce” in Ala. Code § 8-19-3(8), its broad prohibition of unconscionable, false, misleading, or deceptive acts in Ala. Code § 8-19-5(27), and the general rule that UDAP statutes are to be interpreted liberally, it is likely that Alabama courts will conclude that post-sale acts such as debt collection are covered, but the question remains undecided. Alabama’s exemption for banks and their affiliates will also immunize many mortgage services.
e. Real estate	Strong	Ala. Code § 8-19-3(3) defines “goods” to include real property.
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	Alabama courts have not yet ruled on whether reliance is required. Alabama’s UDAP statute requires that “[a]t least 15 days prior to the filing of any action under this section, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be communicated to any prospective respondent” Ala. Code § 8-19-10(e) (emphasis added). There is no case law clarifying whether this section of the UDAP statute requires a showing of reliance at trial, however, and the phrasing is most reasonably interpreted not as imposing a substantive requirement of reliance, but as simply requiring the notice to specify the unfair or deceptive practice on which the consumer relies as the basis for the UDAP claim.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Weak	Ala. Code § 8-19-10(e) requires advance notice.
e. Multiple or punitive damages	Strong	Ala. Code § 8-19-10(a)(2)
f. Attorney fees for consumers	Strong	Ala. Code § 8-19-10(a)(3)
g. UDAP statute does not prohibit class actions	Weak	Prohibited by Ala. Code § 8-19-10(f). A federal Court of Appeals held in <i>Lisk v. Lumber One Wood Preserving</i> , 792 F.3d 1331 (11 <sup>th</sup> Cir. 2015), that this prohibition does not apply in federal court, but it still prevents consumers from joining together in class actions in state court.
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Ala. Code § 8-19-8(a)
c. Restitution for consumers	Strong	The statute mentions restitution in Ala. Code § 8-19-8(b), which allows appointment of a receiver “whenever a person who has been ordered to make restitution under this section has failed to do so within three months.” This language implies that courts have authority to order restitution. In <i>Nunley v. State</i> , 628 So. 2d 619, 621 (Ala. 1993), the Supreme Court of Alabama upheld a trial court’s order that a defendant pay restitution. The court explained that such an order “is not contrary to the provisions of § 8-19-8, which allows the court to grant such relief as it deems appropriate.”
d. Civil penalty amount for initial violations	Weak	Ala. Code § 8-19-11(b) – up to \$2,000 per violation if knowing

# ALASKA

## Alaska Stat. §§ 45.50.471 through 45.50.561 Unfair Trade Practices and Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Alaska Stat. § 45.50.471(a)
b. Broadly prohibits deceptive acts	Strong	Alaska Stat. § 45.50.471(a)
c. Provides the state agency substantive rulemaking authority	Strong	Alaska Stat. § 45.50.491. State has adopted substantive rules.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Mixed	<p>Many of the substantive prohibitions in Alaska’s UDAP statute apply to “goods or services.” In <i>Barber v. National Bank of Alaska</i>, 815 P.2d 857 (Alaska 1991), the Alaska Supreme Court held that a real estate loan was not a “good” and that servicing it was not a “service” under Alaska’s UDAP statute. In 2003 the legislature added Alaska Stat. § 45.50.561(a)(9), which defines goods or services to include those “provided in connection with a consumer credit transaction or with a transaction involving an indebtedness secured by the consumer’s residence.” This amendment could be interpreted to have legislatively overruled <i>Barber</i>. However, in 2014, the Alaska Supreme Court interpreted this amendment narrowly, holding that it only brought certain goods and services, not real property transactions, into the UDAP statute’s scope, so did not extend the statute to a home mortgage or to the actions of a foreclosure trustee. <i>Alaska Trustee, L.L.C. v. Bachmeier</i>, 332 P.3d 1 (Alaska 2014). The court also rejected the argument that Alaska Stat. § 45.50.471(b)(52), which provides that a violation of certain state mortgage lending laws is a UDAP violation, demonstrated that the statute applies to mortgage lending. Nonetheless, in 2016 the court held that the statute does apply to companies that handle non-judicial foreclosures on homes. <i>Alaska Trustee, L.L.C. v. Ambridge</i>, 372 P.3d 207 (Alaska 2016).</p> <p>There are two other statutory exemptions that affect the coverage of credit transactions. One makes the statute inapplicable to “an act or transaction regulated by a statute or regulation administered by” the state or a state or federal agency (with a few exceptions) “unless the law regulating the act or transaction does not prohibit the practices declared unlawful in [the UDAP statute].” Alaska Stat. § 45.50.481(a)(1). Alaska courts find that this exemption applies “only where the business is both regulated elsewhere and the unfair acts and practices are therein prohibited.” <i>Smallwood v. Cent. Peninsula Gen. Hosp.</i>, 151 P.3d 319, 329 (Alaska 2006). Moreover, this exemption was significantly narrowed in 2012 by an amendment making the exemption inapplicable to any of the over fifty specific unfair and deceptive acts and practices listed in the statute’s substantive laundry list. Alaska Stat. § 45.50.481(c). Another section of the UDAP statute exempts “an act or transaction regulated under” the Alaska Banking Code. Alaska Stat. § 45.50.481(a)(3). However, by its terms this exemption does not apply to transactions between banks and their customers, borrowers, or depositors, so the exemption has little effect on consumers. Alaska Stat. § 45.50.481(b). The reference to “borrowers” in this exemption suggests that the statute does apply to credit transactions, because otherwise there would be no point in referring to transactions between banks and their borrowers.</p>

b. Insurance	Weak	The Alaska Supreme Court has held that insurers are exempt from the state UDAP statute pursuant to the exemption in Alaska Stat. § 45.50.481(a)(3) for acts or transactions regulated under the insurance trade practices laws. <i>O.K. Lumber Co., Inc. v. Providence Washington Ins. Co.</i> , 759 P.2d 523 (Alaska 1988).
c. Utilities	Strong	Alaska’s UDAP statute provides that it does not apply to “an act or transaction regulated by a statute or regulation administered by the state, including a state regulatory board or commission, unless the statute or regulation does not prohibit the practices declared unlawful by the UDAP statute.” Alaska Stat. § 45.50.481(a)(1). The Alaska Supreme Court holds that this exemption applies “only where the business is both regulated elsewhere and the unfair acts and practices are therein prohibited.” <i>Smallwood v. Cent. Peninsula General Hosp.</i> , 151 P.3d 319, 329 (Alaska 2006). Thus, it allows a UDAP action to be brought against a utility company as long as the practice in question is not already prohibited by utility laws. The exemption was significantly narrowed in 2012 by an amendment making it inapplicable to any of the over fifty specific unfair and deceptive acts and practices listed in the statute’s substantive laundry list. Alaska Stat. § 45.50.481(c). The exemption is now narrow enough that the statute appears apply to most unfair or deceptive practices involving utility service.
d. Post-sale acts (debt collection, repossession)	Strong	Alaska’s UDAP statute applies to acts and practices in “trade or commerce.” Alaska Stat. § 45.50.471(a). The Alaska Supreme Court has ruled that the state UDAP statute covers debt collection. <i>Merdes &amp; Merdes, P.C. v. Leisnoi, Inc.</i> , 2017 WL 5181610 (Alaska Nov. 9, 2017); <i>State v. O’Neill Investigations</i> , 609 P.2d 520 (Alaska 1980). It also applies to companies that handle non-judicial home foreclosures. <i>Alaska Trustee., L.L.C. v. Ambridge</i> , 372 P.3d 207 (Alaska 2016).
e. Real estate	Weak	In <i>State v. First National Bank of Anchorage</i> , 660 P.2d 406, 412-14 (Alaska 1982), the Supreme Court of Alaska held that the UDAP statute did not apply to real estate transactions. After that decision, Alaska Code § 45.50.561(a)(9) was amended to provide that “goods or services” includes “goods or services provided in connection with a consumer credit transaction or with a transaction involving an indebtedness secured by the borrower’s residence.” However, the state supreme court has held that this amendment does not change its interpretation. <i>Alaska Trustee., L.L.C. v. Ambridge</i> , 372 P.3d 207 (Alaska 2016). <i>See also Robinson v. Southwood Manor Assocs.</i> , 249 P.3d 1059 (Alaska 2011) (statute inapplicable to residential leases).

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	In <i>Odom v. Fairbanks Memorial Hosp.</i> , 999 P.2d 123, 132 (Alaska 2000), a case brought by a private party, the Supreme Court of Alaska articulated the standard for sustaining a UDAP claim, noting that “[a]n act or practice is deceptive or unfair if it has the capacity or tendency to deceive. Actual injury as a result of the deception is not required.... All that is required is a showing that the acts and practices were capable of being interpreted in a misleading way.”
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Alaska Stat. § 45.50.531 requires pre-suit notice only when the consumer seeks an injunction.
e. Multiple or punitive damages	Strong	Alaska Stat. § 45.50.531(c)

f. Attorney fees for consumers	Weak	Alaska Stat. § 45.50.537 states that a prevailing defendant “shall be awarded” attorney fees under a court rule that is quite broad and allows partial fees. While no cases could be found awarding fees to prevailing defendants in UDAP cases, there are many cases awarding fees to defendants under this rule in other types of cases.
g. UDAP statute does not prohibit class actions	Strong	The statute does not contain any restrictions on class actions.
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Alaska Stat. § 45.50.501(a)
c. Restitution for consumers	Strong	Alaska Stat. § 45.50.501(b)
d. Civil penalty amount for initial violations	Strong	Alaska Stat. § 45.50.551 (\$1,000 to \$25,000; no willfulness or knowledge requirement)

## ARIZONA

Ariz. Rev. Stat. Ann. §§ 44-1521 through 44-1534  
Consumer Fraud Act

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Strong	Ariz. Rev. Stat. § 44-1522
b. Broadly prohibits deceptive acts	Strong	Ariz. Rev. Stat. § 44-1522
c. Provides the state agency substantive rulemaking authority	Weak	Ariz. Rev. Stat. § 44-1526(A) only authorizes procedural rules.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Strong	Given the broad statutory definition of “merchandise,” Arizona courts have ruled that Arizona’s UDAP statute covers credit transactions such as loans. <i>Villegas v. Transamerica Fin. Servs., Inc.</i> , 708 P.2d 781 (Ariz. App. 1985).
b. Insurance	Strong	Although Arizona courts have not ruled directly on the question, there is no explicit statutory exemption for insurance, and the statute defines “merchandise” to include services without any restrictions. In <i>Haisch v. Allstate Ins. Co.</i> , 5 P.3d 940 (Ariz. App. 2000), a state appellate court considered a consumer fraud claim against an insurance company. The court dismissed the claim, not because the statute does not cover insurance, but because deception could not be shown. If the court had viewed insurance as outside the scope of the statute, it is likely that it would have dismissed the case on this threshold ground. In addition, in <i>Larkey v. Health Net Insurance Co.</i> , 2012 WL 2154185 (Ariz. Ct. App. June 14, 2012), an unreported decision, the court reversed the dismissal of a UDAP claim against an insurance agent who misrepresented that the policy being purchased was “as good as” the purchaser’s former policy.

c. Utilities	Strong	Arizona’s UDAP statute applies to the sale or advertising of any merchandise, defined broadly to include services and intangibles. Ariz. Rev. Stat. §§ 44-1521(5), 44-1522(A). The statute does not include an exemption for utility service, and an intermediate appellate court has held it applies to utilities. <i>Qwest Corp. v. Kelly</i> , 59 P.3d 789 (Ariz. App. 2002).
d. Post-sale acts (debt collection, repossession)	Undecided	Arizona’s UDAP statute formerly prohibited only deceptive acts, not unfair or unconscionable acts, and so was less than ideal for addressing non-deceptive debt collection abuse. However, in 2013 it was amended to add a prohibition of any “unfair act or practice.” Ariz. Rev. Stat. § 44-1522(A). There has not been a dispositive ruling as to whether the statute covers debt collection, but the statutory language—requiring only that a prohibited practice be “in connection with” the sale of merchandise, is clearly broad enough to cover debt collection. Ariz. Rev. Stat. § 44-1522(A). <i>See Sands v. Bill Kay’s Tempe Dodge, Inc.</i> , 2014 WL 1118149 (Ariz. Ct. App. Mar. 20, 2014) (“in connection with” is “a broad phrase that goes beyond the moment of sale”). Despite this broad definition, in <i>Walker v. Gallegos</i> , 167 F. Supp. 2d 1105, 1107 (D. Ariz. 2001), a federal district court held that the UDAP statute did not cover repossession of a manufactured home from an occupant who was not a party to the contract, because it was too attenuated from the underlying sale of merchandise. It is an open question whether Arizona courts will apply this ruling to debt collection, or even follow it as to repossession. Some courts have also held that the statute does not apply to loan modification practices, on the theory that this concerns modification of the payment schedule for previously purchased merchandise, not sale or advertisement of merchandise. <i>See, e.g., Rich v. BAC Home Loans Servicing L.P.</i> , 2014 WL 7671615 (D. Ariz. Oct. 9, 2014).
e. Real estate	Strong	Ariz. Rev. Stat. § 44-1521(5) defines “merchandise” to include real estate.
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	The issue has not been resolved in Arizona. Ariz. Rev. Stat. § 44-1522(A) states that a deceptive act is a violation “whether or not any person has in fact been misled, deceived or damaged thereby.” In several cases brought by the attorney general, courts have held that reliance is not an element. <i>See, e.g., State ex rel. Corbin v. Tolleson</i> , 773 P.2d 490, 503 (Ariz. Ct. App. 1989); <i>People ex rel. Babbitt v. Green Acres Trust</i> , 618 P.2d 1086 (Ariz. Ct. App. 1980). In addition, in <i>Watts v. Medicis Pharmaceutical Corp.</i> , 365 P.3d 944, 953 (Ariz. 2016), the Arizona Supreme Court listed the elements of a UDAP claim as including causation, but it did not include reliance as an element. However, an early decision, <i>Peery v. Hansen</i> , 585 P.2d 574, 577 (Ariz. App. 1978), held, over a strong dissent, that consumers had to show reliance to establish a UDAP claim. In several other cases brought by private parties, courts have said that a showing of reliance is required. <i>See, e.g., Siemer v. Assocs. First Capital Corp.</i> , 2001 WL 35948712 (D. Ariz. Mar. 30, 2001) (reliance necessary in private UDAP actions but may be established simply by fact that individual purchased the product after the misrepresentations were made); <i>Kuehn v. Stanley</i> , 91 P.3d 346 (Ariz. Ct. App. 2005) (denying UDAP claim because buyers of real property could not show justifiable reliance on inflated appraisal)..
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.

e. Multiple or punitive damages	Strong	Although the statute is silent, the state supreme court has held that punitive damages can be awarded. <i>Sellinger v. Freeway Motor Home Sales, Inc.</i> , 521 P.2d 1119 (Ariz. 1974).
f. Attorney fees for consumers	Weak	Although Arizona consumers are sometimes able to obtain reimbursement of their fees under other statutes, such as Ariz. Rev. Stat. § 12-341.01 (allowing court to order losing party in contract case to reimburse the prevailing party for attorney fees), the Arizona Supreme Court has held that Arizona's UDAP statute creates an implied private right of action for damages but not for attorney fees. <i>Sellinger v. Freeway Mobile Home Sales, Inc.</i> , 521 P.2d 1119 (Ariz. 1974).
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute precludes class actions, and Arizona courts have allowed UDAP class actions. <i>See, e.g., Siemer v. Associates First Capital Corp.</i> , 2001 WL 35948712 (D. Ariz. Mar. 30, 2001); <i>Qwest Corp. v. Kelly</i> , 59 P.3d 789 (Ariz. App. 2002); <i>London v. Green Acres Trust</i> , 765 P.2d 538 (Ariz. App. 1988).
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	When the claim is based on concealment, suppression, or omission of a material fact, Ariz. Rev. Stat. § 44-1522(A) requires a showing of intent that others rely on the concealment, suppression, or omission, but otherwise intent to induce reliance need not be shown. <i>State ex rel. Babbitt v. Goodyear Tire &amp; Rubber Co.</i> , 626 P.2d 1115, 1118 n. 1 (Ariz. App. 1981).
b. Equitable relief	Strong	Ariz. Rev. Stat. § 44-1528(A)
c. Restitution for consumers	Strong	Ariz. Rev. Stat. § 44-1528(A)
d. Civil penalty amount for initial violations	Strong	Ariz. Rev. Stat. § 44-1531(A) (\$10,000 per violation if willful)

## ARKANSAS

### Ark. Code Ann. §§ 4-88-101 through 4-88-207 Deceptive Trade Practices Act

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Strong	Ark. Code § 4-88-107(a) (prefatory language), (a)(8), (a)(10) (catchall)
b. Broadly prohibits deceptive acts	Strong	Ark. Code § 4-88-107(a), (a)(10)
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Strong	Arkansas' UDAP statute prohibits "deceptive and unlawful trade practices." Ark. Code § 4-88-107(a). Some of the specific prohibitions are limited to "goods or services." <i>See, e.g.,</i> Ark. Code § 4-88-107(a)(2) (advertising goods or services with intent not to sell them as advertised). However, others are not so limited. <i>See, e.g.,</i> Ark. Code § 4-88-107(a)(8) (taking advantage of consumers), (10) ("engaging in any other

unconscionable, false, or deceptive practice in business, commerce, or trade”). Even if “goods” and “services” are narrowly construed to exclude extensions of credit, these later prohibitions are not. The main question with respect to coverage of credit transactions is the effect of Ark. Code Ann. § 4-88-101(3), which provides that the statute does not apply to “actions or transactions specifically permitted under laws administered by” the banking commissioner or another state or federal regulatory body, unless the director of one of these agencies asks the attorney general to act. The legislature’s addition of “specifically” to this exemption in 2017 appears to make it clear that it is not a blanket exemption for regulated creditors. *See Air Evac EMS, Inc. v. US Able Mut. Ins. Co.*, \_\_\_ S.W.3d \_\_\_, 2017 WL 6376228 (Ark. Dec. 14, 2017).

b. Insurance	Strong	Arkansas’ UDAP statute prohibits “deceptive and unlawful trade practices.” Ark. Code § 4-88-107(a). Some of the specific prohibitions are limited to “goods or services.” <i>See, e.g.</i> , Ark. Code § 4-88-107(a)(2) (advertising goods or services with intent not to sell them as advertised). However, others are not so limited. <i>See, e.g.</i> , Ark. Code § 4-88-107(a) (8) (taking advantage of consumers), (10) (“engaging in any other unconscionable, false, or deceptive practice in business, commerce, or trade”). Even if “goods” and “services” are narrowly construed to exclude insurance, these later prohibitions are not. The main question with respect to coverage of insurance transactions is the effect of Ark. Code Ann. § 4-88-101(3). This provision formerly excluded “actions or transactions permitted under laws administered by” the insurance commissioner, but in 2017 the legislature amended the statute to insert the word “specifically,” so it now exempts only “[a]ctions or transactions specifically permitted under laws administered by” the insurance commissioner. The Arkansas Supreme Court has held that the revised language does not operate as a blanket exclusion. <i>See Air Evac EMS, Inc. v. US Able Mut. Ins. Co.</i> , ___ S.W.3d ___, 2017 WL 6376228 (Ark. Dec. 14, 2017).
c. Utilities	Undecided	Arkansas courts have not addressed the question whether the statute applies to utilities. Ark. Code § 4-88-101(4) exempts “[a]ctions or transactions of a public utility which have been authorized by the Arkansas Public Service Commission” or comparable regulatory bodies. In light of the general rule that UDAP statutes are to be liberally interpreted, Arkansas courts may conclude that this language exempts only specifically authorized acts and is not a blanket exemption for utilities, but the question remains undecided.
d. Post-sale acts (debt collection, repossession)	Strong	Ark. Code § 4-88-107(a)(10), prohibits “any other unconscionable, false, or deceptive act or practice in business, commerce, or trade.” While Arkansas courts have not ruled on the question, nothing in the statute excludes post-sale acts such as debt collection from the definition of “business, commerce, or trade.” The Arkansas Supreme Court has held that the UDAP statute is inapplicable to the practice of law by attorneys, including attorney collectors. <i>Bennett &amp; DeLoney, P.C. v. State ex rel. McDaniel</i> , 388 S.W.3d 12 (Ark. 2012). However, there does not appear to be any reason to hold that the statute is not otherwise applicable to debt collection and other post-sale acts.
e. Real estate	Strong	Although Arkansas courts have not yet ruled on the coverage of real estate transactions, Ark. Code § 4-88-107(a)(10), prohibits unconscionable, false, or deceptive acts in “business, commerce, or trade,” and nothing in the statute excludes real estate from the definition of “business, commerce, or trade.” Other substantive prohibitions are limited to “goods or services,” but Ark. Code § 4-88-102(4) defines “goods” to include “any tangible property,” and it is hard to imagine how real estate could be considered something other than tangible property. The statute’s private cause of action, Ark. Code § 4-88-113(f), is not worded in a way that could be interpreted to exclude real estate transactions.



3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Weak	As amended in 2017, Arkansas's UDAP statute requires a showing of reliance as a precondition to the private cause of action that the statute provides. Ark. Code § 4-88-113(f) .
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Weak	The statute has no provision for multiple or punitive damages.
f. Attorney fees for consumers	Strong	Ark. Code § 4-88-113(f)
g. UDAP statute does not prohibit class actions	Weak	Ark. Code § 4-88-113(f)(1)(B) provides: "A private class action under this section is prohibited unless the claim is being asserted for a violation of Arkansas Constitution, amendment 89," which is the usury provision in the state constitution.

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Mixed	Some subsections of Ark. Code § 4-88-107 require intent or knowledge, but the general prohibitions in § 4-88-107(a) and (a)(10) do not.
b. Equitable relief	Strong	Ark. Code § 4-88-113(a)(1)
c. Restitution for consumers	Strong	Ark. Code § 4-88-113(a)(2)
d. Civil penalty amount for initial violations	Strong	Ark. Code § 4-88-113(a)(3): \$10,000 per violation

## CALIFORNIA

Cal. Bus. & Prof. Code §§ 17200 through 17594 (West)

Unfair Competition Law

Cal. Civ. Code §§ 1750 through 1785 (West)

Consumers Legal Remedies Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Cal. Bus. & Prof. Code § 17200
b. Broadly prohibits deceptive acts	Strong	Cal. Bus. & Prof. Code § 17200
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	California is rated strong because one of its has two UDAP statutes, the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (West), defines “unfair competition” to include “any unlawful, unfair or fraudulent business act or practice,” without any language that could be interpreted to exclude credit transactions, and the statute has been applied to creditors. <i>See, e.g., Perdue v. Crocker Nat’l Bank</i> , 702 P.2d 503 (Cal. 1985). The state’s other UDAP statute, the Consumers Legal Remedies Act, applies to “a transaction intended to result or which results in the sale or lease of goods or services.” California decisions differ as to whether this language covers extensions of credit that are separate from a specific purchase or lease of goods or services. <i>Compare Jefferson v. Chase Home Fin. L.L.C.</i> , 2007 WL 1302984 (N.D. Cal. May 3, 2007) (coverage of “services” means that mortgage loan is covered) <i>with Perlas v. Mortgage Elec. Registration Sys., Inc.</i> , 2010 WL 3079262 (N.D. Cal. Aug. 6, 2010) (CLRA does not cover mortgage loans).
b. Insurance	Strong	California is rated strong because Cal. Bus. & Prof. Code § 17200 defines “unfair competition” to include “any unlawful, unfair or fraudulent business act or practice.” Courts have held that the state insurance code does not displace this UDAP statute except for matters relating to rate setting. <i>Quelimane Co. v. Stewart Title Guaranty Co.</i> , 960 P.2d 513 (Cal. 1998). California’s second UDAP statute, the Consumers Legal Remedies Act, does not cover insurance, however. <i>Fairbanks v. Superior Court</i> , 205 P.3d 201 (Cal. 2009).
c. Utilities	Strong	Although they have been careful not to interfere with the jurisdiction of the Public Utilities Commission, California courts have applied the Unfair Competition Law to utility matters. <i>See, e.g., People ex rel. Orloff v. Pac. Bell</i> , 80 P.3d 201 (Cal. 2001). California’s other UDAP statute, the Consumers Legal Remedies Act, applies to sales and leases of goods, defined as “tangible chattels,” and services. Cal. Civil Code §§ 1761, 1770. Although no decisions have been found addressing the question, decisions holding that utilities such as water and natural gas, are goods for purposes of the Uniform Commercial Code may be persuasive. In addition, utility service is likely to qualify as “services.” The statute does not include any exemption that would apply to utility services.
d. Post-sale acts (debt collection, repossession)	Strong	The California Unfair Competition Law applies to debt collection. <i>Barquis v. Merchants Collection Ass’n</i> , 496 P.2d 817 (Cal. 1972). California’s other UDAP statute, the Consumers Legal Remedies Act, covers “transactions,” broadly defined to include not only the making but also the performance of the agreement. Cal. Civil Code § 1761(e). Courts have applied it to debt collection. <i>See, e.g., Hood v. Santa Barbara Bank &amp; Trust</i> , 49 Cal. Rptr. 3d 369 (Cal. Ct. App. 2007). The state Unfair Competition Law has also been applied to other post-sale activities such as foreclosure. <i>See, e.g., Lueras v. BAC Home Loans Servicing, LP</i> , 163 Cal. Rptr. 3d 804 (Ct. App. 2013).
e. Real estate	Strong	California is rated strong because the language of its Unfair Competition Law does not provide any basis for distinguishing between real estate and other consumer transactions, and courts have applied the statute to real estate matters. <i>See, e.g., Washington Mut. Bank v. Superior Court</i> , 89 Cal. Rptr. 2d 560 (App. 1999) (inflated settlement charges for real estate mortgages); <i>People v. Nat’l Ass’n of Realtors</i> , 174 Cal. Rptr. 728 (App. 1981) (antitrust suit against board of realtors)

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Mixed	California's Unfair Competition Law, as amended in 2004 by Proposition 64, requires a showing of reliance where the claim is based on a misrepresentation, but not when it is based on the statute's prohibition of unfair or unlawful acts. Cal. Bus. & Prof. Code § 17204 (West). See <i>Kwikset Corp. v. Superior Court</i> , 246 P.3d 877, 888 (Cal. 2011). In a class action, only the named plaintiffs need establish reliance, and reliance can be established by a showing that the misrepresentation was a substantial factor in the purchasing decision. <i>In re Tobacco II Cases</i> , 207 P.3d 20 (Cal. 2009). California courts generally interpret the state's other UDAP statute, the Consumers Legal Remedies Act, as imposing a reliance requirement. See, e.g., <i>Princess Cruise Lines, Ltd. v. Superior Court</i> , 101 Cal. Rptr. 3d 323 (Cal. Ct. App. 2009).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Mixed	The Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 <i>et seq.</i> , does not require pre-suit notice. However, California's other UDAP statute, the Consumers Legal Remedies Act, Cal. Civil Code § 1782, which is also widely used, does require pre-suit notice.
e. Multiple or punitive damages	Strong	Cal. Civ. Code § 1780 allows punitive damages.
f. Attorney fees for consumers	Strong	Cal. Civ. Proc. Code § 1021.5 allows the court, in its discretion, to award fees to the prevailing party where a benefit has been conferred upon public, the financial burden of private enforcement makes an award appropriate, and the fees should not, in the interest of justice, be paid out of the recover). In addition, there is a provision for attorney fees for consumers for claims under the Cal. Consumers Legal Remedies Act, Cal. Civil Code § 1780(d),
g. UDAP statute does not prohibit class actions	Strong	California's Consumer Legal Remedies Act specifically allows class actions. Cal. Civ. Code §§ 152, 1781. Nothing in California's other UDAP statute, the Unfair Competition Law, prohibits class actions, and many class actions have been certified. See, e.g., <i>Kwikset Corp. v. Superior Court</i> , 246 P.3d 877, 892 (Cal. 2011).
4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Cal. Bus. & Prof. Code § 17203
c. Restitution for consumers	Strong	Cal. Bus. & Prof. Code § 17203 (restitution)
d. Civil penalty amount for initial violations	Weak	Cal. Bus. & Prof. Code § 17206: up to \$2,500 per violation

## COLORADO

### Colo. Rev. Stat. §§ 6-1-101 through 6-1-115 Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Weak	The statute does not include a broad prohibition of unfair or conscionable acts.
b. Broadly prohibits deceptive acts	Weak	The statute does not include a broad prohibition of deceptive acts.
c. Provides the state agency substantive rulemaking authority	Weak	Colo. Rev. Stat. § 6-1-108 allows the attorney general to “prescribe such forms and promulgate such rules as may be necessary to administer” the Act. This appears to allow only procedural rules, and no substantive rules have been adopted.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	Most of the statute’s substantive prohibitions apply to transactions involving any property, so would include credit transactions, and the private cause of action is not worded in a way that would exclude credit transactions. Colo. Rev. Stat. §§ 6-1-105, 6-1-113. In addition, Colo. Rev. Stat. § 6-1-110 refers to mortgage loans and Colo. Rev. Stat. § 6-1-105(1)(uu) cross-references Colo. Rev. Stat. § 38-40-105, which deals with mortgage lending. These references would be meaningless if creditors and credit were not covered. The Colorado Court of Appeals held that a claim that the statute applied to a loan transaction was not frivolous. <i>Nienke v. Naiman Group, Ltd.</i> , 857 P.2d 446 (Colo. App. 1992). Two federal courts have considered Colorado UDAP claims against banks, and although they dismissed the claims, they did so for other reasons, without finding that the statute does not apply to lenders. <i>Alpine Bank v. Hubbell</i> , 506 F. Supp. 2d 388 (D. Colo. 2007); <i>Pauley v. Bank One Colorado Corp.</i> , 205 B.R. 272 (D. Colo. 1997). The exclusion in Colo. Rev. Stat. § 6-1-106(1)(a) for conduct in compliance with the orders or rules of a government agency was interpreted narrowly in <i>Showpiece Homes Corp. v. Assurance Co.</i> , 38 P.3d 47 (Colo. 2001), and is unlikely to be construed as a blanket exemption for creditors.
b. Insurance	Strong	The Supreme Court of Colorado made clear in <i>Showpiece Homes Corp. v. Assurance Co. of America</i> , 38 P.3d 47 (Colo. 2001), that Colorado’s UDAP statute applies to insurers. Noting the exception in the consumer protection statute for “[c]onduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency,” Colo Rev. Stat. § 6-1-106, the court explained that its purpose “is intended to avoid conflict between laws, not to exclude from the Act’s coverage every activity that is regulated by another statute or agency.”
c. Utilities	Strong	Colorado’s UDAP statute does not explicitly exclude utilities or provide any basis for treating utility service differently from other services. The narrow exclusion at Colo. Rev. Stat. § 6-1-106(1)(a) for conduct in compliance with the orders or rules of a government agency is unlikely to be construed as a blanket exemption for utility companies in light of the Colorado Supreme Court’s narrow interpretation of that exemption in <i>Showpiece Homes Corp. v. Assurance Co. of America</i> , 38 P.3d 47 (Colo. 2001). In <i>City of Aspen v. Kinder Morgan, Inc.</i> , 143 P.3d 1076 (Colo. App. 2006), an intermediate appellate court held that the state public utility commission had exclusive jurisdiction over a UDAP claim involving rates, but it appears that the UDAP statute can be applied to matters other than rates. In <i>Mountain States Tel. and Tel. Co. v. District Court</i> , 778 P.2d 667 (Colo. 1989), the Colorado Supreme Court upheld an order about class notification in a case brought under the UDAP statute (and the state antitrust statute) against a telephone company. This decision did not deal with any exemption questions, but it demonstrates that UDAP claims are brought against utility companies in Colorado.

d. Post-sale acts (debt collection, repossession)	Strong	Colorado's UDAP statute applies to practices that occur "in the course of such person's business, vocation, or occupation." Colo. Rev. Stat. Ann. § 6-1-105(1). This language is clearly broad enough to cover post-sale acts, and the Colorado Supreme Court has applied it to an insurer's post-sale unfair or bad faith conduct. <i>Showpiece Homes Corp. v. Assurance Co.</i> , 38 P.3d 47 (Colo. 2001). Although the courts have not specifically addressed coverage of debt collection, there is no reason to treat debt collection differently than other post-sale acts. Colorado's UDAP statute is less useful than others in the debt collection context, however, because it lacks broad prohibitions of unfair and deceptive conduct.
e. Real estate	Strong	"Property" (a term used in many of the statute's substantive prohibitions) is defined by Colo. Rev. Stat. § 6-1-102(8) to include real property, and the private cause of action at Colo. Rev. Stat. § 6-1-113(a) is not worded in a way that could be construed to exclude real property. Colo. Rev. Stat. § 6-1-110(3) refers to mortgage loans, also implying that real property transactions are covered. In <i>Hall v. Walter</i> , 969 P.2d 224 (Colo. 1998), the Colorado Supreme Court applied the UDAP statute to a dispute involving a land sale.

3. CONSUMER ACCESS TO JUSTICE	COMMENTS
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a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Mixed	The Colorado Supreme Court has held that proof of causation is required, and in one case, <i>Crowe v. Tull</i> , 126 P.3d 196 (Colo. 2006), it held that reliance established causation. <i>See also</i> <i>Garcia v. Medved Chevrolet, Inc.</i> , 263 P.3d 92, 98 (Colo. 2011) ("reliance often provides a key causal link between a consumer's injury and a defendant's deceptive practice"). However, <i>Hall v. Walter</i> , 969 P.2d 224 (Colo. 1998), demonstrates that causation may be established even if the injured party did not rely on the deceptive statements.
c. Does not require a showing of public interest or public impact	Weak	<i>Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.</i> , 62 P.3d 142 (Colo. 2003); <i>Hall v. Walter</i> , 969 P.2d 224 (Colo. 1998).
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Colo. Rev. Stat. § 6-1-113(2)(b), but this is an unusually narrow provision, allowing multiple damages only if bad faith is shown by clear and convincing evidence
f. Attorney fees for consumers	Strong	Colo. Rev. Stat. § 6-1-113(2)(b)
g. UDAP statute does not prohibit class actions	Weak	Courts have held that class actions are exempted from the statute's primary remedies for consumers by Colo. Rev. Stat. § 6-1-113(2), which provides that, "[e]xcept in a class action" a defendant who violates the statute is liable for the greater of actual damages, \$500, or treble damages (in the case of bad-faith conduct), plus attorney fees. <i>See, e.g., Friedman v. Dollar Thrifty Auto. Grp., Inc.</i> , 2015 WL 4036319, at *2 (D. Colo. July 1, 2015).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY	COMMENTS
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a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Weak	Many of the most commonly-applicable substantive prohibitions, such as Colo. Rev. Stat. § 6-1-105(1)(a), (b), (c), (e), (f), (g), and (o), require knowledge. <i>See, e.g., State ex rel. Suthers v. Mandatory Poster Agency, Inc.</i> , 260 P.3d 9, 14 (Colo. App. 2009).
b. Equitable relief	Strong	Colo. Rev. Stat. § 6-1-110(a)
c. Restitution for consumers	Strong	Colo. Rev. Stat. § 6-1-110(a)
d. Civil penalty amount for initial violations	Weak	Colo. Rev. Stat. § 6-1-112(1): \$2,000 per violation.

# CONNECTICUT

## Conn. Gen. Stat. §§ 42-110a through 42-110q Connecticut Unfair Trade Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Conn. Gen. Stat. § 42-110b(a)
b. Broadly prohibits deceptive acts	Strong	Conn. Gen. Stat. § 42-110b(a)
c. Provides the state agency substantive rulemaking authority	Strong	Conn. Gen. Stat. § 42-110b. The state has adopted a number of regulations.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	The Connecticut UDAP statute applies broadly to acts or practices “in the conduct of any trade or commerce.” The Connecticut Supreme Court has ruled that its UDAP statute applies to banks. <i>Normand Josef Enterprises, Inc. v. Connecticut Nat. Bank</i> , 646 A.2d 1289 (Conn. 1994)
b. Insurance	Mixed	<i>Mead v. Burns</i> , 509 A.2d 11 (Conn. 1986), holds that the state UDAP statute applies to insurance practices even though they are also subject to the state unfair insurance practices statute. However, that case also holds the UDAP statute cannot be used to challenge a practice that is not prohibited by the state unfair insurance practices statute.
c. Utilities	Strong	The Connecticut UDAP statute applies to “trade” and “commerce,” which are broadly defined to include “the distribution of any services and . . . any other article, commodity, or thing of value.” Conn. Gen. Stat. § 42-110a. Nothing in the statute excludes utility service from this broad definition, and the statute has been applied to a utility’s billing and collection practices. <i>Egbarin v. Northeast Utilities Service Co.</i> , 2015 WL 4965891 (Conn. Super. July 23, 2015), <i>later decision at</i> 2016 WL 3202491 (Conn. Super. May 18, 2016).
d. Post-sale acts (debt collection, repossession)	Strong	The state UDAP statute broadly prohibits unfair or deceptive acts or practices “in the conduct of any trade or commerce.” Conn. Gen. Stat. § 42-110a. A number of decisions have applied it to post-sale acts such as debt collection. <i>See, e.g., Pabon v. Recko</i> , 122 F. Supp. 2d 311 (D. Conn. 2000).
e. Real estate	Strong	Conn. Gen. Stat. § 42-110a defines “trade” and “commerce” to include real property transactions. The private cause of action is not worded in a way that could be interpreted to exclude real estate transactions. Conn. Gen. Stat. § 42-110g.
3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	<i>Hinchliffe v. American Motors Corporation</i> , 440 A.2d 810 (Conn. 1981) holds that the consumer need not prove reliance.
c. Does not require a showing of public interest or public impact	Strong	Conn. Gen. Stat. § 42-110g(a)
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.

e. Multiple or punitive damages	Strong	Connecticut’s UDAP statute explicitly authorizes punitive damages, although it does not authorize multiple damages. Conn. Gen. Stat. § 42-110g(a).
f. Attorney fees for consumers	Strong	Conn. Gen. Stat. § 110g(d)
g. UDAP statute does not prohibit class actions	Strong	Conn. Gen. Stat. § 42-110g(b)
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Conn. Gen. Stat. § 42-110d(d)
c. Restitution for consumers	Strong	Conn. Gen. Stat. § 42-110d(d), (e)
d. Civil penalty amount for initial violations	Mixed	Conn. Gen. Stat. § 42-110o(b): \$5,000 per violation if willful

## DELAWARE

Del. Code Ann. tit. 6, §§ 2511 through 2527, 2580 through 2584  
Consumer Fraud Act

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Weak	Although the Act states that its purpose is to protect consumers and legitimate businesses from both unfair and deceptive practices, its substantive provisions, found at Del. Code Ann. tit. 6, § 2513, prohibit only deceptive acts.
b. Broadly prohibits deceptive acts	Strong	Del. Code Ann. tit. 6, § 2513(a).
c. Provides the state agency substantive rulemaking authority	Strong	Del. Code Ann. tit. 29, § 2521.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Strong	Under Del. Code Ann. tit. 6, § 2513(a), prohibited practices must be “in connection with the sale, lease, or advertisement of any merchandise.” Del. Code Ann. tit. 6, § 2511(6) defines “merchandise” to include intangibles and services, which would likely include credit transactions. Delaware courts have not yet ruled on that question, nor on the question whether a credit transaction involves a “sale, lease, or advertisement.” However, nothing in the wording of the private cause of action would exclude credit. In addition, although the case focused on the question whether the statute applies to the sale of real estate, not whether it applies to deceptive acts in credit transactions, the Delaware Supreme Court applied the statute to a real estate seller’s misrepresentations about the availability of financing for homes that it was selling. <i>Stephenson v. Capano Development Inc.</i> , 462 A.2d 1069 (Del. 1983). Another Delaware decision applies the Consumer Fraud Act to a mortgage lender’s misrepresentations, although without discussing scope issues. <i>Yarger v. ING Bank</i> , 285 F.R.308 (D. Del. 2012) (certifying class action).

b. Insurance	Undecided	Delaware’s Consumer Fraud Act, Del. Code Ann. tit. 6, § 2513(b) (3), exempts matters subject to the jurisdiction of the state insurance commissioner. Delaware trial courts have interpreted this exemption narrowly, holding that the insurance laws are intended to supplement other remedies, not displace them, and that the exemption only precludes the state from bringing a UDAP claim against an insurer. <i>See, e.g., Spine Care Del. LLC v. State Farm Mut. Auto Ins. Co.</i> , 2006 WL 3334964, at *2 n.8 (Del. Super. Ct. Nov. 17, 2006); <i>Mentis v. Del. Am. Life Ins. Co.</i> , 1999 WL 744430 (Del. Super. July 28, 1999). However, the state supreme court has not yet decided the issue.
c. Utilities	Undecided	The Delaware UDAP statute provides that it does not apply to matters within the jurisdiction of the Public Service Commission. Del. Code Ann. tit. 6, § 2513(b)(3). While no court decision explicitly addresses the scope of this exemption as applied to utility service providers, Delaware trial courts have interpreted it narrowly in other contexts. <i>See, e.g., Mentis v. Del. Am. Life Ins. Co.</i> , 1999 WL 744430 (Del. Super. July 28, 1999) (insurance). The matter remains undecided.
d. Post-sale acts (debt collection, repossession)	Undecided	Del. Code Ann. tit. 6, § 2513 prohibits deception “in connection with the sale, lease, or advertisement of any merchandise.” This language is broad enough to encompass post-sale acts, and one decision has so held. <i>Lony v. E.I. du Pont de Nemours and Co., Inc.</i> , 821 F. Supp. 956 (D. Del. 1993). However, several state trial court decisions state that the statute does not apply to post-sale abuses. <i>See, e.g., Norman Gershman’s Things to Wear, Inc. v. Mercedes-Benz of N. Am.</i> , 558 A.2d 1066 (Del. Super. Ct. 1989); <i>Ayers v. Quillen</i> , 2004 WL 1965866 (Del. Super. June 30, 2004).
e. Real estate	Strong	Del. Code Ann. tit. 6, § 2511(6) defines “merchandise” to include real estate, and nothing in the private cause of action section limits this.
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	Although proof of causation is necessary, the Delaware Supreme Court has held that the plaintiff need not show reliance. <i>Stephenson v. Capano Dev., Inc.</i> , 462 A.2d 1069 (Del. 1983). <i>See also Teamsters Local 237 Welfare Fund v. AstraZeneca Pharmaceuticals LP</i> , 136 A.3d 688 (Del. 2016) (reiterating that reliance is unnecessary, but denying claim where plaintiff continued to list drug in its formulary for years after learning of the deception).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Although the statute does not mention multiple or punitive damages, the state supreme court has ruled that a consumer can recover punitive damages on a UDAP claim. <i>Stephenson v. Capano Development, Inc.</i> , 462 A.2d 1069, 1076-1077 (Del. 1983).
f. Attorney fees for consumers	Weak	The statute is silent on attorney fees, and the state supreme court has ruled that they are not available. <i>Stephenson v. Capano Development, Inc.</i> , 462 A.2d 1069, 1078 (Del. 1983).
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute prohibits class actions.



4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	When the claim is based on concealment, suppression, or omission of a material fact, Del. Code Ann. tit. 6, § 2513 requires a showing of intent that others rely on the concealment, suppression, or omission, but otherwise there is no requirement in the statute to prove that the defendant acted intentionally.
b. Equitable relief	Strong	Del. Code Ann. tit. 6, §§ 2522, 2523
c. Restitution for consumers	Strong	Del. Code Ann. tit. 6, § 2523
d. Civil penalty amount for initial violations	Strong	Del. Code Ann. tit. 6, § 2522(b) - up to \$10,000 per violation if willful

## DISTRICT OF COLUMBIA

D.C. Code §§ 28-3901 through 28-3913

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	D.C. Code § 28-3904(r)
b. Broadly prohibits deceptive acts	Strong	D.C. Code § 28-3904(e)
c. Provides the state agency substantive rulemaking authority	Mixed	Mayor has authority under D.C. Code § 28-3913. However, no rules have been adopted under this provision, so the District is rated Mixed.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	The UDAP law of the District of Columbia is explicit in its coverage of creditors and credit transactions. D.C. Code § 28-3901(a)(7).
b. Insurance	Strong	The District of Columbia UDAP law applies to “goods or services,” defined as “any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit, franchises, business opportunities, real estate transactions, and consumer services of all types.” D.C. Code 28-3901(a) (2), (7). The law does not include any exemption for insurance transactions, and courts have had no difficulty applying it to insurance transactions. <i>See, e.g., Campbell v. Nat’l Union Fire Ins. Co.</i> , 130 F. Supp. 3d 236 (D.D.C. 2015).
c. Utilities	Strong	The District of Columbia UDAP law applies to trade practices involving “goods or services,” defined to include “any and all parts of the economic output of society.” D.C. Code § 28-3901(6), (7). This definition is clearly broad enough to include utility service, and there is no exemption for utilities in the statute. In <i>District Cablevision Ltd. Partnership v. Bassin</i> , 828 A.2d 714 (D.C. 2003), the District’s highest court applied the statute to a cable television billing dispute.
d. Post-sale acts (debt collection, repossession)	Undecided	D.C.’s UDAP statute appears to apply to post-sale acts such as debt collection. In a case closely analogous to debt collection, the D.C. Court of Appeals reversed summary judgment for a mortgage company that had misrepresented the payoff amount on a loan. <i>Osbourne v. Capital City Mortg. Corp.</i> , 667 A.2d 1321 (D.C. 1995). However, some courts have held that the statute does not apply to mortgage servicers because they do not hold themselves out as supplying goods or services to the homeowner. <i>See, e.g., Baylor v. Mitchell Rubenstein &amp; Assocs.</i> , 857 F.3d 939 (D.C. Cir. 2017); <i>Busby v. Capital One, N.A.</i> , 772 F. Supp. 2d 268 (D.D.C. 2011).

e. Real estate	Strong	D.C. Code § 28-3901(a)(7) defines “goods and services” to include real estate transactions. Note, however, that D.C. Code § 28-3903(c)(2) exempts “landlord-tenant relations.”
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3. CONSUMER ACCESS TO JUSTICE	COMMENTS
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a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
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b. Does not require reliance	Strong	<i>Wells v. Allstate Ins. Co.</i> , 210 F.R.D. 1 (D.D.C. 2002) (2000 amendments eliminated requirement of injury in fact and causation; even before amendments, reliance unnecessary for nondisclosure claim). <i>See also Athridge v. Aetna Cas. &amp; Sur. Co.</i> , 351 F.3d 1166, 1175 (D.D.C. 2003) (it is a violation of the UDAP statute “whether or not a consumer is in fact misled [or] deceived) .
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c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
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d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
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e. Multiple or punitive damages	Strong	D.C. Code § 28-3905(k)(1)(A), (C) (authorizing both treble and punitive damages).
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f. Attorney fees for consumers	Strong	D.C. Code § 28-3905(k)(1)(B)
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g. UDAP statute does not prohibit class actions	Strong	D.C. Code § 28-3905(k)(1), (k)(1)(E)
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4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY	COMMENTS
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a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	<i>See Fort Lincoln Civic Ass’n v. Fort Lincoln New Town Corp.</i> , 944 A.2d 1055 (D.C. 2008) (holding that intent is unnecessary).
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b. Equitable relief	Strong	D.C. Code § 28-3909(a). D.C. Code § 28-3905(i)(3) also gives this authority to the D.C. Dept. of Consumer & Regulatory Affairs.
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c. Restitution for consumers	Strong	D.C. Code § 28-3909(a). D.C. Code § 28-3905(i)(3) also gives this authority to the D.C. Dept. of Consumer & Regulatory Affairs.
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d. Civil penalty amount for initial violations	Weak	D.C. Code § 28-3909(a) (\$1,000 per violation). D.C. Code § 28-3905(i)(3) also authorizes the Dept. of Consumer & Regulatory Affairs to recover \$1,000 per violation.
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## FLORIDA

Fla. Stat. §§ 501.201 through 501.213  
Deceptive and Unfair Trade Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS	COMMENTS
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a. Broadly prohibits unfair or unconscionable acts	Strong	Fla. Stat. Ann. §§ 501.204 broadly prohibits both unfair and unconscionable acts.
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b. Broadly prohibits deceptive acts	Strong	Fla. Stat. Ann. § 501.204
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c. Provides the state agency substantive rulemaking authority	Mixed	Fla. Stat. Ann. § 501.205. However, the state agency has repealed almost all of its rules so is rated Mixed.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Weak	Florida's UDAP statute applies to trade and commerce, and its private cause of action is not limited in a way that would preclude its application to credit transactions. However, Fla. Stat. § 501.212(4) exempts "(b) Banks and savings and loan associations regulated by [a state agency]; (c) Banks or savings and loan associations regulated by federal agencies." This language has been interpreted as a blanket exemption. <i>Bankers Trust Co. v. Basciano</i> , 960 So.2d 773, 779 (Fla. Dist. Ct. App. 2007). While creditors other than banks and savings and loan associations do not fall within this exemption, the exclusion of banks and savings and loan associations is a significant limitation on the application of the UDAP statute to credit.
b. Insurance	Weak	Fla. Stat. § 501.212(4) exempts "[a]ny person or activity regulated under laws administered by . . . (a) The Office of Insurance Regulation of the Financial Services Commission; . . . (d) Any person or activity regulated under the laws administered by the former Department of Insurance." This language has been interpreted as a blanket exemption for insurers. See e.g. <i>International Brokerage &amp; Surplus Lines, Inc. v. Liberty Mut. Ins.</i> , 2007 WL 220172 (M.D. Fla. 2007); <i>LaPenna v. Government Employees Ins. Co.</i> , 2006 WL 3388454 (M.D. Fla. 2006).
c. Utilities	Weak	Fla. Stat. § 501.212(4) exempts "[a]ny activity regulated under laws administered by the Florida Public Service Commission." Under Fla. Stat. § 350.111, this includes gas, electricity, water, and telecommunications providers. In <i>Extraordinary Title Servs., L.L.C. v. Florida Power &amp; Light Co.</i> , 1 So. 3d 400 (Fla. Dist. Ct. App. 2009), a Florida court held that the state UDAP statute does not apply to any activity regulated under laws administered by the state public service commission.
d. Post-sale acts (debt collection, repossession)	Undecided	Florida prohibits unfair or deceptive acts or practices "in the conduct of any trade or commerce." Fla. Stat. Ann. § 501.204(1). "Trade or commerce" is broadly defined as "advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity or thing of value, wherever situated." Fla. Stat. Ann. § 501.203(8). Some Florida courts have held that harassing collection efforts fall within this broad definition. See, e.g., <i>Schauer v. General Motors Acceptance Corp.</i> , 819 So.2d 809, 812 (Fla. Dist. Ct. App. 2002). However, other courts have taken the opposite position. See, e.g., <i>Acosta v. Gustino</i> , 2012 WL 4052245 (M.D. Fla. Sept. 13, 2012). In addition, a Florida court held repossession practices do not relate to the original sale and thus are not covered, <i>City of Cars, Inc. v. Simms</i> , 526 So.2d 119 (Fla. App 1988). Some courts also hold the statute inapplicable to mortgage servicing. See, e.g., <i>Owens-Benniefield v. NationstarMortg. L.L.C.</i> , 2017 WL 2600866 (M.D. Fla. June 15, 2017).
e. Real estate	Mixed	Fla. Stat. Ann. § 501.203(8) defines "trade or commerce" to include real property. However, Fla. Stat. § 501.212(6) immunizes real estate licensees from liability for most acts involving sale, lease, rental, or appraisal of real estate, without limiting this exclusion to acts committed without knowledge of the deception.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	Intermediate appellate decisions are mixed, but in the decision most on point, <i>Davis v. Powertel, Inc.</i> , 776 So.2d 971 (Fla. Dist. Ct. App. 2000), holds that reliance is not required in either an individual or class action, and that proof that the practice was likely to deceive a reasonable consumer is sufficient. See also <i>Fitzpatrick v. Gen. Mills, Inc.</i> , 635 F.3d 1279, 1283 (11 <sup>th</sup> Cir. 2011) (Fla. law) ("a plaintiff need not prove reliance on the allegedly false statement to recover damages under FDUTPA, but rather a plaintiff must simply prove that an objective reasonable person would have been deceived"); <i>Turner Greenberg Assocs., Inc. v. Pathman</i> , 885 So. 2d 1004 (Fla. Dist. Ct. App. 2004) (payment of a deceptive charge is a sufficient showing of reliance and damages). Other intermediate appellate decisions have distinguished <i>Davis</i> , however, and have questioned its reasoning, expressing concerns about "the principle of causation." <i>Philip Morris USA Inc. v. Hines</i> , 883 So.2d 292 (Fla. Dist. Ct. App. 2003); <i>Black Diamond Properties, Inc. v. Haines</i> , 940 So.2d 1176 (Fla. Dist. Ct. App. 2006).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Mixed	Nothing in the main part of the statute requires pre-suit notice. However, Fla. Stat. Ann. § 501.98, a subsection of the statute that applies just to motor vehicle dealers, requires pre-suit notice for these cases.
e. Multiple or punitive damages	Weak	The statute has no provision for multiple or punitive damages.
f. Attorney fees for consumers	Weak	Fla. Stat. Ann. § 501.2105 allows fees to the prevailing party. Although the wording of the statute is ambiguous, it appears that the court has discretion as to whether to award fees to either side. In <i>Mandel v. Decorator's Mart, Inc.</i> , 965 So. 2d 311 (Fla. Dist. Ct. App. 2007), the court required consumers to pay over \$170,000 in attorney fees to the business after they lost a UDAP claim about a condo sale. The court did not make any finding that the suit was filed in bad faith. In <i>Gen. Motors Acceptance Corp. v. Laesser</i> , 791 So. 2d 517 (Fla. Dist. Ct. App. 2001), a court required a consumer who had won a UDAP case in the trial court to pay \$53,387.97 in attorney fees to the business after the business won the case on appeal—again, without any finding that the consumer had brought the suit in bad faith.
g. UDAP statute does not prohibit class actions	Strong	See <i>Latman v. Costa Cruise Lines, N.V.</i> 758 So.2d 699 (Fla. Dist. Ct. App. 2000) (reversing trial court's order denying class certification on claims brought under Florida's UDAP statute).
4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Fla. Stat. Ann. § 501.207(1)(b)
c. Restitution for consumers	Strong	Fla. Stat. Ann. § 501.207(1)(c)
d. Civil penalty amount for initial violations	Strong	Fla. Stat. Ann. § § 501.2075 (\$10,000 per violation if willful)

# GEORGIA

## Ga. Code Ann. §§ 10-1-390 through 10-1-407 Fair Business Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Ga. Code § 10-1-393
b. Broadly prohibits deceptive acts	Strong	Ga. Code § 10-1-393(a)
c. Provides the state agency substantive rulemaking authority	Strong	Ga. Code § 10-1-394 (and state has adopted several rules).
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Undecided	Ga. Code Ann. § 10-1-393 broadly prohibits unfair and deceptive practices “in the conduct of” a consumer transaction, which is defined by Ga. Code Ann. § 10-1-392(a)(10) as “the sale, purchase, lease, or rental of goods, services, or property, real or personal, primarily for personal, family, or household purposes.” One court, <i>Garner v. Academy Collection Service, Inc.</i> , 2005 WL 643680 (N.D. Ga. 2005), held that issuance of a credit card was a consumer transaction because it involved the sale and purchase of a service, that is, the extension of credit. On the other hand, Ga. Code Ann. § 10-1-396(1) exempts “acts or transactions specifically authorized under laws administered by or rules and regulations promulgated by any regulatory agency of this state or the United States.” Some of the decisions interpreting this exemption can be read as exempting only practices that are specifically authorized by the regulatory agency. <i>See, e.g., Chancellor v. Gateway Lincoln-Mercury, Inc.</i> , 502 S.E.2d 799 (Ga. App. 1998) (dealer’s failure to disclose discount given to purchaser of loan not a UDAP violation because federal Truth in Lending Act does not require this disclosure). Other decisions, however, interpret the exemption as a blanket exemption for regulated industries. <i>See, e.g., In re Taylor</i> , 292 B.R. 434 (Bkrtcy. N.D. Ga. 2002).
b. Insurance	Weak	An intermediate appellate court has held that the Georgia UDAP statute does not apply to insurers, because they fall within an exemption for “transactions specifically authorized under” laws administered by a regulatory body. <i>Ferguson v. United Ins. Co.</i> , 293 S.E.2d 736 (Ga. App. 1982).
c. Utilities	Undecided	Georgia courts have not yet addressed the question whether the statute covers utility service. Although utility service could be excluded if the exemption at Ga. Code Ann. § 10-1-396(1) for “acts or transactions specifically authorized under laws administered by or rules and regulations promulgated by any regulatory agency of this state or the United States” is given a broad reading, UDAP statutes are to be given a liberal interpretation, so Georgia courts may find that there is not a blanket exemption for utilities.
d. Post-sale acts (debt collection, repossession)	Strong	Ga. Code § 10-1-393 prohibits unfair or deceptive acts “in the conduct” of consumer transactions. This broad language does not confine its scope to the initial sale. In <i>Garner v. Academy Collection Service, Inc.</i> , 2005 WL 643680 (N.D. Ga. 2005), a federal court held that collection activities were covered under the state UDAP statute “because they involved the sale and purchase of a service—the extension of credit and the associated administration and collection of the debt—for Plaintiff’s personal or household purposes.”

e. Real estate	Strong	“Consumer transaction” is defined by Ga. Code § 10-1-392(3) to include sale, purchase, lease, or rental of real estate. “Trade or commerce” is also defined by Ga. Code § 10-1-392(9) to include real estate. Nothing in the language of the statute creating a private cause of action for consumers precludes a claim regarding a real estate transaction.
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3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Weak	The Georgia Supreme Court has held that a showing of reliance is required for a UDAP claim, at least as to deception claims. <i>Tiismann v. Linda Martin Homes Corp.</i> , 637 S.E.2d 14 (Ga. 2006).
c. Does not require a showing of public interest or public impact	Weak	Georgia intermediate appellate courts have imposed a public interest requirement, basically that the conduct at issue must impact the consuming public. <i>See, e.g. Pryor v. CCEC, Inc.</i> , 571 S.E.2d 454 (Ga. App. 2002) and <i>Borden v. Pope Jeep-Eagle, Inc.</i> , 407 S.E.2d 128 (Ga. App. 1991).
d. Does not require pre-suit notice to the defendant	Weak	Ga. Code § 10-1-399(b) requires pre-suit notice except when the UDAP claim is brought as a counterclaim.
e. Multiple or punitive damages	Strong	Ga. Code § 10-1-399(c) allows treble damages for willful violations. This section also authorizes punitive damages.
f. Attorney fees for consumers	Strong	Ga. Code § 10-1-399(d).
g. UDAP statute does not prohibit class actions	Weak	Ga. Code § 10-1-399(a) authorizes consumers to sue only individually, not in a “representative capacity.” The federal Court of Appeals for the Circuit that includes Georgia held in <i>Lisk v. Lumber One Wood Preserving</i> , 792 F.3d 1331 (11 <sup>th</sup> Cir. 2015), that a similar Alabama restriction does not apply in federal court, but it would still prevent consumers from joining together in class actions in state court.

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Ga. Code § 10-1-397(a)(2)(A)
c. Restitution for consumers	Strong	Ga. Code § 10-1-397(a)(2)(C)
d. Civil penalty amount for initial violations	Mixed	Ga. Code § 10-1-397(a)(2)(B) (\$5,000 per violation)

## HAWAII

Haw. Rev. Stat. §§ 480-1 through 480-24

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	The Hawaii UDAP statute prohibits unfair competition against any person and unfair acts or practices, enforceable by any consumer. The statute also prohibits unfair methods of competition, enforceable by any person. Haw. Rev. Stat. § 480-2(a), (d), (e).
b. Broadly prohibits deceptive acts	Strong	The Hawaii UDAP statute prohibits deceptive acts or practices, enforceable by any consumer. Haw. Rev. Stat. § 480-2(a), (d).

c. Provides the state agency substantive rulemaking authority	Strong	Haw. Rev. Stat. § 487-5(5). State has adopted several substantive rules.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Strong	Hawaii's UDAP statute applies to the "conduct of any trade or commerce." Haw. Rev. Stat. § 480-2. In <i>Hawaii Community Federal Credit Union v. Keka</i> , 11 P.3d 1 (Hawai'i 2000), the Hawaii Supreme Court held that a loan extended by a financial institution is activity involving "conduct of any trade and commerce," and that loan borrowers are "consumers" within the meaning of the state UDAP statute.
b. Insurance	Strong	Insurance appears to be covered under Hawaii's broad UDAP statute, which applies to the "conduct of any trade or commerce." Haw. Rev. Stat. § 480-2. In <i>Jenkins v. Commonwealth Land Title Ins. Co.</i> , 95 F.3d 791 (9 <sup>th</sup> Cir. 1996), the Ninth Circuit held that Hawaii's UDAP statute was not preempted by the state's insurance code.
c. Utilities	Strong	Haw. Rev. Stat. § 480-2 forbids unfair or deceptive acts in trade or commerce. Trade or commerce is not defined but there is no reason to think that it would not include the provision of utility service. There is no statutory exemption for utilities, and Hawaii courts have not shown a tendency to read exemptions into the statute.
d. Post-sale acts (debt collection, repossession)	Strong	Haw. Rev. Stat. § 480-2 forbids unfair or deceptive acts in trade or commerce. Trade or commerce is not defined, so there is no basis for narrowing its scope to exclude post-sale acts, and Hawaii courts have applied the statute to debt collection and foreclosure. <i>See, e.g., Hungate v. Law Office of David B. Rosen</i> , 391 P.3d 1 (Haw. 2017) (foreclosure); <i>Ai v. Frank Huff Agency, Ltd.</i> , 607 P.2d 1304 (Haw. 1980) (debt collection).
e. Real estate	Strong	Hawaii's UDAP statute applies to real estate. In <i>Hawaii Community Federal Credit Union v. Keka</i> , 11 P.3d 1, 16 (Hawai'i 2000), the Supreme Court of Hawaii held "that real estate or residences qualify as 'personal investments' pursuant to HRS § 480-1".
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	In <i>Yokoyama v. Midland Nat'l Life Ins. Co.</i> , 594 F.3d 1087, 1093 (9 <sup>th</sup> Cir. 2010), a private suit, the Ninth Circuit held that the Hawaii UDAP statute does not require a plaintiff to make an individualized showing of reliance, but only to show a likelihood of misleading consumers acting reasonably under the circumstances.
c. Does not require a showing of public interest or public impact	Strong	Haw. Rev. Stat. § 480-2(c)
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Haw. Rev. Stat. § 480-13(a)(1), (b)(1)
f. Attorney fees for consumers	Strong	Haw. Rev. Stat. § 480-13(a)(1), (b)(1)
g. UDAP statute does not prohibit class actions	Strong	Haw. Rev. Stat. § 480-13(c)

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Haw. Rev. Stat. § 480-15
c. Restitution for consumers	Strong	Haw. Rev. Stat. § 487-14(a)
d. Civil penalty amount for initial violations	Strong	Haw. Rev. Stat. § 480-3.1 (\$500 to \$10,000 per violation)

## IDAHO

### Idaho Code Ann. §§ 48-601 through 48-619 Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Idaho Code §§ 48-603(18) and 48-603C broadly prohibit unconscionable acts (but regulated lenders are excluded from the first of these prohibitions and possibly from the second because of a cross-reference in the statute).
b. Broadly prohibits deceptive acts	Strong	Idaho Code § 48-603(17) broadly prohibits deception.
c. Provides the state agency substantive rulemaking authority	Strong	Idaho Code § 48-604(2). Idaho has adopted a number of regulations.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Undecided	In <i>Idaho First Nat. Bank v. Wells</i> , 596 P.2d 429 (Idaho 1979), the Idaho Supreme Court ruled that providing a personal guarantee on a loan to a corporation could not be construed as “goods” under the statute. The court noted, however, that “goods” was defined to include intangibles, so could encompass money. The same decision holds that banks are exempt from the state UDAP statute because they are not subject to FTC regulation. However, after the decision was issued, the legislature added an unconscionability prohibition that specifically exempts regulated lenders. Idaho Code Ann. § 48-603(18). This language supports the position that regulated lenders are subject to the other provisions of the statute, since otherwise the exemption from this particular prohibition would be meaningless. Idaho Code Ann. § 48-605(1) excludes “actions or transactions permitted under laws administered by . . . a regulatory body or officer,” but Idaho Code Ann. § 48-602(8) defines this term narrowly as “specific acts and practices or transactions authorized by a regulatory body or officer pursuant to a contract, rule or regulation, or other properly issued order, directive or resolution.” A bankruptcy court held that a company that purchased a disabled man’s annuity payments for cash was engaged in the sale of financial services and was therefore subject to the UDAP statute. <i>In re Wiggins</i> , 273 B.R. 839, 855–856 (Bankr. D. Idaho 2001). Another court held that the statute applied to collection of a credit card debt where the card had been used to purchase goods or services. <i>Carroll v. Wilson McColl &amp; Rasmussen</i> , 2010 WL 1904779 (D. Idaho May 11, 2010).
b. Insurance	Weak	Idaho Code Ann. § 48-605(3) exempts persons subject to the state unfair insurance practices statute. Idaho Code § 48-605(3). <i>See Irwin Rogers Agency, Inc. v. Murphy</i> , 833 P.2d 128 (Idaho 1992).



c. Utilities	Undecided	Idaho Code Ann. § 48-605(1) excludes “[a]ctions or transactions permitted under laws administered by” the state public utility commission, but Idaho Code Ann. § 48-602(8) makes it clear that this language excludes only “specific acts, practices or transactions authorized by a regulatory body or officer pursuant to a contract, rule or regulation, or other properly issued order, directive or resolution.” No Idaho cases have interpreted these sections of the statute, but their clear meaning is not to provide a blanket exemption for utilities. In <i>Yellowpine Water User’s Ass’n v. Imel</i> , 670 P.2d 54 (Idaho 1983), the Idaho Supreme Court held that a consumer could not pursue a claim against a utility provider where there was no ascertainable loss. Presumably, if the court had viewed section 48-605(1) as excluding utility providers altogether, it would have answered that threshold question and denied the claim on that ground.
d. Post-sale acts (debt collection, repossession)	Strong	The Idaho UDAP statute applies to acts and practices “in the conduct of any trade or commerce,” and defines “trade or commerce” to include collection of debts arising out of the sale, lease, or distribution of goods or services. Idaho Code §§ 48-602(3), 48-603. It also provides that an unconscionable act is a violation whether it occurs “before during, or after the transaction.” Idaho Code § 48-603(C)(1). The Idaho Supreme Court has ruled that collection of debts that arise from sales of goods and services falls within the UDAP statute’s definition of “trade or commerce.” <i>In re Western Acceptance Corp.</i> , 788 P.2d 214 (Idaho 1990)
e. Real estate	Strong	Idaho Code § 48-602(6) defines “goods” to include real property.
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	<i>State ex rel. Kidwell v. Master Distributions, Inc.</i> , 615 P.2d 116 (Idaho 1980) (applying F.T.C. “tendency or capacity to deceive” test; need not show that consumers relied on standardized misleading home sales script).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Idaho Code § 48-608 authorizes punitive damages. In addition, Idaho Code § 48-608(2), as amended effective July 1, 2008, allows elderly consumers to recover an enhanced penalty of \$15,000 or treble damages, whichever is greater, for certain violations.
f. Attorney fees for consumers	Strong	Idaho Code § 48-608(4)
g. UDAP statute does not prohibit class actions	Strong	Class actions are specifically authorized by Idaho Code § 48-608(1), although the strength of this provision is weakened by its placement of a \$1,000 cap on the total statutory award for all the consumers included in a class action.
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Idaho Code § 48-606(1)(b)
c. Restitution for consumers	Strong	Idaho Code §§ 48-606(1)(c), 48-607(2)
d. Civil penalty amount for initial violations	Mixed	Idaho Code § 48-606(1)(e) (up to \$5,000 per violation)

# ILLINOIS

## 815 Ill. Comp. Stat. 505/1 through 505/12 Consumer Fraud and Deceptive Business Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	815 Ill. Comp. Stat. Ann. § 505/2
b. Broadly prohibits deceptive acts	Strong	815 Ill. Comp. Stat. Ann. § 505/2
c. Provides the state agency substantive rulemaking authority	Strong	815 Ill. Comp. Stat. Ann. § 505/4. Illinois has adopted a number of regulations: Ill. Admin. Code tit. 14 § 460.10 <i>et seq.</i>
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Mixed	<p>815 Ill. Comp. Stat. § 505/1(f) defines “trade” and “commerce” to include “distribution of . . . any property . . . and any other article, commodity, or thing of value.” This broad language encompasses extensions of credit. In addition, several provisions of the statute place specific restrictions on credit transactions. 815 Ill. Comp. Stat. §§ 505/2E, 505/2F, 505/2K, 505/2T. If the statute did not cover credit transactions, these would be meaningless.</p> <p>Another issue is the interpretation of 815 Ill. Comp. Stat. § 505/10b(1), which exempts “[a]ctions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States.” The Illinois Supreme Court has interpreted this language to apply only when the regulatory agency has authorized a specific practice, not as a blanket exemption for regulated entities. <i>Price v. Philip Morris, Inc.</i>, 848 N.E.2d 1 (Ill. 2005). Illinois consumers have been able to bring UDAP claims against lenders in cases such as <i>Heastie v. Community Bank</i>, 690 F. Supp. 716 (N.D. Ill. 1988) and <i>Chandler v. Am. Gen. Fin., Inc.</i>, 768 N.E.2d 60 (Ill. App. 2002).</p> <p>Illinois courts have, however, reduced the applicability of the UDAP statute to credit by holding that, where the federal Truth in Lending Act requires certain disclosures, the UDAP statute cannot require additional disclosures. <i>Jackson v. South Holland Dodge</i>, 755 N.E.2d 462 (Ill. 2001); <i>Price v. Philip Morris, Inc.</i>, 848 N.E.2d 1, 41 (Ill. 2005). In addition, <i>Zekman v. Direct American Marketers, Inc.</i>, 659 N.E.2d 853 (Ill. 1998), holds that the UDAP statute does not cast liability upon creditors and others who knowingly accept the fruit of a seller’s fraud. Although these decisions create impediments to consumers in some situations, there is still substantial coverage of creditors under the Illinois UDAP statute.</p>
b. Insurance	Strong	<p>Insurance fits into the broad definition of “trade” and “commerce” at 815 Ill. Comp. Stat. § 505/1(f). The only question is the general exemption at 815 Ill. Comp. Stat. § 505/10b(1) for “[a]ctions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States.” The Illinois Supreme Court has interpreted this language to apply only where the regulatory agency has authorized a specific practice, not as a blanket exemption for regulated entities. <i>Price v. Philip Morris, Inc.</i>, 848 N.E.2d 1 (Ill. 2005). In addition, 815 Ill. Comp. Stat. § 505/2QQ imposes specific restrictions on insurance transactions. If the statute did not cover insurance transactions, these restrictions would be meaningless. Finally, 815 Ill. Comp. Stat. § 505/10b(6) exempts certain false communications by insurance producers without actual knowledge. If insurance transactions were generally exempt, this exemption would not be necessary. The UDAP statute has been applied to insurance practices in a number of cases. <i>See, e.g., Golf v. Henderson</i>, 876 N.E.2d 105 (Ill. App. Ct. 2007).</p>

c. Utilities	Strong	Utility service fits into the broad definition of “trade” and “commerce” at 815 Ill. Comp. Stat. § 505/1(f), which includes “distribution of any services.” In addition, the UDAP statute imposes special restrictions on telecommunications transactions and electricity providers, which would be meaningless if these providers were not covered. 815 Ill. Comp. Stat. §§ 505/2DD to 505/2II, 505/2VV. The only question is the general exemption at 815 Ill. Comp. Stat. § 505/10b(1) for “[a]ctions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States.” The Illinois Supreme Court has interpreted this language to apply only where the regulatory agency has authorized a specific practice, not as a blanket exemption for regulated entities. <i>Price v. Philip Morris, Inc.</i> , 848 N.E.2d 1 (Ill. 2005). The UDAP statute has been applied to utility services in a number of cases. <i>See, e.g., Zahn v. N. Am. Power &amp; Gas, L.L.C.</i> , 72 N.E.2d 333 (Ill. 2016).
d. Post-sale acts (debt collection, repossession)	Strong	The definition of “trade” and “commerce” at 815 Ill. Comp. Stat. Ann. § 505/1(f) focuses primarily on the initial sale, but is broad enough to cover post-sale matters such as debt collection. In addition, the statute includes substantive prohibitions of certain debt collection practices that would be meaningless if the statute did not cover debt collection. 815 Ill. Comp. Stat. Ann. §§ 505/2H, 505/2I. The Illinois Supreme Court held in <i>People ex rel. Daley v. Datacom Systems Corp.</i> , 585 N.E.2d 51 (Ill. 1991), that collection of a debt fell within the definition. Courts have also applied the statute to other post-sale matters such as repossession. <i>See, e.g., Holley v. Gurnee Volkswagen &amp; Oldsmobile, Inc.</i> , 2001 U.S. Dist. LEXIS 7274 (N.D. Ill. Jan. 4, 2001).
e. Real estate	Strong	815 Ill. Comp. Stat. Ann. § 505/1(b) and (f) define “merchandise” and “trade” and “commerce” to include real estate, and the private cause of action at 815 Ill. Comp. Stat. Ann. §§ 505/10a is not worded in a way that could be construed to preclude claims arising out of real property transactions. 815 Ill. Comp. Stat. Ann. §§ 505/10b(4) provides some immunity to real estate licensees, but only for unknowingly passing on false information from the seller. Many decisions recognize that the statute applies to real estate transactions. <i>See, e.g., Scarsdale Builders, Inc. v. Ryland Group, Inc.</i> , 911 F. Supp. 337, 339-340 (N.D. Ill. 1996); <i>Kleczek v. Jorgensen</i> , 767 N.E.2d 913, 918-919 (Ill. App. 2002).
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	815 Ill. Comp. Stat. Ann. § 505/2 requires a showing that the defendant acted with “intent that others rely” on the concealment of a material fact, but the Illinois Supreme Court has held that actual reliance by the consumer need not be shown. <i>Connick v. Suzuki Motor Co., Ltd.</i> , 675 N.E.2d 584 (Ill. 1996) (proximate cause, but not reliance, must be shown); <i>Siegel v. Levy Org. Dev. Co.</i> , 607 N.E.2d 194 (Ill. 1992) (materiality and intent to induce reliance must be shown, but not actual reliance).
c. Does not require a showing of public interest or public impact	Strong	815 Ill. Comp. Stat. Ann. § 505/10(a) required a showing of public impact in suits against motor vehicle dealers, but the state supreme court struck this statute down as unconstitutional in <i>Allen v. Woodfield Chevrolet, Inc.</i> , 802 N.E.2d 752 (Ill. 2003).
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	815 Ill. Comp. Stat. Ann. § 505/10a. <i>See Martin v. Heinold Commodities, Inc.</i> , 643 N.E.2d 734 (Ill. 1994) (punitive damages).

f. Attorney fees for consumers	Strong	815 Ill. Comp. Stat. Ann. § 505/10a(c) has been interpreted by the state supreme court in <i>Krautsack v. Anderson</i> , 861 N.E.2d 633, 645 (Ill. 2006) as allowing a fee award against the consumer only if the consumer acted in bad faith.
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute precludes class certification, and courts have often certified class actions under the Illinois UDAP statute. <i>See, e.g., S37 Management, Inc. v. Advance Refrigeration, Co.</i> , 961 N.E.2d 6 (Ill. Ct. App. 2011).
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	815 Ill. Comp. Stat. Ann. § 505/7(a)
c. Restitution for consumers	Strong	815 Ill. Comp. Stat. Ann. § 505/7(a)
d. Civil penalty amount for initial violations	Strong	815 Ill. Comp. Stat. Ann. § 505/7(b) – up to \$50,000; up to \$50,000 per violation if intent to defraud is shown

## INDIANA

### Ind. Code §§ 24-5-0.5-1 through 24-5-0.5-12 Deceptive Consumer Sales Act

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Strong	Ind. Code § 24-5-0.5-10 (unconscionable acts)
b. Broadly prohibits deceptive acts	Strong	Ind. Code § 24-5-0.5-3(a) prohibits deceptive acts, broadly defined.
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Strong	Ind. Code § 24-5-0.5-2(a)(1) defines “consumer transaction” as “a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, . . . with or without an extension of credit.” This language clearly covers credit sales. Non-purchase money loans should also be covered as “disposition of . . . an intangible.” Ind. Code § 24-5-0.5-6 only excludes acts or practices that are “required or expressly permitted by” other law, so does not operate as a blanket exemption for creditors and credit transactions.
b. Insurance	Weak	Ind. Code §§ 24-5-0.5-2(a)(1) and 24-5-0.5-6 explicitly exclude insurance transactions.
c. Utilities	Strong	Ind. Code § 24-5-0.5-2(a)(1) defines “consumer transaction” as “a sale . . . or other disposition of an item of personal property, . . . a service, or an intangible.” This language is clearly broad enough to cover utility services, and there is no basis in the statute for drawing distinctions between utility services and other kinds of services. Ind. Code § 24-5-0.5-6 only excludes acts or practices that are “required or expressly permitted by” other law, so would not operate as a blanket exclusion for utilities.

d. Post-sale acts (debt collection, repossession)	Strong	Indiana’s statute provides that it applies to acts and omissions occurring before, during, or after the transaction. In addition, by virtue of a 2011 amendment, it explicitly applies to collecting or attempting to collect a debt owed or due, or asserted to be owed or due, to another person. Ind. Code § 24-5-0.5-2(a)(1)(C). The statute also defines any violation of the FDCPA as a violation, Ind. Code §§ 24-5-0.5-3(b)(20), although it denies consumers the right to bring suit for this violation. Ind. Code §§ 24-5-0.5-4(a), (b).
e. Real estate	Mixed	Real estate transactions are included in the definition of “consumer transaction” at Ind. Code § 24-5-0.5-2(a)(1). However, since Ind. Code § 24-5-0.5-4(a) denies the consumer a private cause of action in real property transactions, the state receives a “Weak” rating in section 3(a), regarding gaps in consumers’ ability to enforce the statute, and is rated “Mixed” here.

3. CONSUMER ACCESS TO JUSTICE	COMMENTS
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a. No major gaps in scope of consumers’ ability to enforce the statute	Weak	Ind. Code § 24-5-0.5-4(a) denies the consumer a private cause of action in real property transactions even though the statute is otherwise applicable to them.
b. Does not require reliance	Weak	Ind. Code § 24-5-0.5-4 requires a showing of reliance, in that it provides a private right of action for “a person relying upon an uncured or incurable deceptive act.”
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Weak	Pre-suit notice is required by Ind. Code §§ 24-5-0.5-5 and 24-5-0.5-2(a)(5)-(8) (with an exception for deceptive acts done as part of scheme, artifice, or device with intent to defraud or mislead).
e. Multiple or punitive damages	Strong	Ind. Code § 24-5-0.5-4(1). <i>See also</i> Ind. Code § 24-5-0.5-4(i) (allowing seniors to recover treble damages without the need to show willfulness).
f. Attorney fees for consumers	Undecided	Ind. Code § 24-5-0.5-4(a) allows the court to award attorney fees to the prevailing party. There are no reported cases in which a consumer was required to pay the business’s attorney fees, so it is possible that Indiana courts will interpret this provision like the Illinois Supreme Court did in <i>Krautsack v. Anderson</i> , 861 N.E.2d 633, 645 (Ill. 2006), as allowing a fee award against the consumer only if the consumer acted in bad faith.
g. UDAP statute does not prohibit class actions	Strong	Ind. Code §§ 24-5-0.5-4

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY	COMMENTS
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a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Mixed	Ind. Code § 24-5-0.5-3(b) requires intent or knowledge for most substantive violations, but the general prohibition of deception at § 24-5-0.5-3(a) does not.
b. Equitable relief	Strong	Ind. Code § 24-5-0.5-4(c)(1)
c. Restitution for consumers	Strong	Ind. Code § 24-5-0.5-4(c)(2)
d. Civil penalty amount for initial violations	Mixed	Ind. Code § 24-5-0.5-4(g) (\$5,000 per violation if knowing; <i>see also</i> 24-5-0.5-8 (\$500 per violation for deceptive acts done as part of scheme, artifice, or device with intent to defraud or mislead).

# IOWA

## Iowa Code §§ 714.16 through 714.16A

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Iowa Code §§ 714.16(2)(a), (1)(n) broadly prohibits unfair acts. Only the Attorney General can enforce this prohibition, but in 2009 the legislature enacted a parallel provision, Iowa Code § 714H.3(1), which prohibits unfair practices with the intent to cause reliance upon the unfair practice, and consumers can enforce this prohibition.
b. Broadly prohibits deceptive acts	Strong	Iowa Code § 714.16(2)(a), (1)(f) broadly prohibits deceptive acts. Only the Attorney General can enforce this prohibition, but in 2009 the legislature enacted a parallel provision, Iowa Code § 714H.3(1), which prohibits deception with the intent to cause reliance upon the deception, and consumers can enforce this prohibition.
c. Provides the state agency substantive rulemaking authority	Strong	Iowa Code § 714.16(4)(a). Iowa has adopted several UDAP regulations.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Mixed	Iowa's UDAP statute covers acts "in connection with the lease, sale, or advertisement of any merchandise." Iowa Code §§ 714.16(2), 714H.3(1). "Merchandise" is defined broadly to include intangibles and services. Iowa Code § 714.16(1)(i), 714H.2(6). As a result, there is no impediment to enforcement of the statute by the attorney general against lenders and other creditors. However, since Iowa Code § 714H.4(1)(a)(3), (4), and (k) deny consumers a private cause of action to enforce the statute against a wide range of lenders, including banks, savings and loan associations, and credit unions, plus their affiliates and subsidiaries, the state is rated "Mixed" here, and "Weak" in section 3(a) regarding major gaps in consumers' ability to enforce the statute. (The private cause of action does apply to some types of lenders, such as payday lenders, some mortgage bankers and brokers, and some loan brokers).
b. Insurance	Mixed	Nothing in Iowa's UDAP statute excludes insurance. However, since Iowa Code § 714H.4(1)(a)(1) denies consumers a private cause of action to enforce the statute against insurance companies and insurance producers, the state is rated "Mixed" here, and "Weak" in section 3(a) regarding major gaps in consumers' ability to enforce the statute.
c. Utilities	Mixed	Iowa's UDAP statute applies to "merchandise," defined to include wares, goods, commodities, intangibles, and services. However, since Iowa Code § 714H.4(1)(d), (e), and (j) deny consumers a private cause of action to enforce the statute regarding the provision of local exchange carrier telephone service, or against public utilities that furnish gas by a piped distribution system or electricity to the public for compensation, or franchised cable television or video services, the state is rated "Mixed" here, and "Weak" in section 3(a) regarding major gaps in consumers' ability to enforce the statute. Iowa Code § 714H.4(1)(d), (e), (j).

d. Post-sale acts (debt collection, repossession)	Strong	The Iowa UDAP statute applies broadly to acts or practices “in connection with” the lease, sale, or advertisement of any merchandise. Iowa Code §§ 714.16(2)(a), 714H.3(1). “Merchandise” is broadly defined to include “any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.” Iowa Code §§ 714.16(1)(i), 714H.2(6). The state supreme court held that the statute applies to post-sale conduct such as debt collection. <i>State ex rel. Miller v. Cutty’s Des Moines Camping Club, Inc.</i> , 694 N.W.2d 518 (Iowa 2005). Although the exclusions for financial institutions from the private cause of action will mean that some mortgage servicers are immune from consumer suit, other post-sale actors such as debt collectors are not excluded from the private cause of action that Iowa added to its UDAP statute in 2009.
e. Real estate	Mixed	Iowa Code §§ 714.16(1)(i) and 714H.2(6) define “merchandise” to include real estate. However, since Iowa Code § 714H.4(1)(a)(4) makes a private cause of action unavailable against real estate brokers, broker associates, or salespersons licensed under Iowa Code § 543B.1, the state is rated “Weak” in section 3(a) regarding major gaps in consumers’ ability to enforce the statute, and is rated Mixed here.

3. CONSUMER ACCESS TO JUSTICE	COMMENTS
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a. No major gaps in scope of consumers’ ability to enforce the statute	Weak	When Iowa added a private cause of action for consumers to its UDAP statute in 2009, it excluded, <i>inter alia</i> , insurance companies, insurance producers, a wide variety of lenders and real estate professionals, and most utility service providers. Iowa Code § 714H.4.
b. Does not require reliance	Strong	<i>State ex rel. Miller v. Vertrue, Inc.</i> , 834 N.W.2d 12, 29–31 (Iowa 2013) (state need not show reliance to obtain reimbursement for consumers, except when claim is based on concealment, for which statute lists reliance as an element); <i>State ex rel. Miller v. Hydro Mag, Ltd.</i> , 436 N.W.2d 617 (Iowa 1989). The statute requires a private plaintiff to show that the defendant acted with intent to cause reliance, but this is different from a requirement that the consumer show that he or she relied on the unfair or deceptive act, and the Eighth Circuit held that “but for” causation is sufficient for a private claim under Iowa UDAP statute. <i>Brown v. Louisiana-Pacific Corp.</i> , 820 F.3d 339, 348-349 (8 <sup>th</sup> Cir. 2016).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Iowa Code § 714H.5(4) provides for treble damages in cases of willful and wanton disregard for the rights and safety of others.
f. Attorney fees for consumers	Strong	Iowa Code § 714H.5(2) provides for reasonable attorney fees.
g. UDAP statute does not prohibit class actions	Strong	Iowa Code § 714H.7 allows class actions. It requires them to be approved by the attorney general, but approval must be granted unless the attorney general determines it is frivolous.

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY	COMMENTS
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a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Iowa Code § 714.16(7)
b. Equitable relief	Strong	Iowa Code § 714.16(7)
c. Restitution for consumers	Strong	Iowa Code § 714.16(7)
d. Civil penalty amount for initial violations	Strong	Iowa Code § 714.16(7): \$40,000 per violation, but a course of conduct is not considered separate and different violations merely because it is repeated to more than one consumer.

# KANSAS

## Kan. Stat. Ann. §§ 50-623 through 50-640 and 50-675a through 50-679a Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Kan. Stat. § 50-627
b. Broadly prohibits deceptive acts	Strong	Kan. Stat. § 50-626(a)
c. Provides the state agency substantive rulemaking authority	Weak	Kan. Stat. § 50-630 only allows procedural rules.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Undecided	The Kansas statute applies to consumer transactions, defined as a “sale, lease, assignment or other disposition for value of property or services” within the state to a consumer, or a solicitation by a supplier to do so, with an exception for insurance. Kan. Stat. Ann. § 50-624(C). This broad definition easily encompasses credit transactions. <i>See State ex rel. Stephan v. Brotherhood Bank and Trust Co.</i> , 649 P.2d 419, 422 (Kan. App. 1982). However, Kan. Stat. Ann. § 50-624(l) provides that the definition of “supplier” does not include “any bank, trust company or lending institution which is subject to state or federal regulation with regard to disposition of repossessed collateral by such bank, trust company or lending institution.” One court has held that banks that qualify for this exemption are entirely exempt, not just when they are disposing of repossessed collateral. <i>Kalebaugh v. Cohen, McNeile &amp; Pappas, P.C.</i> , 76 F. Supp. 3d 1251, 1260 (D. Kan. 2015). However, this would be odd language to choose if the legislature had intended to create a blanket exemption. The phrase “with regard to disposition of repossessed collateral” is most logically read as a legislative overruling of <i>York v. InTrust Bank</i> , 962 P.2d 405 (Kan. 1998), which held a bank to be a supplier when it made misrepresentations while selling building lots it had accepted in lieu of foreclosure from a defaulting borrower. Another court adopted this more logical reading and held a bank subject to the statute where its acts did not involve disposition of repossessed personal property. <i>Kahn v. Denison State Bank</i> , 366 P.3d 665 (Kan. App. Ct. Feb. 19, 2016) (table, text at 2016 WL 687728).
b. Insurance	Weak	Kan. Stat. Ann. § 50-624(c) excludes insurance contracts regulated under state law from the definition of consumer transaction.
c. Utilities	Strong	The Kansas UDAP statute applies to “consumer transactions,” defined to include the sale, lease, assignment, or other disposition for value of property or services. Kan. Stat. Ann. § 50-624(c). Although Kansas courts have not addressed the issue, there appears to be no basis in the statute to exclude utilities.
d. Post-sale acts (debt collection, repossession)	Strong	Kan. Stat. § 50-624(l) defines “supplier” to include those who enforce consumer transactions, and the state supreme court has held that this definition encompasses independent debt collectors. <i>State v. Midwest Serv. Bureau, Inc.</i> , 623 P.2d 1343 (Kan. 1981). This conclusion is particularly clear since Kan. Stat. § 50-627(a) provides that an unconscionable act is a violation whether it occurs before, during, or after the transaction. A number of decisions also apply the statute to post-consummation modification of a loan. <i>See, e.g., Rogers v. Bank of Am.</i> , 2014 WL 3091925 (D. Kan. July 7, 2014).
e. Real estate	Strong	Kan. Stat. § 50-624(c) and (h) define “consumer transaction” to include real property transactions.



3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	The statute provides that deceptive acts are a violation "whether or not any consumer has in fact been misled," and allows any consumer who is "aggrieved" by a violation to bring suit. Kan. Stat. §§ 50-626(b)(1), 50-634(b). The key issue is the interpretation of <i>Finstad v. Washburn Univ. of Topeka</i> , 845 P.2d 685 (Kan. 1993). There, the state supreme court held that, to be "aggrieved," a consumer must show a causal connection between the deceptive act and the consumer's injuries. The court held that the plaintiffs had not met this test where they had not relied on the false statement and many were unaware of it, and they did not show that they suffered any injury as a result of it. Some courts interpret <i>Finstad</i> to say that reliance is not required but is a relevant factor when the court determines whether the consumer is "aggrieved." See, e.g., <i>McLellan v. Raines</i> , 140 P.3d 1034 (Kan. App. 2006). <i>Accord Midland Pizza, L.L.C. v. Southwestern Bell Tel. Co.</i> , 2010 WL 4622191 (D. Kan. Nov. 5, 2010); <i>Welch v. Centex Home Equity Co.</i> , 178 P.3d 80 (Kan. Ct. App. 2008) (table, text at 2008 WL 713690) (requirement of causal connection does not mean that reliance is required); <i>Cole v. Hewlett Packard Co.</i> , 2004 WL 376471 (Kan. App. Feb. 27, 2004). On the other hand, <i>Benedict v. Altria Group, Inc.</i> , 241 F.R.D. 668 (D. Kan. 2007), equates a causal connection with reliance.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Although the statute does not provide for multiple or punitive damages, it allows a consumer to recover a \$10,000 civil penalty, so is rated Strong.
f. Attorney fees for consumers	Strong	Kan. Stat. § 50-634(e)
g. UDAP statute does not prohibit class actions	Strong	Kan. Stat. § 50-634(c), (d)
4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Mixed	While almost all of the specific prohibitions at § 50-626(b) require intent or knowledge, the general prohibition of deceptive acts and practices at Kan. Stat. § 50-626(a) does not.
b. Equitable relief	Strong	Kan. Stat. § 50-632(a)(2)
c. Restitution for consumers	Strong	Kan. Stat. § 50-632(a)(3), (c)(2)
d. Civil penalty amount for initial violations	Strong	Kan. Stat. § 50-636 – up to \$10,000 per violation.

## KENTUCKY

Ky. Rev. Stat. Ann. §§ 367.110 through 367.990 (West)  
Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Ky. Rev. Stat. § 367.170
b. Broadly prohibits deceptive acts	Strong	Ky. Rev. Stat. § 367.170
c. Provides the state agency substantive rulemaking authority	Weak	Ky. Rev. Stat. § 15.180 gives the Attorney General authority to issue “regulations which will facilitate performing the duties and exercising the authority vested in” the AG, but because of restrictions in Ky. Rev. Stat. § 13A.222 this is not considered sufficient for substantive rules without a more specific grant of authority.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	Trade or commerce is broadly defined to include distribution of any property, tangible or intangible. Ky. Rev. Stat. § 367.110. This language would clearly include credit. While the private cause of action is extended only to consumers who purchase or lease goods or services, “services” has been interpreted to include credit in a number of states. In <i>Stafford v. Cross Country Bank</i> , 262 F. Supp. 2d 776 (W.D. Ky. 2003), a federal court held that the extension of credit would likely be a “service” under the Kentucky statute. <i>See also Hamilton v. York</i> , 987 F. Supp. 953 (E.D. Ky. 1997) (refusing to dismiss claims against a check cashing company under Kentucky’s consumer protection statute). In addition, one section of Kentucky’s UDAP statute addresses the rights of assignees in consumer credit transactions, including purchase money loans. Ky. Rev. Stat. § 367.610. If the statute did not cover these transactions, this provision would be meaningless.
b. Insurance	Strong	Trade or commerce is broadly defined by Ky. Rev. Stat. Ann. § 367.110 to include sale or distribution of “any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value, and shall include any trade or commerce directly or indirectly affecting” the people of the state. The Supreme Court of Kentucky ruled that the extension of insurance is a service within the meaning of the act. <i>Stevens v. Motorists Mut. Ins. Co.</i> , 759 S.W.2d 819, 820-21 (Ky. 1988). <i>See also Rawe v. Liberty Mut. Fire Ins. Co.</i> , 462 F.3d 521, 530-531 (6 <sup>th</sup> Cir. 2006) (holding Kentucky UDAP statute applicable to insurer’s claims settlement practices).
c. Utilities	Mixed	Trade or commerce is broadly defined by Ky. Rev. Stat. Ann. § 367.110 to include “any services.” There appears to be no basis in the statute for excluding utility service altogether. However, matters affecting rates and services are within the exclusive jurisdiction of the public utility commission, and in <i>Bulldog’s Enters., Inc. v. Duke Energy</i> , 412 S.W.3d 210 (Ky. Ct. App. 2013), the court interpreted this exclusion broadly, denying a utility customer the right to bring a UDAP claim against a utility provider for fraudulently inflating bills through the use of dysfunctional meters.

d. Post-sale acts (debt collection, repossession)	Weak	In <i>Hamilton v. York</i> , 987 F. Supp. 953, 958 (E.D. Ky. 1997), a federal district court found the Kentucky UDAP statute applicable to false statements made in an attempt to collect a debt. However, a number of intermediate appellate decisions hold that a UDAP plaintiff must be in privity with the defendant. See, e.g., <i>Williams v. Chase Bank</i> , 390 S.W.3d 824 (Ky. Ct. App. 2012). Some federal court decisions have applied these rulings to hold that a consumer cannot assert a UDAP claim against a third-party debt collector. See, e.g., <i>Tallon v. Lloyd &amp; McDaniel</i> , 497 F. Supp. 2d 847 (W.D. Ky. 2007).
e. Real estate	Mixed	Ky. Rev. Stat. § 367.110 defines “trade” and “commerce” to include real estate, and Ky. Rev. Stat. § 367.470 explicitly includes “recreation and retirement use land sales.” The private cause of action applies only to a person who “purchases or leases goods or services,” however. Ky. Rev. Stat. § 367.220(1). Although the state supreme court has not yet ruled, a number of decisions hold that this language does not encompass real estate. <i>Aud v. Ill. Central R. Co.</i> , 955 F. Supp. 757 (W.D. Ky. 1997); <i>Todd v. Ky. Heartland Mortg., Inc.</i> , 2003 WL 21770805 (Ky. Ct. App. Aug. 1, 2003); <i>Craig v. Keene</i> , 32 S.W.3d 90, 91 (Ky. App. Ct. 2000). Since these cases hold that the state attorney general can enforce the statute in real estate transactions, but consumers cannot, it is rated Mixed for this category, and the statute is also rated Weak in section 3(a).

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Weak	Decisions such as <i>Aud v. Ill. Central R. Co.</i> , 955 F. Supp. 757 (W.D. Ky. 1997), hold that the private cause of action does not apply to real estate transactions.
b. Does not require reliance	Strong	The few Kentucky courts that have addressed the question have held that a showing of reliance is not required. In <i>Telcom Directories, Inc. v. Commonwealth ex rel. Cowan</i> , 833 S.W.2d 848, 850 (Ky. App. 1991), the court held that it was not necessary for the state to prove actual deception. In <i>Corder v. Ford Motor Co.</i> , 869 F. Supp. 2d 835 (W.D. Ky. 2012), a case brought by a consumer, the court held that the UDAP statute requires proof of a causal nexus between plaintiff’s loss and defendant’s allegedly deceitful practices, but reliance is not required. See also <i>Brown v. Tax Ease Lien Servicing, LLC</i> , 2015 WL 7431044, AT *10 (W.D. Ky. Nov. 20, 2015) (showing of reliance unnecessary).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Ky. Rev. Stat. § 367.220 (“Nothing in this subsection shall be construed to limit a person’s right to seek punitive damages where appropriate”).
f. Attorney fees for consumers	Undecided	Ky. Rev. Stat. § 367.220(3) allows the court to award attorney fees to the prevailing party. There are no reported cases in which a consumer was required to pay the business’s attorney fees, so it is possible that Kentucky courts will interpret this provision like the Illinois Supreme Court did in <i>Krautsack v. Anderson</i> , 861 N.E.2d 633, 645 (Ill. 2006), as allowing a fee award against the consumer only if the consumer acted in bad faith.
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute prohibits class actions, and they are allowed under the general rules of court in Kentucky.

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.

b. Equitable relief	Strong	Ky. Rev. Stat. § 367.190
c. Restitution for consumers	Strong	Ky. Rev. Stat. § 367.200
d. Civil penalty amount for initial violations	Weak	Ky. Rev. Stat. § 367.990 (up to \$2,000 per violation if willful)

## LOUISIANA

### La. Rev. Stat. Ann. §§ 51:1401 through 51:1420 Unfair Trade Practices and Consumer Protection Law

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	La. Rev. Stat. Ann. § 51:1405(A) (unfair acts or practices)
b. Broadly prohibits deceptive acts	Strong	La. Rev. Stat. Ann. § 51:1405(A)
c. Provides the state agency substantive rulemaking authority	Strong	La. Stat. Ann. § 51:1405(B). The state has adopted a number of regulations.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Weak	La. Rev. Stat. Ann. § 51:1406(1) exempts all federally insured financial institutions and entities licensed by Louisiana’s office of financial institutions. It also exempts actions or transactions subject to the jurisdiction of certain financial institution regulators. While the statute may still cover some activities and some creditors, this is a very broad exemption for most creditors.
b. Insurance	Weak	La. Rev. Stat. Ann. § 51:1406(1) exempts “actions or transactions subject to the jurisdiction of the . . . insurance commissioner.” A few decisions interpret this language to exempt insurers only if the act or practice in question is enumerated in the state’s unfair insurance practices laws. <i>See, e.g., Foster-Somerled Enters., LLC v. St. Paul’s Episcopal Church</i> , 212 So. 3d 1191 (La. Ct. App. 2017). However, even that view would exclude a wide range of claims regarding insurance practices, and most Louisiana courts have interpreted this language as a broad exclusion of insurers, regardless of whether they are engaging in deceptive acts. <i>See, e.g., Phillips v. Patterson Ins. Co.</i> , 813 So. 2d 1191 (La. Ct. App. 2002); <i>Southern General Agency, Inc. v. Safeway Ins. Co.</i> , 769 So.2d 606 (La. App. 2000).
c. Utilities	Weak	La. Rev. Stat. Ann. § 51:1406(1) exempts “actions or transactions subject to the jurisdiction of the Louisiana Public Service Commission or other public utility regulatory body.” This language may not preclude UDAP claims that are based on aspects of a utility’s activities that are outside the jurisdiction of the utility commission. <i>See, e.g., Dixie Elec. Membership Corp. v. AT&amp;T</i> , 2013 WL 150379 (M.D. La. Jan. 14, 2013). However, it still excludes most utility matters that affect consumers.

d. Post-sale acts (debt collection, repossession)	Strong	Louisiana prohibits unfair or deceptive acts and practices as long as they are “in the conduct of any trade or commerce.” La. Rev. Stat. § 51:1405(A). The state defines “trade” or “commerce” very broadly as “advertising, offering for sale, sale, or distribution of any services and any property, corporeal or incorporeal, immovable or movable, and any other article, commodity, or thing of value wherever situated. . . .” La. Rev. Stat. § 51:1402(10). Although the courts have not addressed whether the UDAP statute covers debt collection, wrongful repossession appears to be covered. <i>See, e.g., Bryant v. Sears Consumer Fin. Corp.</i> , 617 So. 2d 1191 (La. Ct. App. 1993). It is likely that courts will apply the same reasoning to debt collection. However, Louisiana’s broad exemption for financial institutions will exempt many mortgage servicers.
e. Real estate	Strong	La. Rev. Stat. Ann. § 51:1402 broadly defines “trade or commerce” so that it covers real estate transactions. The private cause of action is not limited in a way that could be interpreted to exclude real estate transactions.

<b>3. CONSUMER ACCESS TO JUSTICE</b>	<b>COMMENTS</b>
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a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	Louisiana courts have not reached the question whether reliance is required.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	La. Rev. Stat. Ann. § 51:1409(A) if knowing violation after being put on notice by Attorney General
f. Attorney fees for consumers	Strong	La. Rev. Stat. Ann. § 51:1409(A)
g. UDAP statute does not prohibit class actions	Weak	La. Rev. Stat. Ann. § 51:1409 disallows suit in representative capacity.

<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>	<b>COMMENTS</b>
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a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	La. Rev. Stat. Ann. § 51:1407(A)
c. Restitution for consumers	Strong	La. Rev. Stat. Ann. § 51:1408(A)
d. Civil penalty amount for initial violations	Mixed	La. Rev. Stat. Ann. § 51:1407(B) (up to \$5,000 per violation if the act is done with intent to defraud)

## MAINE

### Me. Rev. Stat. Ann. tit. 5, §§ 205A through 214 Unfair Trade Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Me. Rev. Stat. Ann. tit. 5 § 207
b. Broadly prohibits deceptive acts	Strong	Me. Rev. Stat. Ann. tit. 5 § 207
c. Provides the state agency substantive rulemaking authority	Strong	Me. Rev. Stat. Ann. tit. 5 § 207(2). The state has adopted several regulations.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Mixed	<p>Maine’s UDAP statute applies to “trade” and “commerce,” which are broadly defined to include “distribution of . . . services, . . . any property . . . and any other article, commodity or thing of value.” Me. Rev. Stat. Ann. tit. 5 § 206(3). This language clearly encompasses credit. The private cause of action in Me. Rev. Stat. tit. 5, § 213(1) extends to “[a]ny person who purchases or leases goods, services, or property.” There could be some question whether this language affords a private cause of action in the case of a personal loan. However, it clearly covers purchase-money credit, and courts in a number of states have held that credit transactions involve a “service” for purposes of UDAP coverage, so it is likely that the statute would be interpreted to afford a private cause of action for unfair and deceptive practices arising out of non-purchase money loans as well.</p> <p>In the past a broad Maine statutory exemption for the activities of regulated institutions might have undercut coverage of credit transactions, but this exemption was significantly narrowed by a 2007 amendment. The statute now exempts “transactions or actions otherwise permitted under laws” administered by a state or federal regulatory board, but goes on to state that this exemption applies only if the defendant shows that the specific activity is authorized, permitted, or required by the agency. However, a provision of a state banking law provides that state-chartered banks and credit unions are exempt from the UDAP statute. Me. Rev. Stat. Ann. tit. 9-B, § 244.</p>
b. Insurance	Strong	<p>Maine’s definition of “trade” and “commerce” includes “distribution of . . . any property,” so is broad enough to encompass insurance. Me. Rev. Stat. Ann. tit. 5 § 206(3). The exemption at Me. Rev. Stat. tit. 5, § 208, for “transactions or actions otherwise permitted under laws” administered by a regulatory body is unlikely to be interpreted as a blanket exemption for insurance transactions. <i>See Campbell v. First Am. Title Ins. Co.</i>, 644 F. Supp. 2d 126 (D. Me. 2009) (exemption inapplicable to claim that title insurer was charging more than approved rates). Pre-2007 decisions were mixed as to whether this language created a blanket exemption for insurance transactions, but the exemption was significantly narrowed by statutory amendment in 2007.</p>

c. Utilities	Strong	Me. Rev. Stat. tit. 5, § 206(3) defines “trade” and “commerce” to include “distribution of . . . any property . . . and any other article, commodity or thing of value.” This expansive language is clearly broad enough to encompass utility service. Me. Rev. Stat. tit. 5, § 208, exempts “[t]ransactions or actions otherwise permitted” under laws administered by a regulatory agency, but the statute limits this exemption to instances where “[t]he specific activity that would otherwise constitute a violation of this chapter is authorized, permitted or required by a state or federal agency or by applicable law, rule or regulation or other regulatory approval.” This exemption is unlikely to be interpreted as a blanket exemption for utility transactions.
d. Post-sale acts (debt collection, repossession)	Strong	An unfair or deceptive act or practice is a violation as long as it is committed “in the conduct of any trade or commerce.” Me. Rev. Stat. tit. 5, § 207. Maine broadly defines “trade” and “commerce” to include “the advertising, offering for sale, sale or distribution of any services and any property, tangible, or intangible, real, personal or mixed, and any other article, commodity, or thing of value. . . .” Me. Rev. Stat. tit. 5, § 206(3). In <i>Newcombe v. Mooers</i> , 2000 WL 33675662 (Me. Super. 2000), a trial court found that improper repossession violated the statute, and in <i>Bowen v. Ditech Financial, LLC</i> , 2017 WL 4183081 (D. Me. Sept. 20, 2017), a court applied the statute to collection of a mortgage loan. <i>See also McCahey v. Fed. Nat’l Mortg. Ass’n v. Fed. Nat’l Mortg. Ass’n</i> , 266 F. Supp. 3d 421 (D. Me. 2017) (applying UDAP statute to misrepresentations in connection with mortgage loan).
e. Real estate	Strong	Me. Rev. Stat. Ann. tit. 5 § 206(3) defines trade or commerce to include real property, and the private cause of action, §213(1), also explicitly applies to real property.
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	Although not free from doubt, decisions interpreting Maine’s UDAP statute generally support a conclusion that reliance is not required. <i>Tungate v. MacLean-Stevens Studios</i> , 714 A. 2d 792, 797 (Me. 1998) holds that “a practice may be deceptive if it ‘could reasonably be found to have caused a person to act differently from the way he otherwise would have acted.’” In contrast, in <i>GxG Management, LLC v. Young Bros. and Co., Inc.</i> , 457 F. Supp. 2d 47 (D. Me. 2006), the court granted defendant’s motion for summary judgment on a UDAP claim because reliance was not shown. However, the court cited <i>State v. Weinschenk</i> , 868 A.2d 200, 206 (Me. 2005), for the proposition that “a claim for a deceptive trade practice requires proof of a material misrepresentation that misleads the consumer regarding choice or conduct in relation to a product.” But the court in <i>Weinschenk</i> actually said that “[a]n act or practice is deceptive if it is a material representation, omission, act or practice that is <i>likely</i> to mislead consumers acting reasonably under the circumstances.” <i>Weinschenk</i> at 206 (emphasis added). Since state courts are the final arbiters of interpretations of state statutes, the <i>GxG Management</i> decision is entitled to little weight. However, the issue remains unresolved in Maine.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Weak	Me. Rev. Stat. Ann. tit. 5 § 213(1-A).
e. Multiple or punitive damages	Weak	The statute has no provision for multiple or punitive damages.
f. Attorney fees for consumers	Strong	Me. Rev. Stat. Ann. tit. 5 § 213(2)

g. UDAP statute does not prohibit class actions	Strong	Nothing in the Maine UDAP statute precludes class actions, and class actions have gone forward under the statute. <i>See, e.g., Oceanside at Pine Point Condominium Owners Ass'n v. Peachtree Doors, Inc.</i> 659 A.2d 267 (Me. 1995).
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4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY	COMMENTS	
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Me. Rev. Stat. Ann. tit. 5 § 209
c. Restitution for consumers	Strong	Me. Rev. Stat. Ann. tit. 5 § 209
d. Civil penalty amount for initial violations	Strong	Me. Rev. Stat. Ann. tit. 5 § 209 (up to \$10,000 per violation if intentional).

## MARYLAND

Md. Code Ann., Com. Law §§ 13-101 through 13-501 (West)  
Maryland Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS	COMMENTS	
a. Broadly prohibits unfair or unconscionable acts	Strong	Md. Code Comm. Law §13-303 (unfair practices)
b. Broadly prohibits deceptive acts	Strong	Md. Code Comm. Law § 13-301(1), (3); §13-303
c. Provides the state agency substantive rulemaking authority	Strong	Md. Code Comm. Law §§ 13-204(12), 13-205. State has adopted several regulations.
2. SCOPE OF STATUTE	COMMENTS	
a. Creditors and credit	Strong	Maryland's UDAP statute applies to extensions of credit, and the statute defines "consumer" to include a recipient of consumer credit, Md. Code Comm. Law § 13-101(c)(1). The private cause of action is not limited in a way that would preclude the application of the statute to credit transactions. Md. Code Comm. Law § 13-408. In addition, Md. Code Comm. Law § 13-316 imposes specific requirements on mortgage servicers—requirements that would be meaningless if the statute were not applicable to mortgage transactions.
b. Insurance	Weak	Md. Code Ann., Com. Law § 13-104(1) excludes "professional services of a . . . insurance company authorized to do business in the State." It also excludes the professional services of insurance producers licensed by the state.
c. Utilities	Weak	Md. Code Ann., Com. Law § 13-104 provides that the UDAP statute does not apply to a "public service company, to the extent that the company's services and operations are regulated by the Public Service Commission." Md. Code Ann., Pub. Util. § 1-101 defines "public service company" as "a common carrier company, electric company, gas company, sewage disposal company, telegraph company, telephone company, water company, or any combination of public service companies." The exemption allows room for the UDAP statute to apply to any unregulated services or operations, but the regulated activities of utility providers appear to be exempt.



d. Post-sale acts (debt collection, repossession)	Strong	Md. Code Comm. Law § 13-301(14)(iii) explicitly makes a violation of the state debt collection law a UDAP violation. Another part of the UDAP statute, Md. Code Com. Law § 13-303(5), provides that a person may not engage in any unfair or deceptive trade practice in the collection of consumer debts. The state's highest court has applied the statute to medical billing practices. <i>Scull v. Groover, Christie &amp; Merritt, P.C.</i> , 76 A.3d 1186 (Md. 2013). Other courts have applied the statute to mortgage servicing. <i>See, e.g., Marchese v. JPMorgan Chase Bank</i> , 917 F. Supp. 2d 452, 466 (D. Md. 2013).
e. Real estate	Mixed	Md. Code Comm. Law § 13-101(c)(1) defines consumer to include a purchaser, lessee, or recipient of consumer realty. Md. Code Comm. Law § 13-303(1), (2) says that a person may not engage in any unfair or deceptive trade practice in the sale, lease, rental, loan or bailment of consumer realty, or the offer thereof. In addition, Md. Code Comm. Law § 13-316 imposes specific requirements on mortgage servicers. However, Md. Code Comm. Law § 13-104 excludes "the professional services of a ... real estate broker, associate real estate broker, or real estate salesperson," without limiting this exclusion to unknowing or unintentional deception.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Weak	An early decision, <i>State v. Andrews</i> , 533 A.2d 282, 286 (Md. Ct. Spec. App. 1987), held that consumers who entered into contracts with a health club that closed did not have to show reliance, as it was an implied condition of their contract that the club would remain open. In addition, <i>Nyhart v. PNC Bank</i> , 2016 WL 6996744, at *6 (D. Md. Nov. 30, 2016), holds that a showing of reliance is not necessarily required for claims that do not depend on a violation of the prohibition against false or misleading statements. However, in other situations courts have held that a showing of reliance is required. <i>See, e.g., Healy v. BWW Law Group, LCC</i> , 2017 WL 2819997, at *3-4 (D. Md. Jan. 23, 2017); <i>Sterling v. Ourisman Chevrolet of Bowie Inc.</i> , 2015 WL 2213708 (D. Md. May 8, 2015) (private party must prove reliance); <i>Green v. Wells Fargo Bank</i> , 927 F. Supp. 2d 244, 254 n.8 (D. Md. 2013) (showing of reliance required for private suit), <i>aff'd</i> , 582 Fed. Appx. 246 (4th Cir. 2014); <i>Farwell v. Story</i> , 2010 WL 4963008 (D. Md. Dec. 1, 2010) (consumer who brings suit must establish loss caused by reliance on seller's misrepresentation); <i>Consumer Prot. Div. v. Morgan</i> , 874 A.2d 919, 941-943 (Md. 2005) (Consumer Protection Division can establish violation and make general restitution order without evidence of reliance, but must establish a procedure to determine whether individual consumers relied before awarding restitution to them); <i>Consumer Prot. Div. v. Consumer Publishing Co.</i> , 501 A.2d 48, 74 (Md. 1985) (to receive restitution in action brought by state, consumers must submit claim form stating that they relied on false advertising); <i>Hoffman v. Stamper</i> , 843 A.2d 153 (Md. Ct. Spec. App. 2004) (reasonable reliance necessary for recovery; shown here), <i>aff'd in relevant part on other grounds, rev'd in part on other grounds</i> , 867 A.2d 276, 294-295 (Md. 2005) (affirming UDAP judgment without deciding whether showing of reliance was necessary). <i>See also See also B&amp;S Marketing Enters., LLC v. Consumer Prot. Div.</i> , 835 A.2d 215, 238 n.15 (Md. Ct. Spec. App. 2003) (state need not show reliance in order to obtain restitution for consumers when claim is based on determination that usurious loans are void, but when claim is based on a misrepresentation the state must show causation).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.

d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Weak	The statute does not include any provision for multiple or punitive damages.
f. Attorney fees for consumers	Strong	Md. Code Comm. Law § 13-408(b)
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute prohibits class actions, and Maryland courts have certified numerous cases as class actions under this statute. <i>See, e.g., Green v. H &amp; R Block, Inc.</i> , 735 A.2d 1039 (Md. 1999) (reversing dismissal of a class action which consisted of, among others, a claim under the state’s UDAP statute).
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Md. Code Comm. Law § 13-406
c. Restitution for consumers	Strong	Md. Code Comm. Law § 13-406
d. Civil penalty amount for initial violations	Weak	Md. Code Comm. Law § 13-410(a), (b) – up to \$1,000 per violation. (\$5,000 per violation, but only for repeat offenders, not for initial violations).

## MASSACHUSETTS

### Mass. Gen. Laws Ann. ch. 93A, §§ 1 through 11 Regulation of Business Practice and Consumer Protection Act

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Strong	Mass. Gen. Laws Ch. 93A, § 2(a)
b. Broadly prohibits deceptive acts	Strong	Mass. Gen. Laws Ch. 93A, § 2(a)
c. Provides the state agency substantive rulemaking authority	Strong	Mass. Gen. Laws Ch. 93A, § 2(c) – and state has adopted a number of regulations.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Strong	The Massachusetts UDAP statute prohibits unfair and deceptive acts and practices “in the conduct of any trade or commerce,” which is broadly defined. Mass. Gen. Laws ch. 93A, § 2(a). Mass. Gen. Laws ch. 93A, § 3 exempts “transactions or actions otherwise permitted under laws as administered by” state and federal regulatory boards, but Massachusetts courts have read this exemption narrowly to require the defendant to “show that such scheme affirmatively permits the practice which is alleged to be unfair or deceptive.” <i>Fleming v. National Union Fire Ins. Co.</i> , 837 N.E.2d 1113 (Mass. 2005). In addition, the Massachusetts attorney general has adopted regulations for certain credit transactions under the UDAP statute. Mass. Regs. Code tit. 940, §§ 3.07, 8.01 to 8.08.
b. Insurance	Strong	The Massachusetts Supreme Judicial Court has held that insurers are subject to the state UDAP statute. <i>Hopkins v. Liberty Mut. Ins. Co.</i> , 750 N.E.2d 943, 949-50 (Mass. 2001).

c. Utilities	Strong	Utility service appears to fall within the UDAP statute's broad coverage of "trade or commerce." Mass. Gen. Laws ch. 93A, § 2(a). In <i>Spence v. Boston Edison Co.</i> , 459 N.E.2d 80 (Mass. 1983), the state's highest court affirmed a trial court's decision not to dismiss UDAP claims against a utility where the plaintiffs claimed that the utility overcharged for steam.
d. Post-sale acts (debt collection, repossession)	Strong	The statute prohibits unfair and deceptive acts and practices "in the conduct of any trade or commerce," which is broadly defined. Mass. Gen. Laws ch. 93A, §§ 1(b), 2(a). The state's highest court has had no difficulty applying this broad statute to debt collection. <i>See, e.g., Kattar v. Demoulas</i> , 739 N.E.2d 246, 257-258 (Mass. 2000); <i>Schubach v. Household Fin. Co.</i> , 376 N.E.2d 140 (Mass. 1978). In addition, the attorney general has adopted a debt collection regulation under the statute. 940 Mass. Code Regs. §§ 7.01 to 7.10.
e. Real estate	Strong	Mass. Gen. Laws ch. 93A, § 1(b) defines trade or commerce to include real property.
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	Many state court decisions hold that a showing of reliance is unnecessary. <i>See, e.g., Iannacchino v. Ford Motor Co.</i> , 888 N.E.2d 879, 886 n.12 (Mass. 2008); <i>Aspinall v. Philip Morris Cos.</i> , 813 N.E.2d 476, 486 (Mass. 2004); <i>Heller Fin. v. INA</i> , 573 N.E.2d 8 (Mass. 1991) (reliance not necessary, but plaintiff must show causal connection between misrepresentation and injury); <i>Int'l Fid. Ins. Co. v. Wilson</i> , 443 N.E.2d 1308 (Mass. 1983). Some federal decisions deviate from this rule. <i>See, e.g., Edlow v. RBW, L.L.C.</i> , 688 F.3d 26, 39 (1st Cir. 2012) (construing Mass. "capacity to deceive" standard as imposing reliance requirement); <i>Rodi v. Southern New England Sch. of Law</i> , 532 F.3d 11 (1st Cir. 2008) (consumer must prove reasonable reliance for fraudulent misrepresentation claim under Mass. UDAP statute); <i>Trifiro v. N.Y. Life Ins. Co.</i> , 845 F.2d 30, 33 n.1 (1st Cir. 1988) (while some causal chains exist in which reliance plays no part, it is required when claim is based on a misrepresentation, and reliance must be reasonable). However, but the state decisions should be considered controlling.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Weak	Mass. Gen. Laws ch. 93A, § 9(3) requires pre-suit notice, with limited exceptions.
e. Multiple or punitive damages	Strong	Mass. Gen. Laws ch. 93A, § 9(3) if willful or knowing or if defendant acted in bad faith or with knowledge of violations in refusing to grant relief in response to consumer's demand.
f. Attorney fees for consumers	Strong	Mass. Gen. Laws ch. 93A, § 9(4)
g. UDAP statute does not prohibit class actions	Strong	Mass. Gen. Laws ch. 93A, § 9(2) explicitly authorizes class actions for violations of the UDAP statute, with requirements that are less stringent than Rule 23. <i>See Aspinall v. Philip Morris Companies, Inc.</i> , 813 N.E.2d 476, 484 (2004).
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.

b. Equitable relief	Strong	Mass. Gen. Laws Ch. 93A, § 4
c. Restitution for consumers	Strong	Mass. Gen. Laws Ch. 93A, § 4
d. Civil penalty amount for initial violations	Mixed	Mass. Gen. Laws Ch. 93A, § 4 (\$5,000 per violation if defendant knew or should have known that practice was a violation)

## MICHIGAN

### Mich. Comp. Laws §§ 445.901 through 445.922 Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	See, in particular, Mich. Comp. Laws Ann. § 445.903(1)(x), (z); other subsections are also relatively broad.
b. Broadly prohibits deceptive acts	Strong	See, in particular, Mich. Comp. Laws Ann. § 445.903(1)(s), (bb), (cc); other subsections are also relatively broad.
c. Provides the state agency substantive rulemaking authority	Weak	Mich. Comp. Laws Ann. § 445.903(2) gives the AG rulemaking authority, but forbids rules that create additional unfair trade practices not already enumerated.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Weak	Mich. Comp. Laws Ann. § 445.904(1)(a) exempts transactions or conduct specifically authorized under laws administered by a regulatory body. This exemption has been interpreted by a number of Michigan courts to exempt lending. See, e.g., <i>Molosky v. Washington Mut., Inc.</i> , 664 F.3d 109, 117-118 (6 <sup>th</sup> Cir. 2011). Although it would probably not apply to a lender that has failed to get a license that is required by law, it still excludes most consumer lenders.
b. Insurance	Weak	Michigan’s UDAP statute includes an exemption for “a transaction or conduct specifically authorized under laws administered by a regulatory board.” Mich. Comp. Laws § 445.904(1). While this language could be read to exempt only specifically authorized practices, the Michigan Supreme Court has construed the exemption extremely broadly. <i>Liss v. Lewiston-Richards, Inc.</i> , 732 N.W.2d 514 (Mich. 2007). Accordingly, courts have held that the Michigan UDAP statute does not apply to insurance transactions. See <i>Smith v. Globe Life Ins.</i> , 597 N.W.2d 28 (Mich. 1999). In addition, a separate section of the UDAP statute provides that it does not apply or create a private cause of action for an act or practice that is made unlawful by the state unfair insurance practices statutes. Mich. Comp. Laws Ann. § 445.904(3).
c. Utilities	Weak	Given the extraordinarily broad reading of the exemption in Mich. Comp. Laws Ann. § 445.904 for “a transaction or conduct specifically authorized” under laws administered by a regulatory agency in cases like <i>Liss v. Lewiston-Richards, Inc.</i> , 732 N.W.2d 514 (Mich. 2007), it is unlikely that Michigan courts would find that the UDAP statute covers utilities.

d. Post-sale acts (debt collection, repossession)	Undecided	Michigan’s UDAP statute, Mich. Comp. Laws Ann. § 445.903, prohibits unfair, unconscionable, or deceptive acts that occur “in the conduct of trade or commerce.” “Trade or commerce” is broadly defined as “the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity.” Mich. Comp. Laws Ann. § 445.902(g). This language is broad enough to cover debt collection, and in <i>DIRECTV, Inc. v. Cavanaugh</i> , 321 F. Supp. 2d 825 (E.D. Mich. 2003), a district court allowed a UDAP claim to go to trial based on the collection activities of a vendor of satellite TV service. Another question, however, is the effect of the Michigan statutes that license and regulate debt collectors. Michigan courts have construed the UDAP statute’s exemption for regulated industries extremely broadly. <i>Liss v. Lewiston-Richards, Inc.</i> , 732 N.W.2d 514 (Mich. 2007). It is conceivable that courts could find that even debt collectors are exempt. In addition, courts hold that mortgage servicers fall within this exemption. <i>See, e.g., Chungag v. Wells Fargo Bank</i> , 2011 WL 672229 (E.D. Mich. Feb. 17, 2011), <i>aff’d on other grounds</i> , 489 Fed. Appx. 820 (6th Cir. 2012).
e. Real estate	Mixed	Mich. Comp. Laws Ann. § 445.902 defines trade or commerce to include real estate, and the private cause of action section, Mich. Comp. Laws Ann. § 445.911, is not worded in a way that could be construed to exclude real estate transactions. <i>See Price v. Long Realty, Inc.</i> , 502 N.W.2d 337 (Mich. App. 1993) (holding that real estate is included within trade or commerce under the act, and finding UDAP liability against a real estate broker). However, the extremely broad reading that the Michigan Supreme Court gave to the exemption at Mich. Comp. Laws Ann. § 445.904 in <i>Liss v. Lewiston-Richards, Inc.</i> , 732 N.W.2d 514 (Mich. 2007), makes it likely that that licensed real estate brokers, and any other party involved in a real estate transaction that holds a state license, will be found exempt from the statute. This major gap in coverage leaves consumers with little redress under the state UDAP statute for unfair, unconscionable, or deceptive practices in real estate transactions.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	Whether reliance is required depends on the specific statutory UDAP provision under which the plaintiff sues. This was explained in <i>Evans v. Ameriquest Mortg. Co.</i> , 2003 WL 734169, at *3 (Mich. App. 2003), where an intermediate appellate court explained that “[w]hile a common law fraud claim based on misrepresentation requires that the plaintiff show reasonable reliance on misrepresentation..., only two of the MCPA’s thirty-three ‘unfair, unconscionable, or deceptive methods, acts or practices’ expressly require some form of reasonable reliance by the consumer” (citations omitted) (referencing Mich. Comp. Laws Ann. §§ 445.903(1)(s) and (bb)). In addition, <i>Dix v. Am. Bankers Life Assurance Co.</i> , 415 N.W.2d 206 (Mich. 1987), held that plaintiffs in a class action need not prove individual reliance, but instead may prove that “a reasonable person would have relied on the representations” of the defendant. <i>See also Gilkey v. Cent. Clearing Co.</i> , 202 F.R.D. 515 (E.D. Mich. 2001); <i>Gasperoni v. Metabolife</i> , 2000 WL 33365948 (E.D. Mich. Sept. 27, 2000). However, some decisions depart from or distinguish the state supreme court’s decision in <i>Dix</i> , and hold that proof of reliance is required for UDAP claims. <i>See, e.g., In re Porsche Cars N. Am., Inc.</i> , 880 F. Supp. 2d 801, 854–855 (S.D. Ohio 2012) (Mich. law) (must plead named plaintiff’s reliance on misrepresentations; reliance cannot be shown where named plaintiff never saw the misrepresentation); <i>Jackson v. Tel. Chrysler Jeep, Inc.</i> , 2009 WL 928224 (E.D. Mich. Mar. 31, 2009) (erroneously holding that UDAP claim requires proof of common law fraud elements, including reliance). Despite these decisions, the state supreme court’s ruling should be considered controlling.

c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Weak	The statute does not include any provision for multiple or punitive damages.
f. Attorney fees for consumers	Strong	Mich. Comp. Laws Ann. § 445.911(2)
g. UDAP statute does not prohibit class actions	Strong	Mich. Comp. Laws Ann. § 445.911(3).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Mich. Comp. Laws Ann. § 445.905
c. Restitution for consumers	Strong	Mich. Comp. Laws Ann. § 445.910(2)
d. Civil penalty amount for initial violations	Strong	Mich. Comp. Laws Ann. § 445.905(1) – up to \$25,000 for a violation if knowing and persistent

## MINNESOTA

Minn. Stat. § 8.31  
Minn. Stat. § 325F.67  
False Statement in Advertising Act  
Minn. Stat. §§ 325F.68 through 325F.70  
Prevention of Consumer Fraud Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Weak	The statute does not include a broad prohibition of unfair or unconscionable acts.
b. Broadly prohibits deceptive acts	Strong	Minn. Stat. § 325F.69(1)
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	Merchandise is defined by Minn. Stat. § 325F.68(2) to include loans, and Minn. Stat. § 325F.691 is a specific prohibition regarding mortgage loan closings. In <i>Higgins v. Harold-Chevrolet-Geo, Inc.</i> , 2004 WL 2660923, at *2 (Minn. App. 2004), a Minnesota appellate court noted that the state UDAP statute “was amended in 1997 to add ‘loans’ to the definition of merchandise.”

b. Insurance	Strong	Insurance appears to fall within the broad definition of “merchandise” at Minn. Stat. § 325F.68(2), and several courts have held that the statute covers insurance. <i>See, e.g., Force v. ITT Hartford Life &amp; Annuity Ins. Co.</i> , 4 F. Supp. 2d 843, 856 (D. Minn. 1998). A provision of Minn. Stat. § 8.31, the statute that authorizes enforcement of the UDAP statute, formerly provided that it was inapplicable to entities engaged in the insurance business, but this provision was repealed in 1983, lending further support to the view that the statute now applies to insurance. <i>See Morris v. Am. Family Mut. Ins. Co.</i> , 386 N.W.2d 233, 236 (Minn. 1986). The Minnesota Supreme Court has held that the UDAP statute does not create a private cause of action to enforce the state unfair insurance practices statute. <i>Id.</i> In addition, the filed rate doctrine will bar a challenge to insurance rates. <i>Schermer v. State Farm Fire &amp; Cas. Co.</i> , 721 N.W.2d 307 (Minn. 2006). However, since most UDAP claims would not be challenges to rates and would not need to rely on the unfair insurance practices statute, it does not appear that these decisions would stand in the way of application of the UDAP statute to most unfair and deceptive practices involving insurance.
c. Utilities	Strong	Although Minnesota courts have not addressed the question, the definition of “merchandise” at Minn. Stat. § 325F.68(2) includes “services,” and nothing in the statute provides any basis for excluding utility service.
d. Post-sale acts (debt collection, repossession)	Weak	The scope section of Minnesota’s Prevention of Consumer Fraud Act requires that the unlawful practice must be “in connection with the sale of any merchandise.” Minn. Stat. § 325F.69. The broad language “in connection with” would appear to cover post-sale acts such as debt collection as long as the transaction is in “trade or commerce” and involves “merchandise.” Nonetheless, although their rationale is not strong, several courts have construed this or other language in the statute to exclude post-sale acts. <i>See, e.g., Thinesen v. JBC Legal Group, P.C.</i> , 2005 WL 2346991 (D. Minn. Sept. 26, 2005). Several decisions also hold that Minnesota’s Deceptive Trade Practices Act and its Unlawful Trade Practices Act do not apply to debt collection. <i>See, e.g., Maneval v. Jon R. Hawks, Ltd.</i> , 1999 WL 33911242 (D. Minn. Oct. 13, 1999).
e. Real estate	Strong	Merchandise is defined by Minn. Stat. § 325F.68(2) to include real estate, and § 325F.691 is a specific prohibition regarding mortgage loan closings. Nothing in the private cause of action statute, Minn. Stat. § 8.31, precludes a consumer from bringing suit regarding a real estate transaction.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Mixed	Minn. Stat. § 325F.69(1) requires a showing of intent that others rely, but this is different than requiring actual reliance. In <i>Wiegand v. Walser Automotive Groups, Inc.</i> , 683 N.W.2d 807, 811 (Minn. 2004), the Minnesota Supreme Court held that it was not necessary to plead individual reliance, but to recover the consumer had to prove a causal nexus, which requires at least circumstantial evidence of reliance. <i>See also In re St. Jude Med., Inc.</i> , 522 F.3d 836 (8th Cir. 2008) (Minn. law) (reliance still relevant; defendant can introduce evidence of non-reliance to negate causal nexus); <i>Group Health Plan, Inc. v. Philip Morris Inc.</i> , 621 N.W.2d 2 (Minn. 2001) (private plaintiffs in damages suit need not plead or prove reliance but must prove causation, which may require direct or circumstantial evidence of reliance).

c. Does not require a showing of public interest or public impact	Weak	In <i>Ly v. Nystrom</i> , 615 N.W.2d 302 (Minn. 2000), the Minnesota Supreme Court imposed a public interest test. Since then, some courts have construed this requirement so broadly as to make it extremely difficult for consumers to bring suit under the statute.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Weak	The statute does not include a provision for multiple or punitive damages.
f. Attorney fees for consumers	Strong	Minn. Stat. § 8.31(3a)
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute precludes class actions, and several have been allowed. <i>See, e.g., Wiegand v. Walser Automotive Groups, Inc.</i> , 683 N.W.2d 807 (Minn. 2004) (reversing dismissal of a class action UDAP claim against a car dealership); <i>Gordon v. Microsoft Corp.</i> , 2003 WL 23105550 (Minn. Dist. Ct. 2003) (denying defendant's motion to decertify a class where UDAP claims were brought against the defendant).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Mixed	Although it is a less demanding standard than proof of intent to deceive, Minn. Stat. § 325F.69(1) requires a showing of intent that others rely on the defendant's deception.
b. Equitable relief	Strong	Minn. Stat. §§ 8.31(3), 325F.70
c. Restitution for consumers	Strong	Minn. Stat. § 8.31(3a) allows the Attorney General to obtain the remedies an individual may obtain, which include damages. Minn. Stat. § 8.31(2c) also refers to sums recovered for the benefit of injured persons. Case law allows recovery of broad restitution under the <i>parens patriae</i> doctrine. <i>See State by Humphrey v. Alpine Air Products, Inc.</i> , 500 N.W.2d 888, 896 n. 4 (Minn. 1993).
d. Civil penalty amount for initial violations	Strong	Minn. Stat. § 8.31(3) - up to \$25,000

## MISSISSIPPI

Miss. Code Ann. §§ 75-24-1 through 75-24-27  
Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Mixed	Miss. Code § 75-24-5(1) broadly prohibits unfair practices, but only allows AG enforcement of this prohibition.
b. Broadly prohibits deceptive acts	Mixed	Miss. Code § 75-24-5(1) broadly prohibits deceptive practices, but only allows AG enforcement of this prohibition.
c. Provides the state agency substantive rulemaking authority	Mixed	Miss. Code § 75-24-27(1)(f) allows the Attorney General to adopt substantive regulations. However, although Mississippi proposed several UDAP regulations in 1994, none have ever been adopted, so the state is rated Mixed in this category



2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Undecided	Mississippi's UDAP statute prohibits unfair and deceptive practices as long as they are "in or affecting" commerce, defined broadly. Miss. Code Ann. §§ 75-24-2, 75-24-3(b). Nothing in the statute or decisions excludes credit. Under Miss. Code Ann. § 75-24-15(1), a private cause of action is afforded only to a person who "purchases or leases goods or services." Courts have not yet decided whether this language allows consumers to bring suit for unfair and deceptive practices in the context of credit transactions such as loans, but courts in other states have held that an extension of credit is a service. However, Mississippi's UDAP statute is very weak in other respects, so is unlikely to provide useful remedies to consumers in credit transactions..
b. Insurance	Mixed	Mississippi's UDAP statute prohibits unfair and deceptive practices as long as they are "in or affecting" commerce. Miss. Code § 75-24-5(1). The statute defines "trade" and "commerce" broadly to include "advertising, offering for sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated." Miss. Code § 75-24-3(b). This language is clearly broad enough to include insurance. In addition, Miss. Code § 75-24-5(m) restricts insurers from increasing premiums for members of the military—a prohibition that would be meaningless if the statute did not apply to insurers and insurance. An intermediate appellate decision, <i>Taylor v. Southern Farm Bureau Cas. Co.</i> , 954 So.2d 1045 (Miss. App. 2007), holds that insurance is not "merchandise" and so is not subject to the UDAP statute, but it is entitled to very little weight because neither the scope provisions nor the substantive prohibitions of the statute use the term "merchandise." Another decision, <i>Burley v. Homeowners Warranty Corp.</i> , 773 F. Supp. 844, 861 (S.D. Miss. 1990), holds that a particular prohibition that applied only to goods and services did not apply to an insurance policy, but does not undermine the view that other prohibitions would apply to insurance. While the Mississippi Supreme Court has not ruled on the question, it is hard to imagine how it could find the statute inapplicable to insurance. However, since the private cause of action extends only to persons who purchase or lease goods or services, the decision holding that insurance is not a good or service might be an impediment to assertion of a private cause of action regarding insurance.
c. Utilities	Strong	Miss. Code Ann. § 75-24-3(b) defines "commerce" broadly to include "advertising, offering for sale, or distribution of any services." Nothing in the statute or decisions excludes utilities or provides any basis for distinguishing between utility services and other services.
d. Post-sale acts (debt collection, repossession)	Weak	Mississippi's UDAP statute prohibits unfair and deceptive practices as long as they are "in or affecting" commerce. Miss. Code § 75-24-5(1). The statute defines "trade" and "commerce" broadly to include "advertising, offering for sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated." Miss. Code § 75-24-3(b). However, one court held that the statute's private cause of action, which extends only to a person who "purchases or leases goods or services . . . and thereby suffers" a loss, is inapplicable to claims against a debt collector that did not itself provide goods or services to the consumer. <i>Lockey v. CMRE Fin. Servs., Inc.</i> , 2011 WL 2971085 (S.D. Miss. July 20, 2011). In any event, Mississippi's UDAP statute is extremely weak in many other respects, so is unlikely to provide a helpful remedy for deceptive or abusive debt collection tactics.
e. Real estate	Undecided	Miss. Code § 75-24-3(b) defines "commerce" to include real estate transactions. A private cause of action is afforded only to a person who "purchases or leases goods or services," however. Courts in certain other states have construed similar language to include real estate transactions, but no reported decisions have addressed the question in Mississippi.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Weak	Only the attorney general, not consumers, can enforce the statute's broad prohibitions of unfair and deceptive practices. There are also unresolved questions about whether consumers can enforce the statute in certain types of transactions such as debt collection.
b. Does not require reliance	Undecided	Mississippi courts have not imposed an explicit requirement of reliance. However, one decision, finding insufficient allegations of a causal connection between the defendants' deception and the plaintiffs' injuries, suggests that reliance is one means by which causation can be shown. <i>Mayberry v. Bristol-Meyers Squibb Co.</i> , 2009 WL 5216968, at *8-9 (D.N.J. Dec. 30, 2009) (Miss. law)
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Weak	Miss. Code § 75-24-15(2) requires pre-suit participation in AG-approved informal dispute settlement program, which necessarily entails a pre-suit notice.
e. Multiple or punitive damages	Weak	The statute has no provision for multiple or punitive damages.
f. Attorney fees for consumers	Weak	Miss. Code § 75-24-15(4) authorizes a fee award to a prevailing defendant if the consumer brought a claim that was frivolous or filed for purposes of delay. There is no provision for an award of fees to prevailing consumers.
g. UDAP statute does not prohibit class actions	Mixed	Mississippi has no class action rule or statute and Mississippi state courts do not recognize class actions. <i>Am. Bankers Ins. Co. v. Booth</i> , 830 So. 2d 1305 (Miss. 2002). However, it is likely that federal courts will be able to hear class actions that seek to enforce the Mississippi UDAP statute, so the state is rated Mixed in this category.
4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Miss. Stat. §§ 8.31(3), 325F.70
c. Restitution for consumers	Strong	Miss. Code § 75-24-11
d. Civil penalty amount for initial violations	Strong	Miss. Code § 75-24-19(1)(b) (\$10,000 per violation, but only if a knowing and willful violation is established by clear and convincing evidence)

# MISSOURI

## Mo. Rev. Stat. §§ 407.010 through 407.307 Merchandising Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Mo. Rev. Stat. § 407.020(1)
b. Broadly prohibits deceptive acts	Strong	Mo. Rev. Stat. § 407.020(1)
c. Provides the state agency substantive rulemaking authority	Strong	Mo. Rev. Stat. § 407.145. The state has adopted a number of rules.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	<p>A prohibited practice must be “in connection with the sale or advertisement of any merchandise in trade or commerce.” Mo. Rev. Stat. § 407.020(1). The statute defines “merchandise” to include “intangibles” and “services,” and “trade or commerce” to include distribution of “any property” and “any . . . other thing of value.” Mo. Rev. Stat. § 407.010(4). These definitions are clearly broad enough to include credit, and a number of courts have applied the statute to credit transactions. <i>See, e.g., Huffman v. Credit Union of Texas</i>, 2011 WL 5008309, at *5 (W.D. Mo. Oct. 20, 2011); <i>Conway v. CitiMortgage, Inc.</i>, 438 S.W.3d 410 (Mo. 2014) (UDAP statute applies to foreclosure on mortgage loan).</p> <p>Additional support for the conclusion that the statute covers credit transactions is Mo. Rev. Stat. § 407.020(2)(2), which explicitly excludes companies and institutions that are under the supervision of the director of finance or the director of credit unions unless that director specifically authorizes the attorney general to proceed “or such powers are provided to either the attorney general or a private citizen by statute.” This exclusion of a subset of creditors implies that the creditors who are not mentioned are covered. One other issue is Mo. Rev. Stat. § 407.025, which extends a private cause of action to any person who “purchases or leases” merchandise, raising the question whether credit involves a “purchase or lease.” Because UDAP statutes are to be interpreted liberally, Missouri courts are likely to conclude that a consumer who acquires an extension of credit is a purchaser.</p>
b. Insurance	Undecided	<p>A prohibited practice must be “in connection with the sale or advertisement of any merchandise in trade or commerce.” Mo. Rev. Stat. § 407.020(1). Mo. Rev. Stat. § 407.010(4) defines “merchandise” to include “intangibles” and “services.” This language appears to be broad enough to include insurance. “Trade” or “commerce” is defined to include distribution of “any property” and “any . . . other thing of value,” which clearly includes insurance. The key issue is the effect of Mo. Rev. Stat. § 407.020(2), which explicitly excludes companies and institutions that are under the supervision of the director of the department of insurance unless “such powers are provided to either the attorney general or a private citizen by statute.” After § 407.020.2(2) was adopted, the legislature passed § 407.025, which authorizes private citizens to bring suit under the UDAP statute. Although Missouri courts have not yet ruled on the question, this may satisfy the requirement that “such powers [be] provided . . . to a private citizen by statute.”</p>

c. Utilities	Strong	The statute applies to the “sale or advertisement of any merchandise in trade or commerce.” Mo. Rev. Stat. § 407.020(1). It defines “merchandise” to include “intangibles” and “services,” and “trade or commerce” is broadly defined to include distribution of “any property” and “any . . . other thing of value.” Mo. Rev. Stat. § 407.010(4), (7). Nothing in the statute excludes utility service from the types of services that it covers. Mo. Rev. Stat. § 407.020(2) excludes some regulated industries but not utilities, thereby supporting the view that utilities are included.
d. Post-sale acts (debt collection, repossession)	Strong	A prohibited practice must be “in connection with the sale or advertisement of any merchandise in trade or commerce.” Mo. Rev. Stat. § 407.020(1). The Missouri Supreme Court has held that a party’s right to collect a loan is part of the credit transaction and is therefore “in connection with” the loan. <i>Conway v. Citimortgage, Inc.</i> , 438 S.W.3d 410 (Mo. 2014). Accordingly, the UDAP statute applies to foreclosure, and this is so regardless of whether it is the original creditor or a third party that is undertaking the collection. <i>Id.</i> Some courts have failed to follow the state supreme court’s ruling in <i>Conway</i> or have given it an unjustifiably narrow interpretation. <i>See, e.g., Bland v. LVNV Funding, LLC</i> , 128 F. Supp. 3d 1152 (E.D. Mo. 2015). In addition, the state supreme court has held that the UDAP statute is inapplicable to mortgage loan modification negotiations, because they are not in connection with the original loan. <i>Watson v. Wells Fargo Home Mortg., Inc.</i> , 438 S.W.3d 404 (Mo. 2014). Nonetheless, in light of the state supreme court’s ruling in <i>Conway</i> , it is reasonable to expect the statute to be applied to most post-sale acts.
e. Real estate	Strong	Mo. Rev. Stat. § 407.010(4) defines “merchandise” to include real estate, as does “trade” or “commerce.” The private cause of action is not limited in any way that would exclude real estate. <i>See Hess v. Chase Manhattan Bank</i> , 220 S.W.3d 758 (Mo. 2007) (real estate is “merchandise” and 2000 amendments allow private cause of action).

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	A showing of reliance is not required under Missouri’s UDAP statute. <i>Hess v. Chase Manhattan Bank, USA, N.A.</i> , 220 S.W.3d 758 (Mo. 2007) (distinguishing common law fraud from a state UDAP claim). <i>See also Edmonds v. Hough</i> , 344 S.W.3d 219 (Mo. Ct. App. 2011) (no need to show that home buyer relied on falsified appraisal); Mo. Code Regs. Ann. tit. 15, § 60-9.020(2) (“[r]eliance, actual deception, knowledge of deception, intent to mislead or deceive, or any other culpable mental state such as recklessness or negligence, are not elements of deception as used in section 407.020.1”).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Mo. Rev. Stat. § 407.025 allows punitive damages.
f. Attorney fees for consumers	Strong	Mo. Rev. Stat. § 407.025(1) states that the court “may award” attorney fees to the prevailing party. Under this provision, requiring the consumer to pay the business’s attorney fees is to be only an extremely rare exception, invoked when the consumer has pursued a vexatious and frivolous claim. <i>Arcese v. Daniel Schmitt &amp; Co.</i> , 504 S.W.3d 772, 789-790 (Mo. Ct. App. 2016).

g. UDAP statute does not prohibit class actions	Strong	Mo. Rev. Stat. § 407.025(2)
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Mo. Rev. Stat. § 407.100(1)
c. Restitution for consumers	Strong	Mo. Rev. Stat. § 407.100(4)
d. Civil penalty amount for initial violations	Weak	Mo. Rev. Stat. § 407.100(6) - up to \$1,000 per violation unless bona fide error shown.

## MONTANA

Mont. Code Ann. §§ 30-14-101 through 30-14-142  
Unfair Trade Practices and Consumer Protection Act

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Strong	Mont. Code § 30-14-103
b. Broadly prohibits deceptive acts	Strong	Mont. Code § 30-14-103
c. Provides the state agency substantive rulemaking authority	Strong	Mont. Code § 30-14-104(2). The state has adopted several rules.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Strong	The Supreme Court of Montana made clear in <i>Enriken v. Motor Coach Fed. Credit Union</i> , 845 P.2d 93, 94 (Mont. 1992), that Montana's UDAP statute "applies to the lending and collecting of money in relation to consumer loans."
b. Insurance	Weak	The Montana Supreme Court has held that the state UDAP statute does not apply to insurance transactions. <i>Britton v. Farmers Ins. Group (Truck Ins. Exchange)</i> , 721 P.2d 303, 323 (Mont. 1986).
c. Utilities	Undecided	Mont. Code Ann. § 30-14-105 excludes "actions or transactions permitted under laws administered by the Montana public service commission." Since Mont. Code Ann. § 69-3-102 places public utilities under the commission's regulatory authority, this exemption excludes at least actions that are specifically authorized by public utility laws, but the state courts have not decided whether it goes beyond that. The exemption does not apply to private electric cooperatives that are not regulated by the public service commission. <i>Granbois v. Big Horn County Elec. Co-op., Inc.</i> , 986 P.2d 1097, 1102 (Mont. 1999).

d. Post-sale acts (debt collection, repossession)	Strong	The Supreme Court of Montana held that the state's UDAP statute applies to "consumer loans by banks in the lending and collecting of such loans." <i>Baird v. Norwest Bank</i> , 843 P.2d 327 (Mont. 1992). The court has also applied the UDAP statute to repossession. <i>Entriiken v. Motor Coach Federal Credit Union</i> , 256 Mont. 85, 845 P.2d 93 (Mont. 1992), and to mortgage servicing, <i>Jacobson v. Bayview Loan Servicing, LLC</i> , 371 P.3d 397, 409-410 (Mont. 2016).
e. Real estate	Strong	The definitions of "consumer" and "trade and commerce" in Mon. Code Ann. § 30-14-102(1) and (8) both include real estate, and the private cause of action is not worded in a way that could be construed to exclude real estate transactions.
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	Nothing in the UDAP statute requires a showing of reliance, and the only court to address the question holds that a showing of reliance is not required. <i>PNC Bank v. Wilson</i> , 2015 WL 3887602 (D. Mont. June 23, 2015).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Mont. Code § 30-14-133(1)
f. Attorney fees for consumers	Strong	Mont. Code § 30-14-133(3) allows fees to the prevailing party, but, "When faced with a successful defendant, a district court should only award attorney fees upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." <i>Tripp v. Jeld-Wen, Inc.</i> 112 P.3d 1018, 1026-27 (Mont. 2005).
g. UDAP statute does not prohibit class actions	Weak	Mont. Code § 30-14-133(1) prohibits class actions
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Mont. Code § 30-14-111(1) requires a showing of knowledge only if the state seeks an injunction against a defendant who is about to use, but has not yet used, an unlawful practice.
b. Equitable relief	Strong	Mont. Code § 30-14-111(1)
c. Restitution for consumers	Strong	Mont. Code § 30-14-131(1)
d. Civil penalty amount for initial violations	Strong	Mont. Code § 30-14-142(2) – up to \$10,000 per violation if willful

# NEBRASKA

## Neb. Rev. Stat. §§ 59-1601 through 59-1623 Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Neb. Rev. Stat. § 59-1602
b. Broadly prohibits deceptive acts	Strong	Neb. Rev. Stat. § 59-1602
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Weak	Nebraska's UDAP statute applies to "trade or commerce," terms which are very broadly defined, and the private cause of action is not limited in a way that would preclude consumers from bringing suit regarding credit transactions. Neb. Rev. Stat. § 59-1602. On the other hand, Neb. Rev. Stat. § 59-1617(1) provides that, with an exception for loan brokers, the UDAP statute does not apply to "actions or transactions otherwise permitted, prohibited, or regulated under laws administered by" a state or federal regulatory body. In <i>Kuntzelman v. Avco Financial Services of Nebraska, Inc.</i> , 291 N.W.2d 705, 707 (Neb. 1980), the Nebraska Supreme Court, interpreting this language, held that conduct is not immunized merely because the actor falls within the jurisdiction of a regulatory body; the conduct must also be regulated. Nonetheless, barring UDAP claims when the conduct is either allowed or prohibited by an agency eliminates a very significant number of the possible claims a consumer could make.
b. Insurance	Strong	Neb. Rev. Stat. § 59-1617(1) provides that, with an exception for loan brokers, the UDAP statute does not apply to "actions or transactions otherwise permitted, prohibited, or regulated under laws administered by" a state or federal regulatory body. Notwithstanding this language, Neb. Rev. Stat. § 59-1617(2) goes on to provide: "Actions and transactions prohibited or regulated under the laws administered by the Director of Insurance shall be subject to section 59-1602 and all statutes which provide for the implementation and enforcement of section 59-1602." As a result, it appears that the Nebraska UDAP statute covers insurance transactions.
c. Utilities	Weak	Neb. Rev. Stat. § 59-1617(1) provides: "Except as provided in subsection (2) of this section, the Consumer Protection Act shall not apply to actions or transactions otherwise permitted, prohibited, or regulated under laws administered by . . . the Public Service Commission [or] the Federal Energy Regulatory Commission. . ." The Nebraska Supreme Court, interpreting this language, has held that conduct is not immunized merely because the actor falls within the jurisdiction of a regulatory body; the conduct must also be regulated. <i>Wrede v. Exch. Bank of Gibbon</i> , 531 N.W.2d 523 (Neb. 1995). Nonetheless, barring UDAP claims when the conduct is either allowed or prohibited by an agency eliminates a very significant number of the possible claims a consumer could make. Neb. Rev. Stat. § 59-1617(1) also goes on to exclude municipal natural gas regulation, and "actions or transactions" by various public power entities and cooperatives "if such actions or transactions are otherwise permitted by law."

d. Post-sale acts (debt collection, repossession)	Strong	The Nebraska UDAP statute applies to acts “in the conduct of any trade or commerce.” Neb. Rev. Stat. § 59-1602. A federal court has ruled that the state UDAP statute applies to debt collection. <i>Hage v. General Service Bureau</i> , 306 F. Supp. 2d 883 (D. Neb. 2003). The court rejected arguments that the statute should be confined to antitrust issues and that debt collectors were exempt because they were subject to the licensing provisions of the state debt collection law. However, an unresolved question is the extent to which the exemption found at Neb. Rev. Stat. § 59-1617(1) for “actions or transactions otherwise permitted, prohibited, or regulated under laws administered by” a state or federal regulatory body will immunize mortgage servicers.
e. Real estate	Mixed	Neb. Rev. Stat. § 59-1601(2) and (3) define trade or commerce to include real estate. There is no language in the private cause of action section, Neb. Rev. Stat. § 59-1609, that would preclude claims arising out of real estate transactions. In <i>Little v. Gillette</i> , 354 N.W.2d 147, 152 (Neb. 1984), the court held that Neb. Rev. Stat. § 59-1617(1) exempted a real estate company from a UDAP misrepresentation claim simply because it was regulated. However, the statute would still cover other entities involved in a real estate sale.

3. CONSUMER ACCESS TO JUSTICE	COMMENTS
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a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	Neb. Rev. Stat. § 56-1609 creates a private cause of action for a UDAP violation, and makes no mention of reliance, so it is likely that Nebraska courts will find that reliance is unnecessary, but the question has not yet been addressed.
c. Does not require a showing of public interest or public impact	Weak	<i>Nelson v. Lusterstone Surfacing Co.</i> , 605 N.W.2d 136 (Neb. 2000)
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Weak	The statute has no provision for multiple or punitive damages.
f. Attorney fees for consumers	Strong	Neb. Rev. Stat. § 59-1609
g. UDAP statute does not prohibit class actions	Strong	There is no language in the statute that restricts class actions, and Nebraska courts have allowed class actions to proceed. <i>See, e.g., Arthur v. Microsoft Corp.</i> , 676 N.W.2d 29 (Neb. 2004) (indirect purchasers of software could sustain a class action under antitrust provisions of UDAP statute).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY	COMMENTS
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a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Neb. Rev. Stat. § 59-1608(1)
c. Restitution for consumers	Strong	Neb. Rev. Stat. § 59-1608(2)
d. Civil penalty amount for initial violations	Weak	Neb. Rev. Stat. § 59-1614 (up to \$2,000 per violation)



## NEVADA

Nev. Rev. Stat. §§ 598.0903 through 598.0999  
Trade Regulation and Practices Act  
Nev. Rev. Stat. § 41.600

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Weak	While Nev. Rev. Stat. § 598.0955 provides that the UDAP statute does not limit other statutory or common law prohibitions of unfair trade practices, the UDAP statute itself does not prohibit either unfair or unconscionable acts.
b. Broadly prohibits deceptive acts	Strong	Nev. Rev. Stat. § 598.0915(15) defines deceptive trade practices to include “knowingly mak[ing] any other false representation in a transaction.” In addition, Nev. Rev. Stat. § 598.0923(2) and (3) prohibit “knowingly ... (2) fail[ing] to disclose a material fact in connection with the sale or lease of goods or services” and (3) violat[ing] a state or federal statute or regulation relating to the sale or lease of goods or services.”
c. Provides the state agency substantive rulemaking authority	Strong	Nev. Rev. Stat. § 598.0967(1). State has adopted several rules.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	Nev. Rev. Stat. § 598.0915 prohibits deceptive trade practices in the course of the defendant’s “business or occupation”—terms broad enough to include credit. Nev. Rev. Stat. § 598.0955(a) excludes “conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency.” Although Nevada courts have not yet had occasion to construe this exemption, it focuses on conduct, not transactions, so is unlikely to be construed as a blanket exemption for credit transactions. Some courts have mistakenly held that Nevada’s UDAP statute excludes real estate lending. <i>See, e.g., Calavera v. Bank of Am.</i> , 2012 WL 1681813, at *6 (D. Nev. May 14, 2012). However, the Nevada Supreme Court affirmed part of a damage award in a UDAP case that was based on misrepresentations in connection with a failed real estate and lending transaction. It rejected the defendants’ contention that the statute did not apply to real estate sales and did not mention any concerns about applying it to the lender as well. <i>Betsinger v. D.R. Horton, Inc.</i> , 232 P.3d 433, 436 n.4 (Nev. 2010).
b. Insurance	Strong	Nev. Rev. Stat. § 598.0915 prohibits deceptive trade practices in the course of the defendant’s “business or occupation”—terms broad enough to include insurance transactions. Many of the statute’s prohibitions apply to transactions in “services,” a term broad enough to include insurance. <i>See Cuadros v. State Farm Fire &amp; Cas. Co.</i> , 2017 WL 2683681 (D. Nev. June 20, 2017). Nev. Rev. Stat. § 598.0955(a) excludes “[c]onduct in compliance with the orders or rules of, or a statute administered by, a federal, state or local governmental agency.” Since this exemption focuses on conduct, not transactions, it is not a blanket exemption. For example, a court held that it does not prevent a consumer from bringing a UDAP action against an insurer for misrepresentation and fraud, as this conduct is not in compliance with agency rules. <i>Ming Chu Wun v. N. Am. Co. for Life &amp; Health Ins.</i> , 2012 WL 893750 (D. Nev. Mar. 15, 2012). In an unpublished decision, the Nevada Supreme Court held that a repair shop’s dispute about the labor rate that an insurance company paid for work on insureds’ cars was a claim of unfair practices that fell within the insurance commissioner’s exclusive jurisdiction, but it would likely treat a consumer claim that did not relate so much to rate-setting differently. <i>Jafbros v. Am. Family Mut. Ins. Co.</i> , 2012 WL 1142262 (Nev. Apr. 2, 2012).

c. Utilities	Strong	Nev. Rev. Stat. § 598.0915 prohibits deceptive trade practices in the course of the defendant’s “business or occupation”—terms broad enough to include utility service. The substantive prohibitions set forth at Nev. Rev. Stat. § 598.0915 apply to services without expressing any basis for excluding utility service. Nev. Rev. Stat. § 598.0955(a) excludes “[c]onduct in compliance with the orders or rules of, or a statute administered by, a federal, state or local governmental agency.” Although Nevada courts have not yet had occasion to construe this exemption, it focuses on conduct, not transactions, so is unlikely to be construed as a blanket exemption for utility service.
d. Post-sale acts (debt collection, repossession)	Strong	Nev. Rev. Stat. § 598.0915 prohibits deceptive trade practices in the course of the defendant’s “business or occupation” – terms broad enough to include post-sale matters. Several of the substantive prohibitions, such as “us[ing] coercion, duress or intimidation in a transaction,” “knowingly misrepresent[ing] the legal rights, obligations or remedies of a party to a transaction,” and “knowingly mak[ing] any other false representation in a transaction” would be applicable to abusive debt collection. Nev. Rev. Stat. §§ 598.0915(15), 598.092(8), 598.0923(3). A federal court decision, <i>Gage v. Cox Communications, Inc.</i> , 2017 WL 1536219 (D. Nev. Apr. 27, 2017), holds that the entire UDAP statute is limited to sales of goods and services, so does not apply to debt collection. However, this view has no support in the statute, which prohibits such practices as caller ID blocking, misrepresentation and non-disclosure in connection with investments, misrepresentation of the rights of the parties to a transaction, and wrongful repossession, without restricting these prohibitions to sales of goods or services. The <i>Gage</i> court’s reading of the statute is so flawed that it is unlikely to stand as an impediment to consumers.
e. Real estate	Strong	Nev. Rev. Stat. § 598.0915 prohibits deceptive trade practices in the course of the defendant’s “business or occupation” – terms broad enough to include real estate transactions. Many of the specific prohibitions apply just to goods and services, but several of the broadest prohibitions, including Nev. Rev. Stat. § 598.0915(15), which prohibits “knowingly making false representations in a transaction,” are not so limited. Nev. Rev. Stat. § 41.600, which gives consumers a private cause of action, is not worded in a way that could be construed to exclude credit transactions. Some decisions, such as <i>Dowers v. Nationstar Mortgage, LLC</i> , 852 F.3d 964 (9 <sup>th</sup> Cir. 2017), assert broadly that the statute does not apply to real estate transactions, but they are clearly incorrect. In <i>Betsinger v. D.R. Horton, Inc.</i> , 232 P.3d 433, 436 n.4 (Nev. 2010), the Nevada Supreme Court confirmed that the statute applies to the sale of real property.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	The statute does not expressly require reliance, so Nevada courts may find that reliance is not required. However a federal court held that Nevada’s UDAP statute requires a showing of reliance when the claim involves an affirmative misrepresentation. <i>Copper Sands Homeowners Ass’n, Inc. v. Copper Sands Realty, L.L.C.</i> , 2013 WL 3270430 (D. Nev. June 26, 2013).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.

e. Multiple or punitive damages	Undecided	Although the UDAP statute does not explicitly authorize multiple or punitive damages, Nev. Rev. Stat. § 41.600(3)(a) provides for the recovery of “any damages,” and a general provision of Nevada’s statutes, Nev. Rev. Stat. § 42.005, makes punitive damages available for breach of an obligation not arising from contract. There appears to be no reason that this provision would not apply to UDAP claims, but Nevada courts have not addressed the question.
f. Attorney fees for consumers	Strong	Nev. Rev. Stat. § 41.600(3)(b)
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute precludes class actions. In <i>Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada</i> , 102 P.3d 578 (Nev. 2004), the Supreme Court of Nevada refused to dismiss a UDAP class action against a public utility.
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Weak	Many of the most significant prohibitions require that the act be knowing, knowing and willful, or intentional.
b. Equitable relief	Strong	Nev. Rev. Stat. §§ 598.0963(3), 598.097, 598.0971(7)(c), 598.0979
c. Restitution for consumers	Strong	Nev. Rev. Stat. §§ 598.0971(3)(c), (4), 598.0979(2)(c).
d. Civil penalty amount for initial violations	Mixed	Nev. Rev. Stat. § 598.0999(2) - up to \$5,000 per violation if willful. <i>See also</i> Nev. Rev. Stat. §§ 598.0971(3)(d) (up to \$1,000 administrative fine for initial violation).

## NEW HAMPSHIRE

N.H. Rev. Stat. Ann. §§ 358-A:1 through 358-A:13  
Consumer Protection Act

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Strong	N.H. Rev. Stat. § 358-A:2
b. Broadly prohibits deceptive acts	Strong	N.H. Rev. Stat. § 358-A:2
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Weak	New Hampshire’s UDAP statute covers “trade or commerce,” terms which are defined broadly enough to include credit. N.H. Rev. Stat. §§ 358-A:1(II), 358-A:2. However, the statute includes a blanket exemption for trade or commerce “that is subject to the jurisdiction of the bank commissioner, . . . the financial institutions and insurance regulators of other states, or federal banking or securities regulators who possess the authority to regulate unfair or deceptive trade practices.” N.H. Rev. Stat. § 358-A:3(I). Several decisions have held regulated lenders exempt. <i>See, e.g., M &amp; M Equities, L.L.C. v. NewAlliance Bank</i> (In re <i>M &amp; M Equities, L.L.C.</i> ), 2009 WL 5713905 (Bankr. D.N.H. Dec. 10, 2009) (state-chartered bank is exempt).
b. Insurance	Weak	N.H. Rev. Stat. Ann. § 358-A:3(I) excludes trade or commerce subject to the jurisdiction of the state insurance commissioner or comparable regulators in other states.

c. Utilities	Weak	N.H. Rev. Stat. Ann. § 358-A:3(I) excludes trade or commerce subject to the jurisdiction of the public utilities commissioner. <i>See, e.g., Rainville v. Lakes Region Water Co.</i> , 37 A.3d 403 (N.H. 2012) (water company's misrepresentations about water quality fall within PUC's jurisdiction so are exempt from UDAP statute).
d. Post-sale acts (debt collection, repossession)	Mixed	The New Hampshire UDAP statute broadly defines unfair and deceptive practices and trade or commerce. N.H. Rev. Stat. Ann. § 358-a:1(II), 358-A:2. Courts have applied the statute to debt collection, repossession, and mortgage servicing without indicating any concerns about the statute's scope. <i>Dionne v. Fed. Nat'l Mortg. Ass'n</i> , 2016 WL 3264344 (D.N.H. June 14, 2016) (loss mitigation and foreclosure); <i>Harris Wayside Furn. Co. v. Idearc Media Corp.</i> , 2007 WL 1847313 (D.N.H. June 25, 2007) (abusive debt collection); <i>Rowe v. Condodemetrak</i> , 2017 WL 1367208 (N.H. Feb. 15, 2017) (car dealer's debt collection and repossession practices). However, many mortgage servicers will probably fall within the statute's broad exemption for financial institutions.
e. Real estate	Strong	N.H. Rev. Stat. § 358-A:1(II) defines trade and commerce to include real estate, and the provision of the statute affording a private cause of action to consumers is not worded in a way that could be construed to exclude real estate transactions. In <i>Gilmore v. Bradgate Assocs., Inc.</i> , 604 A.2d 555 (N.H. 1992), the state supreme court held the statute applicable to condominium sellers and developers. <i>See also</i> N.H. Rev. Stat. § 540-A:4, A:6, and A:8 (declaring certain landlord-tenant practices to be violations of the Consumer Protection Act).
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	The New Hampshire Supreme Court has contrasted fraud claims, which require a showing of detrimental reliance, with UDAP claims, which require only a showing that the defendant used an unfair method of competition or a deceptive act or practice that rises to a certain level of "rascality," and that the act occurred in trade or commerce. <i>Hair Excitement, Inc. v. L'Oreal U.S.A., Inc.</i> , 965 A.2d 1032, 1038 (N.H. 2009). In addition, a federal court decision holds that the statute does not require a showing of reliance. <i>Mulligan v. Choice Mortgage Corp.</i> , 1998 WL 544431 (D.N.H. 1998).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	N.H. Rev. Stat. § 358-A:10(1) if willful or knowing
f. Attorney fees for consumers	Strong	N.H. Rev. Stat. § 358-A:10(1)
g. UDAP statute does not prohibit class actions	Strong	N.H. Rev. Stat. § 358-A:10-a <i>See LaChance v. U.S. Smokeless Tobacco Co.</i> , 931 A.2d 571 (N.H. 2007) (holding that plaintiffs in a class action against a tobacco company were not precluded from bringing a UDAP claim).
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	The New Hampshire Supreme Court has held that the statute does not impose strict liability; the plaintiff must show some level of "rascality," and a misrepresentation made without knowledge or any reason to suspect that it is untrue is not a violation. <i>Kelton v. Hollis Ranch, LLC</i> , 927 A.2d 1242 (N.H. 2007). However, this holding falls short of a requirement to show intent or even actual knowledge.

b. Equitable relief	Strong	N.H. Rev. Stat. § 358-A:4(III)(a)
c. Restitution for consumers	Strong	N.H. Rev. Stat. § 358-A:4(III)(a)
d. Civil penalty amount for initial violations	Strong	N.H. Rev. Stat. § 358-A:4(III)(b) – up to \$10,000 per violation.

## NEW JERSEY

N.J. Stat. Ann. §§ 56:8-1 through 56:8-91 (West)

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	N.J. Stat. Ann. § 56:8-2
b. Broadly prohibits deceptive acts	Strong	N.J. Stat. Ann. § 56:8-2
c. Provides the state agency substantive rulemaking authority	Strong	N.J. Stat. Ann. § 56:8-4. The state has adopted a number of regulations.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	New Jersey’s UDAP statute applies broadly to acts in connection with the sale or advertisement of any merchandise or real estate. N.J. Stat. Ann. § 56:8-2. It defines “merchandise” to include “anything offered, directly or indirectly to the public for sale,” and defines “sale” to include “any ... distribution.” N.J. Stat. Ann. § 56:8-1(c), (e). In <i>Lemelledo v. Beneficial Management Corp.</i> , 696 A.2d 546, 551 (N.J. 1997), the New Jersey Supreme Court held that the UDAP statute applies to “the offering, sale, or provision of consumer credit.” See also <i>Gonzalez v. Wilshire Credit Corp.</i> , 725 A.3d 1103 (N.J. 2011) (statute applies to fraudulent lending practices, including the subsequent performance of the contract).
b. Insurance	Strong	N.J. Stat. Ann. § 56:8-1(c) defines “merchandise” to include “anything offered, directly or indirectly to the public for sale.” The New Jersey Supreme Court has held that the UDAP statute applies to sales of insurance policies. <i>Lemelledo v. Beneficial Management Corp.</i> , 696 A.2d 546 (N.J. 1997). While some New Jersey decisions, such as <i>Kuhnel v. CNA Ins. Cos.</i> , 731 A.2d 564 (N.J. Super. Ct. App. Div. 1999), hold that the statute does not apply to claims settlement practices, they either precede this decision or rely on cases that preceded it. Other decisions recognize that the UDAP statute applies to unfair or deceptive claims denial practices. See, e.g., <i>Weiss v. First Unum Life Ins. Co.</i> , 482 F.3d 254, 266 (3d Cir. 2007) (N.J. law).
c. Utilities	Weak	New Jersey’s UDAP statute defines “merchandise” to include “anything offered, directly or indirectly to the public for sale.” N.J. Stat. Ann. § 56:8-1(c) (West). This language is clearly broad enough to include utility service. However, in <i>Daaleman v. Elizabethtown Gas Co.</i> , 390 A.2d 566 (N.J. 1978), the New Jersey Supreme Court held that the UDAP statute did not apply to a utility company’s alleged manipulation of a contract clause, which was included in the tariff that the PUC had approved, as a way of overbilling customers. The court held that this issue fell within the PUC’s exclusive jurisdiction. Some language in this decision suggests that it might be confined to overbilling issues, but it stands as an impediment to consumers even for UDAP claims that raise other issues.

d. Post-sale acts (debt collection, repossession)	Undecided	N.J. Stat. Ann. § 56:8-2 prohibits unlawful acts “in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of” the defendant. This broad language easily covers post-sale acts, and courts have applied it to matters such as repossession and the modification of mortgage loans. <i>See, e.g., Gonzalez v. Wilshire Credit Corp.</i> , 25 A.3d 1103 (N.J. 2011); <i>Jefferson Loan Co. v. Session</i> , 938 A.2d 169 (N.J. Super. Ct. App. Div. 2008). A federal court held that the statute applied to an auto auction that demanded fees before it would release a repossessed vehicle to a consumer. <i>Pollitt v. DRS Towing, L.L.C.</i> , 2011 WL 1466378 (D.N.J. Apr. 18, 2011). However, a number of decisions hold that debt collectors or debt buyers fall outside the statute’s scope because they are not selling merchandise. <i>See, e.g., Chulsky v. Hudson Law Offices</i> , 777 F. Supp. 2d 823 (D.N.J. 2011) (statute inapplicable to debt buyers). The state supreme court has not yet resolved this issue.
e. Real estate	Strong	N.J. Stat. Ann. § 56:8-1(c) defines “merchandise” to include “anything offered, directly or indirectly to the public for sale.” N.J. Stat. Ann. § 56:8-2 prohibits unconscionable, etc. practices “in connection with the sale or advertisement of any merchandise or real estate.” Nothing in the private cause of action section precludes UDAP claims arising from real estate transactions. The UDAP statute has been applied to real estate transactions in cases such as <i>Gennari v. Weichert Co. Realtors</i> , 691 A.2d 350, 366 (N.J. 1997).
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	The New Jersey Supreme Court has held that a showing of reliance is not required. <i>Gennari v. Weichert Co. Realtors</i> , 691 A.2d 350, 366 (N.J. 1997). <i>See also International Union of Operating Engineers Local No. 68 Welfare Fund v. Merck &amp; Co., Inc.</i> , 929 A.2d 1076, 1086 (N.J. 2007) (UDAP statute “replaces reliance, an element of proof traditional to any fraud claim, with the requirement that plaintiff prove ascertainable loss”).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	The statute does not impose a pre-suit notice requirement. In addition, in <i>Bosland v. Warnock Dodge, Inc.</i> , 964 A.2d 741 (N.J. 2009), the state supreme court held that the statute does not require a consumer to seek a refund from the offending merchant as a prerequisite to filing a complaint.
e. Multiple or punitive damages	Strong	N.J. Stat. Ann. § 56:8-19 (treble damages)
f. Attorney fees for consumers	Strong	N.J. Stat. Ann. § 56:8-19 provides: “In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest. In all actions under this section, including those brought by the Attorney General, the court shall also award reasonable attorneys fees, filing fees and reasonable costs of suit.” The word “also” language indicates that a fee award is to be made only if the court awards legal or equitable relief to the consumer under the preceding sentence, so this fee provision is best interpreted as allowing fees only to prevailing consumers. Courts have allowed fee awards whenever the court finds a UDAP violation, even if no monetary relief is awarded. <i>Sema v. Automall 46, Inc.</i> , 894 A.2d 77 (N.J. Super., App. Div. 2006).
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute prohibits class actions, and New Jersey courts have approved a number of UDAP class actions. <i>See, e.g., Laufer v. U.S. Life Ins. Co.</i> , 896 A.2d 1101 (N.J. Super., App. Div. 2006).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge, except that concealment of a material fact is a violation only if knowing.
b. Equitable relief	Strong	N.J. Stat. Ann. § 56:8-8
c. Restitution for consumers	Strong	N.J. Stat. Ann. §§ 56:8-8, 56:8-14, 56:8-15
d. Civil penalty amount for initial violations	Strong	N.J. Stat. Ann. § 56:8-13 (up to \$10,000 for first offense, up to \$20,000 for second and subsequent offense)

## NEW MEXICO

### N.M. Stat. §§ 57-12-1 through 57-12-22 Unfair Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	N.M. Stat. Ann. §§ 57-12-2(E), 57-12-3
b. Broadly prohibits deceptive acts	Strong	N.M. Stat. Ann. §§ 57-12-2(D), 57-12-3
c. Provides the state agency substantive rulemaking authority	Strong	N.M. Stat. Ann. § 57-12-13. The state has adopted several rules.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	N.M. Stat. Ann. § 57-12-2(C) defines "trade or commerce" to include "distribution" of "any property" or "any thing of value," which is clearly broad enough to include credit. In addition, N.M. Stat. Ann. § 57-12-2(D) defines "unfair or deceptive trade practice" to include false or misleading statements "in connection with . . . the extension of credit." The private cause of action, N.M. Stat. Ann. § 57-12-10, is not limited in a way that would exclude credit. On the other hand, N.M. Stat. Ann. § 57-12-7 says the act does not apply to "actions or transactions expressly permitted under laws administered by a regulatory body of New Mexico or the United States, but all actions or transactions forbidden by the regulatory body, and about which the regulatory body remains silent, are subject to the Unfair Practices Act." In <i>Ashlock v. Sunwest Bank</i> , 753 P.2d 346 (N.M. 1988), the New Mexico Supreme Court gave this exemption an appropriately narrow reading, holding that a bank had violated the state UDAP statute by failing to pay interest on a client's checking account. The court's decision appears to confine the exemption to instances where another law specifically authorizes the challenged practice.

b. Insurance	Strong	N.M. Stat. Ann. § 57-12-2(C) defines “trade or commerce” to include “distribution” of “any services” or “any thing of value,” which is clearly broad enough to include insurance. The private cause of action, N.M. Stat. Ann. § 57-12-10, is not limited in a way that would exclude insurance. N.M. Stat. Ann. § 57-12-7 says the act does not apply to “actions or transactions expressly permitted under laws administered by a regulatory body of New Mexico or the United States, but all actions or transactions forbidden by the regulatory body, and about which the regulatory body remains silent, are subject to the Unfair Practices Act.” This language has been construed as a narrow exemption, and UDAP cases against insurers have been allowed. <i>See, e.g., New Mexico Life Ins. Guar. Ass’n v. Quinn &amp; Co.</i> , 809 P.2d 1278, 1288 (N.M. 1991); <i>Azar v. Prudential Ins. Co.</i> , 68 P.3d 909, 928 (N.M. App. 2003).
c. Utilities	Strong	New Mexico’s UDAP statute prohibits unfair and deceptive practices involving goods, services, credit, or debt collection, made in the course of the person’s trade or commerce, defined broadly to include distribution of any services, property, or other thing of value. N.M. Stat. Ann. §§ 57-12-2, 57-12-3. There is an exemption for practices permitted by a regulatory body, but acts that are prohibited by a regulatory body or about which it is silent are subject to the statute. N.M. Stat. Ann. § 57-12-7. Given these provisions, utilities appear to be covered under the state’s UDAP statute unless the challenged practice is specifically authorized by a utility regulator.
d. Post-sale acts (debt collection, repossession)	Strong	N.M. Stat. Ann. § 57-12-2(C) defines “trade or commerce” to include “distribution” of “any property,” “any services,” or “any thing of value.” Construing this language in light of N.M. Stat. Ann. § 57-12-2(D), which defines “unfair or deceptive trade practice” to include false or misleading statements “in connection with . . . the collection of debts,” it is clear that that the statute applies to debt collection, and a number of cases have so ruled. <i>See, e.g., Campos v. Brooksbank</i> , 120 F. Supp. 2d 1271 (D.N.M. 2000). The private cause of action is also not limited in a way that would exclude debt collection. N.M. Stat. Ann. § 57-12-10. Courts have also applied the statute to repossession. <i>See, e.g., Duke v. Garcia</i> , 2014 WL 1318647 (D.N.M. Feb. 28, 2014).
e. Real estate	Weak	N.M. Stat. Ann. § 57-12-2(C) defines trade or commerce to include “any property” and “any thing of value.” The private cause of action at N.M. Stat. Ann. § 57-12-10 is not limited in a way that could be construed to exclude real property. However, the definition of “unfair or deceptive trade practice” is limited by N.M. Stat. Ann. § 57-12-2(D) to acts “made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts.” A New Mexico appellate court interpreted this language to exclude the sale of a home. <i>McElhannon v. Ford</i> , 73 P.3d 827 (N.M. App. 2003). <i>See also Kysar v. Amoco Production Co.</i> , 379 F.3d 1150, 1157 (10 <sup>th</sup> Cir. 2004) (N.M. UDAP statute does not apply to sale of real estate). While only the New Mexico Supreme Court can issue an authoritative interpretation of the statute, these decisions currently stand as an impediment to consumers.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	Reliance is not required to sustain a UDAP claim in New Mexico. In <i>Lohman v. Daimler-Chrysler Corp.</i> , 166 P.3d 1091, 1098 (N.M. App. 2007), a New Mexico appellate court held that “a claimant need not prove reliance upon a defendant’s deceptive conduct in” order to sustain a UDAP claim. <i>See also Mulford v. Altria Group, Inc.</i> , 242 F.R.D. 615 (D.N.M. 2007) (consumer must show causal link but not reliance); <i>Smoot v. Physicians Life Ins. Co.</i> , 87 P.3d 545 (N.M. Ct. App. 2003) (proof of causation, but not necessarily reliance, is required).



c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	N.M. Stat. Ann. § 57-12-10(B)
f. Attorney fees for consumers	Strong	N.M. Stat. Ann. § 57-12-10(C)
g. UDAP statute does not prohibit class actions	Strong	There is nothing in the statute that would prohibit class actions, and several UDAP class actions have been allowed. In <i>Lohman v. Daimler-Chrysler Corp.</i> , 166 P.3d 1091 (N.M. App. 2007), a UDAP cause of action against an automobile manufacturer survived a motion to dismiss. See also <i>In re N.M. Indirect Purchasers Microsoft Corp.</i> , 149 P.3d 976 (N.M. App. 2006) (upholding a settlement in a class action that was based upon a UDAP claim).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Mixed	N.M. Stat. Ann. §§ 57-12-2(D) requires knowledge as an element of a deceptive practice. This requirement was held applicable to all deceptive practices listed in the statute by <i>Stevenson v. Louis Dreyfus Corp.</i> , 811 P.2d 1308 (N.M. 1991). That decision also holds, however, that the requirement is satisfied if the party knows or should know of the deceptive nature of a statement, so it does not create as great an obstacle as would a requirement that actual knowledge be established.
b. Equitable relief	Strong	N.M. Stat. Ann. § 57-12-8
c. Restitution for consumers	Strong	N.M. Stat. Ann. § 57-12-8(B)
d. Civil penalty amount for initial violations	Mixed	N.M. Stat. Ann. § 57-12-11 (up to \$5,000 per violation if willful)

## NEW YORK

N.Y. Exec. Law § 63(12) (McKinney)  
N.Y. Gen. Bus. Law §§ 349 and 350 (McKinney)

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Mixed	New York's consumer protection statute only prohibits deceptive acts, not unfair ones. N.Y. Exec. Law § 63(12) allows the Attorney General (but not consumers), to bring suit in the case of "repeated fraudulent or illegal acts," defined narrowly to include "unconscionable contract provisions."
b. Broadly prohibits deceptive acts	Strong	N.Y. Gen. Bus. Law §§ 349(a), 350-a(1)
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	New York's UDAP statute applies to deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service, and the private cause of action is not limited in a way that would prevent its application to credit transactions. N.Y. Gen. Bus. Law § 349(a), (h). There is a narrow exemption for regulated industries, making it a defense if "the act or practice is, or if in interstate commerce would be, subject to and complies with the rules and regulations of, and the statutes administered by, . . . any official department, division, commission or agency of the United States." N.Y. Gen. Bus. Law § 349(d). Most courts treat this provision as immunizing conduct only to the extent it complies with specific mandates of other statutes. <i>See, e.g., McAnanay v. Astoria Fin. Corp.</i> , 665 F. Supp. 2d 132, 174-175 (E.D.N.Y. 2009). Overall, the exemption appears to be construed fairly narrowly, not as a blanket exemption for lenders, and a number of decisions allow UDAP claims against lenders. <i>See e.g., Bonior v. Citibank</i> , 828 N.Y.S.2d 765 (N.Y.City Civ. Ct. 2006); <i>La Salle Bank Nat. Ass'n v. Kosarovich</i> , 820 N.Y.S.2d 144 (App. Div. 2006).
b. Insurance	Mixed	UDAP claims against insurance companies appear to be allowed under New York's statute. <i>See, e.g., Harvey v. Metropolitan Life Ins. Co.</i> , 827 N.Y.S.2d 6 (App. Div. 2006). However, many decisions hold that an insurer's mishandling of a consumer's claim does not meet the statute's public interest test. <i>See, e.g., Hassett v. N.Y. Central Mut. Fire Ins. Co.</i> , 753 N.Y.S.2d 788 (App. Div. 2003). These rulings exclude a significant portion of consumer claims against insurers.
c. Utilities	Strong	Gen. Bus. Law § 349(a) prohibits deception "in the conduct of any business, trade or commerce." This language is clearly broad enough to include utility service. N.Y. Gen. Bus. Law § 349(d) makes it a defense if "the act or practice is, or if in interstate commerce would be, subject to and complies with the rules and regulations of, and the statutes administered by, . . . any official department, division, commission or agency of the United States." New York courts have interpreted this exemption narrowly, so it appears that UDAP claims can be brought unless the utility's actions are specifically authorized by regulations. A New York appellate court entertained a UDAP case against a utility service provider, and, although it denied the claim for other reasons, it did not question the application of the statute to the provider. <i>Moore v. Liberty Power Corp.</i> , 897 N.Y.S.2d 723 (App. Div. 2010).
d. Post-sale acts (debt collection, repossession)	Strong	N.Y. Gen. Bus. Law § 349(a) prohibits deception "in the conduct of any business, trade or commerce." This language is broad enough to include debt collection and other post-sale acts, and a number of courts have applied the statute to debt collection. <i>See, e.g., Fritz v. Resurgent Capital Serv., LP</i> , 955 F. Supp. 2d 163 (E.D.N.Y. 2013). The weakness of New York's UDAP statute, however, is that it only prohibits deception, not unfair practices, so a number of cases have refused to apply it to non-deceptive debt collection harassment. <i>See, e.g., Mascoll v. Strumpf</i> , 2006 WL 2795175 (E.D.N.Y. Sept. 26, 2006). Another issue is that New York courts require UDAP plaintiffs to show that the defendant's acts have a broader impact on consumers at large, but a practice that is a normal part of the collector's business appears to meet this requirement. <i>See, e.g., Fritz v. Resurgent Capital Serv., LP</i> , 955 F. Supp. 2d 163 (E.D.N.Y. 2013). A final complication in New York is that a Second Circuit decision, <i>Conboy v. AT&amp;T Corp.</i> , 241 F.3d 242, 257-258 (2d Cir. 2001), holds that a violation of the state debt collection law, for which there is no private cause of action, cannot be framed as a UDAP violation. This decision should be interpreted simply to mean that a violation of the state debt collection law is not a <i>per se</i> UDAP violation, not that a UDAP claim is precluded if the same acts would also violate the state debt collection statute. <i>See, e.g., Samms v. Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara &amp; Wolf, LLP</i> , 163 F. Supp. 3d 109 (S.D.N.Y. 2016). <i>See also</i> N.Y. Gen. Bus. Law § 349(g) (stating that statute "shall apply to all deceptive acts or practices declared unlawful, whether or not subject to any other law of this state").

e. Real estate	Strong	N.Y. Gen. Bus. Law § 349(a) prohibits deception “in the conduct of any business, trade or commerce.” This language is broad enough to include real estate, and several decisions have applied the statute to real estate transactions. <i>See, e.g., Banks v. Consumer Home Mortg., Inc.</i> , 2003 WL 21251584 (E.D.N.Y. 2003).
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3. CONSUMER ACCESS TO JUSTICE	COMMENTS
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a. No major gaps in scope of consumers’ ability to enforce the statute	Weak	Consumers cannot enforce the prohibition of “repeated fraudulent or illegal acts,” including “unconscionable contract provisions,” in N.Y. Exec. Law § 63(12).
b. Does not require reliance	Strong	<i>Oswego Laborers’ Local 214 Pension Fund v. Marine Midland Bank</i> , 647 N.Y.S.2d 20 (N.Y. 1995), states that reliance is not required. <i>Accord Pelman v. McDonald’s Corp.</i> , 396 F.3d 508, 511 (2d Cir. 2005) (section 349 does not require proof of actual reliance); <i>Stutman v. Chem. Bank</i> , 731 N.E.2d 608 (N.Y. 2000); <i>Small v. Lorillard Tobacco Co.</i> , 720 N.E.2d 892 (N.Y. 1999) (reliance unnecessary, but plaintiff must show materiality and actual harm).
c. Does not require a showing of public interest or public impact	Weak	<i>Oswego Laborers’ Local 214 Pension Fund v. Marine Midland Bank</i> , 647 N.Y.S.2d 20 (N.Y. 1995), requires a showing of a broader impact on consumers at large.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Mixed	N.Y. Gen. Bus. Law § 349(h) allows treble damages, but capped at \$1,000. N.Y. Gen. Bus. Law § 350-e(3), a narrower statute applicable only to false advertising, allows treble damages with a \$10,000 cap.
f. Attorney fees for consumers	Strong	N.Y. Gen. Bus. Law §§ 349(h), 350-e(3). However, an award of attorney fees to consumers who win cases under the statute is not mandatory.
g. UDAP statute does not prohibit class actions	Strong	Nothing excludes class actions and there are New York decisions allowing consumers to assert UDAP claims in class actions.

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY	COMMENTS
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a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	N.Y. Gen. Bus. Law § 349(b); N.Y. Exec. Law § 63(12).
c. Restitution for consumers	Strong	N.Y. Gen. Bus. Law § 349(b); N.Y. Exec. Law § 63(12).
d. Civil penalty amount for initial violations	Mixed	N.Y. Gen. Bus. Law § 350-d (up to \$5,000 per violation)

## NORTH CAROLINA

N.C. Gen. Stat. §§ 75-1.1 through 75-35

1. BREADTH OF SUBSTANTIVE PROHIBITIONS	COMMENTS
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a. Broadly prohibits unfair or unconscionable acts	Strong	N.C. Gen. Stat. § 75-1.1(a)
b. Broadly prohibits deceptive acts	Strong	N.C. Gen. Stat. § 75-1.1(a)
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	Credit appears to be covered under North Carolina's UDAP statute, and courts have applied it to credit transactions. For example, in <i>Richardson v. Bank of America, N.A.</i> , 643 S.E.2d 410 (N.C. App. 2007), a North Carolina appellate court held that the sale of unapproved single premium credit insurance to consumers in association with loans having terms greater than fifteen years was an unfair or deceptive act or practice in or affecting commerce in violation of the statute.
b. Insurance	Strong	North Carolina's UDAP statute, which encompasses acts or practices "in commerce," applies to insurance transactions. <i>Pearce v. Am. Defender Life Ins. Co.</i> , 343 S.E.2d 174 (N.C. 1986). See also <i>Page v. Lexington Ins. Co.</i> , 628 S.E.2d 427 (N.C. App. 2006).
c. Utilities	Strong	The North Carolina UDAP statute applies to activities in or affecting commerce, and defines "commerce" broadly as all business activities. N.C. Gen. Stat. § 75-1.1. Although North Carolina courts have not addressed the question whether consumers can bring UDAP claims against utility service providers, there is no explicit statutory exemption for utilities, and the courts have not shown a tendency to read exemptions into the statute.
d. Post-sale acts (debt collection, repossession)	Strong	A portion of North Carolina's UDAP statute explicitly addresses debt collection. N.C. Gen. Stat. §§ 75-50 to 75-56. If the debt collection provisions apply, then the consumer cannot make a separate claim under the general provisions of the UDAP statute, however. N.C. Gen. Stat. §§ 75-56(a); <i>DirecTV, Inc. v. Cephas</i> , 294 F. Supp. 2d 760 (M.D.N.C. 2003). Courts have also applied the statute to other post-sale acts such as repossession. See, e.g., <i>Eley v. Mid/East Acceptance Corp.</i> , 614 S.E.2d 555 (N.C. App. 2005).
e. Real estate	Strong	N.C. Gen. Stat. § 75-1.1(b) defines "commerce" broadly as all business activities. The statute has been applied to real estate transactions in cases such as <i>Willen v. Hewson</i> , 622 S.E.2d 187 (N.C. App. 2005).
3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Weak	The North Carolina Supreme Court has held that, when a UDAP claim stems from an alleged misrepresentation, the plaintiff must show reasonable reliance in order to demonstrate proximate causation. <i>Bumpers v. Cmty. Bank</i> , 747 S.E.2d 220 (N.C. 2013).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	N.C. Gen. Stat. § 75-16
f. Attorney fees for consumers	Strong	N.C. Gen. Stat. § 75-16.1. This provision is somewhat weaker than other states' provisions, in that it allows fees to the consumer only if the defendant acted willfully and made an unwarranted refusal to fully resolve the matter.
g. UDAP statute does not prohibit class actions	Strong	Class actions are allowed in North Carolina. See, e.g., <i>Nicholson v. F. Hoffmann Laroche, Ltd.</i> , 576 S.E.2d 363 (N.C. App. 2003) (detailing the settlement of a class action based upon a UDAP claim against a vitamin manufacturer).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	N.C. Gen. Stat. § 75-14
c. Restitution for consumers	Strong	N.C. Gen. Stat. § 75-15.1
d. Civil penalty amount for initial violations	Mixed	N.C. Gen. Stat. § 75-15.2 (up to \$5,000 per violation if knowing)

## NORTH DAKOTA

N.D. Cent. Code §§ 51-15-01 through 51-15-11

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	N.D. Century Code §§ 51-15-02 (unconscionable practices)
b. Broadly prohibits deceptive acts	Strong	N.D. Century Code §§ 51-15-02, 51-15-02.3.
c. Provides the state agency substantive rulemaking authority	Mixed	N.D. Century Code § 51-15-05. The state has adopted one rule, regulating retail price advertising, however, so is rated Mixed.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	Deceptive practices are prohibited by N.D. Cent. Code § 51-15-02 "in connection with the sale or advertisement of any merchandise." "Merchandise" is defined by N.D. Cent. Code § 51-15-01(3) as "objects, wares, goods, commodities, intangibles, real estate, charitable contributions, or services." Although North Dakota courts have not ruled on the question, this language is broad enough to encompass credit transactions, and there is no explicit statutory exemption for credit transactions.
b. Insurance	Strong	There is no explicit statutory exemption for insurance transactions, which should constitute the "sale" of a "service" or "intangible" as those terms are used in N.D. Cent. Code §§ 51-15-02 and 51-15-01(3). The statute was applied to an insurance transaction in <i>Hanson v. Acceleration Life Ins. Co.</i> , 1999 WL 33283345 (D.N.D. 1999).
c. Utilities	Strong	Deceptive practices are prohibited by N.D. Cent. Code § 51-15-02 "in connection with the sale or advertisement of any merchandise." "Merchandise" is defined by section 51-15-01(3) as "objects, wares, goods, commodities, intangibles, real estate, charitable contributions, or services." Although North Dakota courts have not addressed the question, this language is broad enough to encompass utility service, and there is no statutory exemption for utilities.
d. Post-sale acts (debt collection, repossession)	Strong	Although North Dakota courts have not addressed the question, it is reasonable to conclude that the statute applies to post-sale acts since they would occur "in connection with the sale . . . of any merchandise." N.D. Cent. Code § 51-15-02. "Merchandise" is broadly defined as "any objects, wares, goods, commodities, intangibles, real estate, charitable contributions, or services." N.D. Century Code § 51-15-02.
e. Real estate	Strong	N.D. Century Code § 51-15-01(3) defines "merchandise" to include real estate, and the private cause of action is not limited by § 51-15-09 in any way that would exclude real estate.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	N.D. Cent. Code § 51-15-02 forbids "any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation with the intent that others rely thereon [ . . . ] whether or not any person has in fact been misled, deceived or damaged thereby." The requirement that the defendant have intended that others rely on the deceptive act does not mean that the consumer must show actual reliance, and in fact implies the opposite. Although North Dakota courts have not reached the question, it is unlikely that they would read a requirement of reliance into the statute.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	N.D. Century Code § 51-15-09 if knowing
f. Attorney fees for consumers	Strong	N.D. Century Code § 51-15-09 if knowing
g. UDAP statute does not prohibit class actions	Strong	Class actions under North Dakota's UDAP statute appear to be available. <i>See Hanson v. Acceleration Life Ins. Co.</i> , 1999 WL 33283345 (D.N.D. 1999) (denying defendant's motion for summary judgment on plaintiff's class action UDAP claim).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Mixed	Although it is a less demanding standard than proof of intent to deceive, N.D. Century Code § 51-15-02 requires a showing of intent that others rely on the defendant's deception.
b. Equitable relief	Strong	N.D. Century Code § 51-15-07
c. Restitution for consumers	Strong	N.D. Century Code § 51-15-07
d. Civil penalty amount for initial violations	Mixed	N.D. Century Code § 51-15-11 (up to \$5,000 per violation)

## OHIO

Ohio Rev. Code Ann. §§ 1345.01 through 1345.13 (West) Consumer Sales Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Ohio Rev. Code §§ 1345.02 (unfair acts and practices), 1345.03, 1345.031 (unconscionable acts and practices). <i>See generally Einhorn v. Ford Motor Co.</i> , 48 Ohio St. 3d 27, 29, 548 N.E.2d 933, 935 (1990) ("The Consumer Sales Practices Act is a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed").
b. Broadly prohibits deceptive acts	Strong	Ohio Rev. Code § 1345.02

c. Provides the state agency substantive rulemaking authority	Strong	Ohio Rev. Code § 1345.05(B)(2). The Attorney General has adopted a number of rules.
<b>2. SCOPE OF STATUTE</b>		<b>COMMENTS</b>
a. Creditors and credit	Weak	Ohio Rev. Code § 1345.01 excludes most financial institutions and dealers in intangibles. As a result, lenders other than payday lenders, mortgage brokers, and nonbank mortgage lenders and their loan officers are exempt
b. Insurance	Weak	Ohio Rev. Code Ann. § 1345.01(A) specifically excludes transactions between persons identified in Ohio Rev. Code § 5725.01 (which includes insurance companies) and their customers.
c. Utilities	Weak	Transactions between persons defined in Ohio Rev. Code § 4905.03 (generally, public utilities) and their customers are exempted by Ohio Rev. Code § 1345.01(A). <i>But cf. Haning v. Pub. Utils. Comm'n</i> , 712 N.E.2d 707 (Ohio 1999) (Ohio's UDAP statute covers suppliers of gas/propane, which do not meet the definition of "public utility").
d. Post-sale acts (debt collection, repossession)	Mixed	Ohio Rev. Code § 1345.02(A) provides that a deceptive act is a UDAP violation whether it occurs before, during, or after the transaction. The state supreme court has held that the statute applies to debt collection. <i>Taylor v. First Resolution Investment Corp.</i> , 72 N.E.3d 573 (Ohio 2016). However, the court has also held that it does not apply to mortgage servicing. <i>Anderson v. Barclay's Capital Real Estate, Inc.</i> , 989 N.E.2d 997 (Ohio 2013).
e. Real estate	Weak	The Ohio Supreme Court has ruled that the statute does not apply to pure real estate transactions. <i>Heritage Hills, Ltd. v. Deacon</i> , 551 N.E.2d 125 (Ohio 1990) (rejecting residential tenant's claim against landlord); <i>Brown v. Liberty Clubs, Inc.</i> , 543 N.E.2d 783 (Ohio 1989).
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Strong	A number of decisions hold that a UDAP plaintiff need not prove reliance. <i>Nessle v. Whirlpool Corp.</i> , 2008 WL 2967703 (N.D. Ohio July 25, 2008); <i>Guth v. Allied Home Mortgage Capital Corp.</i> , 2008 WL 2635521, at *7 (Ohio Ct. App. July 7, 2008). In <i>Delahunt v. Cytodyne Technologies</i> , 241 F. Supp. 2d 827 (S.D. Ohio 2003), the court noted that "[u]like a fraud claim, where a plaintiff must allege harm above and beyond the misrepresentation and reliance thereon, a cause of action accrues under the Consumer Sales Practices Act as soon as the allegedly unfair or deceptive transaction occurs." Ohio courts have awarded statutory damages without a showing of any damage. <i>Dantzig v. Sloe</i> , 684 N.E.2d 715, 718 (Ohio App. 1996).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Ohio Rev. Code § 1345.092 limits consumer remedies by giving suppliers a "Right to Cure" within 30 days after service. However, since this impediment is not a pre-suit notice requirement, the state is rated Strong here.
e. Multiple or punitive damages	Strong	Ohio Rev. Code § 1345.09(B) allows a consumer to recover treble damages for acts that violate a UDAP regulation or that were declared deceptive or unconscionable by an Ohio court in a decision made available for public inspection before the act was committed.

f. Attorney fees for consumers	Strong	Ohio Rev. Code § 1345.09(F) allows attorney fees if the supplier knowingly violated the statute. It should be noted that Ohio Rev. Code § 1345.092 gives suppliers a “right to cure” within 30 days after service, and limits attorney fees to \$2,500 in the event the cure offer is accepted. However, since the statute does allow a consumer to recover attorney fees, and does not allow a court to require a consumer to pay a business’s attorney fees if the case was filed in good faith, the statute is still rated Strong.
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g. UDAP statute does not prohibit class actions	Strong	Ohio Rev. Code § 1345.09(B)
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4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY	COMMENTS
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a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Knowledge (but not intent) is only required for unconscionable acts. Ohio Rev. Code § 1345.03.
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b. Equitable relief	Strong	Ohio Rev. Code § 1345.07(A)(2)
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c. Restitution for consumers	Strong	Ohio Rev. Code § 1345.07(B)
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d. Civil penalty amount for initial violations	Strong	Ohio Rev. Code § 1345.07(D) (up to \$25,000 per violation if defendant violated a rule or a prior court decision)
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## OKLAHOMA

### Okla. Stat. tit. 15, §§ 751 through 763 Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS	COMMENTS
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a. Broadly prohibits unfair or unconscionable acts	Strong	Okla. Stat. Ann. tit. 15, §§ 753, 752(14)
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b. Broadly prohibits deceptive acts	Strong	Okla. Stat. Ann. tit. 15, §§ 753, 752(13)
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c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.
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2. SCOPE OF STATUTE	COMMENTS
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a. Creditors and credit	Undecided	Okla. Stat. tit. 15, § 752(2) defines “consumer transaction” to include “distribution of . . . any property, tangible or intangible.” This language clearly encompasses credit transactions, and nothing in the private cause of action or substantive prohibition sections precludes claims arising from consumer credit transactions. The question is the effect of Okla. Stat. tit. 15, § 754(2), which excludes “actions or transactions regulated under laws administered by” a state or federal regulatory body. The Oklahoma Supreme Court has construed this exemption broadly in a different context to find nursing homes exempt. <i>Estate of Hicks</i> , 92 P.3d 88 (Okla. 2004). However, in <i>Brannon v. Boatmen’s Nat. Bank</i> , 976 P.2d 1077 (Okla. Civ. App. 1998), an appellate court overturned a trial court’s dismissal of a UDAP claim against a bank. The court reasoned that the specific acts complained of by the plaintiff were not regulated and thus not exempt from UDAP coverage. On the other hand, a federal court held in <i>Parrish v. Arvest Bank</i> , 2016 WL 3906814 (W.D. Okla. July 14, 2016), that a bank was exempt because it was heavily regulated.
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b. Insurance	Weak	A number of decisions hold that unfair trade practices in the sale of insurance and payment of claims fall within the UDAP statute's exemption for "acts or transactions regulated under laws administered by" an agency. <i>See, e.g., Bayro v. State Farm Fire &amp; Cas. Co.</i> , 2015 WL 4717166 (W.D. Okla. Aug. 7, 2015). While <i>Conatzer v. American Mercury Ins. Co., Inc.</i> , 15 P.3d 1252 (Okla. Civ. App. 2000), holds that the statute can be applied to insurers if the particular activity is not part of the business of insurance and is not subject to the state insurance regulator's oversight, such as an insurer's sale of a rebuilt wreck that it had acquired in settlement of an accident claim, the courts still exclude most UDAP claims involving insurance.
c. Utilities	Weak	The Oklahoma UDAP statute excludes "[a]ctions or transactions regulated under laws administered by the Corporation Commission or any other regulatory body or officer acting under statutory authority of this state or the United States." Okla. Stat. tit. 15, § 754(2). An intermediate appellate court held that this exemption operated to exempt a telephone company. <i>Brice v. AT&amp;T Communications, Inc.</i> , 32 P.3d 885 (Okla. Civ. App. 2001).
d. Post-sale acts (debt collection, repossession)	Undecided	A number of federal district court decisions hold that the UDAP statute does not apply to debt collection and other post-sale acts. <i>See, e.g., Terry v. Nuwell Credit Corp.</i> , 2007 WL 2746919 (W.D. Okla. 2007). These decisions appear to be inconsistent with Okla. Stat. Ann. tit. 15, § 752(13), which says that a prohibited deceptive practice "may occur before, during, or after a consumer transaction is entered into." In 2011, the legislature appears to have resolved the question by amending the UDAP statute to prohibit two specific practices on the part of debt collectors. Okla. Stat. Ann. tit. 15, § 753(31), (32). These prohibitions would be meaningless if the statute did not apply to debt collection. However, one decision mistakenly construes the amendment to subject debt collectors to the UDAP statute only if they commit the two specifically prohibited practices. <i>Walkabout v. Midland Funding LLC</i> , 2015 WL 2345308 (W.D. Okla. May 14, 2015). Until the question is resolved the decision stands as an impediment to application of the statute to abusive debt collection.
e. Real estate	Strong	Okla. Stat. Ann. tit. 15, § 752(2) defines "consumer transaction" to include real estate. Okla. Stat. Ann. tit. 15, § 752(7) also defines "merchandise" to include real estate. The private cause of action is not limited in any way that would exclude real estate.
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers' ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Undecided	Oklahoma's UDAP statute does not include an explicit reliance requirement, but Oklahoma courts have not directly addressed the question whether a showing of reliance is required.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Weak	The statute does not include a provision for multiple or punitive damages.
f. Attorney fees for consumers	Strong	Okla. Stat. Ann. tit. 15, § 761.1(A)
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute prohibits class actions.

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Okla. Stat. Ann. tit. 15, § 756.1(A)(2)
c. Restitution for consumers	Strong	Okla. Stat. Ann. tit. 15, § 756.1(A)(3), (C)(2)
d. Civil penalty amount for initial violations	Strong	Okla. Stat. Ann. tit. 15, § 761.1(C) (up to \$10,000 per violation)

## OREGON

Or. Rev. Stat. §§ 646.605 through 646.656  
Unlawful Trade Practices Law

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Mixed	Or. Rev. Stat. § 646.607(1) prohibits unconscionable tactics, but the statute does not allow consumers to enforce this prohibition.
b. Broadly prohibits deceptive acts	Weak	Or. Rev. Stat. § 646.608(1)(u) prohibits "any other unfair or deceptive conduct in trade or commerce," but Or. Rev. Stat. § 646.608(4) prohibits suit under this section unless the Attorney General has "first established a rule ... declaring the conduct to be unfair or deceptive in trade or commerce."
c. Provides the state agency substantive rulemaking authority	Strong	Or. Rev. Stat. § 646.608(4). The Attorney General has adopted a number of rules.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	Or. Rev. Stat. § 646.605(8) defines "trade" and "commerce" as "advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services." In 1976, an intermediate appellate court interpreted this language not to include consumer lending. <i>Haeger v. Johnson</i> , 548 P.2d 532 (Or. App. 1976). In 2010 the state legislature overruled this decision by explicitly defining the statute to include loans and extensions of credit. Or. Rev. Stat. § 646.605(6).
b. Insurance	Weak	Or. Rev. Stat. § 646.605(6) excludes insurance from the definition of "real estate, goods or services," which has the effect of exempting insurance transactions from the UDAP statute.
c. Utilities	Strong	Or. Rev. Stat. § 646.605(8) defines "trade" and "commerce" broadly to include "any . . . services," without creating any exception for utility services. Or. Rev. Stat. § 646.612(1) excludes "[c]onduct in compliance with the orders or rules of, or a statute administered by a federal state or local governmental agency." This exemption is worded to exempt only particular conduct that complies with a rule, an order, or a statute, rather than exempting the entity itself. Although Oregon courts have not addressed the coverage of utilities, the Oregon Supreme Court has construed this language not to provide a blanket exemption in other contexts. <i>See, e.g., Rathgeber v. James Hemenway, Inc.</i> , 69 P.3d 710, 714 (Or. 2003). In light of these decisions and the general rule that UDAP statutes are to be liberally interpreted, it is unlikely that Oregon courts will construe this language as a blanket exemption.

d. Post-sale acts (debt collection, repossession)	Strong	Or. Rev. Stat. § 646.639, part of the UDAP statute, prohibits specific unlawful debt collection practices and is subject to a separate private cause of action. Or. Rev. Stat. § 646.641. The UDAP statute also prohibits unconscionable tactics in “collection or enforcement of an obligation,” Or. Rev. Stat. § 646.607(1), but this prohibition is not privately enforceable. Or. Rev. Stat. § 646.638(1) (creating a private cause of action only for violation of § 646.608, not § 646.607). Courts have had no difficulty applying the UDAP statute to mortgage servicing. <i>See, e.g., Kwake v. Select Portfolio Servicing, Inc.</i> , 2017 WL 442899 (D. Or. Feb. 1, 2017).
e. Real estate	Strong	Or. Rev. Stat. § 646.605(6) defines trade or commerce to include real estate transactions (with an exception for landlord-tenant matters). The statute was applied to a real estate transaction in <i>Rathgeber v. James Hemenway, Inc.</i> , 69 P.3d 710 (Or. 2003).
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Weak	The statute does not give the consumers the right to enforce the prohibition of unconscionable tactics, and they can enforce the broad prohibition of deceptive tactics only if the attorney general has adopted a rule prohibiting the specific practice.
b. Does not require reliance	Mixed	Reliance is required in some but not all circumstances. <i>Pearson v. Philip Morris, Inc.</i> , 361 P.3d 3, 27 (Or. 2015) (whether reliance is an element of UDAP claim depends on type of violation and type of loss alleged; it is the necessary causal link when misrepresentations are alleged and consumer seeks refund); <i>Sanders v. Francis</i> , 561 P.2d 1003 (Or. 1971) (not required in case of non-disclosure).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Or. Rev. Stat. § 646.638 allows punitive damages.
f. Attorney fees for consumers	Strong	Or. Rev. Stat. § 646.638(3) states that the court “may” award attorney fees to the prevailing plaintiff, or to the prevailing defendant if the court finds no objectively reasonable basis for bringing the action.
g. UDAP statute does not prohibit class actions	Strong	Or. Rev. Stat. § 646.638(4) explicitly refers to class actions.
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Or. Rev. Stat. § 646.632
c. Restitution for consumers	Strong	Or. Rev. Stat. § 646.636
d. Civil penalty amount for initial violations	Strong	Or. Rev. Stat. § 646.642 - up to \$25,000 per violation if willful.

## PENNSYLVANIA

### 73 Pa. Stat. Ann. §§ 201-1 through 201-9.3 (West) Unfair Trade Practices and Consumer Protection Law

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Undecided	73 Pa. Stat. § 201-3 broadly prohibits unfairness, but there is a significant lack of clarity in the statute, as this prohibition, if given a narrow interpretation, can be held to be tied to a specific definition in 73 Pa. Stat. § 201-2(4) that forbids only a few relatively narrow examples of unfair acts.
b. Broadly prohibits deceptive acts	Strong	73 Pa. Stat. § 201-2(4) has a broad prohibition of deception. Both of the state intermediate appellate courts have interpreted the statute not to require proof of common law fraud. <i>Milliken v. Jacono</i> , 60 A.3d 133 (Pa. Super. Ct. 2012); <i>Bennett v. A.T. Masterpiece Homes at BROADSPRINGS, L.L.C.</i> , 40 A.3d 145 (Pa. Super. Ct. 2012); <i>Commw. ex rel. Corbett v. Manson</i> , 903 A.2d 69 (Pa. Commw. Ct. 2006).
c. Provides the state agency substantive rulemaking authority	Strong	73 Pa. Stat. § 201-3.1. The Attorney General has adopted just a few rules, but one, which relates to motor vehicle sales and service, is significant.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	Pennsylvania courts have held that credit transactions fall within the state UDAP statute's broad coverage of trade or commerce, and that consumers can bring suit under the statute in cases involving credit transactions. <i>See, e.g., Pennsylvania Bankers Ass'n v. Pennsylvania Bur. of Consumer Protection</i> , 427 A.2d 730 (Pa. Commw. 1981); <i>Safeguard Investment Corp. v. Commonwealth by Colville</i> , 404 A.2d 720 (Pa. Commw. 1979).
b. Insurance	Strong	Insurance transactions fit easily within the Pennsylvania UDAP statute's broad coverage of "trade or commerce," and there is no statutory exclusion for insurance. Pennsylvania courts have developed a distinction between misfeasance and nonfeasance in the insurance context, however, which prevents the application of the statute to many insurance claim denial issues. <i>See, e.g., Gardner v. State Farm Fire &amp; Cas. Co.</i> , 544 F.3d 553 (3d Cir. 2008) (Pa. law). Nonetheless, it appears that the statute is applicable to affirmative wrongdoing by insurers, and many decisions have applied the UDAP statute to insurance transactions. <i>See, e.g., Toy v. Metropolitan Life Ins. Co.</i> , 928 A.2d 186 (Pa. 2007).
c. Utilities	Strong	Pennsylvania's UDAP statute applies broadly to "trade and commerce," defined to include distribution of any services, any property, or any other thing of value. Pa. Stat. Ann. tit. 73, § 201-2(3) (West). This language is clearly broad enough to encompass utility service, and courts have applied the UDAP statute to various utilities. <i>See, e.g., Pettko v. Pa. Am. Water Co.</i> , 39 A.3d 473 (Pa. Commw. Ct. 2012) (applying UDAP statute to overcharges by regulated utility; PUC has primary but not exclusive jurisdiction).
d. Post-sale acts (debt collection, repossession)	Strong	Pennsylvania's UDAP statute applies to trade or commerce, defined broadly. Pa. Stat. tit. 73, § 201-2(3). A number of decisions have held that the Pennsylvania UDAP statute applies to debt collection. <i>See, e.g., Pennsylvania Retailers Ass'n v. Lazin</i> , 426 A.2d 712 (Pa. Commw. Ct. 1981). In addition, the state debt collection statute provides that a debt collector's violation of any of its provisions constitutes a violation of the UDAP statute. Pa. Stat. tit. 73, § 2270.4. Courts have also applied the statute to post-consummation dealings between mortgage lenders and consumers. <i>See, e.g., Smith v. Commercial Banking Corp.</i> , 866 F.2d 576 (3d Cir. 1989) (Pa. law).

e. Real estate	Strong	The broad scope of Pennsylvania’s UDAP statute, applicable to “trade or commerce,” easily encompasses real estate transactions. Pa. Stat. tit. 73, § 201-2(3). <i>See, e.g., Gabriel v. O’Hara</i> , 534 A.2d 488 (Pa. Super. 1987).
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Weak	The Pennsylvania Supreme Court has held that reliance is an element of a UDAP claim. <i>Toy v. Metropolitan Life Ins. Co.</i> , 928 A.2d 186 (Pa. 2007); <i>Yocca v. Pittsburgh Steelers Sports, Inc.</i> , 854 A.2d 425 (Pa. 2004).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	73 Pa. Stat. § 201-9.2(a).
f. Attorney fees for consumers	Strong	73 Pa. Stat. § 201-9.2(a).
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute precludes class actions, and courts have certified class actions under Pennsylvania’s UDAP statute. <i>See, e.g., Allen v. Holiday Universal</i> , 249 F.R.D. 166 (E.D. Pa. 2008). However, a number of courts have found the Pennsylvania Supreme Court’s unusually rigid statements that justifiable reliance is an element of a UDAP claim to be an impediment to class certification. <i>See, e.g., Kern v. Lehigh Valley Hospital</i> , 108 A.3d 1281 (Pa. Super. Ct. 2015).
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	73 Pa. Stat. § 201-4.
c. Restitution for consumers	Strong	73 Pa. Stat. § 201-4.1.
d. Civil penalty amount for initial violations	Weak	73 Pa. Stat. § 201-8(b) (allowed for willful violations; \$1,000 per violation, \$3,000 per violation if victim is age 60 or older).

## RHODE ISLAND

R.I. Gen. Laws §§ 6-13.1-1 through 6-13.1-27  
Unfair Trade Practice and Consumer Protection Act

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Strong	R.I. Gen. Laws §§ 6-13.1-1(6)(xiii), 6-13.1-2
b. Broadly prohibits deceptive acts	Strong	R.I. Gen. Laws §§ 6-13.1-1(6)(xii), (xiii), (xiv), 6-13.1-2
c. Provides the state agency substantive rulemaking authority	Strong	R.I. Gen. Laws § 6-13.1-7(c). However, the state has adopted rules only regarding time shares and odometer tampering, so is rated Mixed in this category



b. Does not require reliance	Strong	In <i>Long v. Dell, Inc.</i> , 93 A.3d 988 (R.I. 2014), a suit by a consumer, the Rhode Island Supreme Court adopted the FTC definition of deception, which does not require reliance. It also held that evidence that the defendant's practice "affected plaintiff's conduct regarding the product" was sufficient to preclude summary judgment against the consumer. These holdings may amount to a conclusion that reliance is not an element of a UDAP claim, and at least strongly imply that it is not.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	R.I. Gen. Laws § 6-13.1-5.2 allows punitive damages.
f. Attorney fees for consumers	Strong	R.I. Gen. Laws § 6-13.1-5.2(d) says "In any action brought by a person under this section, the court may award, <i>in addition to the relief provided in this section</i> , reasonable attorney's fees and costs" (emphasis added). This seems to allow fees only if relief is awarded under § 6-13.1-5.2, which authorizes relief only for consumers. This would mean that fees could only be awarded along with relief to the consumer, so consumers would not be required to pay the business's attorney fees if they filed a case in good faith but lost. No decisions were found on this question, however.
g. UDAP statute does not prohibit class actions	Strong	R.I. Gen. Laws § 6-13.1-5.2(b)

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	R.I. Gen. Laws § 6-13.1-5(a)
c. Restitution for consumers	Strong	R.I. Gen. Laws § 6-13.1-5(c)
d. Civil penalty amount for initial violations	Weak	Rhode Island's UDAP statute does not authorize civil penalties for initial violations.

## SOUTH CAROLINA

S.C. Code Ann. §§ 39-5-10 through 39-5-160  
Unfair Trade Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	S.C. Code § 39-5-20(a)
b. Broadly prohibits deceptive acts	Strong	S.C. Code § 39-5-20(a)
c. Provides the state agency substantive rulemaking authority	Weak	S.C. Code § 39-5-80 allows the AG to "promulgate such rules and prescribe such regulations as may be necessary," but this authority is included in a statutory section that deals solely with investigations and hearings, and the AG has not adopted any substantive rules.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	“Trade” and “commerce” are defined broadly by S.C. Code Ann. § 39-5-10(b) to include “distribution . . . of any property . . . and any other . . . thing of value.” This language is broad enough to include extensions of credit. S.C. Code Ann. § 39-5-40(a) makes the statute inapplicable to “actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of” South Carolina or the United States or “actions or transactions permitted by any other South Carolina State law.” In <i>Beattie v. Nations Credit Financial Services Corp.</i> , 69 Fed. Appx. 585 (4 <sup>th</sup> Cir. 2003), the Fourth Circuit construed this exemption narrowly. Citing <i>Ward v. Dick Dyer &amp; Assocs., Inc.</i> , 403 S.E.2d 310, 312 (S.C. 1991), the court held that the exemption is not meant to exclude every activity regulated by another agency or statute, but it is meant to ensure that companies are not subjected to lawsuits for following an agency regulation or statute.
b. Insurance	Weak	S.C. Code Ann. § 39-5-40 states: “This article does not supersede or apply to unfair trade practices covered and regulated under” the state unfair insurance practices law. A number of decisions hold that this language exempts all unfair trade practices in the business of insurance. <i>See, e.g., Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.</i> , 868 F. Supp. 128, 132 (D.S.C. 1994).
c. Utilities	Strong	The South Carolina UDAP statute applies to “trade” and “commerce,” defined to include “distribution . . . of any property . . . and any other . . . thing of value.” S.C. Code Ann. § 39-5-10(b). This language is clearly broad enough to include utility service. S.C. Code Ann. § 39-5-40(a) exempts “[a]ctions or transactions permitted under laws administered by” a regulatory body or other South Carolina law,” but this language has not been construed as a blanket exemption in other contexts. <i>See, e.g., Beattie v. Nations Credit Fin. Servs. Corp.</i> , 69 Fed. Appx. 585 (4 <sup>th</sup> Cir. 2003). In <i>Andrade v. Johnson</i> , 546 S.E.2d 665 (S.C. Ct. App. 2001), <i>rev’d on other grounds</i> , 588 S.E.2d 588 (S.C. 2003), an intermediate appellate court held that, where a public utility required customers to do business with a contractor who engaged in unfair and deceptive acts, the utility was not exempt from UDAP coverage because, although the utility’s rate structure was approved by the South Carolina Public Service Commission, the implementation of a contractor program was not.
d. Post-sale acts (debt collection, repossession)	Strong	South Carolina’s UDAP statute applies to practices “in the conduct of any trade or commerce,” a term that is broadly defined. S.C. Code §§ 39-5-10(b), 39-5-20. Post-sale acts appear to be covered by South Carolina’s UDAP statute, and several courts have applied the statute to debt collection. <i>See, e.g., In re Daniel</i> , 137 B.R. 884 (D.S.C. 1992); <i>Craig v. Andrew Aaron &amp; Associates, Inc.</i> , 947 F. Supp. 208 (D.S.C. 1996).
e. Real estate	Strong	S.C. Code § 39-5-10(b) defines trade or commerce to include real estate, and the private cause of action is not limited in a way that could be construed to exclude real estate. In <i>Payne v. Holiday Towers, Inc.</i> , 321 S.E.2d 179 (S.C. App. 1984), the South Carolina Court of Appeals upheld a ruling for plaintiffs who purchased condominiums from defendants based upon misrepresentations.
3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.



b. Does not require reliance	Undecided	South Carolina courts have not addressed the question whether reliance is required. A number of decisions list the elements that a plaintiff must allege to sustain a UDAP claim, without listing reliance. <i>See, e.g., City of Charleston, SC v. Hotels.com, LP</i> , 487 F. Supp. 2d 676 (D.S.C. 2007). In addition, <i>State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.</i> , 777 S.E.2d 176, 191-192 (S.C. 2015) states that a consumer must show a causal connection, a lesser requirement than reliance would be. However, the question remains undecided.
c. Does not require a showing of public interest or public impact	Weak	South Carolina Supreme Court decisions such as <i>Daisy Outdoor Advertising Co. v. Abbott</i> , 473 S.E.2d 47 (S.C. 1996), require a public interest showing, which can be met by showing actual repetition or a potential for repetition. Courts in South Carolina have interpreted this requirement less harshly than courts in the other states that impose such a requirement, but it still stands as an impediment to consumers.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	S.C. Code § 39-5-140(a) if willful or knowing
f. Attorney fees for consumers	Strong	S.C. Code § 39-5-140(a)
g. UDAP statute does not prohibit class actions	Weak	S.C. Code § 39-5-140 allows suit only by consumer who is not acting “in a representative capacity”
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	S.C. Code § 39-5-50(a)
c. Restitution for consumers	Strong	S.C. Code § 39-5-50(b)
d. Civil penalty amount for initial violations	Mixed	S.C. Code § 39-5-110(a) – up to \$5,000 per violation if willful

## SOUTH DAKOTA

### S.D. Codified Laws §§ 37-24-1 through 37-24-35 Deceptive Trade Practices and Consumer Protection Law

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Weak	The statute does not include a broad prohibition of unfair or unconscionable acts.
b. Broadly prohibits deceptive acts	Mixed	S.D. Codified Laws § 37-24-6(1) would be broad except that the deceptive act must be knowing and intentional. On the other hand, that requirement does not apply to Attorney General enforcement actions because of § 37-24-8 (see § 4(a) below).
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	South Dakota courts have not addressed the question whether the state UDAP statute covers credit transactions. The statute prohibits deceptive practices in connection with the sale of “merchandise,” but that term is broadly defined to include intangibles and services, which would appear to encompass credit. S.D. Codified Laws §§ 37-24-1, 37-24-6. The private cause of action in S.D. Codified Laws § 37-24-31 is not worded in a way that would exclude cases based on credit transactions. S.D. Codified Laws § 37-24-10 exempts “acts or practices permitted” under South Dakota or federal laws, regulations, and decisions, but this language is relatively narrow and appears to exempt just specific acts or practices rather than creating a blanket exemption for all credit transactions.
b. Insurance	Strong	South Dakota courts have not addressed the question whether the UDAP statute applies to insurance transactions. S.D. Codified Laws § 37-24-6 only prohibits deceptive practices in connection with the sale of “merchandise,” but that term is broadly defined by section 37-24-1(7) to include intangibles and services, which would appear to encompass insurance. S.D. Codified Laws § 37-24-10 exempts “acts or practices permitted under laws of this state” or the United States or under rules, regulations, or decisions interpreting such laws. This language is relatively narrow and appears to exempt just specific acts or practices rather than creating a blanket exemption for all insurance transactions.
c. Utilities	Strong	South Dakota courts have not addressed the question whether the UDAP statute covers utilities. The statute applies to the sale or advertisement of merchandise, broadly defined to include any object, wares, goods, commodity, intangible, instruction, or service. S.D. Codified Laws §§ 37-24-1, 37-24-6. Nothing in the statute creates a distinction between coverage of utility service and coverage of other services. S.D. Codified Laws § 37-24-10 exempts “acts or practices required or permitted by or in accord with laws of this state or the United States or under rules, regulations, sub-regulatory policy, or decisions interpreting such laws.” This language is relatively narrow and appears to exempt just specific acts or practices rather than creating a blanket exemption for all utility service.
d. Post-sale acts (debt collection, repossession)	Undecided	S.D. Codified Laws § 37-24-6(1) prohibits deceptive acts “in connection with the sale . . . of any merchandise.” The broad language “in connection with” would appear to cover post-sale acts such as debt collection as long as the transaction involves “merchandise,” a term that is broadly defined by S.D. Codified Laws § 37-24-1(7). However, South Dakota courts have not decided the issue.
e. Real estate	Strong	The general prohibition of deception at S.D. Codified Laws § 37-24-6(1) applies to sale or advertisement of “merchandise,” which is defined by § 37-24-1(7) as “any object, wares, goods, commodity, intangible, instruction, or service.” Real estate is probably an “object,” and sale of real estate is probably a “service,” but no court has yet interpreted this language. Many of the other prohibitions of § 37-24-6 also apply to merchandise or to “consumer property,” a very broad but undefined term. It would be hard to argue that a consumer’s home is not “consumer property.” The private cause of action is not limited in a way that could be interpreted to exclude real estate. In addition, the definition of “trade or commerce” at S.D. Codified Laws § 37-24-1(13) includes the sale or distribution of “any property, tangible or intangible,” so clearly includes real estate. While the terms “trade” and “commerce” are not actually used anywhere in the statute, the presence of this definition indicates an intention on the part of the legislature that the statute would apply to real estate.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.

b. Does not require reliance	Undecided	S.D. Codified Laws § 37-24-31 allows a consumer who is “adversely affected” to sue. In <i>Nygaard v. Sioux Valley Hospitals &amp; Health System</i> , 731 N.W.2d 184, 196 (S.D. 2007), the South Dakota Supreme Court held that, in order to state a UDAP claim, the plaintiffs must plead that their damages were proximately caused by defendant’s alleged unfair or deceptive acts. The court contrasted UDAP claims with intentional and negligent misrepresentation claims in a footnote, noting that “[b]oth intentional and negligent misrepresentation also require reliance.” <i>Id.</i> at 197 n. 13. This language suggests that a showing of reliance is not required for UDAP claims. However, the court also rejected a claim of deception on the ground that the defendant did not make any representation that induced a belief by the plaintiffs that caused them to select the defendant hospitals. Some courts have construed this part of the decision as imposing a reliance requirement. <i>See, e.g., Rainbow Play Sys., Inc. v. Backyard Adventure, Inc.</i> , 2009 WL 3150984 (D.S.D. Sept. 28, 2009).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Weak	The statute does not include any provision for multiple or punitive damages.
f. Attorney fees for consumers	Weak	The statute does not give a judge authority to order a business to reimburse a consumer’s attorney fees when a consumer wins a case.
g. UDAP statute does not prohibit class actions	Strong	Although no cases could be found approving UDAP class actions in South Dakota, there is no prohibition of class actions in the statute.
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Even though knowledge and intent are required by S.D. Codified Laws § 37-24-6(1), S.D. Codified Laws § 37-24-8 says that, for actions brought by the Attorney General, “engaging in an act or practice declared to be unlawful by § 37-24-6 shall be prima facie evidence that the act or practice was engaged in knowingly and intentionally.”
b. Equitable relief	Strong	S.D. Codified Laws § 37-24-23
c. Restitution for consumers	Strong	S.D. Codified Laws § 37-24-29
d. Civil penalty amount for initial violations	Weak	S.D. Codified Laws § 37-24-27 (up to \$2,000 per violation if intentional)

## TENNESSEE

Tenn. Code Ann. §§ 47-18-101 through 47-18-125  
Consumer Protection Act

<b>1. BREADTH OF SUBSTANTIVE PROHIBITIONS</b>		<b>COMMENTS</b>
a. Broadly prohibits unfair or unconscionable acts	Mixed	Tenn. Code § 47-18-104(a) broadly prohibits unfairness, but only the specific unfair acts or practices listed in Tenn. Code § 47-18-104(b) can be enforced by consumers. <i>See</i> Tenn. Code § 47-18-109(a)(1).

b. Broadly prohibits deceptive acts	Mixed	Tenn. Code § 47-18-104(a) broadly prohibits deception, but only the specific deceptive acts or practices listed in Tenn. Code § 47-18-104(b) can be enforced by consumers. <i>See</i> Tenn. Code § 47-18-109(a)(1). In addition, pursuant to Tenn. Code § 47-18-104(b)(27), only the attorney general may enforce the catchall provision forbidding “any other” deceptive act or practice.
c. Provides the state agency substantive rulemaking authority	Weak	Tenn. Code § 47-18-5002(3) allows the state agency to promulgate procedural rules but not substantive rules.

2. SCOPE OF STATUTE	COMMENTS
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a. Creditors and credit	Undecided	<p>Tennessee’s UDAP statute applies to acts and practices “affecting the conduct of any trade or commerce,” broadly defined to include “distribution of any . . . property, tangible or intangible, real, personal, or mixed, and other articles, commodities or things of value wherever situated.” Tenn. Code §§ 47-18-103(19), 47-18-104. This language is broad enough to encompass credit transactions, and the private cause of action is not limited in a way that would exclude credit transactions. The question in Tennessee is the effect of two statutory exclusions. First, Tenn. Code § 47-18-111(a)(1) excludes “acts or transactions required or specifically authorized under the laws administered by, or rules and regulations promulgated by, any regulatory bodies or officers acting under the authority of this state or of the United States.” Second, Tenn. Code § 47-18-111(a)(3) excludes “[c]redit terms of a transaction which may be otherwise subject to the provisions of this part, except insofar as the Tennessee Equal Consumer Credit Act.”</p> <p>In <i>Hathaway v. First Family Financial Services, Inc.</i>, 1 S.W.3d 634, 642-3 (Tenn. 1999), although it found that an exclusive remedy provision in a state banking statute meant that a UDAP claim was unavailable, the Tennessee Supreme Court declined to adopt a general banking exemption, holding that each case must be examined on its own facts. However, there appears to be no settled view yet as to how much banking activity is excluded from the statute. In <i>Smith v. First Union Nat. Bank of Tennessee</i>, 958 S.W.2d 113, 116-117 (Tenn. App. 1997), a Tennessee appellate court held a bank exempt from the act where it posted checks against a client’s account in an order that would lead to more fees for the bank, but this precise practice was authorized by state banking laws. On the other hand, in <i>Kleto v. AmSouth Bank</i>, 2005 WL 2573379 (E.D. Tenn. 2005), a federal district court gave the exemption a broader reading, holding that deceptive acts or practices by banks fall outside the scope of the Act unless they also violate the state equal credit act. Yet another decision holds that there is no general exemption for banking activities, and a bank may be liable for its lax monitoring of investment accounts that enabled an investment advisor to steal the consumer’s money. <i>Jackson v. Regions Bank</i>, 2010 WL 3069844 (M.D. Tenn. Aug. 4, 2010). It appears that these exemptions exclude many aspects of credit transactions, but their precise scope remains unresolved.</p>
b. Insurance	Weak	In 1998, the Tennessee Supreme Court held that the UDAP statute covers insurance transactions. <i>Myint v. Allstate Ins. Co.</i> , 970 S.W.2d 920 (Tenn. 1998). However, in 2011 the legislature overruled this decision by providing that the state unfair insurance practices statute displaces all other statutory claims for unfair or deceptive acts or practices in connection with a contract of insurance. Tenn. Code § 56-8-113.

c. Utilities	Undecided	The definitions of “trade,” “commerce,” “consumer transaction,” and “services” at Tenn. Code § 56-8-103 are clearly broad enough to encompass utility service, and there is no specific exemption for utility companies. Tenn. Code Ann. § 47-18-111 excludes “[a]cts or transactions required or specifically authorized under the laws administered by, or rules and regulations promulgated by, any regulatory bodies or officers acting under the authority of this state or of the United States.” In the context of credit transactions the Tennessee Supreme Court refused to interpret this language as creating a blanket exemption, but instead held that each case must be examined on its own facts. <i>Hathaway v. First Family Fin. Servs., Inc.</i> , 1 S.W.3d 634, 642–643 (Tenn. 1999). Accordingly, it is unlikely that this language would be construed as a blanket exemption for utilities. However, the question remains undecided.
d. Post-sale acts (debt collection, repossession)	Undecided	The Tennessee UDAP statute appears to be broad enough to cover debt collection. It prohibits unfair or deceptive acts “affecting” the conduct of any trade or commerce. Tenn. Code § 47-18-104(a). The terms “trade,” “commerce,” and “consumer transaction” are broadly defined to include “advertising, offering for sale, lease or rental, or distribution of any goods, services or property, tangible or intangible, real, personal, or mixed, and other articles, commodities or things of value wherever situated.” Tenn. Code § 47-18-103(19). Nonetheless, the coverage of debt collection is thrown into some doubt by the Tennessee Supreme Court’s ruling in <i>Pursell v. First Am. Nat’l Bank</i> , 937 S.W.2d 838 (Tenn. 1996), that repossession does not fall within the UDAP statute’s definition of “trade” or “commerce.” See also <i>Davenport v. Bates</i> , 2006 WL 3627875 (Tenn. App. Dec. 12, 2006). The <i>Pursell</i> court did not describe its rationale in any detail, and focused primarily on a claim that the creditor failed to return personal property that was not subject to the creditor’s security interest but which the consumer had left in the vehicle before it was repossessed. By contrast, a debt collection claim would involve the debt that arose from the underlying transaction rather than the disposition of unrelated property that came into the creditor’s possession by happenstance, so is much more likely to be found to “affect” the conduct of trade or commerce. Several decisions have applied the statute to the collection phase of a transaction. See, e.g., <i>Wolfe v. MBNA Am. Bank</i> , 485 F. Supp. 2d 874 (W.D. Tenn. 2007).
e. Real estate	Strong	The definition of consumer at Tenn. Code § 47-18-103(2) includes one who seeks or acquires real estate. The definition of “trade,” “commerce,” and “consumer transaction” at Tenn. Code § 47-18-103(11) also include real estate. The private cause of action is not limited in a way that could be construed to preclude suits regarding real estate. One section of the UDAP statute, Tenn. Code § 47-18-104(b)(42), has specific prohibitions that relate to real estate sales. The Tennessee Supreme Court has held that the statute applies to real estate sales. <i>Fayne v. Vincent</i> , 301 S.W.3d 162, 172 (Tenn. 2009).

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Weak	The statute broadly prohibits unfairness and deception, but these prohibitions cannot be enforced by consumers.
b. Does not require reliance	Strong	A number of decisions hold that a UDAP claim does not require proof of reliance. See, e.g., <i>Nickell v. Bank of Am.</i> , 2012 WL 394467, at *7 (W.D. Tenn. Feb. 26, 2002); <i>Fleming v. Murphy</i> , 2007 WL 2050930 (Tenn. Ct. App. 2007) (“[A]lthough the TCPA does not require reliance, plaintiffs are required to show that the defendant’s wrongful conduct proximately caused their injury.”)
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.

e. Multiple or punitive damages	Strong	Tenn. Code § 47-18-109(a)(3) (allowing treble damages if violation was willful or knowing, but denying court the authority to award punitive damages for the same practice).
f. Attorney fees for consumers	Strong	Tenn. Code § 47-18-109(e). <i>See Killingsworth v. Ted Russell Ford, Inc.</i> , 205 S.W.3d 406 (Tenn. 2006) (affirming award of attorney fees for successful appeal in UDAP case).
g. UDAP statute does not prohibit class actions	Weak	Tenn. Code § 47-18-109(a)(1) formerly allowed an action for damages to be brought “individually.” The Tennessee Supreme Court has interpreted this language to preclude class actions. <i>Walker v. Sunrise Pontiac-GMC Truck, Inc.</i> , 249 S.W.3d 301 (Tenn. 2008). A 2011 amendment ( <i>see</i> Tenn. Code § 47-18-109(g)) appears to have narrowed this language so that it only prohibits class actions for damages, not injunctive or other relief, but courts have not yet addressed this question, and even with a narrow interpretation it would still prohibit a wide range of class actions.

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Tenn. Code § 47-18-108(a)
c. Restitution for consumers	Strong	Tenn. Code § 47-18-108(b)(1)
d. Civil penalty amount for initial violations	Weak	Tenn. Code § 47-18-108(b)(3) - \$1,000 per violation

## TEXAS

### Tex. Bus. & Com. Code Ann. §§ 17.41 through 17.63 (Vernon) Deceptive Trade Practices—Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Tex. Bus. & Com. Code §§ 17.45(5), 17.50(a)(3) (unconscionable acts).
b. Broadly prohibits deceptive acts	Mixed	Tex. Bus. & Com. Code § 17.46(a) broadly prohibits deception, but Tex. Bus. & Com. Code § 17.46(d) and 17.50(a)(1)(A) deny consumers the ability to enforce this prohibition.
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Mixed	Credit is covered but only if it was used to purchase goods or services. <i>Riverside Nat’l Bank v. Lewis</i> , 603 S.W.2d 169 (Tex. 1980).
b. Insurance	Strong	The Texas UDAP statute explicitly provides that a violation of the state unfair insurance practices act is actionable as a UDAP violation. The Texas Supreme Court has applied the state UDAP statute to insurance transactions. <i>See Progressive County Mut. Ins. Co. v. Boyd</i> , 177 S.W.3d 919 (Tex. 2005); <i>Stewart Title Guar. Co. v. Aiello</i> , 941 S.W.2d 68, 72 (Tex. 1997).

c. Utilities	Strong	The Texas UDAP statute applies to the purchase or lease of “goods or services.” Tex. Bus. & Com. Code Ann. § 17.45(4), (6) (West). A Texas intermediate appellate court has held that this language encompasses the provision of electric service. <i>Bailey v. Gulf States Utilities Co.</i> , 27 S.W.3d 713, 718 (Tex. App. 2000)
d. Post-sale acts (debt collection, repossession)	Strong	Tex. Bus. & Com. Code § 17.45(6), defining trade or commerce, is broad enough to include post-sale acts such as debt collection. The statute’s prohibitions against deception and unconscionability are also broad. In <i>EMC Mortg. Corp. v. Jones</i> , 252 S.W.3d 857 (Tex. App. 2008), a Texas appellate court upheld an award of damages based in part on a UDAP claim for unreasonable collection practices. The statute has also been applied to wrongful repossession and wrongful foreclosure of purchase money mortgages. <i>See, e.g., Flenniken v. Longview Bank &amp; Trust Co.</i> , 661 S.W.2d 705 (Tex. 1984) (UDAP statute applies to bank’s unconscionable foreclosure); <i>Kheir v. Progressive County Mut. Ins. Co.</i> , 2006 WL 1594031 (Tex. App. June 13, 2006) (upholding UDAP damages award for wrongful repossession). One limitation is that the underlying debt must fall within the statute’s scope, so the statute does not apply to collection of a debt that arises from a credit transaction that is not connected to the purchase of goods or services. <i>See, e.g., Marquez v. Fed. Nat’l Mortgage Ass’n</i> , 2011 WL 3714623, at *4 (N.D. Tex. Aug. 23, 2011). However, the statute still applies relatively broadly to abusive debt collection and other post-sale practices.
e. Real estate	Strong	Tex. Bus. & Com. Code § 17.45(1) defines goods to include real property. Tex. Bus. & Com. Code § 17.45(b), which defines trade or commerce, is also broad enough to include real estate. The Texas Supreme Court has confirmed that consumers who purchase real estate can bring UDAP claims. <i>Chastain v. Koance</i> , 700 S.W.2d 579 (Tex. 1985).

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Weak	The statute broadly prohibits deception, but denies consumers the ability to enforce this prohibition.
b. Does not require reliance	Weak	The Texas UDAP statute expressly requires a consumer to prove reliance for violations of its laundry list (but not breach of warranty, unconscionability, or violations of the Texas Insurance Code). Tex. Bus. & Com. Code § 17.50(a)(1)(B)
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Weak	Tex. Bus. & Com. Code § 17.505
e. Multiple or punitive damages	Strong	Tex. Bus. & Com. Code § 17.50(b)(1) if knowing
f. Attorney fees for consumers	Strong	Tex. Bus. & Com. Code § 17.50(d)
g. UDAP statute does not prohibit class actions	Strong	Tex. Bus. & Com. Code § 17.501. <i>See also Bally Total Fitness Corp. v. Jackson</i> , 53 S.W.3d 352 (Tex. 2001) (denying motion to decertify a class with claims under the state’s UDAP statute).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Tex. Bus. & Com. Code § 17.47(a)
c. Restitution for consumers	Strong	Tex. Bus. & Com. Code § 17.47(d)
d. Civil penalty amount for initial violations	Strong	Tex. Bus. & Com. Code § 17.47(c) (up to \$20,000 per violation)

# UTAH

## Utah Code Ann. §§ 13-11-1 through 13-11-23 Consumer Sales Practices Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Utah Code Ann. § 13-11-5
b. Broadly prohibits deceptive acts	Strong	Utah Code Ann. § 13-11-4(1)
c. Provides the state agency substantive rulemaking authority	Strong	Utah Code Ann. § 13-11-8. The state has adopted several rules.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Undecided	Utah Code Ann. § 13-11-3(2) defines “consumer transaction” to include “oral or written transfer or distribution of . . . property.” This language is broad enough to include credit. The question is the scope of two statutory exemptions. First, Utah Code Ann. § 13-11-22(1)(a) exempts “[a]n act or practice required or specifically permitted by or under federal law, or by or under state law.” The reference to “an act or practice” and the phrase “specifically permitted” make this a fairly narrow exemption. In addition, Utah Code Ann. § 13-11-22(1)(d) exempts “[c]redit terms of a transaction otherwise subject to this act.” No decisions have been found that interpret this language. Even if it were given a broad reading, claims involving matters such as misrepresentation, bait-and-switch tactics, and abusive collection would still be available. However, the Tenth Circuit has held that the state UDAP statute does not apply to mortgage loans, because more specific statutes regulate the area. <i>Berneike v. Citimortgage, Inc.</i> , 708 F.3d 1141 (10th Cir. 2013).
b. Insurance	Weak	Utah Code Ann. § 13-11-3(2)(a) excludes insurance from the definition of “consumer transaction.”
c. Utilities	Weak	Utah Code Ann. § 13-11-22(1)(e) provides that the UDAP statute does not apply to any public utility subject to the regulating jurisdiction of the state public service commission.
d. Post-sale acts (debt collection, repossession)	Strong	Utah Code Ann. §§ 13-11-4(1) and 13-11-5(1) define deceptive and unconscionable acts or practices as violations whether they occur before, during, or after the transaction. The statute also defines a “supplier” subject to the statute to include a person who “enforces consumer transactions.” Utah Code Ann. § 13-11-3(6). A federal court of appeals has held that the statute covers debt collection. <i>Heard v. Bonneville Billing &amp; Collections</i> , 216 F.3d 1087 (10th Cir. 2000).
e. Real estate	Strong	The definition of “consumer transaction” at Utah Code Ann. § 13-11-3(2)(a) is broad, and the private cause of action at Utah Code Ann. § 13-11-19 is not limited in any way that would exclude real property. See <i>Iadanza v. Mather</i> , 820 F. Supp. 1371 (D. Utah 1993).
3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.



b. Does not require reliance	Undecided	Utah courts have not addressed this question directly, but they construe the requirement that the consumer suffer a loss liberally in favor of the consumer. See <i>Andreason v. Felsted</i> , 137 P.3d 1, 4 (Utah App. 2006). Given this general interpretation, it is likely that Utah courts would find that reliance is not required. However, the issue remains unresolved.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Weak	The statute does not provide for multiple or punitive damages.
f. Attorney fees for consumers	Strong	Utah Code Ann. § 13-11-19(5)
g. UDAP statute does not prohibit class actions	Strong	Utah Code Ann. §§ 13-11-19(3), (4), 13-11-20 specifically provide for UDAP class actions.

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Mixed	The general prohibition of deception at Utah Code Ann. § 13-11-4(a) does not require a showing of intent or knowledge, but the list of § 13-11-4(b) of specific practices that are deceptive does require a showing of intent or knowledge. Utah Code Ann. § 13-11-5 allows a finding of unconscionability to be made in light of facts which the defendant "knew or had reason to know"—a standard that falls short of a requirement to show intent or knowledge for this violation.
b. Equitable relief	Strong	Utah Code Ann. § 13-11-17(1)(b)
c. Restitution for consumers	Strong	Utah Code Ann. § 13-11-17(1)(c), (2)(b)
d. Civil penalty amount for initial violations	Weak	Utah Code Ann. § 13-11-17(4) - \$2,500 per violation

## VERMONT

Vt. Stat. Ann. tit. 9, §§ 2451 through 2480g  
Consumer Fraud Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Vt. Stat. Ann. tit. 9, § 2453(a)
b. Broadly prohibits deceptive acts	Strong	Vt. Stat. Ann. tit. 9, § 2453(a)
c. Provides the state agency substantive rulemaking authority	Strong	Vt. Stat. Ann. tit. 9, § 2453(c). The state has adopted a number of rules.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	Vt. Stat. Ann. tit. 9, § 2451a(b) defines “goods” and “services” broadly to include “intangibles” and “other property or services of any kind.” Although Vermont courts have not yet ruled on the coverage of credit transactions, this language appears broad enough to include loans of money. In <i>Gramatan Home Investors Corp. v. Starling</i> , 470 A.2d 1157 (Vt. 1983), the Vermont Supreme Court upheld the application of the home solicitation provisions of the statute to a creditor that had financed home improvement work.
b. Insurance	Mixed	In <i>Greene v. Stevens Gas Service</i> , 858 A.2d 238 (Vt. 2004), the state supreme court declined to rule on whether the state UDAP statute applies to insurers. The court instead upheld the dismissal of a UDAP claim against an insurer because no loss was shown. However, still on the books is <i>Wilder v. Aetna Life &amp; Cas. Ins. Co.</i> , 433 A.2d 309 (Vt. 1981), which held that, while the business of insurance is in commerce, its sale is not a sale of goods or services, so no private cause of action is available under Vermont’s UDAP statute. That statement was arguably <i>dicta</i> , since the plaintiffs were accident victims who were suing the other driver’s insurance company, and the court also held that they had not entered into a sale with the defendant. <i>Greene</i> discussed <i>Wilder</i> , and referred to amicus briefs filed by the attorney general, which argued that <i>Wilder</i> should be overturned, and that a 1985 amendment sufficiently broadened the scope of the statute to cover insurance. However, Vermont courts have not yet resolved these issues. Because <i>Wilder</i> can still be cited as good law, it is an impediment to consumers in Vermont seeking to apply the UDAP statute to insurance.
c. Utilities	Strong	Although Vermont courts have not yet ruled on the coverage of utilities, Vt. Stat. Ann. tit. 9, § 2451a(b) defines “goods” and “services” broadly. Since UDAP statutes are to be liberally construed, and there is no basis in the statutory language to distinguish between utility service and other services, it is likely that Vermont courts will find that the statute covers utilities. In addition, the statute and the attorney general’s regulations specifically address propane sales. Vt. Stat. Ann. tit. 9, § 2461b; Vt. Admin. Code 3-2-109:CP 111. The statute also addresses telephone billing practices, a provision that would be meaningless if the statute were inapplicable to this service. Vt. Stat. Ann. tit. 9, § 2466.
d. Post-sale acts (debt collection, repossession)	Strong	Vt. Stat. Ann. tit. 9, § 2453 broadly prohibits unfair or deceptive acts or practices “in commerce.” There is no language in the statute that would limit “commerce” to exclude post-sale acts. Further, Vt. Stat. Ann. tit. 9, § 2451a(a) broadly defines “consumer” as “any person who purchases, leases, contracts for, or otherwise agrees to pay consideration for” goods or services. The language “agrees to pay consideration for” also suggests coverage of post-sale collection practices. The private cause of action set forth at Vt. Stat. Ann. tit. 9, § 2461(b) is not limited in any way that would preclude suit based on post-sale acts. In addition, the Vermont Attorney General has adopted regulations under the UDAP statute regarding debt collection practices. Vt. Consumer Protection Rules, Vt. Admin. Code 3-2-103:CP 104. In <i>First Quality Carpets, Inc. v. Kirschbaum</i> , 54 A.3d 465 (Vt. 2012), a case involving a dispute about the seller’s replacement of defective carpet, the Vermont Supreme Court stated that the statute extended to misrepresentations in the course of services provided after the sale.
e. Real estate	Strong	Vt. Stat. Ann. tit. 9, § 2451a(b) defines “goods” and “services” to include real estate. § 2453(e) provides that substantive prohibitions apply to real estate transactions. A number of Vermont Supreme Court decisions have upheld the application of the statute to real estate sales and landlord-tenant transactions. <i>See, e.g., Carter v. Gugliuzzi</i> , 716 A.2d 17 (Vt. 1998); <i>Bisson v. Ward</i> , 628 A.2d 1256 (Vt. 1993).

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Undecided	An older decision, still on the books, holds that consumers cannot enforce the statute in insurance transactions. The Vermont Supreme Court has not decided whether the decision is still binding.
b. Does not require reliance	Strong	Vt. Stat. Ann. tit. 9, § 2461(b) requires <i>either</i> reliance or that consumer "sustain damages or injury as a result of" a prohibited practice. In <i>Dernier v. Mortgage Network, Inc.</i> , 87 A.3d 465, 481 (Vt. 2013), the state supreme court stated that a consumer must show either reliance on a deceptive act or injury caused by an unfair or deceptive act.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Vt. Stat. Ann. tit. 9, § 2461(b) - treble damages
f. Attorney fees for consumers	Strong	Vt. Stat. Ann. tit. 9, § 2461(b)
g. UDAP statute does not prohibit class actions	Strong	Class actions are allowed under Vermont's UDAP statute. In <i>Elkins v. Microsoft Corp.</i> , 817 A.2d 9 (Vt. 2002), the Vermont Supreme Court reversed the dismissal of a class action based on a UDAP claim against Microsoft. Although the decision does not address whether consumers have the right to bring a class action, it is unlikely that the court would have allowed the case to proceed if class actions were not allowed.
4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Vt. Stat. Ann. tit. 9, § 2458
c. Restitution for consumers	Strong	Vt. Stat. Ann. tit. 9, § 2458(b)(2)
d. Civil penalty amount for initial violations	Strong	Vt. Stat. Ann. tit. 9, § 2458(b)(1) - up to \$10,000 per violation

## VIRGINIA

Va. Code Ann. §§ 59.1-196 through 59.1-207  
Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Weak	The statute does not include a broad prohibition of unfair or unconscionable acts.
b. Broadly prohibits deceptive acts	Strong	Va. Code Ann. § 59.1-200(A)(14)
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Weak	Va. Code Ann. § 59.1-199(D) excludes banks, savings institutions, credit unions, small loan companies, and mortgage lenders. This exception leaves only a small part of the credit industry covered by the statute. In addition, Virginia excludes any aspects of consumer transactions that are regulated by the Federal Consumer Credit Protection Act. Va. Code § 59.1-199(E).
b. Insurance	Weak	Va. Code Ann. § 59.1-199(D) excludes insurance companies regulated by state or federal authorities.
c. Utilities	Weak	Va. Code Ann. § 59.1-199(D) excludes gas suppliers and “public service corporations,” defined by Va. Code Ann. § 56-1 to include gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, telegraph companies, and common carriers, with a limited exception for municipal and other publicly-owned utilities.
d. Post-sale acts (debt collection, repossession)	Undecided	The Virginia UDAP statute’s prohibitions apply to acts “in connection with” a consumer transaction, which would seem to cover post-sale matters such as debt collection. Va. Code Ann. § 59.1-200. However, the exclusion at Va. Code § 59.1-199(C) for aspects of consumer transactions that are regulated by the Federal Consumer Credit Protection Act could be construed to exempt debt collectors who are subject to the Fair Debt Collection Practices Act, which is a subchapter of the CCPA. The statute might still apply to creditors collecting debts in their own names, as the FDCPA does not apply to them, but the possible exclusion of third-party debt collections would be a significant limitation on the statute’s scope. In addition, some mortgage servicers may fall within the exemption found at Va. Code Ann. § 59.1-199(D) for banks.
e. Real estate	Mixed	Va. Code Ann. § 59.1-198 defines goods (a term that is incorporated in the definition of “consumer transaction”) to include real property. In <i>Holland v. MBM Sales, Inc.</i> , 34 Va. Cir. 194, 1994 WL 1031255 (Va. Cir. Ct. 1994), a trial court awarded attorney’s fees under the UDAP statute to plaintiffs who sued for misrepresentations in the purchase of a piece of land. <i>See also Messer v. Shannon &amp; Luchs Co.</i> , 15 Va. Cir. 18, 1985 WL 306802 (Va. Cir. Ct. 1985) (concurring with another case which “held that a real estate agent is analogous to a distributor”); Va. Code Ann. § 59.1-200.1 (specific prohibitions for foreclosure rescue operators). However, Va. Code Ann. § 59.1-199(F) provides a blanket exemption for licensed real estate brokers, salespersons, and rental location agents.
3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Weak	A showing of reliance is required. <i>Owens v. DRS Automotive Fantomworks, Inc.</i> , 764 S.E.2d 256 (Va. 2014) (although VCPA claim does not require proof of common law fraud, it does require proof “in misrepresentation cases of the elements of reliance and damages;” must show that plaintiff suffered a loss as a result of reliance on the false statements).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Va. Code Ann. § 59.1-204(A) if willful
f. Attorney fees for consumers	Strong	Va. Code Ann. § 59.1-204(B)

g. UDAP statute does not prohibit class actions	Mixed	Virginia does not allow class actions. <i>See Pearsall v. Va. Racing Comm'n</i> , 494 S.E.2d 879, 883 (Va. App. 1998). However, it is likely that federal courts will be able to hear class actions that seek to enforce the Mississippi UDAP statute, so the state is rated Mixed in this category.
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4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Va. Code § 59.1-207
b. Equitable relief	Strong	Va. Code Ann. § 59.1-203
c. Restitution for consumers	Strong	Va. Code Ann. § 59.1-205
d. Civil penalty amount for initial violations	Weak	Va. Code Ann. § 59.1-206 (up to \$2,500 per willful violation)

## WASHINGTON

Wash. Rev. Code §§ 19.86.010 through 19.86.920  
Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Wash. Rev. Code § 19.86.020
b. Broadly prohibits deceptive acts	Strong	Wash. Rev. Code § 19.86.020
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	The Washington UDAP statute defines "trade," "commerce," and "asset" broadly enough to include credit, and neither the section prohibiting unfair and deceptive acts nor the section creating a private cause of action is worded in a way that would exclude credit. Wash. Rev. Code § 19.86.110(2), (3). While Wash. Rev. Code § 19.86.170 excludes actions or transactions "permitted, prohibited or regulated" under insurance, utility, and transportation laws (with certain exceptions), it only excludes actions or transactions "permitted" by other regulatory bodies. In <i>Klem v. Washington Mut. Bank</i> , 295 P.3d 1179 (Wash. 2013), the state supreme court applied the statute to foreclosure of a mortgage loan without any indication that this exemption was a problem. In addition, whatever the scope of the exemption, it is significantly narrowed by provisions in Washington lending laws that explicitly make violations actionable under the state UDAP statute. <i>See, e.g.,</i> Wash. Rev. Code §§ 19.146.100 (mortgage broker practices act), 31.04.208 (consumer loan act), 31.45.190 (check cashers).

b. Insurance	Strong	Wash. Rev. Code § 19.86.170 states that the UDAP statute does not “apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of the state...” However, it adds a proviso that “actions and transactions prohibited or regulated under the laws administered by the insurance commissioner shall be subject to” the substantive prohibitions of the UDAP statute and to “all sections ... [of the UDAP statute] which provide for the implementation and enforcement of” the UDAP statute’s substantive prohibitions. It then adds a further proviso that “nothing that is required or permitted to be done” pursuant to the insurance code, or “specifically permitted” by any regulatory body, is a UDAP violation. The result of this chain of exceptions and provisos appears to be that there is no blanket exemption for insurance companies, but actions that are required or permitted by the insurance code are not violations. A number of decisions are consistent with this reading. <i>See, e.g., Besel v. Viking Ins. Co.</i> , 49 P.3d 887 (Wash. 2002) (granting an award to plaintiff against an insurer on a UDAP claim); <i>Stephens v. Omni Ins. Co.</i> , 159 P.3d 10 (Wash. App. 2007) (refusing to find an insurer free from UDAP liability for unfair collection practices because the insurer could not point to any specific law or regulation approving of the insurer’s activities, but finding the insurer not liable for other reasons), <i>aff’d sub nom Panag v. Farmers Ins. Co.</i> , 204 P.3d 885 (Wash. 2009). Bad faith by an insurer can be a UDAP violation, as can failure by an insurer to comply with state insurance regulations. <i>Industrial Indemnity Co. v. Kallevig</i> , 792 P.2d 520 (Wash. 1990).
c. Utilities	Weak	The Washington Supreme Court has held that utilities fall within the UDAP statute’s exemption at Wash. Rev. Code § 19.86.170 for transactions or actions permitted, prohibited, or regulated by the state utility commission. <i>Tanner Elec. Co-op. v. Puget Sound Power &amp; Light Co.</i> , 911 P.2d 1301 (Wash. 1996). By statute this general exemption does not apply to certain telecommunications companies, or to for water companies that are not regulated by the state utility commissioner. Wash. Rev. Code §§ 80.04.010(30), 80.36.360. Nonetheless, it still operates as a blanket exemption for most utility providers.
d. Post-sale acts (debt collection, repossession)	Strong	Wash. Rev. Code §§ 19.86.010(2) and 19.86.010(3), which define “trade,” “commerce,” and “asset,” are clearly broad enough to include post-sale acts, and neither the section prohibiting unfair and deceptive acts nor the section creating a private cause of action is worded in a way that would exclude post-sale acts. The state supreme court has held the statute applicable to collection activities. <i>Panag v. Farmers Ins. Co.</i> , 204 P.3d 885 (Wash. 2009). The state debt collection statute also provides that a violation of it constitutes a violation of the UDAP statute. Wash. Rev. Code § 19.16.440. Courts have also applied the statute to repossession and foreclosure. <i>See, e.g., Sherwood v. Bellevue Dodge, Inc.</i> , 669 P.2d 1258 (Wash. Ct. App. 1983) (repossession); <i>Klem v. Washington Mut. Bank</i> , 295 P.3d 1179 (Wash. 2013) (foreclosure).
e. Real estate	Strong	Wash. Rev. Code § 19.86.010(2) and (3), define “trade,” “commerce,” and “asset” to include real estate, and neither the section prohibiting unfair and deceptive acts nor the section creating a private cause of action is worded in a way that could be construed to exclude real estate. The statute has been applied to real estate transactions in cases such as <i>McRae v. Bolstad</i> , 676 P.2d 496 (Wash. 1984).

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.

b. Does not require reliance	Strong	In <i>Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.</i> , 170 P.3d 10 (Wash. 2007), the Washington Supreme Court held that proximate causation must be shown, and rejected the argument that reliance is required. See also <i>Thornell v. Seattle Service Bur., Inc.</i> , 363 P.3d 587, 591-592 (Wash. 2015) (reiterating that reliance is not an element); <i>Schnall v. AT&amp;T Wireless Servs., Inc.</i> , 259 P.3d 129 (Wash. 2011) (reiterating that reliance is not necessarily an element; remanding to trial court for evaluation of “but for” causation).
c. Does not require a showing of public interest or public impact	Weak	<i>Hangman Ridge Training Stables, Inc. v. Safeco Title. Ins. Co.</i> , 719 P.2d 531 (Wash. 1986), requires a showing of public interest as an element. While the negative impact of this decision is lessened by the fact that most Washington consumer protection statutes include a “public interest” impact declaration, and Wash. Rev. Code § 19.86.093 provides that this element can be shown by proof of injury or capability to injure others, it still stands as an impediment to consumers.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Wash. Rev. Code § 19.86.090 (allowing treble damages, capped at \$25,000)
f. Attorney fees for consumers	Strong	Wash. Rev. Code § 19.86.090
g. UDAP statute does not prohibit class actions	Strong	Nothing in the UDAP statute precludes class actions, and the state supreme court has confirmed that class actions are allowed. <i>Dix v. ICT Group, Inc.</i> , 161 P.3d 1016 (Wash. 2007).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	Wash. Rev. Code § 19.86.080(1)
c. Restitution for consumers	Strong	Wash. Rev. Code § 19.86.080(2)
d. Civil penalty amount for initial violations	Weak	Wash. Rev. Code § 19.86.140 - up to \$2,000 per violation

## WEST VIRGINIA

W. Va. Code §§ 46A-6-101 through 46A-6-110

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	W. Va. Code §§ 46A-6-102(7) (prefatory language), 46A-6-104
b. Broadly prohibits deceptive acts	Strong	W. Va. Code §§ 46A-6-102(7) (prefatory language), 46A-6-104
c. Provides the state agency substantive rulemaking authority	Strong	W. Va. Code §§ 46A-6-103, 46A-7-102(e). The state has adopted several rules.

2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Undecided	<p>W. Va. Code § 46A-6-102(6) defines trade or commerce as involving “goods or services,” and the private cause of action created by W. Va. Code § 46A-6-106(a) extends only to a consumer who “purchases or leases goods or services.” The state supreme court has ruled that arranging a loan is provision of a service and is subject to the UDAP statute. <i>Harper v. Jackson Hewitt, Inc.</i>, 706 S.E.2d 63 (W. Va. 2010). However, it is unclear whether the statute applies to extending credit, as opposed to arranging for its extension. While courts in some other states have construed credit to be a “service,” the West Virginia Supreme Court has not ruled on this question. However, W. Va. Code § 46A-6-102(7)(N) defines “unfair or deceptive acts or practices” to include misrepresentation of the terms of an extension of consumer credit. This definition would be meaningless if the statute did not cover the extension of consumer credit. In addition, “sale” is defined by W. Va. Code § 46A-6-102(5) as “any sale, offer for sale or attempt to sell any goods for cash or credit or any services or offer for services for cash or credit,” which implies that credit is covered at least when it is for the purchase of goods or services. However, a federal court decision, construing these statutes in the context of a UDAP statute of limitations question, holds that a mortgage loan is not goods or services.</p> <p>The issue is complicated somewhat by <i>Herrod v. First Republic Mortgage Corp., Inc.</i>, 625 S.E.2d 373, 389 (W.Va. 2005), in which one of the state supreme court justices stated, in a special concurring opinion, that the UDAP statute applies to the sale of mortgage brokers’ services. However, in the same passage he stated that the UDAP statute does not apply to lending itself. As this statement addressed a question that was not before the court, and was a concurring opinion rather than the majority opinion, it has no precedential value.</p>
b. Insurance	Mixed	<p>The statute defines trade or commerce as involving “goods or services,” and defines “services” to include insurance. W. Va. Code §§ 46A-1-102(47), 46A-6-102(6), 46A-6-104. Another section of the statute, W. Va. Code § 46A-1-105, excludes “the sale of insurance by an insurer,” but there is no reason that the statute would not apply to an insurer’s non-sale activities or to non-insurers’ acts that relate to insurance.</p>
c. Utilities	Mixed	<p>W. Va. Code § 46A-1-105(a)(3) excludes “[t]ransactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.” The West Virginia Supreme Court construed this exemption broadly to encompass all the matters addressed by the utility’s tariff, holding that it immunized a water company from UDAP liability not only for matters relating to its rates but also for its termination of a customer’s service in violation of a public utility commission order. <i>Holt v. W. Va.-Am. Water Co.</i>, 760 S.E.2d 502 (W. Va. 2014). On the other hand, the court had no difficulty applying the statute to a telephone company’s deceptive marketing of inside wire maintenance services that were not governed by a tariff, and it held that the public service commission did not have jurisdiction over the claim. <i>State ex rel. Bell Atl. v. Ranson</i>, 497 S.E.2d 755 (W. Va. 1997).</p>



d. Post-sale acts (debt collection, repossession)	Undecided	West Virginia’s Consumer Credit and Protection Act includes both the state’s UDAP statute and a set of specific debt collection protections (W. Va. Code §§ 46A-2-122 to 46A-2-129a). Whether the UDAP provisions apply to debt collection has not been definitively determined, but the statute applies broadly to “the advertising, offering for sale, sale or distribution of any goods or services and shall include any trade or commerce, directly or indirectly, affecting the people of this state.” W. Va. Code § 46A-6-102(6). A state supreme court decision, <i>State ex rel. McGraw v. Telecheck Servs., Inc.</i> , 582 S.E.2d 885, 897 n.20 (W. Va. 2003), states that deceptive and abusive debt collection tactics are “clearly a proper subject of UDAP scrutiny.” This statement appears only in a footnote, however, and the court acknowledged that the question was not before it, so it is still not entirely clear whether the statute applies to debt collection.
e. Real estate	Undecided	W. Va. Code § 46A-6-102(6) defines trade or commerce as involving “goods or services.” In <i>State ex rel. Morrissey v. Copper Beech Townhome Communities Twenty-Six, LLC</i> , 806 S.E.2d 172 (W. Va. 2017), the state supreme court held that the statute did not apply to residential leases of real property entered into by a landlord and tenant. The court did not address the sale of real property, however, so the question remains undecided.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Mixed	The West Virginia Supreme Court held in 2010 that reliance is necessary to show a causal connection in the case of affirmative representations, but not for nondisclosure claims. <i>White v. Wyeth</i> , 705 S.E.2d 828 (W. Va. 2010). As amended in 2015, W. Va. Code § 46A-6-106(b) requires a UDAP plaintiff who bases a claim on an affirmative misrepresentation to show that it “caused him or her to enter into the transaction,” and that, for an omission, the plaintiff must show that his or her loss was “proximately caused” by the omission. This amendment appears to confirm that the plaintiff must show causation, but not necessarily reliance, for a claim based on an omission, and may establish the same principle for affirmative misrepresentations.
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Weak	W. Va. Code § 46A-6-106(b).
e. Multiple or punitive damages	Weak	The statute does not provide for multiple or punitive damages.
f. Attorney fees for consumers	Strong	W. Va. Code § 46A-5-104
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute restricts class actions.
4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant’s intent or knowledge.
b. Equitable relief	Strong	W. Va. Code § 46A-7-108

c. Restitution for consumers	Strong	W. Va. Code § 46A-7-108 allows the attorney general to obtain “other appropriate relief.” In <i>State ex rel. McGraw v. Imperial Marketing</i> , 506 S.E.2d 799, 811-2 (W. Va. 1998), the West Virginia Supreme Court held that this language was broad enough for the Attorney General to obtain an order requiring a seller to make refunds to consumers.
d. Civil penalty amount for initial violations	Mixed	W. Va. Code § 46A-7-111(2) – up to \$5,000 per violation if repeated and willful.

## WISCONSIN

Wis. Stat. §§ 100.18, 100.20

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Mixed	Wis. Stat. Ann. § 100.20(1) prohibits unfair trade practices, but consumers can enforce this requirement only if the defendant violated a specific rule. While the state has adopted rules dealing with a wide variety of specific industries and practices, including home improvement practices, manufactured homes, motor vehicle repair, and residential rental practices (Wis. Admin. Code ATCP chs. 109 to 134), the state still lacks a broadly-applicable prohibition of unfair practices that is enforceable by consumers.
b. Broadly prohibits deceptive acts	Strong	Wis. Stat. Ann. § 100.18(1) (false advertisements)
c. Provides the state agency substantive rulemaking authority	Strong	Wis. Stat. Ann. § 100.20(2). The state has adopted a number of rules.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Mixed	One of Wisconsin’s UDAP statutes, Wis. Stat. § 100.18, does not have any language that would exclude credit transactions. It forbids false advertising (broadly defined) and applies to “purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service.” Although there are no reported Wisconsin decisions on point, this language appears broad enough to cover extensions of credit. A second UDAP statute, Wis. Stat. § 100.20, applies to “business and trade,” but a private cause of action is available only if the defendant violated one of the specific UDAP regulations, and none of the UDAP regulations targets lending practices. As a result, Wis. Stat. § 100.20 is unlikely to be very useful to consumers in credit transactions.
b. Insurance	Weak	Wis. Stat. § 100.18, one of Wisconsin’s two UDAP statutes, prohibits deceptive advertising and representations, but subsection (12)(a) exempts insurance. Wis. Stat. § 100.20, its other UDAP statute, applies to “business and trade,” but a private cause of action is available only if the defendant violates a specific UDAP regulation, and none of the UDAP regulations targets insurance practices. As a result, section 100.20 is unlikely to be helpful to consumers in insurance transactions.
c. Utilities	Strong	Wis. Stat. § 100.18 applies to “purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service,” which is clearly broad enough to include utility service. In addition, Wis. Stat. § 100.207 specifically restricts telecommunications marketing and collection practices, and Wis. Admin. Code ATCP §§ 123.01 to 123.28 and 125.04 impose restrictions on telecommunications and cable television services and on charges for utility service in manufactured home communities. These restrictions would be meaningless if the statute did not apply to utility service.

d. Post-sale acts (debt collection, repossession)	Weak	One of Wisconsin's UDAP statutes, Wis. Stat. Ann. § 100.18, only applies to advertisements. Although "advertisement" is interpreted broadly to encompass oral statements and statements made to a single person, it is unlikely to be interpreted to apply to post-sale acts. A second UDAP statute, Wis. Stat. Ann. § 100.20, applies to "business and trade," which is clearly broad enough to include debt collection. However, a private cause of action is available only if the defendant violated one of the specific UDAP regulations, and none of the UDAP regulations targets debt collection or other post-sale practices. As a result, although Wisconsin, like a number of other states, has separate laws on debt collection practices, § 100.20 is not usually of use to consumers in debt collection matters.
e. Real estate	Strong	Wis. Stat. Ann. § 100.18 prohibits deceptive advertisements for real estate, although there is an exception at § 100.18(12)(b) for licensed real estate brokers and salespersons who unknowingly make false representations. The statute was applied to misrepresentations in the sale of a house in <i>Rach v. Kleiber</i> , 367 N.W.2d 824 (Wis. App. 1985) and <i>Novell v. Migliaccio</i> , 749 N.W.2d 544 (Wis. 2008). Wis. Stat. Ann. § 100.20 applies to "business and trade," which is clearly broad enough to include real estate transactions. Regulations adopted under the statute, Wis. Admin. Code ATCP chs. 114 and 134, prohibit certain real estate advertising and sale practices and certain residential rental practices.

3. CONSUMER ACCESS TO JUSTICE		COMMENTS
a. No major gaps in scope of consumers' ability to enforce the statute	Weak	Consumers can enforce the broad prohibition of unfair trade practices in Wis. Stat. Ann. § 100.20 only if the defendant violated a rule prohibiting the specific practice. <i>See</i> § 100.20(5).
b. Does not require reliance	Strong	<i>Novell v. Migliaccio</i> , 749 N.W.2d 544 (Wis. 2008) (reasonable reliance not an element of UDAP claim, but jury may consider reasonableness of consumer's reliance on misrepresentation in determining causation); <i>Tool &amp; Die Corp. v. Perfection Machinery Sales, Inc.</i> , 732 N.W.2d 792 (Wis. 2007) (reasonable reliance unnecessary under Wis. Stat. Ann. § 100.18; sufficient to show that false advertisement was material inducement).
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Strong	Nothing in the statute requires pre-suit notice.
e. Multiple or punitive damages	Strong	Wis. Stat. Ann. § 100.20(5) allows double damages for violation of the rules adopted under it, and there a number of strong rules.
f. Attorney fees for consumers	Strong	Wis. Stat. Ann. §§ 100.18(11)(b)(2), 100.20(5).
g. UDAP statute does not prohibit class actions	Strong	Nothing in the statute precludes class actions, and Wisconsin courts have allowed class actions. <i>See, e.g. Gallego v. Wal-Mart Stores, Inc.</i> , 707 N.W.2d 539 (Wis. App. 2005) (reversing dismissal of class claim under § 100.20).

4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY		COMMENTS
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Nothing in the statute requires a showing of the defendant's intent or knowledge.
b. Equitable relief	Strong	Wis. Stat. Ann. § 100.18(11)(a), (d) (for false advertisement law)
c. Restitution for consumers	Strong	Wis. Stat. Ann. §§ 100.18(11)(a), 100.20(6)

d. Civil penalty amount for initial violations	Strong	Wis. Stat. Ann. § 100.26 (\$100 to \$10,000 for each violation of an “order issued under 100.20;” since the statute refers to rules as “general orders,” this allows civil penalties for rule violations). Most violations of Wis. Stat. Ann. § 100.18 are also subject to civil penalties, which range from \$50 to \$10,000, depending on the specific violation: Wis. Stat. Ann. § 100.26(4), (4m), and (5).
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## WYOMING

### Wyo. Stat. Ann. §§ 40-12-101 through 40-12-114 Consumer Protection Act

1. BREADTH OF SUBSTANTIVE PROHIBITIONS		COMMENTS
a. Broadly prohibits unfair or unconscionable acts	Strong	Wyo. Stat. Ann. § 40-12-105(a)(xv)
b. Broadly prohibits deceptive acts	Strong	Wyo. Stat. Ann. § 40-12-105(a)(xv)
c. Provides the state agency substantive rulemaking authority	Weak	The statute does not provide rulemaking authority.
2. SCOPE OF STATUTE		COMMENTS
a. Creditors and credit	Strong	<p>Wyoming’s UDAP statute covers deceptive trade practices in the course of a person’s business and in connection with a consumer transaction. Wyo. Stat. Ann. § 40-12-105. A “consumer transaction” is one involving advertising, offering for sale, sale, or distribution of any merchandise to an individual for personal, family, or household use, and “merchandise” is defined to include “any property, tangible, intangible, real, personal, or mixed.” Wyo. Stat. Ann. § 40-12-102(a)(ii), (vi). These definitions are clearly broad enough to include extensions of credit, and nothing in the private cause of action section would preclude application of the statute to credit.</p> <p>Wyo. Stat. Ann. § 40-12-110(a) exempts “acts or practices required or permitted by state or federal law, rule, or regulation or judicial or administrative decision,” but this language is narrower than some statutes in that it refers only to “acts or practices.” Wyoming courts have not had occasion to interpret this exemption, but as it is worded narrowly it is unlikely that it would be interpreted as a blanket exemption for credit transactions.</p>
b. Insurance	Mixed	The statute’s definition of “merchandise” is broad enough to cover insurance. Wyo. Stat. Ann. § 40-12-102(a)(vi). However, in <i>Herrig v. Herrig</i> , 844 P.2d 487 (Wyo. 1992), the state supreme court upheld a trial court’s denial of a third-party tort victim’s motion to amend a complaint to add a UDAP claim against the tortfeasor’s insurance company. It held stated: “The Wyoming Consumer Protection Act was drafted primarily to protect consumers from unscrupulous and fraudulent marketing practices. The Wyoming Legislature has addressed the problem of and remedies for unfair claims settlement or payment practices in the Wyoming Insurance Code.” The case only involved third-party claimants, and the court could take a broader view in a case involving the insured. Nevertheless, the court’s language suggests that, while the statute may cover insurance marketing practices, it does not cover unfair or deceptive insurance claims settlement practices regardless of whether the claimant is the insured or a third party.

c. Utilities	Strong	Wyo. Stat. Ann. § 40-12-102(a)(vi) defines “merchandise” to include “any service.” Wyo. Stat. Ann. § 40-12-110(a) exempts “acts or practices required or permitted by state or federal law, rule, or regulation or judicial or administrative decision.” This language is narrower than some statutes in that it refers only to “acts or practices.” Wyoming courts have not had occasion to interpret this statute, but since it is worded narrowly it is unlikely that it would be interpreted as a blanket exemption for utilities.
d. Post-sale acts (debt collection, repossession)	Strong	Under Wyo. Stat. Ann. § 40-12-105(a), a deceptive act need only be “in connection with” a consumer transaction, so it should apply to post-sale acts such as debt collection.
e. Real estate	Strong	Wyo. Stat. Ann. § 40-12-102(a)(vi) defines “merchandise” to include real property, and nothing in the private cause of action section precludes suit in real property transactions.
<b>3. CONSUMER ACCESS TO JUSTICE</b>		<b>COMMENTS</b>
a. No major gaps in scope of consumers’ ability to enforce the statute	Strong	The statute does not preclude consumers from enforcing any of its major substantive provisions, or from enforcing the statute against any major type of business that the statute otherwise covers.
b. Does not require reliance	Weak	Wyo. Stat. Ann. § 40-12-108(a) explicitly requires a showing of reliance: “a person relying upon an uncured unlawful deceptive practice may bring and action under this act for the damages he has actually suffered.”
c. Does not require a showing of public interest or public impact	Strong	Nothing in the statute requires a showing of public interest or public impact, and courts have not imposed this requirement.
d. Does not require pre-suit notice to the defendant	Weak	Wyo. Stat. Ann. §§ 40-12-102(a)(ix), 40-12-108(a)
e. Multiple or punitive damages	Weak	The statute does not provide for multiple or punitive damages.
f. Attorney fees for consumers	Weak	Wyo. Stat. Ann. § 40-12-108(b) authorizes attorney fees in class actions, but there is no similar authorization for individual actions.
g. UDAP statute does not prohibit class actions	Strong	Wyo. Stat. Ann. § 40-12-108(b)
<b>4. STRENGTH OF PUBLIC ENFORCEMENT AUTHORITY</b>		<b>COMMENTS</b>
a. Allows public enforcement without requiring a showing of the defendant’s intent or knowledge	Weak	The definition of unlawful practices at Wyo. Stat. Ann. § 40-12-105 requires that the defendant act knowingly.
b. Equitable relief	Strong	Wyo. Stat. Ann. § 40-12-106
c. Restitution for consumers	Strong	Wyo. Stat. Ann. § 40-12-106
d. Civil penalty amount for initial violations	Strong	Wyo. Stat. Ann. § 40-12-113 - up to \$10,000 per violation if willful

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