How Well Do States Protect Consumers from Unfair and Deceptive Business Practices?

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National Consumer Law Center Survey Finds Many Weaknesses in Most State Laws

Download the full report, a state-by-state chart comparison, 14 comparative maps, capsule summaries of each state and the District of Columbia laws, and summaries of each entity's statutes at: http://bit.ly/2DJKbGp

Boston – Unfair and Deceptive Acts and Practices (UDAP) state laws prohibit deceptive practices in consumer transactions, such as sales of cars and other goods, loans, home improvements, utility contracts, and mortgage transactions. A new report from the National Consumer Law Center (NCLC) finds that in many states, these statutes fall far short of their goal of deterring and remedying a broad range of predatory, deceptive, and unscrupulous business practices. "Unfair and Deceptive Acts and Practices laws should be the backbone of consumer protection in every state, but significant gaps or weaknesses in almost all states undermine the promise of these vital protections so the deck is stacked against consumers," **said Carolyn Carter**, National Consumer Law Center Deputy Director and author of Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws.

In many states, the deficiencies are glaring. Legislation or court decisions in dozens of states have narrowed the scope of UDAP laws or granted sweeping exemptions to entire industries. Other states have placed substantial legal obstacles in the path of officials charged with UDAP enforcement, or imposed ceilings as low as $1,000 on civil penalties. And several states have stacked the financial deck against consumers who go to court to enforce the law themselves.

Since NCLC's 2009 analysis of state UDAP laws, **Alaska, Arizona, Iowa, North Dakota**, and **Oregon** have made significant improvements to their UDAP statutes, yet each of these states still has room for improvement. **Tennessee** and **Ohio** went in the opposite direction, weakening their UDAP statutes in significant ways. **Arkansas** enacted a set of amendments in 2017 that both improve its UDAP statute in some ways and weaken it in others. **Michigan** and **Rhode Island's** UDAP laws were gutted by court decisions that interpret the statute as being applicable to almost no consumer transactions. These decisions were issued over ten years ago, yet the state legislatures still have not corrected them.

Key Recommendations

States that want to strengthen their protections for consumers should:

Strengthen their UDAP statute's substantive prohibitions by:

- Making sure that the statute includes **broad prohibitions** of deceptive and unfair acts that consumers can enforce.

Strengthen their UDAP statute's scope by:

- **Narrowing or deleting any exclusion for regulated industries**, so that is clear that the mere fact of regulation is not a license to engage in unfair and deceptive practices.
- **Eliminating exemptions** for lenders, other creditors, insurers, and utility companies.
- Making it clear that the statute applies to **real estate transactions and to post-transaction matters** such as abusive collection of consumer debts.

Strengthen the state's ability to enforce the statute by:

- Deleting any requirement that **knowledge or intent** be proven as an element of a UDAP violation.
- Increasing the size of the **civil penalty** and making sure that it is applicable per violation.
- Allowing courts to order a business to **pay the state's attorney fees** and costs when the state prevails in a UDAP case. Providing **adequate funding** for the consumer protection activities of the state agency.

Strengthen consumers' access to justice by:

- Removing any gaps in consumers' **ability to enforce** the statute.
- Making it clear that courts can order a business to pay a consumer's **attorney fees**, and that the consumer cannot be held responsible for the business's attorney fees if the case was filed in good faith.
- Removing any restrictions on UDAP **class actions**, so that they are governed by the state's usual rules (or by the federal rules if the case is led in federal court).
- Deleting any **special barriers** imposed on consumers before they can invoke a statute's remedies, such as a special advance notice requirement, a requirement that a consumer who has been cheated prove that the business cheats consumers as a general rule, or a rule that denies consumers who have suffered an invasion of privacy or some other non-monetary injury the ability to enforce the statute.
- Amending the statute to make it clear that courts can **presume that consumers relied on material misrepresentations**, without requiring individual proof.
- Allowing consumers to seek **enhanced damages or punitive damages** in appropriate cases.

Even if a UDAP statute is already free from these weaknesses, it can often be improved by, for example, making attorney fee awards to consumers mandatory, so that if they prevail they are assured of being made whole, and making it clear that the heightened requirements of common law fraud and rigid contract law rules are not applicable to UDAP claims.

A full list of recommendations is available at http://bit.ly/2DJKbGp.

For more on NCLC's body of work on unfair and deceptive practices, please visit: https://www.nclc.org/issues/unfair-a-deceptive-acts-a-practices.html. Subscription information for NCLC's Unfair and Deceptive Acts and Practices, and free access to Chapter One of all of the legal treatises in NCLC's Consumer Credit and Sales Legal Practices Series, is available at https://www.nclc.org/library.